

March 18, 2021

**VIA ELECTRONIC MAIL TO: dmarine@pembina.com**

Mr. Darren Marine  
Vice President, Transmission Pipelines  
Pembina Pipeline Corporation  
4000, 585-8 Ave. SW  
Calgary, Alberta T2P1G1, Canada

**CPF No. 3-2020-5004**

Dear Mr. Marine:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Pembina Cochin, LLC, which was executed on March 17, 2021. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission, or as otherwise 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: Order and Consent Agreement

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA  
Mr. George Casey Hopkins, Vinson & Elkins, LLP, Counsel for Pembina Cochin, LLC,  
ghopkins@velaw.com  
Ms. Cassia Prentice, Legal Counsel, Pembina Cochin, LLC, cprentice@pembina.com

**CONFIRMATION OF 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	)	
	)	
Pembina Cochin LLC,	)	CPF No. 3-2020-5004
a subsidiary of Pembina U.S. Corporation,	)	
	)	
Respondent.	)	
	)	

**CONSENT AGREEMENT AND ORDER**

**WHEREAS**, on March 19, 2020, pursuant to 49 C.F.R. § 190.207, the Director, Central Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (Director), issued a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice) to Kinder Morgan Cochin, LLC, which is now known as Pembina Cochin LLC (Pembina Cochin or Respondent).<sup>1</sup> The Notice alleged that Respondent had violated the pipeline safety regulations in 49 C.F.R. Part 195 and proposed a civil penalty of \$187,200; and

**WHEREAS**, on April 22, 2020, Pembina Cochin submitted payment in the amount of \$187,200, and on April 24, 2020, requested an extension to respond to the Notice. The company requested a second extension to respond on May 13, 2020, and on May 22, 2020, filed a response to the Notice, contesting the allegations of violation, the proposed civil penalty, and the proposed compliance order, and requesting an informal hearing; and

**WHEREAS**, the Director and Pembina Cochin held a meeting telephonically on August 17 and October 29, 2020, to discuss resolution of this proceeding; and

**WHEREAS**, as result of these good-faith discussions, PHMSA and Respondent (collectively, the Parties) have reached an agreement on the terms and conditions of a settlement, as set forth herein, and agree that this Consent Agreement and Order (Agreement) will serve to avoid further administrative proceedings or litigation, that it is the most appropriate means of resolving this proceeding, and that it will promote the public interest by improving the safety performance of Pembina Cochin’s pipeline system and advancing the enforcement and safety goals of PHMSA.

**NOW, THEREFORE**, upon consent and agreement of the Parties, it is Ordered and Adjudged as follows:

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<sup>1</sup> Pembina U.S. Corporation is the parent company of Pembina Cochin LLC. Pembina Cochin LLC owns and operates the U.S. portion of the Cochin Pipeline.

## **I. General Provisions.**

1. For purposes of this Agreement, Pembina Cochin acknowledges that the portion of the Cochin Pipeline in the United States and the Cochin Kankakee Terminal located in Kankakee County, Illinois is subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative orders issued thereunder.

2. Pembina Cochin further acknowledges that it received proper notice of PHMSA's allegations in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U. S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

3. The Parties agree to the terms of this Agreement, and Pembina Cochin agrees to hereby waive any further procedural requirements with respect to its issuance. Pembina Cochin further waives all rights to contest the validity of this Agreement, including all rights to administrative or judicial hearings or appeals.

## **II. Findings of Fact and Violations.**

4. Respondent acknowledges, and PHMSA hereby finds, that Pembina Cochin violated 49 C.F.R. § 195.307(c) (Item 1), as alleged in the Notice, by failing to pressure test Tank 4 at the company's Kankakee, Illinois terminal in accordance with section 7.3.5 of API Standard 650. Specifically, Respondent was unable to provide any evidence that the water level for Tank 4 was filled to the maximum design liquid level.

5. Respondent further acknowledges, and PHMSA hereby finds, that Pembina Cochin violated 49 C.F.R. § 195.505(b) (Item 2), as alleged in the Notice, by failing to follow its own written operator qualification program to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, Respondent utilized contractors to perform pig-receiver modifications at its Rogers Pump Station, and on the following day in the early morning, a leak occurred at said facility. Respondent's internal investigation determined that the cause of the release was a contractor's failure to thoroughly tighten the threaded fitting upon completion of certain modification work.

## **III. Civil Penalty.**

6. Pembina Cochin further agrees to pay a civil penalty in the amount \$14,400 in connection with Item 1 of the Notice and \$158,400 in connection with Item 2 of the Notice, for a total civil penalty amount of \$172,800.

