



Administrative Monetary Penalty / Sanction administrative pécuniaire
NOTICE OF VIOLATION / AVIS D'INFRACTION

REFERENCE NUMBER / N° DE REFERENCE: AMP-003-2015

Information for Pipeline Company / Third Party / Individual:

Information pour la société pipelinière / une tierce partie / un particulier :

Name / Nom :	Plains Midstream Canada ULC (Plains)	TOTAL PENALTY AMOUNT / MONTANT TOTAL DES PÉNALITÉS:
Contact / Contactez:	W. David Duckett	
Title / Titre:	President	76,000
Address / Adresse:	Suite 1400, 607 - 8th Avenue S.W. T2P 0A7	Date of Notice / Date de l'Avis:
		12 February 2015
		Regulatory Instrument # / N° de l'instrument réglementaire:
		N/A
City / Ville:	Calgary	
Province / State / État	Alberta	
Telephone / Téléphone:	██████████	
Fax / Télécopieur:	██████████	
E-mail / Courriel:	██	

On / Le 6 March 2014

Plains Midstream Canada ULC

was observed to be in violation of a NEB regulatory requirement. This violation is subject to an administrative monetary penalty, as outlined below.

a commis une infraction aux exigences réglementaires de l'ONÉ, sujet à la sanction administrative pécuniaire ci-dessous.

1. VIOLATION DETAILS / RENSEIGNEMENTS SUR L'INFRACTION

Date of Violation / Date d'infraction :		Has compliance been achieved? / La situation est-elle rétablie? <input type="radio"/> Yes / Oui <input checked="" type="radio"/> No / Non If no, a subsequent NoV may be issued. Si non, un autre avis d'infraction pourrait être envoyé.
(from / du): 6 March 2014	(to / au): 6 March 2014	
Total Number of Days / Nombre total de jours: 1		

Location of Violation / Lieu de l'infraction:

e.g. Facility/plant/head office or nearest geographical point or lat/long / ie: usine/siege central/lieu géographique Plains Midstream Head Office, Calgary, Alberta

Short Form Description of Violation / Description abrégée de l'infraction (Refer to Schedule 1 of the AMP Regulations) / (Voir l'annexe 1 du Règlement)	Provision and Short-form Description / Disposition et Sommaire
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<i>NEB Onshore Pipeline Regulations / Règlement de l'Office national de l'énergie sur les pipelines terrestres</i>	
53(1) Failure to conduct inspections and audits as prescribed (Type B) / Omission de procéder à des inspections et à des vérifications tel qu'exigé (Type B) 53(2) Failure to document the audit as prescribed (Type B) / Omission de documenter la vérification tel qu'exigé (Type B)	

<i>NEB Onshore Pipeline Regulations / Règlement de l'Office national de l'énergie sur les pipelines terrestres</i>	
55 Failure to conduct and document audits as prescribed (Type B) / Omission d'effectuer et de documenter les vérifications tel qu'exigé (Type B)	

<input type="checkbox"/>	<i>Contravention of an Order or Decision made under the Act (ss. 2(2) of the AMP Regulations)</i>
<input type="checkbox"/>	<i>Failure to comply with a term or condition of any certificate, licence, permit, leave or exemption granted under the Act (ss. 2(3) of the AMP Regulations)</i>

2. RELEVANT FACTS

Briefly describe reasonable grounds to believe a violation has occurred / Décrire brièvement les motifs raisonnables de croire qu'une infraction a été commise

1 - As part of its 2009-2010 compliance verification program, the NEB conducted an audit of Plains Midstream's (Plains) management and protection programs as they relate to Safety, Integrity, Crossings, Public Awareness and Environmental Protection, with a focus on the development and implementation of these programs. This was the second program audit on Plains: the first one was conducted in 2002.

2 - The 2002 NEB Audit identified a number of findings spread across all the evaluated programs. For Plains' Environmental Protection Program (EPP), the Board determined that Plains:

- (a) did not have an adequate and effective internal audit program as required by sections 53 and 55 of the Onshore Pipeline Regulations, 1999 (OPR-99), as well as Plains' Health, Safety & Environment (HSE) Policy; and
- (b) did not establish a program for management review of its environmental program as required by section 48 of OPR-99, and Plains' HSE Policy.

