



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety**

901 Locust Street, Suite 480
Kansas City, MO 64106

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

**VIA ELECTRONIC MAIL TO: SBurrows@Pembina.com; PMarquart@Pembina.com;
JFinch@Pembina.com; BBachmeier@Pembina.com;**

November 14, 2024

Mr. Scott Burrows
President and Chief Executive Officer,
Pembina Cochin, LLC
4000, 585-8 AVE SW
Calgary, AB Canada T2P 1G1

CPF 3-2024-071-NOPV

Dear Mr. Burrows:

From July 17, 2023 to September 22, 2023, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) and the Minnesota Office of Pipeline Safety (MNOPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected Pembina Cochin, LLC's (Pembina), records in Palermo, North Dakota, and completed field observations of Pembina's condensate pipeline system facilities in Illinois and Indiana.

As a result of the inspection, it is alleged that Pembina has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.**
 - (a)
 - (b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:
 - (1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, *see* § 195.3);

- (i) Impoundment around a breakout tank must be installed in accordance with section 22.11.2; and**
- (ii) Impoundment by drainage to a remote impounding area must be installed in accordance with section 22.11.1.**

Pembina failed to maintain and provide to PHMSA documentation indicating that breakout tanks at Kankakee, Illinois, built after October 2, 2000, complied with NFPA-30 impoundment capacities, in violation of § 195.264(b)(1).

Pursuant to NFPA-30, when the impounding around tanks by open diking strategy is used, section 22.11.2.2 applies. Section 22.11.2.2 states, “[t]he volumetric capacity of the diked area shall not be less than the greatest amount of liquid that can be released from the largest tank within the diked area, assuming a full tank.” To demonstrate compliance with the § 195.264(b)(1), Pembina must supply documentation to PHMSA indicating NFPA-30 compliant dike capacities exceed the volume of the largest tank. Pembina failed to maintain said documentation and thus was unable to provide it to PHMSA during the inspection to demonstrate compliance with the requirements of § 195.264(b)(1).

2. § 195.412 Inspection of rights-of-way and crossings under navigable waters.

- (a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.**

Pembina failed to maintain its pipeline right-of-way (ROW) in a way such that its monitoring efforts meet the requirements of § 195.412(a). Specifically, during PHMSA’s inspection, Pembina’s ROW near Milepost (MP) 1402 (tract 47-A in Illinois) had significant tree and vegetation overgrowth and the ROW near MP 1645 (tracts 278 and 279 in Indiana) had canopy overgrowth that obstructed large areas of the ROW. Such conditions obstructed the inspection of the surface conditions on or adjacent to the pipeline ROW during aerial patrols.

Furthermore, based on Pembina’s responses to PHMSA’s follow-up inquiries, PHMSA discovered that none of Pembina’s pilots reported ROW canopy deficiencies since calendar year 2020. Reporting ROW canopy deficiencies is covered in Pembina’s training of its pilots. Since no ROW canopy deficiencies were reported, no follow-up activities were taken by field operations. Follow-up activities, such as conducting ground patrols at the areas of concern, would be necessary when aerial patrols are obstructed. The last time the ROW clearing was completed at the relevant locations was in December 2019, by the prior owner, Kinder Morgan, and before acquisition of the asset by Pembina. Following acquisition by Pembina, ROW clearance at both locations faced delays due to the environment conditions present in calendar years 2020 and 2021, then was overlooked for unknown reasons in calendar year 2022, per Pembina’s response to the 90-day report, titled, “PHMSA 2023 Integrated Audit Requested Item 71603 Goshen #2.”

Following the field inspection that occurred on September 18 and 21, 2023, Pembina provided photo evidence on October 17, 2023, that it appropriately cleared the ROW at the relevant areas on October 13, 2023. On December 15, 2023, Pembina retrained its pilots who conduct aerial patrol inspections on proper reporting of ROW conditions, such that observations would be recorded and be relayed to field operations for action, if needed.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before December 28, 2023, the maximum penalty may not exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022, and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018, and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$43,500 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$ 43,500

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted

and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 3-2024-071-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

cc: Pete Marquart, Manager, US Pipeline District, Pembina Cochin, PMarquart@Pembina.com
Jeff Finch, Senior Regulatory Advisor, Regulatory US, Pembina Cochin,
JFinch@Pembina.com
Bob Bachmeier, Manager of Regulatory and Environmental, US Operations, Pembina
Cochin, BBachmeier@Pembina.com

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Pembina a Compliance Order incorporating the following remedial requirements to ensure the compliance of Pembina with the pipeline safety regulations:

- A. In regard to Item Number 1 of the Notice, pertaining to Pembina's failure to provide records showing compliance with the required capacities for shared tank dikes with respect to tank volume, Pembina must supply documentation indicating NFPA-30 compliant shared dike capacities which exceed the maximum volume of the largest tank for the Kankakee, Illinois, facility within **90** days of receipt of the Final Order for the Director's review and approval. If the containment area does not meet the volume requirements, Pembina must bring the containment area into compliance within **270** days of receipt of the Final Order.
- B. It is requested (not required) that Pembina maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. Ochs, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.