

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety**

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In the Matter of)	
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Kinder Morgan Liquids Terminals, LLC.,)	CPF No. 1-2011-5001
Perth-Amboy, N.J.)	
)	
Respondent)	
)	

**WRITTEN RESPONSE TO NOTICE of PROBABLE VIOLATION,
PROPOSED COMPLIANCE ORDER
and
PROPOSED CIVIL PENALTY**

Kinder Morgan Liquids Terminals, LLC. (KMLT, Respondent or the Company) owns and operates a petroleum liquids terminal facility located in Perth-Amboy, New Jersey. On October 28, 2009, during a delivery of fuel oil by pipeline into breakout tank 57, the tank inlet valve was closed , directing flow to Tank 42, which was designed as relief overflow protection. A block valve to Tank 42 had inadvertently been left closed after maintenance, however, and the resulting overpressure sheared the bolts off the pump, resulting in a release of approximately 8,500 gallons of product. All but approximately 20 gallons of product was contained in a diked area around the tanks, and approximately 8,450 gallons of the product was recovered.

Respondent timely reported the release to both the National Response Center (NRC) and to the Office of Pipeline Safety (OPS), Pipeline and Hazardous Materials Safety Administration (PHMSA), and then immediately began response and cleanup efforts. Respondent also began working on facility improvements in advance of any formal request by PHMSA to do so.

On May 11, 2011, PHMSA issued a Notice of Probable Violation, Proposed Compliance Order and Proposed Civil Penalty (NOPV) to Respondent for the October 28, 2009, tank overfill incident. The NOPV alleged seven (7) separate violations. The NOPV also contained a proposed Compliance Order, which contained nine (9) separate requested actions. The enforcement action also proposed a civil penalty of \$425,000.

On June 10, 2011, Respondent submitted a request for hearing on the NOPV and Proposed Compliance Order, but also sought an extension of time to submit additional

materials, in order to allow the parties an opportunity to meet and confer on the facility improvement activities already underway by Respondent.

In light of the facility improvement activities already completed or planned, and the discussions between Respondent and PHMSA to date, Respondent believes that the issues presented by this enforcement action can be fully resolved without the need for a hearing. Because an agreement to that effect has not yet been formalized, however, Respondent is submitting this Written Response to the allegations contained in the NOPV as issued on May 11, 2011, in order to preserve its right to a hearing.

The Company's reasons for requesting a hearing on this matter at the outset, and the current status of the issues alleged, are set forth below, and in the accompanying Statement of Issues.

Response to NOPV Allegations

NOPV Item 1: Failure to Follow Written Startup and Shutdown Procedures in the Facility's Operation & Maintenance (O&M) Manual, pursuant to 49 C.F.R. Part 195.402(c)(7)

The Agency alleges in this violation that the isolation valve to Tank 42 was left closed following maintenance activities, and that Respondent's alleged failure to have written startup and shutdown procedures that addressed proper line up of valves during product deliveries caused or contributed to the tank overflow incident.

Respondent acknowledges that the isolation valve to Tank 42 was inadvertently left in a closed position after maintenance activities. Respondent has already revised its O&M Manual to include more specific startup and shutdown procedures in regard to valve lineup, and Respondent has also conducted additional activities intended to prevent recurrence of such an incident.

The "Pipeline Safety Violation Report" prepared by PHMSA for this incident notes that 'KM failed to take any action to comply' with the underlying requirements. Respondent contests that allegation. Respondent already had an O&M Manual and procedures, thus it is inaccurate to allege that the Company had 'failed to take any action to comply.' Moreover, the Company has already revised its O&M Manual to more fully address the concerns noted in the NOPV, and those corrective actions began even before the NOPV was issued. In addition, the PSA and its implementing regulations as of the time of this incident limit the maximum administrative or civil penalty to \$100,000 per violation per day. The NOPV as issued proposes a \$122,500 civil penalty for Item 1, which is in excess of the maximum (and no multi-day violation is alleged in the NOPV or in the supporting materials, nor is appropriate given the facts). Six (6) of the seven (7) alleged violations in the NOPV invoke a single regulation under the PSA (Part

195.402), and the associated proposed civil penalties for those alleged violations also exceed the statutory maximum.