In response to these non-compliant findings, Plains filed a Corrective Action Plan (CAP) on 6 September 2002, which the Board approved 3 March 2003. The CAP stated that the company would develop and implement processes to address the 2002 findings of non-compliance.

3 - On 22 August 2005, the Board completed its review of the CAP and submitted a letter to Plains outlining its determination that Plains' programs were adequate and effective for achieving compliance with the requirements of OPR-99 related to the audited programs. This

follow-up review was based on examination of statements, documentation and records submitted to the Board. The Board also stated that it would ensure continued compliance by conducting inspections of Plains' regulated facilities and undertaking future audits. The file was closed out with no further action required at the time.

4 - On 26 February 2010, a draft of the Board's 2009-2010 audit report was sent to the company with the opportunity to comment. The audit found that a considerable number of the program elements were non-compliant or needed improvement. On 23 April 2010, Plains sent a letter to the Board challenging the Audit Team's findings, and objecting to references of non-compliant findings contained in the Board's 2002 Audit. Plains stated that their programs were adequate and effective, and that Plains believed the 2009-2010 NEB Audit contained some material errors and unsubstantiated claims. Plains filed further responses to the Draft Audit Report on 12 and 28 May 2010.

5 - On 2 September 2010, the Board submitted a covering letter to Plains regarding Final Audit Report No. 2008-264 to respond to the company's objections. The Board noted elements found to be non-compliant from the Board's 2002 Audit, and to which Plains committed to implementing corrective action. The Board reminded Plains that the Board's close out of a past audit does not absolve Plains from the requirement to have fully developed and implemented programs in place.

6- The Final Audit Report noted that although the Board saw evidence of some internal audit activities occurring during its EPP assessment, these activities were focused primarily on safety considerations and did not appropriately include the suitability and implementation of its environmental program. The Board determined these activities did not meet the requirements of sections 53 and 55 of OPR-99 since they did not formally include all regulatory requirements, and the terms and conditions of its certificates and orders. Furthermore, Plains did not demonstrate that senior management was routinely reviewing the adequacy and compliance of its EPP as per sections 53 and 55 of OPR-99, and as per Corrective Action Plan commitments related to its 2002 Audit.

7 - In response to the 2 September 2010 NEB Audit Report, Plains submitted a CAP to the Board for approval on 29 September 2010. To address the management review finding, Plains committed to formalizing management review and communication processes by documenting them in the Environment & Safety Management System (ESMS), with a target completion date of Q4-2010. The CAP also stated that Plains would commission certified third party auditors to conduct annual audits of the Safety, Integrity, Crossings, Public Awareness and Environment Programs in order to return to compliance with applicable Federal and Provincial legislation. Plains committed to submitting a copy of the third-party audit report to the Board by Q3-2011.

8 - On 28 October 2010, the Board submitted a letter to Plains approving the CAP, but also directed the company to develop a more detailed plan and schedule for the implementation of its CAP. Furthermore, the Board directed Plains to identify and implement a reporting structure to provide updates every two months relating to the implementation of the CAP and associated activities in regard to the required schedule.

9 - On 24 November 2010, Plains submitted a letter to the Board indicating that quarterly status reports of the CAP implementation would be filed.

10 - On 30 December 2010, Plains submitted a quarterly status report indicating that the CAP associated with the management review had been completed and filed in ESMS.

11 - From 5 April 2011 through to 2 February 2012, Plains submitted quarterly status reports demonstrating that implementation of their corrective actions were in progress.

12 - On 24 April 2012, Plains submitted a quarterly status report indicating that the CAP associated with the internal audit finding has been completed.

13 - On 29-30 January and 6 March 2014, Board auditors conducted an Implementation Assessment (IA) meeting with Plains to assess the implementation of the CAP associated with the EPP. Plains provided documentation and records on their internal audit program as well as their management review to demonstrate the implementation of their CAP and to be in compliance with sections 53 and 55 of the OPR. Board auditors determined that Plains had been completing above-ground facility-specific inspections, and two of their facilities had been International Standards Organization (ISO) 14001 certified. However, when reviewing these records, Board auditors determined these activities did not meet the requirements of section 53 of the OPR, as legislative requirements were either incomplete or absent. Most notably the activities did not meet the OPR requirements and NEB certificate/order conditions as per para. 53(1)(c). In addition, these activities only addressed certain above-ground facilities and did not include their entire pipeline system such as the pipeline right-of-way.

14 - During the IA meeting, Plains also provided records on its environmental liability management program annual review to demonstrate their EPP was audited for adequacy and effectiveness as per section 55. When reviewing the records, the Board auditors determined these reviews only addressed one aspect of Plains' EPP and did not include all their environmental-related processes and procedures. In addition,

Plains provided records of their quarterly management review. When reviewing these records, the Board auditors noted that the only environmental related content was pertaining to spills. While understanding the environmental impacts of spills is important knowledge for management, it does not demonstrate the EPP has been reviewed for adequacy and effectiveness to manage all potential threats.

15 - During the IA Meeting, Plains provided additional records on audits conducted at several of their NEB and provincially regulated facilities. Additional information was also provided on their management reviews. Upon reviewing this information, the Board auditors communicated to Plains this information did not demonstrate that Plains has implemented its CAP as committed.

16 - At the end of the meeting, the Board auditors provided Plains with an assessment of the information provided and communicated that based on the documentation and records, Plains has not implemented the CAP as committed and remains in non-compliance with sections 53 and 55 of the OPR.

17 - On 14 August 2014, the Board issued a letter to Plains advising them that a Section 15 Member has been assigned to the file and directing Plains senior management to meet with the Section 15 Member and Board staff. The Section 15 Member was to assess Plains' approach for coming into compliance and to report back to the Board. The Authorized Member was to take and consider all necessary evidence and information for the purpose of reporting to the Board on the appropriateness of any further regulatory processes or enforcement actions the Board should take with respect to the Plains' operation. The Authorized Member was delegated all of the powers of the Board for the purpose of acquiring the necessary information for the report.

18 - On 13 January 2015, the Board issued Order SO-P384-001-2015. This Order requires Plains to conduct an independent third party expert audit of its management system, environmental protection and integrity management programs. Other conditions of the Order include the filing of safety critical tasks and controls, Plains quality assurance program, quarterly meetings with Board staff as well as the requirement for all filings to be reviewed and submitted by the Accountable Officer. These items remain ongoing as of the issuance of this NOV.

3. PENALTY CALCULATION / CALCUL DES SANCTIONS

(a) BASELINE PENALTY (Gravity Value = 0) / PÉNALITÉ DE BASE (côte de gravité = 0)

Category / Catégorie	(Type A)	Individual / Personne physique	Any Other Person / Autre Personne
		<input type="checkbox"/> \$1,365	<input type="checkbox"/> \$5,025
	(Type B)	<input type="checkbox"/> \$10,000	<input checked="" type="checkbox"/> \$40,000

[Refer to [AMP Regulations](#), Subsection 4(1) / Voir le [Règlement](#), paragraphe 4(1)]

(b) APPLICABLE GRAVITY VALUE / COTE DE GRAVITE GLOBALE APPLICABLES

[Refer to [AMP Regulations](#), Subsection 4(2) / Voir le [Règlement](#), paragraphe 4(2)]

	Mitigating / Atténuer			Aggravating / Aggravantes		
	-2	-1	0	+1	+2	+3
<input type="checkbox"/> Other violations in previous seven (7) years / Autres infractions au cours des sept (7) années précédentes	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
* insert additional information, as required *						
<input type="checkbox"/> Any competitive or economic benefit from violation / Avantages concurrentiels ou économiques découlant de l'infraction	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
* insert additional information, as required *						
<input checked="" type="checkbox"/> Reasonable efforts to mitigate / reverse violation's effect / Efforts raisonnables déployés pour atténuer ou annuler les effets de l'infraction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--

After the 2002 and 2010 NEB Audits, Plains Midstream submitted Corrective Action Plans to address non-compliances with several program elements. The CAP Q1 status report on 24 April 2012 indicated Plains completed their EPP audit. Although Plains submitted their CAPs on time, the 2012 Q1 status report failed to address all of the Board's directives as identified in the 2 September 2010 letter. Furthermore, an NEB Implementation Assessment meeting confirmed that Plains has failed to demonstrate how implementation of their EPP has taken place.

<input type="checkbox"/> Negligence on part of person who committed violation / Négligence de la part de la personne ayant commis l'infraction	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
* insert additional information, as required *						
<input checked="" type="checkbox"/> Reasonable assistance to Board with respect to violation / Collaboration raisonnable avec l'Office en ce qui a trait à l'infraction	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
Plains was cooperative throughout the audits and Implementation Assessment meeting and, where required, sought clarification and understanding of the NEB Auditors findings and Boards requirements.						
<input type="checkbox"/> Promptly reported violation to Board / Infraction signalée sans délai à l'Office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--
* insert additional information, as required *						
<input checked="" type="checkbox"/> Steps taken to prevent reoccurrence of violation / Mesures prises pour prévenir les récidives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	--
Plains attempted to address the non-compliances found in the final audit report released in September 2010. However the measures implemented were not sufficient in order to bring the company back into compliance with NEB requirements or fully address all environmental hazards associated with their operations.						
<input type="checkbox"/> Violation was primarily reporting / record-keeping failure / Infraction reliée principalement à la production de rapports ou à la tenue des dossiers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	--	--	--
* insert additional information, as required *						
<input checked="" type="checkbox"/> Any aggravating factors in relation to risk of harm to people or environment / Facteurs aggravants pouvant causer du tort au public ou à l'environnement	--	--	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In the Board's 2002 audit of Plains, the Board noted non-compliances related to the company's EPP. The Board further noted in its 2010 audit, elements found to be non-compliant in the Board's 2002 Audit, and to which Plains committed to implementing corrective action, had not yet been resolved. Non-compliances related to Plains implementation of its EPP remain as of the issuance of Board's January 2015 Letter and Order (843421). In this Letter and Order, the Board decided to impose further conditions on Plains in order to ensure that Plains' pipelines and related facilities would be operated in a manner that protects the public and environment.						
The ongoing and long-term nature of these non-compliances increases the NEB's concern that the environment could be affected. The Board will continue to monitor Plain's implementation of previous and additional conditions related to its EPP.						
(c) TOTAL GRAVITY VALUE / COTE DE GRAVITÉ GLOBALE						+3
(d) DAILY PENALTY / SANCTIONS QUOTIDIENNES						
(The baseline penalty, adjusted for the final gravity level) (Pénalité de base d'après la côte de gravité)					\$	76,000
(e) NUMBER OF DAYS OF VIOLATION / DURÉE DE L'INFRACTION						
(If more than one day, then the justification must be provided.) (Si plus d'une journée, prière de justifier.)						1
Notes to explain decision to apply multiple daily penalties, or "Not Applicable" / Notes pour expliquer la décision d'appliquer des pénalités multiples quotidiennes, ou «sans objet»						
4. TOTAL PENALTY AMOUNT / MONTANT TOTAL DE LA PÉNALITÉ					\$	76,000
Note: The total penalty amount shown is based on the period described in Step 1 above. If compliance has not been achieved, a subsequent Notice of Violation may be issued. Le montant total de la pénalité est calculé d'après la période décrite à l'étape 1 ci-dessus. Si la situation n'a pas été rétablie, un autre avis d'infraction pourrait être envoyé.						

Notes

You have the right to make a request for a review of the amount of the penalty or the facts of the violation, or both, within 30 days after the Notice of Violation was received.

If you do not pay the penalty nor request a review within the prescribed period, you are considered to have committed the violation and you are liable for the penalty set out in the Notice of Violation. The penalty is due on the date indicated above.

The unpaid penalty amount is a debt due to the Crown and may be recovered by collection procedures stipulated in the [Financial Administration Act](#).

