

INSIGHTS

Industry Impact from Criminal Verdict in Pipeline Oil Spill

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On September 7, 2018, a jury in a California state court **found** Plains All American Pipeline guilty on 9 criminal counts, stemming from a release of 140,000 gallons of crude oil from a Plains pipeline near Santa Barbara in 2015. Media across America reported on the criminal verdict in the Plains case, and certain commenters predict that the verdict could further energize pipeline opposition groups around the country. The case may be viewed best, however, as somewhat of an anomaly: a broadside of state legal requirements brought after an oil spill to a sensitive environment in California.

The release reached waters along the coast, traveling through a State Park, and resulted in the loss of a number of birds and marine mammals. The then California Attorney General Kamala Harris (now U.S. Senator with Presidential ambitions) and the Santa Barbara County prosecutor sought and obtained an **indictment** of Plains in the middle of 2016. All of the 46 criminal charges initially brought by the State were based on state law except for one State statute that adopted Section 301 of the federal Clean Water Act (CWA) (33 U.S.C. § 1301) (known as ‘the discharge prohibition’ for any release of oil to water without a permit), alleging a felony charge that Plains knowingly discharged a pollutant to waters of the State. The majority of the remaining 45 criminal charges were based on alleged violations of the California Fish & Game Code, including separate counts for individual animals affected.

The federal CWA authorizes strict liability for a release of oil to water. Strict liability means that the fact of a release of oil to waters is all that is necessary to create liability; there is no need to prove causation or fault. In addition, simple negligence is enough to sustain misdemeanor criminal liability under the CWA (while “knowingly” causing a discharge is required to sustain felony liability under the CWA). Certain state laws, including California, also authorize strict liability for the “taking” of wildlife or for delayed incident reporting. For these reasons, it is uncommon for operators to proceed to trial for criminal charges as opposed to negotiating plea agreements.

Over the course of the underlying prosecution, the 46 initial charges were reduced to 13, which went to trial. Most of the charges withdrawn related to the multiple, individual wildlife Counts. According to news sources, the jury found Plains guilty of 9 of the remaining 13 charges (Counts 1, 4, 7, 9-12, 14-15). Count 1 alleged a felony violation of California law for “knowingly” engaging in or causing a release of oil to water. Counts 4 and 7 were misdemeanors alleging violation of State release reporting requirements (although Count 4 was initially brought as a felony charge). The remaining six guilty Counts were misdemeanors arising from the California

Fish & Game Code.

The jury declared a mistrial on three Counts, including an alleged felony ‘knowing’ discharge a pollutant to State waters (based on the federal CWA), felony ‘knowing’ deposit of hazardous materials to the environment) and a misdemeanor charge for the alleged take of a sea lion. Finally, Plains was acquitted on a final Count, which alleged an ‘unlawful deposit of oil’ in State waters. In a [statement](#) on the verdict, Plains emphasized that there was no conviction for knowing misconduct with respect to operation of the pipeline and of the 9 counts, 8 were misdemeanors including 7 counts associated with State strict liability statutes.

Criminal misdemeanor liability under the federal CWA requires simple negligence for a discharge of oil that reaches waters of the U.S. The CWA also provides for felony criminal liability for operators that “knowingly” cause a discharge. The federal Pipeline Safety Act provides for felony criminal liability, which requires a “knowing and willful” violation of PHMSA pipeline regulations. This is a more difficult standard to prove than “knowing” (for CWA felony) or even simple negligence (for CWA misdemeanor) under the CWA. Notably, of the 9 criminal violations found by the jury, *none* were brought under the CWA or the PSA and all were based on California state laws. Criminal convictions of companies are rare under any standard, but the Plains incident and conviction should be viewed in its limited context—due to the facts of the incident, the oil spill to a sensitive environment in California, the characteristics of the pipeline at issue, and state legal requirements as well as local politics.

While pipeline operators around the country cannot entirely avoid unfortunate incidents (or overzealous prosecutors), they can closely monitor their systems through maintenance and integrity management activities that meet or exceed the minimum federal standards, particularly with respect to the risks presented by aging infrastructure. Operators can also work to ensure that their release reporting obligations, emergency response and legal contingency plans are well established and understood, in order to further minimize impacts to the public and the environment in the event of an incident.