Accordingly, and as discussed further below, we respectfully suggest that a proposed civil penalty of \$122,500 for Item 1 of the NOPV exceeds the statutory maximum, and that even if within the statutory maximum it exceeds PHMSA precedent in assessing penalties for similar alleged violations (there are eight PHMSA enforcement actions just in the past two years that have assessed far lower penalties for more significant incidents).

NOPV Item 2: Failure to Have and Follow Written Procedures for Monitoring Pressures from an Attended Location, pursuant to 49 C.F.R. Part 195.402(c)(8)

PHMSA alleges in this violation that the facility was not designed or operated to 'fail safe' in the event of abnormal operations. As alleged, and as addressed in the Agency's Proposed Compliance Order for this violation, PHMSA has questioned the sufficiency of Respondent's O&M Manual, as it did in Item 1 above. KMLT has already revised its O&M Manual to address this concern.

We believe that this allegation is improperly duplicative of NOPV Item 1, however, as concerns about the adequacy of an operator's O&M Manual should properly be classified as a single allegation, not separate and multiple counts. Respondent also believe that the Agency's inspection guidance materials illustrate that pressures can be monitored from remote positions to an attended location. For these reasons, KMLT respectfully requests that NOPV Item 2 be merged into Item 1, and that the combined penalty be reduced accordingly.

NOPV Item 3: Failure to Have and Follow Written Procedures to Detect Abnormal Operating Conditions, pursuant to 49 C.F.R. Part 195.402(c)(9)

Item 3 of the NOPV alleges that Respondent's O&M Manual did not contain written procedures to detect abnormal operating conditions, such as pressure, temperature, flow or other conditions.

As with the preceding alleged violations, KMLT has already revised its O&M Manual to address this concern, and we believe this allegation is improperly duplicative of NOPV Items 1 and 2. Concerns about the adequacy of an operator's O&M Manual should properly be classified as a single allegation, not separate and multiple counts. For that reason, KMLT respectfully requests that NOPV Item 3 be merged with Items 1 and 2, and that the combined penalty be reduced accordingly.

NOPV Item 4: Failure to Have and Follow Written Procedures for Overpressure Safety Devices and Overfill Protection, pursuant to 49 C.F.R. Part 195.402(c)(3)

Item 4 of the NOPV again alleges that Respondent's O&M Manual was not complete, in this case because it did not address elements required by Part 195.428.

Respondent notes that PHMSA has not alleged any violation of Part 195.428, but instead simply repeated the allegation stated in Items 1 - 3 of the NOPV, being that Respondent's O&M Manual was not specific enough. KMLT has already revised its O&M Manual to address this concern. This allegation is improperly duplicative of NOPV Items 1 - 3. Concerns about the adequacy of an operator's O&M Manual should properly be classified as a single allegation, not separate and multiple counts. For that reason, KMLT respectfully requests that NOPV Item 4 be merged with Items 1 - 3, and that the combined penalty be reduced accordingly.

NOPV Item 5: Failure to Have and Follow Written Procedures for Valve Maintenance, pursuant to 49 C.F.R. Part 195.402(c)(3)

Item 5 of the NOPV again alleges that Respondent's O&M Manual was not complete, in this instance because it did not address elements required by Part 195.420.

Respondent notes that PHMSA has not alleged any violation of Part 195.420, but instead simply repeated the allegation stated in Items 1 - 4 of the NOPV, being that Respondent's O&M Manual was not specific enough. KMLT has already revised its O&M Manual to address this concern. This allegation is, again, improperly duplicative of NOPV Items 1 - 4. Concerns about the adequacy of an operator's O&M Manual should properly be classified as a single allegation, not separate and multiple counts. For that reason, KMLT respectfully requests that NOPV Item 4 be merged with Items 1 - 4, and that the combined penalty be reduced accordingly.

NOPV Item 6: Failure to Inspect and Test the Relief Device on Tank #42, pursuant to 49 C.F.R. Part 195.428(a)

Item 6 of the NOPV expressly addresses whether Respondent had inspected the pressure relief device to Tank #42 for capacity, within the time frames specified in Part 195.428(a).

Respondent has confirmed its inspection and testing schedule, to ensure compliance with Part 195.428(a). Given PHMSA precedent for similar alleged violations, we respectfully request that the penalty for NOPV Item 6 be reduced.

NOPV Item 7: Failure to Have a Communication System to Ensure Safe Operation of the Pipeline, pursuant to 49 C.F.R. Part 195.402©(9)

Item 7 of the NOPV again cites the requirement to have a “manual of written procedures” (O&M Manual) pursuant to Part 195.402. In making this allegation, the Agency repeats the same allegation supporting Items 1 - 5 of the NOPV, and specifically duplicating Item 3 of the NOPV (also citing Part 195.402(c)(9)).

Respondent has already revised its communication plan in response to PHMSA’s concerns. We believe this allegation is duplicative of Items 1, 2, 4 and 5 of the NOPV generally, and of Item 3 specifically. In light of those duplicative allegations and KMLT’s cooperative response, the proposed penalty is excessive. We respectfully request that Item 7 of the NOPV be merged with Items 1 through 5, and that the proposed civil penalty be reduced accordingly.

Response to Proposed Civil Penalty

As noted above, the NOPV improperly exceeds the statutory maximum in assessing more than \$100,000 for Item 1 of the NOPV. Moreover, six (6) of the seven (7) Items in the NOPV are founded on alleged violations of a single regulation, being Part 195.402. Taken together, those allegations also exceed the statutory maximum allowed by statute for civil penalties.

The total amount of civil penalty proposed for this NOPV is excessive because it: (a) exceeds the statutory maximum for Item 1; (b) exceeds the statutory maximum for Items 1 -5 and 7, all of which are founded on a single regulation; and (c) because it exceeds civil penalties for similar violations as assessed by PHMSA over just the past two years.

The following recent PHMSA penalty actions all show lesser penalties assessed for incidents of greater impact than the 2009 Perth-Amboy tank overfill (which was contained within a diked area on operator’s property):

1. CPF No. 5-2009-5004: assessed only \$100,000 penalty under Part 195.402 for failure to have a procedure for replacement of temperature probe in tank, which resulted in a release of 80 barrels (Final Order issued on January 11, 2011)
2. CPF No. 1-2010-5009: assessed only \$100,000 penalty under Part 195.402 for failure to follow O&M Manual, for incident that caused third party damage and interrupted fuel supply to La Guardia airport (Final Order issued on January 31, 2011);
3. CPF No. 5-2009-5002: assessed only \$28,000 penalty for multiple violations of Part 195.402, including failure to review for 35 months (Final Order issued on March 30, 2011);
4. No. 4-2009-5006: assessed only \$200,000 penalty under Part 195.402, for failure to follow written procedures concerning abnormal operations and leak

- detection, where more 31,000 barrels was released over more than a 24 hour period before being detected (Final Order issued on April 6, 2010);
5. CPF No. 4-2009-5011: assessed only \$17,500 for multiple violations of Part 195.402, where respondent failed to acknowledge NOPV and lost material evidence (Final Order issued on April 22, 2010);
 6. No. 3-2008-5006: assessed only \$84,000 penalty for violations of Part 195.402, where overpressure and release occurred during tank transfer (Final Order issued on December 16, 2010).

Response to Proposed Compliance Order

Respondent has already completed virtually all actions requested by the Proposed Compliance Order that accompanied the NOPV, and as communicated to the Director of PHMSA's Eastern Region on a meeting on August 4, 2011, the Company plans to have all corrective actions, including training, complete by December 1, 2011. Information documenting such actions has been or will be provided to PHMSA, along with the cost documentation requested by the Proposed Compliance Order.

Summary

For the reasons set forth in the above Response to the NOPV, and in light of Respondent's cooperative response to this action, we respectfully request that PHMSA resolve this matter through entry of a Consent Order, pursuant to 40 C.F.R. Part 190.219. Respondent also respectfully requests that PHMSA reduce the proposed penalty, in light of the duplicative allegations contained in NOPV Items 1 - 5 and 7, because of Respondent's prompt and cooperative response to the enforcement action, and because the Agency's assessment of penalties for similar actions in just the past two years indicates that the penalty requested in this instance is considerably higher than normal.

If the Agency believes that any significant issues remain in regard to the Proposed Compliance Order, or that the amount of penalty cannot be resolved informally during entry of a Consent Order, then KMLT is prepared to proceed to hearing on this matter.

Respectfully submitted,



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