

MAY 17, 2013

Mr. Harry N. Pefanis
President and Chief Operating Officer
Plains Pipeline, LP
333 Clay Street, Suite 1600
Houston, TX 77002

Re: CPF No. 4-2012-5020, Plains Pipeline, LP

Dear Mr. Pefanis:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by Plains Pipeline, LP, to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Southwest Region, 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. R. M. Seeley, Director, Southwest Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Troy E. Valenzuela, Vice-President, Environmental, Health and Safety, 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. 4-2012-5020
)	
Respondent.)	
_____)	

FINAL ORDER

On multiple occasions from June 27 to December 2, 2011, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted on-site pipeline safety inspections of the facilities and records of Plains Pipeline, LP (Plains or Respondent), in Texas, Louisiana, and New Mexico. Plains is a subsidiary of Plains All American Pipeline, LP, which operates 18,000 miles of crude oil, natural gas liquids, and refined products pipelines and gathering systems in the United States.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 10, 2012, a Notice of Probable Violation 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. §§ 195.428(d), 195.432(b), and 195.579(b), and proposed ordering Respondent to take certain measures to correct the alleged violations.

On June 12, 2012, Plains requested an extension of time to respond to the Notice. OPS granted an extension of the deadline to July 3, 2012. Plains responded to the Notice by letter dated July 2, 2012 (Response). The company did not contest the allegations of violation but asserted that it neither owned nor operated the facilities in question and provided information concerning the actions it had taken to address the issues raised in the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS 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. § 195.428(d), which states:

¹ See <http://www.paalp.com/Our-Company/Overview-1643.html> (last accessed December 31, 2012).

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least twice each calendar year... inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

(b) In the case of relief valves on pressure breakout tanks containing highly volatile liquids, each operator shall test each valve at intervals not exceeding 5 years...

(d) After October 2, 2000, the requirements of paragraphs (a) and (b) of this section for inspection and testing of pressure control equipment apply to the inspection and testing of overfill protection systems.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(d) by failing to fulfill the requirements of paragraphs (a) and (b) of § 195.428 as they pertain to the inspection and testing of overfill protection systems. Specifically, the Notice alleged that Plains had no records of the inspections and tests required for overfill protection systems on breakout tanks at the Alliance and Murphy refineries and that were used to relieve pressure surges on the Plains pipeline system.

In its Response, Plains did not contest the facts underlying the allegation of violation. Plains noted, however, that it neither owned nor operated the tanks in question; the company asserted that ConocoPhillips owned and operated the tank at the Alliance refinery in Belle Chasse, Louisiana, and that Valero Energy owned and operated the tank at the Murphy refinery in Meraux, Louisiana. The company noted that such third-party operation of the facilities presented “practical challenges to Plains’ ability to access, inspect and test the equipment.”

In addition, Plains stated that it believed the tanks in question were actually “storage tanks subject to EPA regulations applicable to non-transportation-related facilities.”² Plains cited a February 4, 2000 memorandum, known as the “Felder/Luftig Memo,” which clarified jurisdictional issues and established mutual goals between PHMSA and the Environmental Protection Agency (EPA) regarding breakout tanks and oil storage tanks.³ Plains stated that it believed one of the examples in the memo, Attachment 3, applied to the circumstances in this case, and that the tanks in question were storage tanks subject to EPA regulations, not breakout tanks subject to Part 195.

Section 195.2 defines “breakout tank” as “a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.” The Felder/Luftig memorandum does not purport to

² Response at 1-2.

³ Available at http://www.epa.gov/osweroe1/docs/oil/spcc/guidance/H_BreakoutTankMemo.pdf (last accessed April 29, 2013).

change this definition or affect the regulations in Part 195 which apply to breakout tanks. Furthermore, the memo states, “[o]wners or operators of a complex facility must comply with all the regulatory requirements of both agencies when both agencies have jurisdiction. An example of dual jurisdiction is a bulk storage container serving as a tank storing oil while also serving as a breakout tank for a pipeline or other transportation purpose.”⁴ This appears to describe the circumstances in this case.

The Notice alleged that these tanks had been used to relieve surges on the Plains pipeline; Plains did not dispute this.⁵ Therefore, I find that the tanks in question are breakout tanks. Because Plains uses these tanks to relieve surges on its pipeline system, the tanks must be operated and maintained as pressure control equipment. Under § 195.428(a), it is the pipeline operator’s responsibility to inspect and test these systems periodically to ensure they are functioning properly. This includes the inspection and testing of overfill protection systems on breakout tanks.

While it may pose practical difficulties for a pipeline operator to ensure that breakout tanks owned and maintained by another company but used to protect the pipeline operator’s facilities are properly inspected and tested under Part 195 and that such tests are properly documented, the regulation imposes an obligation on the pipeline operator to ensure that breakout tanks used to protect its system meet the requirements of § 195.428. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(d) by failing to inspect and test each item of pressure control equipment at the required intervals.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to [American Petroleum Institute (API)] Standard 653 (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service aboveground breakout tanks according to API Standard 653. Specifically, the Notice alleged that Plains had no record of the physical integrity inspections of breakout tanks at the Alliance and Murphy refineries, which were used to relieve surges from the Plains pipeline system.

In its Response, Plains did not contest the facts underlying the allegation of violation. Plains stated that it believed the tanks in question were actually storage tanks and not subject to the

⁴ Felder/Luftig Memo at 2.

⁵ Response at 2. Plains noted, “In the past 5 years we have less than 1 barrel of product relieved from the pipelines into the refinery tanks.”

requirements of Part 195. As discussed above, these tanks appear to serve dual purposes, but as long as they are used as breakout tanks for Plains' system, they must be inspected and maintained as such. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service aboveground breakout tanks according to API Standard 653.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.579(b), which states:

§ 195.579 What must I do to mitigate internal corrosion?

- (a)
- (b) *Inhibitors.* If you use corrosion inhibitors to mitigate internal corrosion, you must—
 - (1) Use inhibitors in sufficient quantity to protect the entire part of the pipeline system that the inhibitors are designed to protect;
 - (2) Use coupons or other monitoring equipment to determine the effectiveness of the inhibitors in mitigating internal corrosion; and
 - (3) Examine the coupons or other monitoring equipment at least twice each calendar year, but with intervals not exceeding 7½ months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.579(b) by failing to examine the coupons it used to monitor internal corrosion, at least twice each calendar year but with intervals not exceeding 7½ months. Specifically, the Notice alleged that Plains failed to examine the coupon at the Calumet refinery at the required interval. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.579(b) by failing to examine the coupons it used to monitor internal corrosion at least twice each calendar year, but with intervals not exceeding 7½ months.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 195.428(d), 195.432(b), and 195.579(b), respectively. 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of §§ 195.428(d) and 195.432(b) (**Items 1 and 2**), Respondent must inspect or provide records of inspections of the physical integrity and the overfill protection systems of the breakout tanks used to relieve surges on its pipeline system at the Alliance and Murphy refineries. Plains must submit documentation of completion of these activities to the Director within 90 days of receipt of this Final Order.

2. With respect to the violation of § 195.579(b) (**Item 3**), Respondent must review its program for monitoring and mitigating internal corrosion. Plains must evaluate the need for additional coupon monitoring locations, review its pigging procedures and the implementation of those procedures to ensure the highest likelihood of collecting liquid and solid samples for laboratory examination, and evaluate the need to monitor acid-producing bacteria and sulfate-reducing bacteria. Plains must implement a policy to obtain records of coupon monitoring as they are generated and maintain them separately from the contractor that performs the monitoring. Plains must submit documentation of completion of these activities to the Director within 90 days of receipt of this Final Order.
3. It is requested that Plains maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the cost to the Director. 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.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

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, 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 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. Unless the Associate Administrator, upon request, grants a stay, the terms and conditions of this Final Order are effective upon receipt of service.

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