

**DEC 19 2011**

Mr. Harry N. Pefanis  
President  
Plains Marketing, L.P.  
333 Clay St., Suite 1600  
Houston, TX 77002

**Re: CPF No. 4-2010-5014**

Dear Mr. Pefanis:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$29,000. It further finds that Plains Marketing, L.P., has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Troy Valenzuela, Vice President Environmental, Health and Safety, Plains Pipeline  
Mr. Rod M. Seeley, Director, Southwest Region, PHMSA  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety, PHMSA

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203000252]**

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

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<b>In the Matter of</b>	)	
	)	
<b>Plains Marketing, L.P.,</b>	)	<b>CPF No. 4-2010-5014</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On March 8-12, 2010, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the pipeline and tank facilities operated by Plains Marketing, L.P. (Plains or Respondent), in St. James, Louisiana. Plains is a subsidiary of Plains All American Pipeline, L.P., which transports, stores, terminals and markets crude oil, refined products and liquefied petroleum gas. Plains' system includes roughly 16,000 miles of active crude and refined products pipelines and gathering systems.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 10, 2010, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Plains had violated 49 C.F.R. § 195.420(b) and proposed assessing a civil penalty of \$29,000 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

After requesting<sup>2</sup> and receiving an extension of time, Plains responded to the Notice by letter dated October 15, 2010 (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:

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<sup>1</sup> <http://www.paalp.com/> (last accessed 7/26/2011).

<sup>2</sup> Response dated September 17, 2010.

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states in relevant part:

**§ 195.420 Valve maintenance.**

(a) . . . .

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to properly inspect each of its mainline valve at intervals not exceeding 7½ months, but at least twice each calendar year. Specifically, the Notice alleged that Plains failed to operate several mainline valves<sup>3</sup> at its St. James Terminal during the company's valve inspections, to determine if the valves function properly. PHMSA asserted that a review of Respondent's 2007-2009 Valve Inspection Reports, *PPLP Form No. 010*, showed that the valves were only visually inspected.<sup>4</sup>

Respondent acknowledged that there was no indication on the inspection reports of a functional check of the valves in question.<sup>5</sup> Accordingly, after considering all the evidence, I find Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect numerous mainline valves at its St. James Terminal to determine if they were functioning properly, at intervals not exceeding 7½ months, but at least twice each calendar year.

### ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. 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; the Respondent's ability to pay the penalty and 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 \$29,000 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$29,000 for Respondent's violation of 49 C.F.R. § 195.420(b), for failing to inspect its St. James Terminal mainline valves to ensure that they operated properly. As noted above, Plains did not contest the allegation that it failed to

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<sup>3</sup> See Notice, Attachment Table I, pages 1-3.

<sup>4</sup> Plains' Operations & Maintenance Manual (O&M Manual), *Valve Maintenance & Inspection Procedure, O&M-414*, details the steps required for mainline valve inspections and requires that the results of each inspection be recorded on PPLP Form No. 010. See PHMSA Violation Report, Exhibit C. The service performed on the valves in question was recorded on PPLP Form No. 010 as "visual inspection." See PHMSA Violation Report, Exhibit B.

<sup>5</sup> Response, at 2.

inspect each valve to determine that it functioned properly. Instead, Respondent argued that the proposed penalty should be reduced.

First, it contended that the valves were only inspected visually because the company was accustomed to frequently witnessing the satisfactory operation of the valves in the course of routine terminal operations and that such operations would not occur if the valves were not functional.<sup>6</sup> According to Plains, this was supported by the company's records of normal valve operations, which showed that the valves functioned properly.<sup>7</sup> Second, it argued that since the valves did indeed work properly, the company's "sole deficiency" was that it failed to properly document the inspections that it had conducted.<sup>8</sup>

I am unconvinced by Respondent's arguments. I find that conducting only visual inspections because the valves had been observed as being functional during normal operations is inconsistent with the regulation's intent to ensure that all mainline valves are inspected at the required intervals. I also find that Plains' failure to ensure the operability of numerous valves at its St. James Terminal violated its own O&M Manual, which required the actual operation of valves during inspections to ensure that they were in good working order.<sup>9</sup> Therefore, it is clear that Respondent was well aware of this regulatory requirement but failed to comply, thus indicating that Respondent is fully culpable for the violation.

The nature, circumstances, and gravity of the violation justify the proposed penalty. Respondent's failure to properly inspect the mainline valves at its St. James Terminal placed the safety of its pipelines at risk, as well as that of the public, property, and the environment in the vicinity of its pipelines. Fully functioning valves are extremely important to mitigate damage during an emergency, as mainline valves can be closed to isolate part of a pipeline system and limit the volume of product released in the event of a spill. One purpose of the mandatory valve inspection interval set forth in § 195.420(b) is to ensure that valve problems are identified and corrected *before* they impact the safety of the pipeline system.

Respondent has not produced any evidence or argument to justify a reduction in the proposed penalty amount. Accordingly, upon consideration of all of the evidence and the arguments presented, I hereby assess Respondent a total civil penalty of **\$29,000** for violation of 49 C.F.R. § 195.420(b). Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire

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<sup>6</sup> Respondent further maintained that some piping and valves at the St. James Terminal were installed for future anticipated business and were not yet operational, and that the company needed more time to verify the status of all the valves listed in the Notice. *See* Response dated September 17, 2010.

<sup>7</sup> The company stated (but submitted no supporting documentation) that four of the valves in question were operated by two other operators and that those records are also archived. Plains also stated that its records for the entire 2007-2009 period were not submitted because it was "a laborious process to extract records more than 6 months old." Response dated October 15, 2010, page 2.

<sup>8</sup> *Id.*

<sup>9</sup> O&M Manual, *Valve Maintenance & Inspection Procedure, O&M-414*. *See* PHMSA Violation Report, Exhibit C.

transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$29,000 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.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.420(b). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.420(b) (**Item 1**), Respondent has properly inspected the mainline valves listed in Table I of the Notice. Respondent has also reviewed its valve maintenance and inspection procedures, amended its O&M Manual to include the revised procedures, and trained its employees on the revised valve inspection procedures.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued