

NOV 16 2011

Mr. Phil Smith
Vice President of Operations
Plains Marketing, L.P.
333 Clay St.
Suite 1600
Houston, TX 77002

Re: CPF No. 4-2011-5010

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$10,000. 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 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. R.M. Seeley, Director, Southwest Region, PHMSA
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Jordan Janak, Senior Director, Environmental & Regulatory Compliance, Plains
Marketing, L.P.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164202879798]

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

In the Matter of

Plains Marketing, L.P.,

Respondent.

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CPF No. 4-2011-5010

FINAL ORDER

From May through July 2011, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), investigated a hazardous liquid incident that occurred on September 12, 2010, in St. James Terminal, St. James, LA. Plains Marketing, L.P. (Plains), is a wholly-owned operating subsidiary of Plains All American Pipeline, L.P., that 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.¹

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated July 13, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Plains had violated 49 C.F.R. § 195.54 and proposed assessing a civil penalty of \$10,000 for the alleged violation. The warning item required no further action, but advised the operator to correct the probable violation.

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 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.54(a), which states:

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30

¹ See 10-K, available at <http://www.b2i.us/profiles/investor/secxml.asp?Bzid=789&fg=1>.

days after discovery of the accident, prepare and file an accident report on DOT Form 7000-1, or a facsimile.

The Notice alleged that Respondent violated 49 C.F.R. § 195.54(a) by failing to prepare and file an accident report on DOT Form 7000-1, or a facsimile, as soon as practicable, but not later than 30 days following an accident required to be reported under § 195.50. Specifically, the Notice alleged that on September 12, 2010, Plains experienced a hazardous liquid accident but did not file an original report until January 12, 2011, approximately four months after the accident occurred.

While the Respondent did not contest this allegation of violation, it provided a written explanation for the delay and included documentation to support mitigation of the proposed penalty. I will address these arguments in the Assessment of Penalty section below.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.54(a) by failing to prepare and file an accident form on DOT Form 7000-1, or a facsimile, as soon as practicable, but not later than 30 days after discovery of an accident required to be reported under § 195.50.

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 \$10,000 for the violation cited above.

Item 2: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 195.54(a), for failing to prepare and file an accident report on DOT Form 7000-1, or a facsimile, as soon as practicable, but not later than 30 days following an accident required to be reported under § 195.50. The Respondent did not contest this Item.

According to Plains, a new employee neglected to electronically submit the required document on October 11, 2010; however, a "draft" form of the document was created, which Plains attached to its Response.² Respondent's argument notwithstanding, the actual accident report was not submitted to PHMSA until January 12, 2011. Between the date the "draft" was prepared and the date PHMSA inspectors discovered the delay, Plains did not contact PHMSA to

² In its Response, Plains states that this draft was designated "Draft Number 4000" and was completed on October 11, 2010. Response, at 1.

self-report its failure to submit a timely report. As a result, I decline to find that Plains has presented evidence sufficient to justify a reduction in the proposed penalty.

The Respondent further argues that the violation “did not result in any threat or impact to the safety and health of the public or the environment.”³ This is correct in the sense that neglecting to file reports will rarely result in a threat of the nature contemplated by the Respondent. However, the fact that a requirement is administrative does not negate its importance or potential impact on safety. Written accident reports provide important information to PHMSA and the public on the nature of said incidents and why they occur. In determining the facilities involved, the accident type, and extent of harm to public and property, PHMSA determines whether there is a need to take a closer look at the operations and maintenance of a particular pipeline facility, or whether to evaluate and update current safety regulations or to issue new ones.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.54(a).

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to “U.S. Department of Transportation,” to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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 (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 \$10,000 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.

WARNING ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 195 specifically considered to be a warning item. The warning was for:

49 C.F.R. § 195.52(a) (**Item 1**) — Respondent’s alleged failure to report, at the earliest practicable moment following discovery, a release of hazardous liquid transported resulting in an event described on §195.50. Plains never gave

³ Response, at 1.

telephonic notice of this release, even though it later determined, shortly after September 12, 2010, that the release met the definition under § 195.50(e). Plains explained that it initially estimated that property damage from the failure did not exceed \$50,000. However, Plains ultimately determined that the weld on the tank for the roof drain valve failed due to a full penetration crack, resulting in damage greater than \$50,000.

Plains presented information in its Response showing that it had taken certain actions to address the cited item. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, 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 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 service 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. § 190.215. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued