

MAR 15 2011

Mr. Mark J. Gorman
Senior Vice President
Operations & Business Development
Plains Pipeline, L.P.
333 Clay St., Suite 1600
Houston, TX 77002

Re: CPF No. 4-2009-5009

Dear Mr. Gorman:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$22,900, and specifies actions that need to be taken by Plains Pipeline, L.P., 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. Rod M. Seeley, Director, Southwest Region, PHMSA

Mr. Jordan Janek
Senior Director, Environmental and Regulatory Compliance
Plains Pipeline, L.P.
P.O. Box 4648
Houston, TX 77210-4648

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 3634]

**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, L.P.,)	CPF No. 4-2009-5009
)	
Respondent.)	
_____)	

FINAL ORDER

Between February 17 and March 12, 2009, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an inspection of 29 breakout tanks operated by Plains Pipeline, L.P. (Plains or Respondent), in Texas, Oklahoma, and New Mexico. Plains, a subsidiary of Plains All American Pipeline, L.P., operates approximately 3,500 miles of interstate crude oil and refined petroleum products pipelines.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated July 29, 2009, 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 Respondent had violated 49 C.F.R. §§ 195.432, 195.436, and 195.581 and proposed assessing a civil penalty of \$88,400 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Plains responded to the Notice by letter dated September 1, 2009 (Response). Respondent contested two of the allegations and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one. Respondent submitted a second letter, dated October 6, 2009, in which it described the steps it had taken and planned to take to satisfy the proposed compliance order.

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. § 195.432(b), which at the time of the inspection, stated:

§ 195.432 Inspection of in-service breakout tanks.

(a)

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653¹

The Notice alleged that Respondent failed to inspect the physical integrity of certain in-service breakout tanks according to Section 4 of API Standard 653.² Section 4 provides for the evaluation of the suitability of existing tanks for continued service and for making decisions involving repairs. Sections 4 references the tank inspection intervals contained in Section 6 of the API Standard. The Notice alleged the following four groups of violations:

1. *Performance of monthly inspections.* The Notice alleged that Plains failed to perform routine in-service tank inspections at least once each month for three tanks at Hendrick Station and two tanks at Wink East Station during periods between 2007 and 2009, as required by Section 6.3.1.2 of API Standard 653.
2. *Performance of remedial actions.* The Notice alleged that Plains failed to timely remediate certain tank integrity issues, including some issues that were identified and documented during inspections of the tanks, as required by Section 6.3.1.3 of API Standard 653. The issues included:
 - a grounding cable that was unattached;
 - leaking tank rivets;
 - inoperable alarms;
 - inoperable valves;
 - damaged and compromised tank foundations; and
 - integrity issues regarding tank shell and Chime Ring.
3. *Documentation of repairs.* The Notice alleged that Plains failed to document certain “makeshift” repairs to breakout tanks and their foundations, but the Notice did not cite a specific provision in Section 4 of API Standard 653 alleged to be violated. The undocumented repairs observed by PHMSA inspectors included:
 - recently placed, non-compacted soils around certain tanks;
 - fusion bonded, epoxy-like material applied onto rivets; and
 - application of house bricks placed for support as the foundation of a tank.
4. *Performance of five-year inspection.* The Notice alleged that Plains failed to perform an external inspection by an authorized inspector at least every five years at Cimarron Tank #41085, as required by Section 6.3.2.1 of API Standard 653. Specifically, the Notice alleged that the inspection was performed 118 days after the five-year period expired.

¹ Section 195.432(b) was amended after the inspection. It presently reads: “Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653” Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits, 75 Fed. Reg. 48,593, 48,607 (Aug. 11, 2010).

² American Petroleum Institute (API) Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction,” is incorporated by reference. See § 195.3.

Performance of monthly inspections.

With respect to the first allegation, Plains acknowledged that it did not conduct certain monthly inspections of the five tanks at Hendrick and Wink East stations, but the company contended that it was not required to conduct monthly inspections under § 195.432(b) because the tanks were not in-service. According to Plains, the tanks were empty, “in the process of being permanently removed from service,” and that “the piping connecting these tanks to their pipeline systems was being physically removed during these periods.”

Section 195.432(b) requires “in-service” breakout tanks to be inspected in accordance with API Standard 653, including section 6.3.1, which requires routine inspections at least every month. A breakout tank continues to be in service until it is physically disconnected from the pipeline system by, for example, removing or locking a valve. A tank is not considered out of service simply because it is empty or idle, or because an operator intends to take it out of service.

Missing from the Response is any explanation by Plains of when, or if, these tanks had ever physically been taken out of service. Respondent claimed that the tanks were “in the process of being” taken out of service, and that piping “was being physically removed,” but never stated that those actions had been completed by the time Plains started foregoing monthly inspections. For example, Plains made no claim, and submitted no documentation, that the piping connecting these tanks to their pipeline systems had actually been physically removed.

The evidence in Exhibit A attached to the Violation Report contains Respondent’s inspection reports for the five breakout tanks at issue. Based on this evidence, it appears that Plains considered the tanks to be out of service during the time in question and stopped performing monthly inspections until early 2009, when the company decided that it wished to return the tanks to service. Given that Respondent has not described or documented any actual physical disconnection of each tank from the pipeline system during the period in question, I find the tanks continued to be in-service, and therefore Respondent was obligated to perform monthly inspections in accordance with § 195.432(b).

Accordingly, I find that Plains violated § 195.432(b) by failing to perform monthly inspections of the five breakout tanks.

Performance of remedial actions.

With respect to the second allegation relating to Respondent’s failure to perform timely remedial actions, Plains contested some of the alleged conditions of tanks, argued that some of the conditions did not present a safety issue, and further argued that “there is no regulatory, standard or code requirement for performing remedial action on items noted during a tank inspection within specified times.”

Section 4 of API Standard 653 does contain remediation requirements. For example, Section 4.2 mandates certain tank roof repairs and replacements. Section 4.3 requires certain tank shell corrosion and damage to be repaired. Cracks in shell-to-bottom welds must be removed and repaired. Section 4.5 requires structural cracks and general foundation deterioration to be repaired.

Respondent is correct, however, that neither § 195.432(b) nor Section 4 of the referenced API Standard 653 contain time requirements for such repairs. Section 6.3.1.3, cited in the Notice, specifies what type of conditions should be documented during an inspection, but does not establish a time period for remediation. Although an entirely different regulation, 49 C.F.R. § 195.401(b), requires operators who discover “any condition that could adversely affect the safe operation of its pipeline system, [to] correct it within a reasonable time,” the Notice did not contain a statement that alleged a violation of § 195.401(b).

Based upon the foregoing, I order the allegation that Respondent violated § 195.432(b) by failing to perform timely remedial actions to be withdrawn.

Documentation of repairs.

With respect to the third allegation relating to Respondent’s failure to document certain repairs, Plains contested some of the alleged conditions, argued that some of the conditions did not present a safety issue, and further argued that “[t]here is no regulatory requirement to document repairs of this nature unless the unsatisfactory conditions were noted on tank inspection Form 505, which they were not in this case.”

Respondent is correct that neither § 195.432(b) nor Section 4 of the referenced API Standard 653 contain any appreciable repair documentation requirement. A different section of API Standard 653, Section 13.2, requires operators to maintain certain information about tank repairs. In addition, 49 C.F.R. § 195.404 requires operators to maintain the records of repairs to parts of the pipeline system for at least 1 year. The Notice, however, did not contain a statement that either of these provisions had been violated.

Based upon the foregoing, I order the allegation that Respondent violated § 195.432(b) by failing to document certain repairs to be withdrawn.

Performance of five-year inspection.

Plains did not contest the allegation that it had failed to perform an external inspection of Cimarron Tank #41085 within the required five-year interval specified in section 6.3.2 of API Standard 653. Therefore, I find that Plains violated § 195.432(b) by failing to perform an external inspection at the required interval.

In summary, after considering all of the evidence and legal issues presented, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to perform monthly inspections of five breakout tanks and by failing to perform a five-year external inspection of an additional tank. I order the remaining allegations that Respondent violated § 195.432(b) be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.436, which states:

§ 195.436 Security of facilities.

Each operator shall provide protection for each pumping station and breakout tank area and other exposed facility (such as scraper traps) from vandalism and unauthorized entry.

The Notice alleged that Respondent violated 49 C.F.R. § 195.436 by failing to provide protection for two pumping stations from vandalism and unauthorized entry. Specifically, the Notice alleged that one side of Cimarron Station was not protected by a fence or other barrier against unauthorized entry. The Notice alleged further that there was no protection at Wheeler Station against unauthorized entry to the roofs of the breakout tanks.

In its Response, Plains did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.436 by failing to provide protection for two pumping stations from vandalism and unauthorized entry.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.581, which states in relevant part:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581 by failing to coat an exposed segment of pipe connected to a tank at Cimarron Station was not painted.

In its Response, Respondent contended that the pipeline segment at issue connects the tank to a truck manifold, and therefore the pipe is not subject to § 195.581(c). In support of this assertion, Respondent submitted an interagency agreement between PHMSA and the Environmental Protection Agency (EPA) that clarified jurisdictional issues with regard to transportation and non-transportation-related pipeline facilities.³ The agreement includes several clarifying diagrams, one of which shows that a pipeline connecting a breakout tank to a truck loading area is under the regulatory responsibility of EPA, rather than PHMSA.

The few photographs in the record suggest that the pipe does extend from the breakout tank to a truck loading area, however, the limited evidence is not conclusive. Missing from the record is a pipeline schematic or other definitive proof of the configuration of the facility. Thus, based on the limited evidence in the record, it appears as though the pipe segment at issue falls under EPA's regulatory oversight as a non-transportation-related pipeline rather than under PHMSA's.

Accordingly, after considering all of the evidence, I order the allegation that Respondent violated 49 C.F.R. § 195.581 be withdrawn for insufficient evidence.

Pursuant to § 190.213(c), this withdrawal does not preclude PHMSA from determining in a future matter based on additional information that the pipe is indeed subject to the pipeline safety regulations in 49 C.F.R. Part 195.

³ Memorandum from Richard B. Felder, Associate Administrator, Office of Pipeline Safety, and Stephen D. Luftig, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, February 4, 2000, Attachment 4.

The above findings of violation will be considered prior offenses 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 \$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; 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 \$88,400 for the violations cited in Item 1 and Item 3 above.

Item 1: The Notice proposed a civil penalty of \$46,700 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to inspect the physical integrity of in-service breakout tanks according to section 4 of API Standard 653.

Respondent's failure to perform monthly inspections of five breakout tanks presented a safety risk. Even though the tanks may have been empty at the time, the tanks were still connected to the pipeline system and Plains was apparently able to utilize the tanks if necessary for storing hazardous liquids incidental to transportation. The use of these tanks, even for temporary storage, would have presented a greater risk of failure if integrity issues were allowed to develop without proper attention and remediation provided by monthly inspections.

In addition, Respondent's failure to perform a five-year external inspection of the Cimarron Tank presented a similar risk to safety, although Plains eventually performed the inspection approximately 118 days after the five-year interval had expired.

For the above reasons, I find a civil penalty for these violations is warranted. Since certain other alleged violations of § 195.432(b) in Item 1 were withdrawn, however, a corresponding reduction to the proposed civil penalty is appropriate.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$22,900 for violation of 49 C.F.R. § 195.432(b).

Item 3: The Notice proposed a civil penalty of \$41,700 for Respondent's violation of 49 C.F.R. § 195.581, for failing to coat certain pipeline segments exposed to the atmosphere. Because I ordered that the allegations contained in Item 3 be withdrawn, no civil penalty will be assessed for that Item.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$22,900**.

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 \$22,900 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 Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 195.432, 195.436, and 195.581, 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. Because Plains has taken the Cimarron Station permanently out of service, the proposed compliance terms relating to that station are not included in this order. Further, because I ordered that Item 3 and portions of Item 1 be withdrawn, the proposed compliance terms for those violations are not included in this order.

With respect to the violation of § 195.436, Plains has indicated that it reviewed the remaining stations in its system where breakout tanks are located, and provided a summary of its findings and a plan to provide adequate security for each tank or facility. Accordingly, this aspect of the proposed compliance order is not included in this order.

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 remaining actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.436 (**Item 2**), Respondent must, within 60 days of receipt of this Final Order, provide evidence of adequate protection at Wheeler Station.

2. It is requested that Plains maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the total cost as follows: (a) total cost associated with preparation and revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes, if any, to the pipeline infrastructure, including replacements and additions.
3. Documentation of compliance must be submitted to the Director, Southwest Region, Office of Pipeline Safety, 8701 South Gessner, Suite 1110, Houston, TX 77074-2949.

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 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, D.C. 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept a petition received no later than 20 days after receipt of this Final Order by Respondent, provided it contains 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued