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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, Plaintiff, v. PLAINS ALL AMERICAN PIPELINE, L.P.; PLAINS PIPELINE, L.P.; PLAINS MARKETING GP INC.; and PLAINS MARKETING, L.P., Defendants.	)	Civil Action No.

CONSENT DECREE

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with the lodging of this Consent Decree, alleging that the Defendants, Plains All American Pipeline, L.P.; Plains Pipeline, L.P.; Plains Marketing GP Inc.; and Plains Marketing, L.P. (hereinafter collectively referred to as "Plains"), are liable for civil penalties and injunctive relief to the United States pursuant to the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1251 *et seq.*, as amended.

The Complaint against Plains alleges that, on ten occasions between June 2004 and September 2007, approximately 6,510 barrels (273,420 gallons) of crude oil were discharged from various pipelines owned and operated by Plains into navigable waters and/or adjoining shorelines in the states of Texas, Louisiana, Oklahoma, and Kansas in violation of CWA Sections 301 and 311, 33 U.S.C. §§ 1311 and 1321. These ten discharges (the "Listed Discharges") are described in Appendix A to this Consent Decree.

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In addition to the Compliance Requirements of this Consent Decree, Plains represents that it has taken the following steps to prevent future unauthorized discharges of crude oil from its Pipelines:

1. Completed baseline assessments on all Category I Pipelines in accordance with the requirements of Plains' Integrity Management Plan ("IMP");

2. Completed initial risk screening on all Category II, III, and IV Pipelines in accordance with the requirements of Plains' Risk Screening Process protocol ("RSP");

3. Performed in-line inspections ("ILIs") on no fewer than 40 Segments (totaling 600 miles) of Category II and Category III Pipelines in calendar years 2008 and 2009;

4. Performed chemical analyses to assess the potential for internal corrosion in calendar years 2008 and 2009 on over 200 Segments (totaling 5000 miles) of Pipeline;

5. Trained all 30 members of Plains' corrosion team in accordance with National Association for Corrosion Engineers ("NACE") certification standards, with 8 corrosion team members certified as "Testers," 11 corrosion team members certified as "Technicians," 10 corrosion team members certified as "Technologists," and 1 corrosion team member certified as a "Specialist";

6. Permanently shut down and closed the Huck Lease 4" Pipeline in the Fairport Gathering System in Ellis County, Kansas and the Live Oak to Iraan 12" Pipeline in Crockett County, Texas;

7. Implemented an enhanced hydrostatic testing procedure for Pipelines;

8. Amended its Risk Screening Process protocol ("RSP") and Risk Screening Worksheet to require that data be developed and considered within the RSP regarding: a) the existence, type, nature, and condition of the subject Pipeline's coating, b) the type of product being transported in the subject Pipeline, and c) the status of Right-of-Way clearing and marking for the subject Pipeline;

9. Implemented and trained necessary personnel on revised Section 413 ("Internal Corrosion") of Plains' Operations and Maintenance Procedures, which includes greater specificity and detail regarding the means,

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methods, and procedures required for controlling internal corrosion on Plains' Pipelines, including specifying the required frequency of performing ILIs to detect internal corrosion, running of cleaning/maintenance pigs, injection of corrosion inhibitors or biocides, and monitoring of corrosion coupons, maintenance pigging residuals, or other samples to detect internal corrosion, and incorporating additional engineering practices for detecting, monitoring, and controlling internal corrosion;

10. Implemented and trained necessary personnel on revised Section 504 ("Abnormal Operations") of Plains' Operations and Maintenance Procedures, which lists the following as the first required action where there is an indication of an increase in flow-rate outside the steady-state range: "If there is an unexplained increase in delivery flow-rate with corresponding decrease in pressure – SHUTDOWN the affected line segment"; and

11. Constructed a new Operations Control Center in Midland, Texas and commenced upgrading its SCADA systems to a Telvent OASyS™ DNA real-time information management platform.

Plains neither admits nor denies any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I of this Consent Decree (Jurisdiction and Venue), and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28

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U.S.C. §§ 1331, 1345, and 1355, and Section(s) 309(b), 309(d), 311(b), and 311(n) of the CWA, 33 U.S.C. §§ 1319(b), 1319(d), 1321(b), and 1321(n). This Court has personal jurisdiction over the Parties to this Consent Decree. Venue is appropriate in this District pursuant to 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391(b) and (c), and § 1395(a), because Plains resides, is located, and otherwise may be found in this judicial district, and Plains conducts business in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Plains consents to this Court's jurisdiction and to venue in this judicial district.

2. For purposes of this Consent Decree only, Plains agrees that the Complaint states claims upon which relief may be granted pursuant to CWA Section(s) 309 and 311, 33 U.S.C. §§ 1319 and 1321.

3. Notice of the commencement of this action has been given to the States of Texas, Oklahoma, Louisiana, and Kansas, as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Plains and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of any portion of Plains' Pipelines, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Plains of its respective obligations as either an owner or operator to ensure that the terms of this Consent Decree are implemented unless: a) the transferee agrees in writing with Plains to undertake the obligations required under this Consent Decree with respect to the transferred Pipelines, b) the

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transferee agrees in writing to be substituted for Plains or included as an additional Party under this Consent Decree with respect to the transferred Pipelines and thus be bound by the terms thereof, and c) the United States consents to relieve Plains of its obligations with respect to the transferred Pipelines, and to the substitution or inclusion of the proposed transferee as an additional Party with respect to the transferred Pipelines. This written agreement between Plains and the proposed transferee shall be enforceable by the United States as a third-party beneficiary of such agreement, and shall include an express term reflecting this requirement. Plains need not secure the agreement described above for any transfer of the ownership of a Pipeline(s) provided that: 1) Plains continues to be fully responsible for operating the Pipeline(s) and 2) in any action to enforce this Consent Decree, Plains shall not raise as a defense either the transfer of ownership of a Pipeline(s) or the failure by any owner(s) of a Pipeline(s) to take any actions necessary to comply with the provisions of this Consent Decree. This Paragraph shall not apply to a transfer of the operation of the Frontier Pipeline Company from Plains caused by the exercise of Enbridge, Inc.'s unilateral right to remove Plains as operator of the Frontier Pipeline Company. Plains shall provide a copy of any documentation reflecting the transfer of operation of the Frontier Pipeline Company in accordance with Section XIII of this Consent Decree (Notices) within 30 Days of such transfer.

6. At least 30 Days prior to such transfer, Plains shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 6, EPA Region 7, and the United States Department of Justice, in accordance with Section XIII of this Consent Decree (Notices). Any attempt to transfer ownership or operation of any portion of

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Plains' Pipelines without complying with this Paragraph constitutes a violation of this Consent Decree.

7. Plains shall provide a copy of this Consent Decree to all officers and supervisory employees whose duties include compliance with any provision of this Consent Decree. Plains shall provide a copy of Sections V, VI, X, and any other relevant portion of this Consent Decree to any other employee or agent whose duties include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Plains shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Plains shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the same meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

A. "Category I Pipeline(s)" shall mean Pipelines that are regulated pursuant to the Safety Regulations and are not Category II, Category III, or Category IV Pipelines;

B. "Category II Pipeline(s)" shall mean Pipelines that are regulated pursuant to the Safety Regulations and are either Category II-A (Gathering)

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Pipelines or Category II-B (Low-Stress) Pipelines;

i. "Category II-A (Gathering) Pipeline(s)" shall mean any section of Category II Pipeline that meets all of the following criteria:

a. Has a nominal diameter from 6 5/8 inches (168 mm) to 8 5/8 inches (219.1 mm);

b. Is located in or within one-quarter mile (.4 km) of any Unusually Sensitive Area; and

c. Operates at a maximum pressure established under 49 C.F.R. § 195.406 corresponding to:

1. A stress level greater than 20-percent of the specified minimum yield strength of the Pipeline; or

2. If the stress level is unknown or the Pipeline is not constructed with steel pipe, a pressure of more than 125 psi (861 kPa) gage.

ii. "Category II-B (Low-Stress) Pipeline(s)" shall mean any section of Category II Pipeline that meets all of the following criteria:

a. Has a nominal diameter of 8 5/8 inches (219.1 mm) or more;

b. Is located in or within one-half mile (.8 km) of any Unusually Sensitive Area; and

c. Operates at a maximum pressure established under 49 C.F.R. § 195.406 corresponding to:

1. A stress level equal to or less than 20-percent of the specified minimum yield strength of the Pipeline; or

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2. If the stress level is unknown or the Pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage.

C. "Category III Pipeline(s)" shall mean Pipelines that are not regulated pursuant to the Safety Regulations and are either Category III-A (Gathering) Pipelines or Category III-B (Low-Stress) Pipelines;

i. "Category III-A (Gathering) Pipeline(s)" shall mean any section of Category III Pipeline that meets all of the following criteria:

a. Has a nominal diameter from 6 5/8 inches (168 mm) to 8 5/8 inches (219.1 mm);

b. Is located in or within one-quarter mile (.4 km) of any High Consequence Area; and

c. Operates at a maximum pressure established under 49 C.F.R. § 195.406 corresponding to:

1. A stress level greater than 20-percent of the specified minimum yield strength of the Pipeline; or

2. If the stress level is unknown or the Pipeline is not constructed with steel pipe, a pressure of more than 125 psi (861 kPa) gage.

ii. "Category III-B (Low-Stress) Pipeline(s)" shall mean any section of Category III Pipeline that meets all of the following criteria:

a. Has a nominal diameter of 8 5/8 inches (219.1 mm) or more;

b. Is located in or within one-half mile (.8 km) of any High Consequence Area; and

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c. Operates at a maximum pressure established under 49 C.F.R. § 195.406 corresponding to:

1. A stress level equal to or less than 20-percent of the specified minimum yield strength of the Pipeline; or

2. If the stress level is unknown or the Pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage.

D. "Category IV Pipeline(s)" shall mean all Pipeline other than Category I Pipeline(s), Category II Pipeline(s), or Category III Pipeline(s);

E. "Centerline Verification" shall mean the process of validating the accuracy of the Pipeline centerline in the Geographic Information System ("GIS") spatial database to its true global location so as to comply with the National Pipeline Mapping System ("NPMS") quality rating of "G" (good) or better;

F. "Complaint" shall mean the complaint filed by the United States in this action;

G. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto;

H. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

I. "Defendants" shall mean Plains All American Pipeline, L.P.; Plains Pipeline, L.P.; Plains Marketing GP Inc.; and Plains Marketing, L.P. (collectively referred to herein as "Plains");

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J. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

K. "Effective Date" shall have the definition provided in Section XIV of this Consent Decree;

L. "High Consequence Area(s)" or "HCA(s)" shall have the same meaning as described in 49 C.F.R § 195.450;

M. "Listed Discharges" shall mean the discharges of crude oil from Plains' Pipelines and Replacement and/or Substitute Breakout Tanks into the environment that are listed in Appendix A to this Consent Decree;

N. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral;

O. "Parties" shall mean the United States and Defendants;

P. "PHMSA" shall mean the Pipeline and Hazardous Materials Safety Administration, currently an agency of the United States Department of Transportation, and any of its successor departments or agencies;

Q. "Pipeline" shall mean any pipe operated by Plains in the United States used for crude oil service, other than intra-facility flowlines, intra-facility gathering lines, or Pipeline permanently removed from service (emptied of crude oil and purged); provided that, if any Pipeline removed from service is subsequently put back into crude oil service, the Pipeline shall be subject to all applicable requirements of this Consent Decree;

R. "Plaintiff" shall mean the United States;

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S. "Replacement and/or Substitute Breakout Tank(s)" shall mean any aboveground crude oil tank owned and/or operated by Plains that is used as a replacement and/or substitute (regardless of whether it is a permanent, temporary, or stand-by replacement or substitute) for an existing breakout tank used to relieve surges in Pipelines, including but not limited to relief tanks.

T. "Safety Regulations" shall mean the PHMSA regulations promulgated at 49 C.F.R. Part 195, as in effect on the Effective Date;

U. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

V. "Segment" shall mean a discrete section of a Pipeline that is bounded and defined by instrumentation, such as meters, or by physical features, such as valves;

W. "Slack-Line Operations" shall mean Pipeline operating conditions during which a given Segment of Pipeline is not entirely filled with oil or is partly void;

X. "United States" shall mean the United States of America, acting on behalf of EPA; and

Y. "Unusually Sensitive Area(s)" or "USA(s)" shall have the same meaning as described in 49 C.F.R § 195.6.

IV. CIVIL PENALTY

10. Within three (3) business days after Plains receives notice that this Consent Decree has been lodged with the Court, Plains shall deposit the amount of three-million two-

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hundred fifty-thousand dollars ($3,250,000.00) into an escrow account bearing interest on commercially reasonable terms in a federally chartered bank (the "United States' Escrow Account") as a civil penalty. Such monies shall remain in escrow until entry of this Consent Decree. If this Consent Decree is not entered by the Court, and the time for any appeal of the Court's decision has run, or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with the accrued interest thereon, shall be returned to Plains. If this Consent Decree is entered by the Court, Plains shall, within fifteen (15) Days thereof, cause the monies (including all accrued interest) in the United States' Escrow Account to be released and disbursed to the United States in accordance with this Section of this Consent Decree in payment of the civil penalty under this Consent Decree.

11. Plains shall pay the civil penalty and interest due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Plains, following lodging of this Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Texas. The payment shall reference the civil action number assigned to this case and DOJ case number: 90-5-1-1-08698, and shall specify that the payment is for CWA civil penalties that are to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

12. At the time of payment, Plains shall also send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for the CWA civil penalty owed pursuant to this Consent Decree in *U.S. v. Plains All American Pipeline, L.P., et al.* and shall reference the civil action number assigned to this case and DOJ case number: 90-5-1-1-08698, to the United States in accordance with Section XIII of this

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Consent Decree (Notices) and to:

Stephen C. Ewart
NPFC-MS 7100
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, Virginia 20598-7100

Commander Robert Bruce
United States Coast Guard
Office of Claims and Litigation
2100 Second Street, S.W.
Washington, D.C. 20593-0001

13. Plains shall not deduct or capitalize any penalties paid under this Consent Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal, state, and local income taxes.

V. COMPLIANCE REQUIREMENTS

14. Until termination of this Consent Decree, Plains shall implement or continue to implement the measures contained in this Section with the objective of preventing future unauthorized discharges of crude oil from Plains' Pipelines and Replacement and/or Substitute Breakout Tanks.

15. **Enhanced Integrity Management and Corrosion Control**.

A. IMP Requirements for Category I, Category II-B, and Category III-B Pipelines. Plains shall assess, operate, and maintain all Category I, Category II-B, and Category III-B Pipelines in accordance with the requirements of Plains' IMP, subject to the requirements of sub-paragraph 15.G.

B. RSP Screening of Category II-A, Category III-A, and Category IV

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Pipelines. Plains shall assess, operate, and maintain all Category II-A, Category III-A, and Category IV Pipelines in accordance with the requirements of Plains' RSP, subject to the requirements of sub-paragraph 15.G. Plains shall develop and implement action plans detailing risk mitigation actions to address the risks or other anomalies found during the RSP in accordance with the risk category schedule set forth in Section 7 of Plains' RSP (or the corresponding section(s) of any updated versions of Plains' RSP).

C. Integrity Management of Category II and Category III Pipelines.

i. Category II-A and Category III-A (Gathering) Pipelines. For all Category II-A and Category III-A Pipelines as of the Effective Date of this Consent Decree, Plains shall operate and maintain such Pipelines in conformity with the safety requirements for rural gathering pipelines established in 49 C.F.R. 195.11(b); provided, however, that with respect to the specific provisions listed below, Plains shall also meet the following accelerated schedules:

a. By no later than the Effective Date, Plains shall identify all Segments of Pipeline meeting the definition of either a Category II-A or Category III-A Pipeline; and

b. By no later than the Effective Date, Plains shall develop and implement a continuing public education program as described in 49 C.F.R. § 195.440; and

c. By no later than July 3, 2010, Plains shall develop and implement a corrosion control program as described in 49 C.F.R. Part 195, subpart H.

ii. Category II-B and Category III-B (Low-Stress) Pipelines. In addition to the requirements of sub-paragraph 15.A, for all Category II-B and Category III-B Pipelines as of the Effective Date of this Consent Decree, Plains shall:

a. By no later than the Effective Date, identify all Segments of Pipeline meeting the definition of either a Category II-B or Category III-B Pipeline; and

b. By no later than July 3, 2013, Plains shall complete baseline

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assessments of all Category II-B and III-B Pipelines in conformity with 49 C.F.R. § 195.452(c). By no later than January 3, 2011, Plains shall complete at least 50-percent of these baseline assessments (based on the total mileage of Category II-B and III-B Pipeline to be assessed), beginning with the highest risk pipe; and

c. By no later than July 3, 2010, Plains shall develop and implement a corrosion control program as described in 49 C.F.R. Part 195, subpart H.

D. New Pipeline Acquisitions.

i. Initial Screening. Plains shall complete initial screening of all Category II-A, Category III-A, and Category IV Pipeline(s) purchased or otherwise acquired by Plains after July 1, 2009, in accordance with Plains' RSP, pursuant to the following schedule:

a. Provided that digital maps with Centerline Verification of the Pipeline(s) purchased or otherwise acquired are available to Plains, Plains shall complete initial screening of no less than 1,000 miles of Pipeline per twelve-month period from the date of each purchase or acquisition until all such newly purchased or acquired Pipeline is screened; or

b. If digital maps with Centerline Verification are not available for any portion of the Pipeline(s) purchased or otherwise acquired, Plains shall complete initial screening of all Pipeline(s) with digital maps and Centerline Verification at a rate of no less than 1,000 miles of Pipeline per twelve-month period from the date of each purchase or acquisition until all such newly purchased or acquired Pipeline is screened. After completing initial screening of all such Pipeline(s) with digital mapping and Centerline Verification, Plains shall complete GIS digital mapping, Centerline Verification, and initial screening of no less than 500 miles of Pipeline without digital mapping and Centerline Verification per twelve-month period from the date initial screening of the Pipeline(s) with digital mapping and Centerline Verification is complete until all such purchased or acquired Pipeline(s) is digitally mapped, Centerline-Verified and screened.

c. For purposes of determining the rate and deadline for completing initial screening under this sub-paragraph 15.D., the

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availability of digital maps with Centerline Verification shall be determined individually for each separate purchase or acquisition of Pipeline. If Plains makes additional purchases or acquisitions of Pipeline before completing initial screening of an earlier purchase or acquisition covered by this sub-paragraph 15.D., Plains shall complete initial screening of all Pipelines purchased or otherwise acquired at an overall rate of no less than 1,000 miles of Pipeline per twelve-month period until only one set of Pipeline(s) purchased or acquired remains to be initially screened, in which case Plains shall complete initial screening of the remaining set of Pipeline(s) in accordance with sub-paragraph 15.D.i.a or 15.D.i.b., as applicable.

ii. Integrity Management of Newly Purchased or Acquired Category II and Category III Pipelines. Plains shall determine the proper Category for newly purchased or acquired Pipeline(s) at the time of purchase or acquisition, and based on mapping available at that time. For any Category II or Category III Pipelines purchased or otherwise acquired after the Effective Date of this Consent Decree, Plains shall also comply with the requirements of sub-paragraph 15.C. by the specified deadlines if the deadline for a particular requirement will not pass within six months from the date of purchase or acquisition. If a deadline specified in sub-paragraph 15.C. has already passed or will pass within six months from the date of purchase or acquisition, Plains shall comply with the requirements of sub-paragraph 15.C., as well as sub-paragraph 15.A for Category II-B and III-B Pipeline(s), within six months from the date of purchase or acquisition. If subsequent centerline verification requires that a newly purchased or acquired Pipeline be designated under a different Category, Plains shall have six months from the date of such re-categorization to comply with the requirements of this Paragraph.

E. Geographic Information Systems ("GIS") Mapping. By no later than July 1, 2010, Plains shall complete initial digital GIS mapping and Centerline Verification of all Pipelines operated by Plains as of May 1, 2010. For any Pipeline(s) purchased or acquired by Plains after May 1, 2010, Plains shall complete initial digital GIS mapping and Centerline Verification of all such Pipelines in accordance with the schedules and requirements provided in sub-paragraph 15.D.i.b.

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F. Anode Beds, Internal Corrosion Control, and Close Interval Surveys.

Plains shall spend no less than a total of $6,000,000 during the two-year period including calendar years 2010 and 2011 on the following activities to mitigate threats posed by corrosion of Plains' Pipeline(s): (i) replacement or installation of no fewer than 120 anode beds and/or rectifiers; (ii) installation of equipment to inject corrosion inhibitor and biocides for internal corrosion control, and (iii) performance of close interval surveys on no fewer than 2400 miles of Pipeline.

G. Subsequent Revisions to Plains' IMP or RSP.

i. From the Effective Date until the termination of this Consent Decree, Plains shall not implement any material changes to Plains' IMP or RSP that are less protective of navigable waters and/or adjoining shorelines, as those terms are defined in 33 U.S.C. § 1362 and any implementing regulations, without prior written approval from EPA. For the purpose of this Consent Decree, "material changes" shall mean any change that:

a. removes the designation of any Segment of Pipeline that, as of the Effective Date, Plains has designated as one that "could affect a HCA," or removes this designation from any Segment of Pipeline that Plains is required to so designate pursuant to the requirements of this Consent Decree, except with respect to a Pipeline or Segment of Pipeline that is permanently removed from service after the Effective Date by emptying it of all crude oil and purging it; or

b. reduces the stringency of the Pipeline risk assessment, evaluation, and repair procedures, methods, and criteria established in Plains' IMP and/or RSP such as:

1. baseline assessment or risk screening procedures and methods;

2. requirements for implementing and/or re-assessing RSP Action Plans, as well as the underlying Pipeline preventative and mitigative measures; or

3. extends the required timeframes for performing any of

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the actions described in this sub-paragraph 15.G.i.b.

ii. Within 90 Days after receiving notice from EPA that Plains has made a material change to its IMP or RSP in a manner that EPA has determined to be less protective of navigable waters, or within such other time as agreed to by EPA, Plains shall implement its former IMP or RSP, or shall implement modifications that EPA determines are equivalent to the former provisions of Plains' IMP or RSP.

16. **Enhanced Pipeline Leak Detection**.

A. Weekly Aerial Patrols. Plains shall conduct weekly aerial patrols (weather permitting) of all Category I Pipeline(s), Category, II-A Pipeline(s), Category II-B Pipeline(s), and Category III-B Pipeline(s), including any such Pipeline purchased or otherwise acquired after the Effective Date of this Consent Decree to identify indications of a leak or spill of oil. Plains shall also conduct weekly aerial patrols (weather permitting) of all Pipeline Segments in the systems from which the discharges listed in Appendix A occurred. At its option, Plains may conduct the weekly patrols (weather permitting) on foot or by motorized vehicle, provided that, in such instances, Plains shall visually inspect surface conditions over the entire Pipeline right-of-way that would otherwise be flown in order to identify indications of a leak or spill of oil.

B. Implementation of API 1130 Compliant CPM Leak Detection. Plains will comply with the performance standards for Computational Pipeline Monitoring ("CPM") Leak Detection described in API 1130 on the Segments of Pipeline identified in "Appendix B," for so long as those Segments of Pipeline are in service. By no later than December 31, 2011, Plains shall install CPM equipment on an additional 30 Segments of Pipeline and operate such Segments of Pipeline and CPM equipment in accordance with

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API 1130.

C. Enhancement of API 1130 Compliant CPM Leak Detection and Minimization of Slack-Line Operations.

i. Investigation. By no later than December 31, 2011, Plains shall complete and document an investigation of the Pipeline Segments listed on Appendix B (and any Segments added to CPM pursuant to sub-paragraph 16.B) that is designed to identify potential enhancements to Plains' leak detection capabilities and measures to minimize Slack-Line Operations and/or mitigate the effects of Slack-Line Operations on the CPM leak detection systems on those Pipeline Segments. This investigation shall incorporate, but is not limited to, an evaluation of the following elements:

a. Reviewing both the migration of the CPM Pipeline Segments listed on Appendix B to, and the implementation of the additional 30 new CPM Pipeline Segments referenced in sub-paragraph 16.B in, the Telvent OASyS™ DNA Pipeline Monitoring (PLM) CPM application used in Plains' Midland, TX Operational Control Center;

b. Examining Slack-Line Operations on all Pipeline Segments subject to this sub-paragraph 16.C, including an analysis of whether reduction or elimination of Slack-Line Operation is practicable, and the effect of such reduction or elimination on leak detection capability. The examination of Slack-Line Operations shall include, but is not limited to, an evaluation of:

1. Slack-Line Operations during "shut-in" and flowing Pipeline operating conditions, including by reviewing recent and relevant over/short measurements;

2. The amount of slack volume during "shut-in" and flowing Pipeline operating conditions;

3. The amount of time required to refill the Pipeline(s) during "start-up" operations;

4. The ability of the CPM systems to adhere to API 1130 considering the effect of Plains' Slack-Line Operations and over/short measurement capabilities

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on CPM leak detection capabilities; and

5. Measures to minimize Slack-Line Operations and/or mitigate the effects of Slack-Line Operations on the CPM leak detection systems. Such measures may include, but are not limited to, consideration and implementation of one or more of the following for each Segment of Pipeline:

   A. No action required, provided that current CPM leak detection system tolerances are adequate to detect leaks and/or spills given the Pipeline's Slack-Line Operations or Slack-Line Operations are not present;

   B. Revision of operating procedures for the applicable Segment of Pipeline, including the "start-up" and "shut-in" procedures;

   C. Installation of valves or pressure control devices to provide additional back-pressure, taking into consideration the limitations of the Segment of Pipeline and connecting facilities to safely contain such pressure; and

   D. Adjusting the CPM alarm limits to account for the expected refilling of the slack volumes so that leaks or spills are detected, but false indicators are avoided.

c. Historical SCADA data or other available data to identify and examine uncertainties and/or variability in measured Pipeline flow rates, operating pressures, temperatures, tank levels, and/or Pipeline operations in order to: (i) determine Plains' CPM leak detection capability and (ii) determine achievable Pipeline Segment alarm limits that do not result in excessive nuisance alarms.

ii. Action Plans. Based on the findings of the investigation described above, Plains shall develop action plans as the investigation progresses. Such action plans shall include one or more of the measures identified in sub-paragraph 16.C.i.b.5. and any other actions that Plains may also take to improve the leak detection system and/or minimize Slack-Line Operations. Plains shall

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complete the development of all action plans by no later than March 31, 2012. Plains shall complete implementation of all enhancements to the CPM leak-detection capabilities and/or Slack-Line Operations identified in the action plans prior to Plains submitting a request for termination of this Consent Decree.

17. **Requirements for Replacement and/or Substitute Breakout Tanks**.

A. By no later than the Effective Date of the Consent Decree, Plains' Replacement and/or Substitute Breakout Tanks must meet the following requirements:

i. Requirement for "Sufficient Capacity": All Replacement and/or Substitute Breakout Tanks must meet the design capacity requirements specifically needed to receive and safely contain oil from surges, pressure relief events, operational upsets, or other abnormal events in the associated pipeline system, as well as any applicable design capacity requirements necessary to comply with good engineering practice.

ii. Requirement for "Secondary Containment":

a. "Secondary Containment" for Replacement and/or Substitute Breakout Tanks shall mean secondary containment and/or other diversionary structures sufficient to contain the entire capacity of the Replacement and/or Substitute Breakout Tank and sufficient freeboard to contain precipitation. In all cases, the entire system for Secondary Containment, including walls and floor, must be sufficiently impervious so as to contain oil, and must be constructed so that any discharge from the primary containment system will not escape the system for Secondary Containment before cleanup occurs; and

b. All Replacement and/or Substitute Breakout Tanks must be properly located within Secondary Containment areas until the tank is permanently closed. The Secondary Containment requirement shall apply regardless of whether the Replacement and/or Substitute Breakout Tank is being used for supplemental storage capacity during an abnormal event and existing Secondary Containment is not available. In such circumstances, Secondary Containment must be constructed and the Replacement and/or Substitute Breakout Tank must be properly located within such Secondary Containment areas until the Replacement and/or Substitute Breakout Tank is

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permanently closed.

18. **Personnel and Training**.

A. Plains will preserve and staff the following employee positions until at least July 31, 2011:

i. PHMSA/IMP Records Coordinator and five records specialists;

ii. Pipeline Integrity Coordinator for Non-PHMSA Regulated Pipelines;

iii. Pipeline Integrity Coordinator for Internal Inspection;

iv. Senior Measurement and Quality Control Manager;

v. Pipeline Control Center Training Supervisor;

vi. Control Center Shift and Console Supervisors;

vii. One Call Administrator; and

viii. Two Leak Detection Engineers.

B. If an employee filling any of the positions listed above in sub-paragraph 18.A is not able to perform his/her duties for an extended period of time, is terminated, or leaves his/her employment with Plains, Plains shall designate an alternate employee as soon as possible who is capable of performing all duties, responsibilities, and authorities required by the position until the original employee is able to resume his/her position or a new full-time replacement is employed by Plains.

C. Plains shall train all employees assigned to operate and maintain Category III-A and Category IV Pipelines in conformity with the Operator Qualification requirements of 49 C.F.R. 195, subpart G. Plains shall also conduct mandatory pre-screening testing for all new pipeline controller applicants using a computer simulator-

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based console operator assessment.

D. Plains shall train field personnel performing Pipeline maintenance on proper Pipeline cleaning techniques and procedures.

19. Permits. Where any compliance obligation under this Section requires Plains to obtain a federal, state, or local permit or approval, Plains shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Plains may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Plains has submitted timely and complete applications and has taken all other actions necessary to obtain such permit or approval.

VI. REPORTING REQUIREMENTS

20. Plains shall submit the following reports to the persons designated in Section XIII of this Consent Decree (Notices):

A. By no later than six months after the Effective Date, and every sixth months thereafter until this Consent Decree terminates pursuant to Section XVII of this Consent Decree (Termination), Plains shall submit a semi-annual report to EPA that shall discuss, for the preceding six months: (i) the status of the compliance measures required under Section V of this Consent Decree; (ii) a detailed listing of the specific items for which expenditures required under sub-paragraph 15.F. were made; (iii) Plains' progress regarding the completion of any required milestones under this Consent Decree, including, but not limited to summaries of the RSP Action Plans required pursuant to

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sub-paragraph 15.B. and a description of actions taken pursuant to the RSP Action Plans during the preceding six months; (iv) summaries of each action plan developed pursuant to sub-paragraph 16.C.ii. and a description of actions taken to implement the action plans during the preceding six months; (v) any problems encountered or anticipated in complying with this Consent Decree, as well as implemented or proposed solutions; (vi) the status of any necessary permit applications; (vii) a listing and description of any material changes Plains has made to its IMP or RSP (including a copy of any amendments thereto); and (viii) the total miles of Pipeline purchased, acquired, or sold during the preceding six months, if any.

B. The reports required under this Section shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Plains shall so state in the report. Plains shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Plains becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Plains of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

21. Each report submitted by Plains under this Section shall be signed by an official of the submitting party and shall include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in

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> accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on any personal knowledge I may have and my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

22. The reporting requirements of this Consent Decree do not relieve Plains of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

23. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

24. Plains shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII of this Consent Decree (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including, but not limited to, any work plan or schedule established by or pursuant to this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or pursuant to this Consent Decree.

25. Late Payment of Civil Penalty.

If Plains fails to pay the civil penalty and interest required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, Plains shall pay a stipulated penalty

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of $7,500 per Day for each Day that the payment is late.

26. Compliance Milestones.

The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Section V of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th Day
$ 3,500	15th through 30th Day
$ 5,000	31st Day and beyond

27. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$ 500	1st through 14th Day
$ 1,000	15th through 30th Day
$ 1,500	31st Day and beyond

28. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

29. Plains shall pay any stipulated penalty within 30 Days of receiving the United States' written demand or submit the matter for Dispute Resolution.

30. The United States may, in the unreviewable exercise of its discretion, reduce or

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waive stipulated penalties otherwise due under this Consent Decree.

31. Stipulated penalties and interest shall continue to accrue as provided in Paragraphs 25-28 during any Dispute Resolution, but need not be paid until the following:

A. If the dispute is resolved by agreement, Plains shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement.

B. If the dispute is appealed to the Court and the United States prevails in whole or in part, Plains shall pay all accrued penalties determined by the Court to be owing, together with interest, within 30 Days of receiving the Court's decision or order, except as provided in sub-paragraph C, below.

C. If any Party appeals the District Court's decision, Plains shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

32. Plains shall pay stipulated penalties and any interest owing to the United States by EFT, in accordance with instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Texas, or by certified or cashier's check in the amount due, payable to the "United States Department of Justice" for deposit in the U.S. Treasury, referencing D.J. No. 90-5-1-1-08698, and delivered to:

United States Attorney, Financial Litigation Unit
Southern District of Texas
P.O. Box 61129
Houston, Texas, 77208

Payment of stipulated penalties shall be accompanied by the transmittal correspondence required by Paragraphs 11-12, except that the transmittal correspondence shall state that the payment is

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for stipulated penalties due under this Consent Decree and shall state the violation(s) for which the penalties are being paid. Plains shall also send a copy of the transmittal correspondence to the United States in accordance with Section XIII of this Consent Decree (Notices).

33. Plains shall not deduct or capitalize stipulated penalties or interest paid under this Section in calculating its federal income tax.

34. If Plains fails to pay stipulated penalties according to the terms of this Consent Decree, Plains shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Plains' failure to pay any stipulated penalties.

35. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Plains' violation of this Consent Decree, the CWA, or any other applicable law.

VIII. FORCE MAJEURE

36. A "Force Majeure Event," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Plains, of any entity controlled by Plains, or of Plains' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Plains' best efforts to fulfill the obligation. The requirement that Plains exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure Event and best efforts to address the effects of any such event: (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent

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possible. A Force Majeure Event does not include Plains' financial inability to perform any obligation under this Consent Decree.

37. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure Event, Plains shall provide notice verbally or by electronic transmission as soon as possible to EPA, but by no later than seventy-two (72) hours from when Plains first knew, or in the exercise of due diligence should have known, that the event might cause a delay. Within seven (7) Days from when Plains first knew, or in the exercise of due diligence should have known, of the event, Plains shall also provide in writing to EPA, as provided in Section XIII of this Consent Decree (Notices), an explanation and description of the reasons and causes for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Plains' rationale for attributing such delay to a Force Majeure Event if it intends to assert such a claim; and a statement as to whether, in the opinion of Plains, such event may cause or contribute to an endangerment to public health, welfare or the environment. Plains shall include with any notice required by this Section all available documentation supporting the claim that the delay was attributable to a Force Majeure Event. Failure to comply with the requirements of this Section shall preclude Plains from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Plains shall be deemed to know of any circumstance of which Plains, any entity controlled by Plains, or Plains' contractors knew or should have known.

38. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure

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Event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure Event may be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure Event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Plains in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

39. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure Event, or does not agree to the extension of time sought by Plains, EPA's decision shall be considered binding unless Plains invokes Dispute Resolution pursuant to Section IX of this Consent Decree (Dispute Resolution).

40. If Plains elects to invoke the dispute resolution procedures set forth in Section IX of this Consent Decree (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such dispute, Plains shall have the burden of proving by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure Event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Plains exercised best efforts to avoid and mitigate the effects of the delay, and that Plains complied with all requirements of this Section. If Plains carries this burden, the delay at issue shall be deemed not to be a violation by Plains of the affected obligation of this Consent Decree.

IX. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising

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under or with respect to this Consent Decree. However, the dispute resolution procedures of this Section shall not apply to actions by the United States to enforce obligations of Plains under this Consent Decree that have not been disputed in accordance with this Section.

42. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Plains sends the United States a written Notice of Dispute, as provided in Section XIII of this Consent Decree (Notices). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty-one (21) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Plains files with the Court, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section, the following standards of review will apply. In any dispute that is accorded review on the administrative record under applicable principles of administrative law, Plains shall have the burden of demonstrating that the position of the United States is arbitrary, capricious or otherwise not in accordance with law. With respect to any other dispute arising hereunder, Plains shall bear the burden of demonstrating that its position complies with and better furthers the requirements and objectives of this Consent Decree, the CWA and any implementing regulations, and that Plains is entitled to relief.

43. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Plains under this Consent Decree,

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unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 31. If Plains does not prevail on the disputed issue, stipulated penalties and interest shall be assessed and paid as provided in Section VII of this Consent Decree (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

44. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry with respect to Plains' Pipeline and/or Replacement and/or Substitute Breakout Tanks or any other facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

A. monitor the progress of activities required under this Consent Decree;

B. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

C. obtain samples and, upon request, splits of any samples taken by Plains or its representatives, contractors, or consultants;

D. obtain evidence, including documents, photographs, and other data; and

E. assess Plains' compliance with this Consent Decree.

45. Upon request, Plains shall provide EPA or its authorized representatives splits of any samples taken by Plains. Upon request, EPA shall provide Plains splits of any samples taken by EPA.

46. Notwithstanding the provisions of Section XVII of this Consent Decree (Termination), until five years after the termination of this Consent Decree, Plains shall retain,

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and shall instruct its contractors and agents to preserve, all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that are generated in connection with or as part of Plains' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Plains shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, subject to the assertion of privilege as described in Paragraph 47.

47. At the conclusion of the information-retention period provided in the preceding Paragraph, Plains shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Plains shall deliver any such documents, records, or other information to EPA within 30 days of the United States' request. Plains may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Plains asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title (if the title is available) of each author of the document, record, or information; (4) the name and title (if the title is available) of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Plains. However, any underlying documents, records, or other information from which Plains has compiled the semi-annual reports required under Section VI

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of this Consent Decree (Reporting Requirements) or any other submission required by this Consent Decree shall not be withheld on grounds of privilege.

48. Plains may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Plains seeks to protect as CBI, Plains shall follow the procedures set forth in 40 C.F.R. Part 2.

49. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Plains to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

50. This Consent Decree resolves the civil claims of the United States for the CWA violations alleged in the Complaint filed in this action regarding the Listed Discharges.

51. Plains hereby covenants not to sue and agrees not to assert any claims related to the Listed Discharges, or response activities in connection with the Listed Discharges, against the United States pursuant to the CWA, the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2701 *et seq.*, or any other federal, state law, or regulation, including, but not limited to, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund, or pursuant to any other provision of law.

52. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the

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rights of the United States to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 50. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Plains' Pipeline and/or Replacement and/or Substitute Breakout Tanks, whether related to the violations addressed in this Consent Decree or otherwise.

53. This Consent Decree is without prejudice to the rights of the United States against Plains with respect to all matters other than those expressly specified in Paragraph 50 above, including, but not limited to:

A. claims based on a failure of Plains to meet any requirement of this Consent Decree;

B. any and all criminal liability;

C. claims relating to past, present, or future discharges of oil, other than as alleged in the Complaint filed in this action;

D. claims for reimbursement for any disbursements from the federal Oil Spill Liability Trust Fund arising from the Listed Discharges, or any other discharges or threatened discharges, pursuant to OPA, including for subrogated claims under OPA Section 1015, 33 U.S.C. § 2715, or CWA Section 311(f), 33 U.S.C. §1311(f); and

E. liability for natural resource damages arising from the Listed Discharges, or any other discharges or threatened discharges.

54. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to Plains' Pipeline and/or Replacement and/or Substitute Breakout Tanks, Plains shall not assert, and may not

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maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 50 of this Section.

55. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Plains is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Plains' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Plains' compliance with any aspect of this Consent Decree will result in compliance with the CWA, or with any other provisions of federal, state, or local laws, regulations, orders, or permits.

56. This Consent Decree does not limit or affect the rights of Plains or of the United States against any third parties that are not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Plains, except as otherwise provided by law.

57. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

58. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees)

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incurred in any action to enforce this Consent Decree provided that the United States prevails in the action.

XIII. NOTICES

59. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by U.S. Registered or Certified Mail, return receipt requested, and shall be addressed as follows:

As to the United States:

As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ No. 90-5-1-1-08698

and

As to EPA:

Nelson "Beau" Smith
U.S. Environmental Protection Agency
Region 6
1445 Ross Ave.
Dallas, TX 75202-2733
Mail Code: 6SFPC

Ward Burns
Air Permitting and Compliance Branch
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101

and

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As to Plains:

Mark Gorman
Senior Vice President
Plains All American Pipeline
333 Clay Street, Suite 1600
Houston, Texas 77002

and

Tim Moore
General Counsel
Plains All American Pipeline
333 Clay Street, Suite 1600
Houston, Texas 77002

60. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

61. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

62. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

63. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purposes of resolving disputes arising under this Consent Decree pursuant to Section IX of this Consent Decree (Dispute Resolution), entering orders modifying this Consent

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Decree pursuant to Section XVI of this Consent Decree (Modification), and effectuating or enforcing compliance with the terms of this Consent Decree.

XVI. MODIFICATION

64. Except as otherwise specified in Paragraph 60 of Section XIII of this Consent Decree (Notices), the terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

65. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section IX of this Consent Decree (Dispute Resolution); provided, however, that instead of the burden of proof provided in Paragraph 42, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

66. By no earlier than July 31, 2013 and after Plains has completed performance of its obligations required by this Consent Decree, including Section IV (Civil Penalty), Section V (Compliance Requirements), Section VI (Reporting Requirements), and the payment of any accrued stipulated penalties, Plains may submit to the United States a written Request for Termination, stating that Plains has satisfied those requirements, together with all necessary supporting documentation.

67. Following receipt by the United States of Plains' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may

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have as to whether Plains has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating this Consent Decree.

68. If the United States does not agree that this Consent Decree may be terminated, Plains may invoke Dispute Resolution under Section IX of this Consent Decree (Dispute Resolution). However, Plains shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 42 of Section IX, until no sooner than 90 Days after submitting its Request for Termination.

XVIII. PUBLIC PARTICIPATION

69. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. Plains agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Consent Decree, unless the United States has notified Plains in writing that it no longer supports entry of this Consent Decree. Plains consents to entry of this Consent Decree without further notice.

XIX. SIGNATORIES/SERVICE

70. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, on behalf of the United States, and each undersigned representative of Plains certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents

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to this document.

71. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Plains agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

72. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXI. APPENDICES

73. The following appendices are attached to and incorporated as part of this Consent Decree:

> "**Appendix A**" sets forth the Listed Discharges
>
> "**Appendix B**" is the initial list of pipeline segments for which Plains will implement and maintain Computation Pipeline Monitoring ("CPM") Leak Detection in accordance with API 1130.

XXII. FINAL JUDGMENT

74. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Plains. The

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Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED.

Dated and entered this 21st **day of** September**, 2010.**

UNITED STATES DISTRICT JUDGE
Southern District of Texas

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Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of *United States v. Plains All American Pipeline, L.P., et al.* (S.D. TX):

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: 8/6/10

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Attorney-in-Charge:

STEVEN D. SHERMER
District of Columbia Bar No. 486394
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
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JOSÉ ANGEL MORENO
United States Attorney
Southern District of Texas

Local Co-counsel:

JUDY A. ROBBINS
Assistant United States Attorney
Southern District of Texas
P.O. Box 61129
Houston, Texas 77208

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Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of *United States v. Plains All American Pipeline, L.P., et al.* (S.D. TX):

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 7/17/10

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

CHERYL T. ROSE, ESQ.
Senior Attorney
Office of Enforcement and Compliance
U.S. Environmental Protection Agency
Washington, D.C. 20460

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Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of *United States v. Plains All American Pipeline, L.P., et al.* (S.D. TX):

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

Date: 7/12/2010

AL ARMENDARIZ
Regional Administrator
U.S. Environmental Protection Agency, Region 6

EDWIN QUINONES, ESQ.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

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Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of *United States v. Plains All American Pipeline, L.P., et al.* (S.D. TX):

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7:

Date: 7/8/2010

KARL B. BROOKS
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 7

KRISTINA M. GONZALES, ESQ.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101

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Subject to the notice and comment provisions of 28 C.F.R. § 50.7, THE UNDERSIGNED PARTIES enter into this Consent Decree entered in the matter of *United States v. Plains All American Pipeline, L.P., et al.* (S.D. TX):

FOR DEFENDANTS PLAINS ALL AMERICAN PIPELINE, L.P.; PLAINS PIPELINE, L.P.; PLAINS MARKETING GP, INC.; AND PLAINS MARKETING, L.P.:

Date: 6/18/10

MARK J. GORMAN
Senior Vice President
Plains All American Pipeline, L.P.

Date: 6/18/10

KEVIN A. GAYNOR, ESQ.
Vinson & Elkins, L.L.P.

ATTORNEYS FOR PLAINS ALL AMERICAN PIPELINE, L.P.; PLAINS PIPELINE, L.P.; PLAINS MARKETING GP, INC.; AND PLAINS MARKETING, L.P.

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Appendix A - Listed Discharges:

	Date:	NRC#:	Location:	Cause:
1)	6/17/04	725339	KS	Damaged poly-pipeline slip insert and external corrosion
2)	11/22/04	742154	TX	External corrosion
3)	12/28/04	745558	TX	Cracked weld joint
4)	01/05/05	746194	TX	Failed pressure relief pin and undersized temporary relief tank located outside of secondary containment
5)	03/07/05	752981	TX	External corrosion
6)	04/06/05	754956	LA	Internal corrosion
7)	07/06/05	764626	OK	Internal corrosion
8)	11/30/05	781043	TX	External corrosion
9)	08/21/07	846336	TX	External corrosion
10)	09/05/07	847909	TX	External corrosion

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Appendix B – Pipeline Segments Subject to API 1130 CPM:

	PLM/CPM Record Name	Description
1	BOAC	Bay Marchand/Grand Isle/Ostrica to Alliance
2	BS_BJL_BML	Basin Jal to Midland
3	BS_BML_COL	Basin Midland to Colorado City
4	BS_COL_WFL	Basin Colorado City to Wichita Falls
5	BS_WFL_CSH	Basin Wichita Falls to Cushing
6	CA_ALHCA_BELCA	Aera Lost Hills to Belridge
7	CA_BELCA_LIGHT	Belridge Light Incoming
8	CA_LSFCA_PNTCA	Los Flores to Pentland
9	CA_PNTCA_EMDCA	Pentland to Emidio
10	CAM1	Clovelly to Alliance / Murphy
11	CW_PKE_WRV	Capwood - Patoka East to Woodriver
12	EP_ELPEP_ABQEP	El Paso to Albuquerque
13	JP_ELPJP_JUAJP	El Paso to Juarez
14	PG_10GPG_LAKPG	Elk Hills Manifold to Coles Levee/Lake
15	PG_EDACA_LAKPG	Derby Acres to Lake Line 2
16	PG_LAKPG_KEYPG	Lake to Kelly 10 Inch Line 1
17	RP_CHTRP_DPTRP	Frontier to Dupont
18	RP_CMSRP_FOTRP	Commerce City to Fountain
19	RP_DPTRP_CMSRP_SOUTH	Dupont - Commerce City South
20	RP_STSRP_CHTRP	Stroud to Cheyenne Terminal 8"
21	RP_STSRP_RCTRP	Stroud to Rapid City Terminal 6"
22	SP_CSRSP_DRVSP	Coates to Driver
23	SP_FLD_MIDSP	Floyd to Midland
24	SP_GLCSP_MIDSP	Glasscock to Midland
25	SP_HNYSP_CSRSP	Hanley to Coates
26	SP_SDWSP_KCXSP	Sulfur Draw to Ken Cox
27	SP_TIPSP_SPBSP	Tippett to Patterson
28	SP_WESNJ_CGVRW	Westbrook to China Grove
29	TL_MED_OKI	Tulsa - Medford to Oki Junction
30	AR_HAY_BUM	ArkLaTex Bumpas to Calumet O/S
31	AT_BDK_PAP	Burns Dock to Patterson Pump Station O/S - Atch
32	AT_COA_PAP	Coastal Terminal to Patterson Pump O/S - Atch
33	AT_TRU_SHG	Trunkline to Shell Gibson O/S - Atch
34	BF_HAR_SKH	Buffalo Harpers Ranch to Stockholm
35	BF_KAU_ORN	Buffalo Kaufman to Orion - O/S
36	BF_SKH_BLN	Buffalo Stockholm to Blaine
37	BRGLK_BUR	Bridger Lake to Burns Terminal O/S
38	C_PLM08	McMurray to Tyler Pipeline O/S
39	C_PLM23_CRSA	Crain Ranch to Sabine pipeline O/S

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40	CFD_PLM4	Cranfield Truck Station to Cranfield O/S
41	CH_HWT_TSY	Cherokee HWT - TSY O/S
42	CH_OKY_CUS	Cherokee OKY - CUS O/S
43	CH_TSY_OKY	Cherokee Tussy to OK City
44	CS_BLN_CAS	Cashion Blaine to Cashion
45	CS_CAS_CCJ	Cashion to Cushing O/S
46	CS_ELK_COY	Cashion Elk City to Colony
47	CS_ORN_CAL	Cashion Orion to Calumet O/S
48	CS_VER_CAL	Cashion Verdon / Morgan to El Reno O/S
49	EI_BUR_DCK	Burns Terminal to Burns Dock O/S
50	FD_RBU_CBK	Ross Bayou/Lake St. John to Canebrake O/S
51	GM_CAI_COC	Caillou Island to Cocodrie O/S
52	GM_GMD_HMA	Golden Meadow / Cocodrie to Houma / Lirette O/S
53	KE_GOR_BUS	Gorham to Bushton O/S
54	KE_NES_HOG	Ness City / Riverside to Hodgeman O/S
55	KW_TRN_HRN	Trenton to Herndon O/S
56	MG_CHU_TEN	Magnolia Chunchula to Ten Mile O/S
57	MG_EUT_YCK	Magnolia Eucutta to Yellow Creek O/S
58	MG_LUM_EUT_L2	Magnolia Lumberton to Eucutta Line 2 O/S
59	MG_LUM_EUT_L3	Magnolia Lumberton - Eucutta Line 3 O/S
60	MG_TEN_LUM	Magnolia Ten Mile to Lumberton 14"
61	MG_TEN_MOS	Magnolia Ten Mile to Mobile Ship 14"
62	ND_MRM_BAK	Baker Marmarth to Baker O/S
63	ND_RHM_MRM	Baker Rhame to Marmarth O/S
64	NM_DLH_JAL	Dollarhide to Jal
65	RR_HLD_RCS	Red River HLD-RCS O/S
66	RR_HWK_QMN	Red River HWK_QMN Test O/S
67	RR_QMN_YTS	Red River QMN-YTS O/S
68	RR_YTS_HLD	Red River YTS-HLD O/S
69	SCS_BRM	Coffeyville 16" O/S
70	ST_GWS_VLO	George West to Valero Tie-in
71	C_PLM12_PWFL	Powell to Floyd pipeline O/S
72	SP_OWNSP_BLLSP	Owens to Ball
73	RP_STSRP_DPTRP	Stroud to Dupont Terminal 10" Bypass
74	RP_NCSRP_RCTRP	New Castle to Rapid City Terminal 8"
75	RP_CMSRP_DPTRP	Commerce City to Dupont North - OS
76	BS_CFL_CNC	Wichita Falls to Comanche
77	SP_GRWSP_MIDSP	Greenwood to Midland
78	PB_WSN_WOD	Wasson to West Odessa 16" O/S
79	SHI_PLM1	Sand Hills to Crane O/S
80	LN2000/63	Line 2000/63