

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6 BEFORE THE ADMINISTRATOR

2012 AUG 29 PM 2:43

ALBINO PUBLIC CLERK EPA REGION VI

IN THE MATTER OF:

PLAINS GAS SOLUTIONS, LLC

ACADIA PARISH

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EPA DOCKET NO. CAA-06-2012-3319

PLAINS GAS SOLUTIONS, INC.'S ANSWER, AFFIRMATIVE DEFENSES AND REQUEST FOR HEARING

COMES NOW, Plains Gas Solutions, Inc. ("PGS"), Respondent in the above entitled matter and, having been served with an administrative complaint on July 30, 2012, timely files its Answer, Affirmative Defenses, and Request for Hearing, as set forth below:

I. ANSWER

Respondent PGS respectfully answers the allegations of the complaint as follows:

- 1. Paragraph 1 of the complaint requires no response, but out of an abundance of caution, Respondent denies same.
2. Respondent disputes that it did not comply with the general duty clause of the Clean Air Act (CAA) at section 112(r)(1) as alleged and so paragraph 2 of the complaint is denied.
3. Paragraphs 3 through 7 of the complaint are recitations of law and regulations and require no response, but out of an abundance of caution, Respondent denies same.
4. Respondent admits it corporate status and that it is a "person", but denies all other allegations of paragraphs 8 and 9.
5. Respondent admits the allegations of paragraphs 10 through 15 regarding its operations.

6. With respect to the allegations of paragraph 16 of the complaint, Respondent admits only that an accidental release occurred at its facility on February 24, 2012.
7. With respect to the allegations of paragraph 17 of the complaint, Respondent admits only that the facility was shut down on February 23, 2012 and restarted on February 24, 2012.
8. With respect to the allegations of paragraphs 18 through 20 of the complaint, Respondent admits only that on February 24, 2012, at approximately 1:15 pm, an explosion and fire occurred that resulted in a reported injury of an employee, and that the fire was extinguished within 24 hours and the facility immediately shut down.
9. Respondent denies the allegations of paragraph 21 of the complaint.
10. With respect to the allegations of paragraphs 22, Respondent re-urges each and every of its responses to paragraphs 1 through 21 of the complaint.
11. Paragraph 23 is a legal conclusion that requires no response, but out of an abundance of caution, Respondent denies same.
12. Respondent denies the allegations of paragraphs 24 through 26 of the complaint.
13. With respect to the allegations of paragraphs 27, Respondent re-urges each and every of its responses to paragraphs 1 through 26 of the complaint, and further states that Paragraph 27 is a legal conclusion that requires no response, but out of an abundance of caution, Respondent denies same.
14. Paragraph 28 of the complaint requires no response, but out of an abundance of caution, Respondent denies same and Respondent further states that it denies that any penalty is justified or warranted.
15. Paragraphs 29 through 38 of the complaint require no response.

**II.**  
**AFFIRMATIVE DEFENSES AND GENERAL POSITION**

16. PGS respectfully submits that there is no factual or legal basis for the imposition of penalties against it in this matter. Reduced to its lowest common denominator, this matter boils down to whether PGS fulfilled its responsibility to properly train, instruct and enforce federal safety standards for its employees. PGS submits that the unequivocal answer to this question is yes.

17. The EPA is seeking an administrative penalty of \$37,500.00 on the basis that PGS violated the General Duty Clause under the Clean Air Act, Section 112(r)(1) by allegedly failing to design and operate a safe facility. PGS vehemently denies the allegations and contends that it has complied with pertinent EPA regulations as well as OSHA's process safety management regulations in all respects and thus the penalty should be withdrawn.

18. PGS has enjoyed an outstanding reputation and record for safety and compliance at its facilities. At all pertinent times herein, PGS complied with federal regulations and in particular its own PSM Guidance Manual. As the following paragraphs show in more detail, the incident at Basile was the result of unforeseeable and unpreventable circumstances.

19. On February 24, 2012 at approximately 1:15 P.M. the Basile Gas Plant experienced a fire that resulted in a hydrocarbon release. Within seconds of the incident, the plant emergency shutdown system was activated, blocking in all inlet and outlet fuel sources to the fire allowing it to bleed down and burn itself out. The fire was fully extinguished at approximately 8:00 A.M. on Saturday February 25, 2012.

20. Prior to the incident in question, an engineering evaluation was initiated to determine whether the plant could operate without the E2224/E2223 exchanger in operation. A Promax Model simulating the plant process confirmed that E2225 (which is downstream of and in series

with E2223 in the process flow) had ample heat duty to regulate the demethanizer bottoms temperature without E2223, and yield design product recoveries within design pressure and temperature limitations throughout the process. A Management of Change (“MOC”) analysis was conducted by the Plant Engineer, Plant Manager and operating personnel, to restart the plant. The MOC was drafted by the Plant Engineer and reviewed with plant operating personnel by the Plant Manager prior to startup of the plant with E2224/E2223 out of service.

21. The cold portion of the Basile Gas Plant is a GasSub-cooling Process, cryogenic facility designed and manufactured by Exterran. It was fabricated in 2009, purchased by PGS having never been used, and placed into service in February of 2011. The plant also includes amine treating and glycol dehydration designed and manufactured by others, upstream of the cold plant.

22. PGS required Exterran to review, certify and warrant the application of the cold plant at Basile based on the anticipated operating volume, pressure, temperature and actual detailed gas quality analysis of the gas to be processed from the Pine Prairie Energy Center (based on over one year’s worth of actual gas quality in the PPEC System), which Exterran did, after making some modifications to the demethanizer internals and de-rating the plant capacity due to lower than design operating gas pressures.

23. During the construction of the Basile Plant, a Process Hazard Analysis (“PHA”) was performed to insure that the plant design incorporated adequate alarms and shutdowns. Several alarms, shutdowns, and set points were derived and documented in the PHA. Upon commissioning the plant, all alarms and shutdowns were tested to insure they operated properly.

24. PGS is required to provide its employees with a work place that is free of recognized hazards. PGS submits that it fulfilled its duty through the implementation of its written safety

programs and instruction to its employees. PGS cannot be held responsible for potential violations of federal law which result from unforeseeable or unpredictable circumstances.

25. It is well settled that where it is determined that an employer such as PGS has used all feasible means to enforce compliance with safety standards, any alleged hazardous conduct of employees will be held to be unforeseeable and unpreventable and thus the employer cannot be found to have committed a violation of law. *Brock v. L.E. Myers Company*, 818 F.2d 1270, 1276 (6th Cir.) cert. den. 108 S.Ct. 479, 98 L.Ed. 2d 509 (1987).

26. PGS complied with the CAA general duty clause in that it: (i) identified hazards which may result from accidental releases using appropriate hazard assessment techniques, (ii) designed and maintained a safe facility taking such steps as are necessary to prevent releases, and (iii) minimized the consequences of accidental releases which do occur.

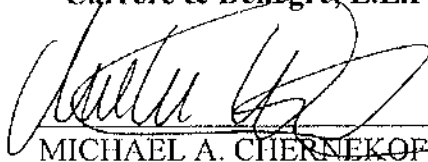
27. At no time prior to the incident in question did PGS management have either actual or constructive knowledge of any potentially unsafe conditions, the existence of which is vehemently denied. It is both unfeasible as well as impractical for PGS management to be expected to monitor in minute detail the acts and/or omissions of its employees, nor is there any federal obligation to do so. *Horne Plumbing & Heating Co. v. OSHA*, 528 F.2d 564 (5th Cir. 1976).

### **III. REQUEST FOR HEARING**

Pursuant to 40 CFR 22.15(c), Respondent PGS requests a hearing on the issues raised in the complaint and answer in this matter.

Respectfully submitted,

**Jones, Walker, Waechter, Poitevent,  
Carrère & Denègre, L.L.P.**



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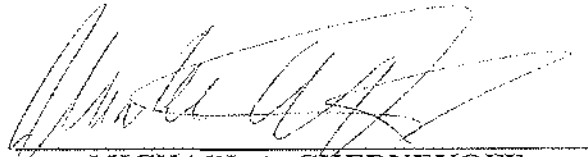
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**ATTORNEYS FOR  
PLAINS GAS SOLUTIONS, INC.**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been forwarded on this the 28<sup>th</sup> day of August, 2012, to:

Regional Hearing Clerk (6RC-D)	[ ]	by certified mail, return receipt requested
United States Environmental Protection Agency	[ ]	by regular mail
Region 6	[ x ]	by overnight delivery
1445 Ross Avenue, Suite 1200	[ ]	by hand delivery
Dallas, Texas 75202-2733	[ ]	by facsimile
Mr. Tom Rucki	[ ]	by certified mail, return receipt requested
Assistant Regional Counsel	[ ]	by regular mail
United States Environmental Protection Agency	[ x ]	by overnight delivery
Region 6	[ ]	by hand delivery
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**MICHAEL A. CHERNEKOFF**