The information regarding the violation may be posted on the NEB website:

- a) 30 days from the date this Notice of Violation was received
- or;
- b) upon issuing a decision following a Request for Review.

To Make Payment:

You may remit your fee payment by Electronic Funds Transfer (EFT) or by cheque payable to the order of Receiver General for Canada.

EFT payments can be arranged by contacting the Director of Financial Services, Monday to Friday, from 09:00 to 16:00 Mountain Time:

Telephone: 403-606-0779 / 800-899-1265

Fax: 403-292-5503 / 877-288-8803

Cheques should be made out to the "Receiver General for Canada" and mailed to:

National Energy Board
Attention: Finance
Centre 10, 517 – 10th Avenue SW
Calgary, Alberta
T2R 0A8

Your completed *Payment* form should be enclosed with your payment.

Vous disposez de 30 jours après la signification de l'Avis d'infraction pour demander une révision du montant de la pénalité, ou les faits rapportés, ou les deux.

Si les sanctions ne sont pas acquittées et qu'aucune révision n'est demandée, vous êtes considérés comme coupable de l'infraction et vous devez payer les sanctions précisées dans l'Avis d'infraction. Les sanctions sont payables à la date indiquée ci-dessus.

Un défaut de paiement constitue une créance envers l'Etat et peut être recouvré en utilisant tous les recours prévus dans la [Loi sur la gestion des finances publiques](#).

L'information concernant l'infraction pourrait également être affichée sur le site Web de l'ONE:

- a) 30 jours après la date de réception de l'Avis;
- b) dès qu'une décision a été rendue à la suite d'une Demande de Révision.

Paiement:

Vous pouvez payer le montant dû par transfert électronique de fonds (TEF) ou par chèque établi à l'ordre du Receveur général du Canada.

Pour se prévaloir du service de transfert électronique, communiquer par téléphone avec le Directeur, Service des finances, du lundi au vendredi, de 9 h à 16 h, heure des Rocheuses :

Telephone: 403-606-0779/ 800-899-1265

Telec. : 403-292-5503/877-288-8803

Les chèques doivent être établis à l'ordre du Receveur général du Canada et postés à l'adresse suivante:

Office national de l'énergie
Service des finances
Centre 10, 517 – 10e Avenue S.-O.
Calgary (Alberta)
T2R 0A8

Le formulaire de *paiement* dûment rempli doit accompagner le paiement.

To Request a Review

Pursuant to the NEB Act, Section 144, you may file a request for a review of this Notice of Violation by the Board.

The date of filing is the date on which the document is received, as indicated by the date on an e-mail submission or the stamped on the document by a NEB employee.

If you elect to make a request for a review, complete and submit the attached *Request for Review* form to:

Administrative Monetary Penalty - Reviews
National Energy Board
Centre 10, 517 – 10th Avenue SW
Calgary, Alberta
T2R 0A8

For more information on reviews, please see the Administrative Monetary Penalties Process Guide available on the NEB's [website](#).

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

Demander de révision

En vertu de l'article 144 de la Loi sur l'ONE, vous pouvez présenter à l'Office une *Demande de révision* de cet Avis l'infraction.

La date du dépôt correspond à la date de réception du document, qui apparaît sur l'envoi électronique ou le timbre apposé sur le document par un employé de l'ONE.

Si vous voulez demander une révision, veuillez remplir et soumettre le formulaire de Demande de révision à l'adresse suivante :

Sanction administrative pécuniaire - Révision
Office national de l'énergie
Centre 10, 517 – 10e Avenue S.-O.
Calgary (Alberta)
T2R 0A8

Pour de plus amples informations sur le processus de révision, prière de consulter le Guide sur le processus relatif aux sanctions administratives pécuniaires sur le [site Web](#).

Pour toute question à ce sujet, veuillez communiquer avec la personne soussignée.

Sincères salutations,

Robert Steedman

Designated Officer
Administrative Monetary Penalties

Fonctionnaire désigné
Sanctions administratives pécuniaires

403-299-3178