7. PHMSA agrees to use reasonable efforts to assist Pembina Cochin in recouping the excess civil penalty that has already been paid by Respondent to PHMSA, in amount of \$14,400.

## **IV. Corrective Measures.**

8. PHMSA agrees to withdraw the Proposed Compliance Order as written in the Notice, and, instead, Respondent agrees to take the following Corrective Measures:

- a. Pembina Cochin will complete an Engineering Assessment, to be performed by third-party experts, to evaluate the fitness for service of Tank 4, using API 579<sup>2</sup> finite element modeling of the applied stresses in the tank, weld residual stress models, other API 579 requirements along with Welding Research Council Bulletin 562, “Recommendations for Establishing the Minimum Pressurization Temperature (MPT) for Equipment,” and models for material properties in the fracture mechanics calculations. Pembina Cochin will provide to the Director the qualifications of the third-party experts and the results of the Engineering Assessment, including the impact on the maximum design level of Tank 4, within 60 days of the Effective Date of this Agreement; and
- b. From the Effective Date of this Agreement until December 31, 2023, or the date when Pembina Cochin performs an internal and external inspection of Tank 4 under API 653,<sup>3</sup> whichever is earlier, Pembina Cochin will implement the measures referenced in Appendix A attached hereto with respect to Tank 4.

9. The Director may grant an extension of time for completion of any of the work to be performed under Paragraphs 8(a) and 8(b) upon Respondent’s timely, written request that demonstrates both good cause for an extension and provides sufficient detail to enable the Director to evaluate Respondent’s request. A timely request should be submitted at least 15 calendar days prior to the date on which the work at issue is due to be submitted to the Director.

10. Respondent agrees to maintain documentation of the costs associated with implementation of the actions specified in Paragraphs 8(a) and 8(b), including Appendix A, and agrees to make this information available to PHMSA upon request.

## **V. Miscellaneous.**

11. Nothing in this Agreement affects or relieves Pembina Cochin of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA’s right of access, entry, inspection, and information gathering, or its authority to bring any enforcement action against Pembina Cochin pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or state law.

12. This Agreement does not waive or modify any Federal, state, or local laws or regulations applicable to Pembina Cochin’s pipeline system. This Agreement is not a permit or a modification of a permit under any Federal, state, or local laws or regulations. Pembina Cochin remains responsible for achieving and maintaining compliance with all applicable Federal, state, and local laws, regulations and permits.

13. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the

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<sup>2</sup> ASME - API 579-1/ASME FFS-1, *Fitness-For-Service*, June 2016.

<sup>3</sup> API Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction,” 3rd edition, December 2001, (including addendum 1 (September 2003), addendum 2 (November 2005), addendum 3 (February 2008), and errata (April 2008)), which is incorporated by reference into 49 CFR Part 195.

settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

14. This Agreement does not create rights in, or grant any cause of action to, any person not a party to this Agreement. PHMSA is not liable for any injuries or damages to persons or property arising from acts or omissions of Pembina Cochin or its officers, employees, or agents carrying out the work required by this Agreement. PHMSA, its officers, employees, agents, and representatives are not liable for any cause of action arising from any acts or omissions of Pembina Cochin or its contractors in carrying out any work required by this Agreement.

15. This Agreement shall apply to and be binding on PHMSA and Pembina Cochin, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.

16. For all transfers of ownership or operating responsibility of Pembina Cochin's pipeline system, Respondent will provide notice of the transfer to PHMSA through the National Registry of Operators no later than 60 days after the transfer occurs, consistent with the requirements of 49 C.F.R. § 191.22(c)(2).

#### **VI. Enforcement**

17. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. §60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. §60122, and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator.

#### **VII. Effective Date.**

18. The "Effective Date" is the date on which this Agreement has been signed by both Pembina Cochin and PHMSA.

#### **VIII. Termination.**

19. Respondent may request that the Director close this case on or after December 31, 2023, or after the date when Pembina Cochin performs an internal and external inspection of Tank 4 under API 653, whichever is earlier. Closure of the case will result in termination of the Agreement.

#### **IX. Ratification.**

20. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

**PEMBINA COCHIN LLC**

**PIPELINE AND HAZARDOUS  
MATERIALS ADMINISTRATION,  
OFFICE OF PIPELINE SAFETY**

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**Name:** Darren Marine  
**Title:** Vice President, Transmission Pipelines

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**Name:** Alan K. Mayberry  
**Title:** Associate Administrator for Pipeline Safety

March 16, 2021

March 17, 2021

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**Date:**

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**Date:**