



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

Molly Joseph Ward
Secretary of Natural Resources

5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT ISSUED TO PLAINS MARKETING, L.P. AST FACILITY ID # 5026427

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and § 62.1-44.15(8d), 62.1-44.34:20 between the State Water Control Board and Plains Marketing, L.P. for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

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

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground.
2. "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.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

6. "Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil and includes a pipeline. The Facility is owned by Plains Marketing, L.P., located at 2201 Goodwin Neck Rd, Yorktown, VA.
7. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity.
8. "Order" means this document, also known as a Consent Special Order.
9. "Plains Marketing" means Plains Marketing, L.P., a foreign limited partnership company (VA SCC ID# M0101123) certified to do business in Virginia, and its affiliates, partners, and subsidiaries.
10. "Release prevention barrier (RPB)" means a nonearthen barrier that is impermeable; is composed of material compatible with oil stored in the AST; meets proper engineering strength and elasticity standards; and functions to prevent the discharge of stored oil to state lands, waters and storm drains.
11. "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. 9 VAC 25-210-10.
12. "Tank vessel" means any vessel used in the transportation of oil as bulk cargo.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Plains Marketing, a person pursuant to 9 VAC 25-91-10, owns and operates the Facility. The Facility contains AST's and is located on the York River, a state water.
2. On January 31, 2016, the DEQ Tidewater Regional Office ("TRO") Pollution Response Program ("PREP") received a report of a discharge resulting from an AST overflow at the Facility.
3. On February 8, 2016, Plains Marketing stated that the overflow occurred during a tank vessel (barge) to AST fuel transfer and resulted in a release of 93,954 gallons of oil in the form of gasoline blend stock product into the Release Prevention Barrier (secondary containment area) surrounding AST #615.
4. On April 21, 2016, Plains Marketing provided that investigation found that the independent high and high-high alarm both annunciated audibly and visually.

However, the radar gauging instrumentation malfunctioned, causing the level readings seen by the Console Operator to be below the levels that should have triggered the independent alarms. Therefore, the Console Operator believed the alarms were false and did not shutdown the transfer in accordance with the safe fill and shutdown procedures.

5. 9 VAC 25-91-130 (B)(3)(a) states that an AST operator shall institute safe fill, shutdown and transfer procedures or equivalent measures established by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur.
6. On April 21, 2016, Plains provided documentation showing that enhanced safety equipment and procedures had been introduced at the Facility as the result of this incident. The malfunctioning gauge had been repaired, additional alarm systems had been installed, and an enhanced Facility policy had been implemented regarding immediate shutdown in response to high level alarms.
7. On April 27, 2016, DEQ issued a Notice of Violation (NOV) (No. TRO-05-22221) to Plains Marketing for failure to follow safe fill, shutdown, and transfer procedures, which resulted in the discharge of approximately 93,954 gallons of oil in the form of gasoline blend stock product into the Release Prevention Barrier.
8. Based upon documentation submitted by Plains Marketing on January 31, 2016 and April 21, 2016, the State Water Control Board concludes that Plains Marketing has violated 9 VAC 25-91-130 (B)(3)(a) for failure to follow safe fill, shutdown, and transfer procedures, as described in paragraphs C.2 through C.5 above.
9. Plains Marketing has submitted documentation that verifies that the violation in paragraphs C.2 through C.5, above, has been addressed.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), 62.1-44.34:20 the Board orders Plains Marketing, and Plains Marketing agrees to pay a civil charge of \$4,695.00 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 Marketing shall include its Federal Employer Identification Number (FEIN) 76-0587115 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 Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Plains Marketing shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Plains Marketing for good cause shown by Plains Marketing, 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. 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 Marketing admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the factual findings and conclusions of law contained herein.
4. Plains Marketing 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 Marketing declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, 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 Marketing 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 Marketing 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 occurrence. Plains Marketing

shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Plains Marketing shall notify the DEQ Regional Director in writing 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 within 24 hours 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, their 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 Marketing. Nevertheless, Plains Marketing agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until in effect until:
 - a. The Director or his designee terminates the Order after Plains Marketing has completed all of the requirements of the Order;
 - b. Plains Marketing 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 Marketing.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Plains Marketing 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 Marketing 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 Marketing 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 Marketing to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Plains Marketing.
- 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 Marketing voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7 day of October, 2016.

Maria R. Nold
Maria R. Nold, Regional Director
Department of Environmental Quality

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

Date: 8-15-16 By: Wm. Dean Gore, Jr., V. P. Envi & Reg Compliance
(Person) (Title)
Plains Marketing

State of Texas
City/County of HARRIS

The foregoing document was signed and acknowledged before me this 15th day of

August, 2016, by Wm. Dean Gore, Jr. who is

V.P. Envi + Reg Comp of Plains Marketing on behalf of the company.

Lena Drake
Notary Public

Registration No.

My commission expires: 9-9-18

Notary seal:

