

May 20, 2019

Mr. Willie Chiang
Chief Executive Officer and Director
Plains All American Pipeline, LP
333 Clay Street, Suite 1600
Houston, Texas 77002

Re: CPF No. 2-2018-5002

Dear Mr. Chiang:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a reduced civil penalty of \$19,000 against Plains Pipeline, LP, a subsidiary of Plains All American Pipeline, LP. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. James Urisko, Director, Southern Region, Office of Pipeline Safety, PHMSA
Mr. Dean Gore, Vice President, Environmental and Regulatory Compliance, Plains All
American Pipeline, LP, 333 Clay Street, Suite 1600, Houston, Texas 77002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

)	
In the Matter of)	
)	
Plains Pipeline, LP,)	CPF No. 2-2018-5002
 a subsidiary of Plains All American Pipeline, LP,)	
)	
Respondent.)	
)	

FINAL ORDER

On May 15, 2018, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), reviewed Plains Pipeline, LP’s (Plains or Respondent) Operator Registry Notification F-20180514-20608, dated May 14, 2018. Plains is an operating subsidiary of Plains All American Pipeline, LP (PAA). PAA has approximately 18,700 miles of active crude oil and natural gas liquid pipelines and gathering systems in the United States.¹

As a result of PHMSA’s review, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated June 21, 2018, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Plains had violated 49 C.F.R. § 195.64 and proposed assessing a civil penalty of \$36,200 for the alleged violation.

Plains responded to the Notice by letter dated August 16, 2018 (Response). The company did not contest the allegation of violation, but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Plains did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.64, which states in relevant part:

¹ Plains All American Pipeline, LP website, available at <https://www.plainsallamerican.com/what-we-do/transportation>, (Last accessed March 1, 2019).

§ 195.64 National Registry of Pipeline and LNG Operators.

(a)....

(c) Changes. Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the events occurs:

(i)....

(iii) Reversal of product flow direction when the reversal is expected to last more than 30 days. This notification is not required for pipeline systems already designed for bi-directional flow; or...

The Notice alleged that Respondent violated 49 C.F.R. § 195.64(c)(1)(iii) by failing to notify PHMSA of a flow reversal project, for which the flow reversal was expected to last more than 30 days, not later than 60 days before the event occurred. Specifically, the Notice alleged that Plains submitted an Operator Registry Notification to PHMSA on May 14, 2018, for a flow reversal project that was scheduled to begin on July 1, 2018—48 days before the reversal was scheduled to occur. The Notice described the project as the flow reversal of the 10-inch Liberty to Lumberton pipeline in Mississippi, as well as making the 14-inch Lumberton to Ten Mile pipeline, which runs from Alabama to Mississippi, flow bi-directionally. The Notice also alleged that the flow reversal would be in place for at least two years.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.64(c)(1)(iii) by failing to notify PHMSA of a flow reversal project, for which the flow reversal was expected to last more than 30 days, not later than 60 days before the event occurred.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.² In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$36,200 for the violation cited above.

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

Item 1: The Notice proposed a civil penalty of \$36,200 for Respondent's violation of 49 C.F.R. § 195.64(c)(1)(iii), for failing to notify PHMSA of a flow reversal project, for which the flow reversal was expected to last more than 30 days, not later than 60 days before the event occurred. In its Response, Plains requested a reduction in the penalty and claimed mitigating factors that resulted in non-compliance. Plains explained that the flow reversal project was originally scheduled to be completed by September 1, 2018. However, it was informed by the customer that its existing market would be shutdown effective July 1, 2018. Consequently, to keep from stranding barrels in the field, the customer requested that Plains expedite the flow reversal project. Plains noted that while it missed the 60-day notification by 12 days, PHMSA still had 48 days in which to schedule and witness the reversals.

I find that the mitigating factors offered by Plains provide a reasonable justification for Plains's non-compliance and demonstrate that the Respondent made a good faith attempt to comply with the pipeline safety regulations. Plains's non-compliance with the notification requirement was prompted by circumstances beyond its control: specifically, due to a change in market conditions for a customer and to prevent stranding barrels in the field, Plains expedited its flow reversal project. Once the project deadline changed, Plains notified PHMSA, missing the notification deadline by 12 days. I find that these mitigating factors, are reasonable justification for non-compliance and justify a reduction in the civil penalty.

Based upon the foregoing, I assess Respondent a reduced civil penalty of **\$19,000** for violation of 49 C.F.R. § 195.64(c)(1)(iii).

Failure to pay the \$19,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

May 20, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued