



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

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Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Plains Marketing, L.P. Incident Report No. IR 2014-T-2395

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Plains Marketing, L.P. for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

### **SECTION B: Definitions**

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Plains" means Plains Marketing, L.P., a limited partnership, and its affiliates, partners, and subsidiaries. Plains is a 'person' within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

7. "Facility" means the Plains Marketing, L.P. petroleum terminal located at 2201 Goodwin Neck Road in Yorktown, Virginia.
8. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred: At the intersection of 2<sup>nd</sup> Street and Avenue C within the Plains Marketing, L.P. petroleum terminal located at 2201 Goodwin Neck Road in Yorktown, Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14. Diesel fuel is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
13. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into state waters.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Plains owns and operates the Facility located at 2201 Goodwin Neck Road in Yorktown, Virginia. Plains uses a network of pipelines and Aboveground Storage Tanks to transport and store Oil at the terminal.
2. On March 10, 2014, DEQ received notification of a discharge of Oil, in the form of gasoline at the Location.

3. The notification indicated that at 1:10 PM on March 10, 2014, an 18'' section of pipeline at the Location ruptured and discharged approximately 1302 gallons of gasoline onto the ground and nearby ditches. By email March 12, 2014, Plains reported that less than one (1) pint of material entered a jurisdictional ditch within the Facility, causing a sheen which was quickly corrected and contained, preventing the discharge from reaching State waters.
4. Emergency response personnel responded to the gasoline discharge on March 10, 2014 and conducted Containment and Cleanup at the Location. Emergency response personnel constructed a temporary earthen dam to prevent the gasoline from discharging to state waters, placed absorbent pads, vacuumed and removed all free gasoline from the ground and ditches, flushed culverts and ditches with fresh water to remove gasoline contamination and excavated gasoline contaminated soil.
5. On March 10-11, 2014, Plains removed approximately 280 tons of gasoline contaminated soil from the Location and discharged gasoline contaminated wastewater to a DEQ permitted wastewater treatment plant.
6. On March 12, 2014 and April 11, 2014, Plains collected soil samples from the Location to verify all gasoline contaminated soil had been excavated from the Location. Based on the sampling results, on May 6, 2014, Plains excavated an additional 14 tons of gasoline contaminated soil from the Location. Sampling conducted on May 9, 2014, confirmed that all gasoline contaminated soil had been removed.
7. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
8. On April 30, 2014, the Department issued Notice of Violation No. 05-2395-TRO-2014 to Plains for a discharge of gasoline to the land.
9. On May 13, 2014, DEQ conducted a conference call meeting with Plains representatives to discuss the NOV.
10. Plains reported that the pipeline failure appeared to have been caused by overheating during manufacture and not by a time-dependent mechanism or the failure to maintain the pipeline. Reportedly, Plains has inspected, refurbished and replaced tanks, pipelines and other petroleum transfer equipment at the Facility and plans to replace 650 feet of pipeline at the Location in October 2014.
11. Based on the results of the March 10, 2014 notification and documentation submitted on February 14, 2014, the State Water Control Board concludes that Plains has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(7), above.
12. Plains has submitted documentation that verifies that the violations in paragraphs C(2) through C(7), above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.34:20, the Board orders Plains, and Plains agrees to pay a civil charge of \$7,811.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Plains shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Plains shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Plains for good cause shown by Plains, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 05-2395-TRO-2014 dated April 30, 2014. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Plains admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, findings of fact, and conclusions of law contained herein.
4. Plains consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Plains declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative

proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Plains to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Plains shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Plains shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Plains shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Plains. Nevertheless, Plains agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Plains has completed all of the requirements of the Order;

- b. Plains petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Plains.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Plains from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Plains and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Plains certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Plains to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Plains.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Plains voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5 day of December, 2014.

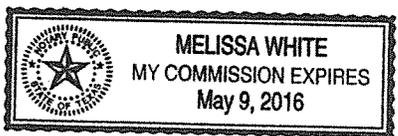
  
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Maria R. Nold, Regional Director  
Department of Environmental Quality

Plains Marketing L.P., voluntarily agrees to the issuance of this Order.

Date: 10-9-14 By: Troy F. Valenzuela, VP-EH&S *MSK*  
(Person) (Title)  
Plains Marketing L.P. **Plains Marketing, L.P.  
By Plains GP LLC  
Its General Partner**

STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on 9<sup>th</sup> day of October 2014, by Troy Valenzuela, Vice President, of Plains GP LLC, General Partner of Plains Marketing L.P., on behalf of said corporation and partnership.



Melissa White  
Notary Public, State of Texas  
My Commission Expires:  
May 9, 2016