

March 2, 2017

Mr. Greg Armstrong
Chairman and CEO
Plains Pipeline, LP
333 Clay Street, Suite 1600
Houston, TX 77002

Re: CPF No. 4-2016-5001

Dear Mr. Armstrong:

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 \$184,300. 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 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. Rodrick M. Seeley, Director, Southwest Region, OPS
Mr. William Dean Gore Jr., Managing Director, Environmental and Regulatory
Compliance, Plains Pipeline, LP

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. 4-2016-5001
)	
Respondent.)	
)	

FINAL ORDER

From January to August 2015, 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 investigation of an accident involving the pipeline system operated by Plains Pipeline, LP (Plains or Respondent) in Midland, Texas. Respondent is a subsidiary of Plains All American Pipeline, LP, and employs a variety of owned and long-term leased physical assets throughout the United States and Canada, including approximately 17,800 miles of active crude oil pipelines, natural gas liquid pipelines, and gathering systems.¹

The investigation arose out of a release of 500 barrels of crude oil from Plains' Mesa to Basin 12" pipeline on January 1, 2015. The release was the result of a pipeline failure initiated from a dent caused by outside force damage incurred during a construction project that lasted from August to October 2014.²

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated January 6, 2016, 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. § 195.442, and proposed assessing a civil penalty of \$190,000 for the alleged violation.

Plains responded to the Notice by letter dated February 11, 2016 (Response). The company contested the allegation of violation, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ Pipeline Safety Violation Report (Violation Report), (January 6, 2016) (on file with PHMSA), at 1.

² Failure Analysis of Mesa to Basin 12-3/4 inch Pipeline, Final Report, Stress Engineering Services, Inc. (February 20, 2015).

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.442, which states in relevant part:

§ 195.442 Damage prevention program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term “excavation activities” includes excavation, blasting, boring, tunneling, backfilling, the removal of above-ground structures by either explosive or mechanical means, and other earthmoving operations.

(b)

(c) The damage prevention program required by paragraph (a) of this section must at a minimum:

(1)

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.442 by failing to carry out its written program to prevent damage to the pipeline from excavation activities. Specifically, the Notice alleged that Plains failed to carry out its written Damage Prevention Program,³ and failed to follow its Pipeline Excavation/Ditching and Backfill Procedure⁴ on four separate occasions.

On August 14, 2014, Strike Construction, LLC (Strike) notified the one-call center regarding a planned construction project for Plains (Sunrise Project) in the area of Plains’ Mesa to Basin pipeline.⁵ The one-call operator issued the ticket with an erroneous location instruction.⁶ Plains’ Mesa office received the one-call ticket and the Mesa line locator marked the pipelines in accordance with the ticket.⁷ Plains’ Basin office did not receive a one-call ticket.⁸ Plains Basin

³ Plains Operations and Maintenance Procedures Manual, Appendix C.

⁴ Plains All American Pipeline, LP, Doc No. PAALP-ENG-SPC-PRW-042.

⁵ Violation Report, at 5.

⁶ Response, at 2.

⁷ *Id.*

⁸ *Id.*

facility is managed by Plains Pipeline, LP and Plains Mesa facility is managed by Plains Marketing, LP.⁹ The Sunrise Project was set to begin August 18, 2014. The Mesa to Basin pipeline was not marked until September 5, 2014, when the Basin District Manager noticed work in the vicinity and had a staff member mark the line.¹⁰ The Sunrise Project ended on October 17, 2014.¹¹ Plains' failure to follow its procedures resulted in outside force damage to the Mesa to Basin pipeline, which was dented in the excavation activities. This third-party damage ultimately led to the failure and release of 500 barrels of crude oil from Plains' Mesa to Basin 12" pipeline on January 1, 2015.¹²

The four separate occasions where it is alleged that Plains failed to carry out its Damage Prevention Program and failed to follow its Pipeline Excavation/Ditching and Backfill Procedure were as follows:

1. *The Notice alleged that Plains failed to carry out its written Damage Prevention Program and failed to follow its Pipeline Excavation/Ditching and Backfill Procedure when it failed to provide temporary marking of its buried Mesa to Basin pipeline upon receipt of an initial one-call ticket on August 14, 2014.*

In its Response, Plains contended that personnel complied with the written Damage Prevention Program. Plains stated that the Plains Basin and Mesa facilities are managed by two different entities under Plains All American Pipeline, LP, and each facility has its own line locator staff and areas of responsibility when responding to a one-call ticket. Respondent further stated that when Strike made the initial one-call dig request, the one-call operator issued the ticket with a location error. Not knowing that the Basin line locator personnel did not receive the same or different ticket, the Mesa line locator personnel followed the orders and instructions for the ticket received.

There is no dispute that the Plains Basin and Plains Mesa facilities are managed by separate entities; however, both entities utilize the same damage prevention procedures. Additionally, the one-call ticket positive responses for both lines, which informed the excavator that the lines were marked, directed the requestor to contact the same entity – Plains All American Pipeline – with any questions. Plains' Damage Prevention Program requires its District Office to “be responsible for all activities involved with excavation notices including receiving the notice, researching the notice, dispatching personnel for temporary marking and inspection and maintaining the documentation.”¹³ Respondent admitted that the Mesa line locator determined

⁹ Response, at 2.

¹⁰ *Id.*

¹¹ Violation Report, at 9.

¹² Failure Analysis of Mesa to Basin 12-3/4 inch Pipeline, Final Report, Stress Engineering Services, Inc. (February 20, 2015).

¹³ Plains Operations and Maintenance Procedures Manual, Appendix C, Damage Prevention Program, at 3.

the location on the one-call ticket was incorrect; however, there has been no evidence that the District Office dispatched personnel to mark the Mesa to Basin line.

With respect to the first allegation, I find that Plains failed to carry out its written Damage Prevention Program and failed to follow its Pipeline Excavation/Ditching and Backfill Procedure when it failed to provide temporary marking of its buried Mesa to Basin pipeline upon receipt of an initial one-call ticket on August 14, 2014.

2. The Notice alleged that Plains failed to carry out its written Damage Prevention Program when it failed to immediately correct the incorrect information on the one-call ticket. Plains also allegedly failed to refresh its line markings after marking the line on September 5, 2014.

Plains also asserted that when its Mesa line locator received the one-call ticket coordinates, he drove to the location and contacted Strike. The locator notified Strike that the location being marked in accordance with the one-call ticket instructions was different than the construction site location. Plains argued that under state damage prevention requirements, it is the excavator's responsibility to notify the one-call operator of any incorrect information on the ticket.¹⁴ Additionally, Respondent stated that on September 5, 2014, the Basin District Manager noticed the work in the vicinity of the 12" pipeline without visible markers. Plains claimed that out of an abundance of caution, a Basin staff member marked the line, and because this marking was not initiated through a one-call program, correction of the location and subsequent renewals did not trigger re-marking the pipeline.

The state damage prevention requirements cited by Respondent do not excuse the operator from following its damage prevention program. Plains' Damage Prevention Program requires that it "take necessary steps to correct or prevent unsafe conditions" when there is third party construction activity discovered without prior approval or without a one-call notification. Plains discovered that the one-call ticket location was incorrect, but did not take the necessary steps to correct the information to prevent unsafe conditions. Additionally, even though Plains marked the Mesa to Basin line on September 5, 2014, Plains knew the construction activity was ongoing, yet did not take necessary steps to prevent unsafe conditions, such as re-marking the line.

With respect to the second allegation, I find that Plains failed to carry out its written Damage Prevention Program when it failed to take necessary steps to correct or prevent unsafe conditions. Plains did not immediately correct the incorrect information on the one-call ticket and failed to refresh its line markings after marking the line on September 5, 2014.

3. The Notice alleged that Plains failed to follow its Pipeline Excavation/Ditching and Backfill Procedure when it failed to determine the depth of cover over its buried pipeline and failed to share the information with the excavator operator when marking the line on September 5, 2014.

Plains claimed its Pipeline Excavation/Ditching and Backfill Procedure does not apply in this case, but rather is intended for new construction, repair, inspection, or maintenance-type

¹⁴ 16 Tex. Admin. Code § 18.4 (Sept. 1, 2007).

excavations. Plains further stated that there were no plans to excavate the 12” pipeline, or conduct a bellhole or pothole examination of the 12” pipeline because it was approximately 45 feet from the construction area. Plains contended prevailing industry practice is to refuse to make available any depth information to the contractor or excavator. Respondent further contended that while the new electronic, multi-frequency locating equipment provides quick and user-friendly locating, the depth accuracy cannot be guaranteed, and will influence an excavator to dig unsafely.

Plains’ Pipeline Excavation/Ditching and Backfill Procedure, Section 6 directs Plains and its contractors to “[d]etermine the depth of the *targeted pipe* and share the information with the Excavator operator.” (Emphasis added). In the incident at hand, Strike’s Sunrise Project did not involve work on the Mesa to Basin line. While the 12” Mesa to Basin pipeline was within the construction area, it was not the “targeted pipe” for Strike’s construction project.

With respect to the third allegation, I find that Plains did not fail to follow its Pipeline Excavation/Ditching and Backfill Procedure in that the Mesa to Basin pipeline was not the “targeted pipe” as referenced in Section 6 of the Pipeline Excavation/Ditching and Backfill Procedure.

4. The Notice alleged that Plains failed to carry out its written Damage Prevention Program when it failed to inspect the Mesa to Basin, 12” pipeline during the excavation activity that led to the damage of the pipeline. Plains Engineering and Basin personnel were relying on a contract construction inspector to observe and inspect the pipeline excavation activities for the duration of the Sunrise Project (August 2014 – October 2014).

Finally, Plains maintains it met its procedural requirements. Respondent stated that its written Damage Prevention Program states “[a] ‘Company representative’ must be present at all times during any excavation within 10 feet of Company pipelines or above ground facilities.” Respondent further stated that “Company representative” is defined as a contract inspector as long as said inspector is not an employee of the company performing the excavation – essentially, a third-party inspector representing Plains. The third-party inspector during the subject excavation activities was contracted through Tulsa Inspection Service.

There is no disagreement that a contract construction inspector observed and inspected the pipeline excavations activities during Strike’s project. However, there is no evidence the functions and activities that the inspector was supposed to perform, such as ensuring only hand tools are used within 24 inches of the pipeline, ensuring the line is supported, ensuring the pipeline has been marked, and ensuring there is no risk to the pipeline from grading operations and excavation activities, were carried out on the Mesa to Basin pipeline during the excavation activity.

With respect to the fourth allegation, I find that Plains failed to carry out its written Damage Prevention Program when it failed to inspect the Mesa to Basin, 12” pipeline during the excavation activity that led to the damage of the pipeline.

Conclusion

In conclusion, Plains failed to carry out its written Damage Prevention Program and its Pipeline Excavation/Ditching and Backfill Procedure when it did not research the notice and dispatch personnel for temporary marking of the Mesa to Basin 12” pipeline, when it did not take necessary steps to correct or prevent unsafe conditions, and when it failed to provide for inspection of the Mesa to Basin 12” pipeline during the excavation activity that led to the damage of the pipeline. However, Plains did not fail to carry out its Pipeline Excavation/Ditching and Backfill Procedure when it allegedly failed to determine the depth of cover over its buried pipeline and share the information with the excavator operator.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.442 by failing to carry out its written program to prevent damage to pipeline from excavation activities on three separate occasions.

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. 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; 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 \$190,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$190,000 for Respondent’s violation of 49 C.F.R. § 195.442, for failing to carry out a written damage prevention program to prevent damage to pipeline from excavation activities. As discussed above, Plains presented several arguments in favor of a penalty elimination or reduction.

I find that, with respect to culpability, Respondent failed to take appropriate action to comply with a clearly applicable requirement. When Respondent discovered the incorrect location on the one-call ticket, it should have researched the notice and dispatched personnel for temporary marking and inspection of the Mesa to Basin pipeline. Additionally, Strike was performing a construction project for Plains. It stands to reason that Plains should have known where the Mesa to Basin pipeline was located in relation to the construction project and should have taken necessary steps to correct or prevent unsafe conditions, per its Damage Prevention Program.

The gravity of the violation in this case was quite serious, insofar as it was a causal factor in the failure. Because of the violation, pipeline integrity was significantly compromised and resulted in a release of crude oil that harmed the environment by causing soil contamination.¹⁵

Preventing damage to pipelines caused by excavation activity is an important part of operating a pipeline safely. Pipeline operators are obligated to provide notice of their damage prevention programs to excavators including information about pipeline location marking, utilizing the one-call system prior to excavation activity, and what to do if the pipeline is damaged during excavation. Safety is compromised when an unintended release of hazardous liquid occurs, as it increases the risk of harm to the public and the environment.

While I acknowledge that Plains has taken corrective actions, those actions taken after the violation had already occurred do not warrant reducing the civil penalty. When considering the good faith of Respondent in attempting to comply with the pipeline safety regulations, PHMSA only recognizes good-faith efforts by an operator to interpret and follow the regulations prior to the violation, not those after the violation.

Upon consideration of all of Respondent's arguments, I am unconvinced that a penalty reduction is warranted with respect to the three occasions of Respondent failing to follow its Damage Prevention Program, as described in instances 1, 2, and 4 above. I do, however, find a penalty reduction is warranted because Plains did not fail to follow its Pipeline Excavation/Ditching and Backfill Procedure, as described in instance 3 above.

Accordingly, having reviewed the record and considered the assessment criteria for the Item cited above, I assess Respondent a reduced total civil penalty of **\$184,300**.

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 transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, 6500 S MacArthur Blvd., Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$184,300 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 has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline

¹⁵ Violation Report, at 3.

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. PHMSA will accept petitions received no later than 20 days after receipt of the 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. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. 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.

March 2, 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued