



RECEIVED AUG 30 2010

10/0044

August 27, 2010

**VIA FEDERAL EXPRESS**

Byron Coy, PE  
Director, Eastern Region  
Office of Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration  
820 Bear Tavern Road, Suite 306  
West Trenton, New Jersey 08628

RE: CPF 1-2010-5004M

Dear Mr. Coy:

This letter is written in response to the Notice of Amendment (NOA) dated April 7, 2010 to David Vattimo, Regional Vice President, Kinder Morgan Liquids Terminals LLC (KM), which was written as a result of the inspection conducted on August 18-21, 2008 of the KM Operator Qualification (OQ) records and procedures in Perth Amboy, New Jersey. The NOA alleges 4 inadequacies of KM's OQ program and requires KM to either contest the allegations within 30 days of receipt of the NOA or submit amended procedures within 60 days of receipt of the NOA. By letter dated August 11, 2010 you granted an extension until August 31, 2010 to request a hearing or to provide amended procedures on or before September 30, 2010.

Pursuant to Section II (c) of the Response Options for Pipeline Operators in Compliance Proceedings document, Kinder Morgan is contesting items 1, 2, 3 (with regards to welding) and 4. Our response to each of the alleged inadequacies, stating our reason for objecting to the Notice of Amendment item and providing additional information to support our position, is provided below. For your convenience we have included the original citation and PHMSA comment followed by our response.

We trust the additional information will warrant modification of the Notification of Amendment. If you have any questions, please contact Jason Hughes, Manager of Pipeline Integrity at 732-969-5735.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'David C. Vattimo', is written over a faint, larger version of the same signature.

David C. Vattimo  
Regional Vice President for Terminals

DCV/cj  
Atts.

cc: Jason Hughes

1. §195.505 Qualification program.

**Each operator shall have and follow a written qualification program. The program shall include provisions to:**

**(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities;**

Training material on task-specific abnormal operating conditions (AOCs) for KM's covered tasks are not provided for all covered tasks.

KM uses multiple sources of training material to train operator personnel. This includes new employee orientation, computer based training, O&M Procedures, Performance Evaluation Study Guides, Evaluation Reference Manuals, Skill Checklists, and Knowledge Tests, to train operator personnel. This material was reviewed for selected covered tasks. Some covered tasks had no task specific AOCs identified in the training material, nor did KM have documentation showing that these covered tasks were evaluated for potential task specific AOCs.

**Kinder Morgan's Response:** It is difficult for Kinder Morgan to address this alleged discrepancy since PHMSA has not provided specific tasks with no task specific AOCs identified. We have reviewed all of the OQ tasks assigned to the Perth Amboy employees and were unable to find any that did not address task specific AOCs in at least one of the following manners: Computer Based Training, Evaluation Resource Manual Guides, Performance Study Guides, or Knowledge Tests. In addition, as stated in section 2.3 of our OQ Plan (see Attachment A), task specific AOCs are included in our knowledge tests and skills checklists steps. Although they may not be specifically identified by the moniker AOC, conditions that could result in a hazard(s) to persons, property, or the environment or indicate a condition exceeding design limits are addressed in the knowledge tests and/or skill evaluation steps. Successful completion of the knowledge tests and skill evaluations are then documented in ISNetwork. Given this, Kinder Morgan believes task specific AOCs are adequately addressed and documented in our program and respectfully requests additional guidance regarding this alleged inadequacy to ensure we fully understand PHMSA's concerns and adequately address them. However, note that KM is transitioning to a task list based on B31Q that explicitly states the task specific AOCs. The target date for this is January 2011.

2. §195.505 Qualification program.

**§195.505 (b) Each operator shall have and follow a written qualification program. The program shall include provisions to: (b) Ensure through evaluation that individuals performing covered tasks are qualified.**

The OQ Program does not identify a level of performance criteria for passing written evaluations. While the operator states that 80% is used for passing an evaluation, this is not identified in the OQ Program (emphasis added).

**Kinder Morgan's Response:** Kinder Morgan disagrees that we do not identify a level of performance criteria for passing written evaluations in our OQ Program

The passing criteria for knowledge tests is identified in our Evaluator/Proctor training manual, which is part of our OQ Program and which all evaluators and proctors receive training on before they can proctor knowledge tests as required by our OQ Plan. Attached for your review is page 6 of the manual (see Attachment B).

Notwithstanding the fact that we do document the knowledge testing criteria for passing in our Evaluator/Proctor training manual, Kinder Morgan acknowledges this criterion is not specifically stated in our written OQ Plan document and has no objections to adding it. An amended OQ Plan will be submitted for PHMSA's review by September 30, 2010.

3. §195.505 Qualification program.

**§195.505 (g) Each operator shall have and follow a written qualification program. The program shall include provisions to: (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed.**

The reevaluation intervals identified for the covered tasks noted below, and referenced in the KM OQ Program, are inconsistent with actual practice.

- "welding on existing pipeline systems" (KM covered task 104.21) and
- "general pipeline repair – Clock Spring" (KM covered task 104.12)

KM follows API 1104 and ASME Section 9 for determining the reevaluation interval for welding qualifications, which both require annual requalification. The KM OQ Program specifies a requalification interval of every 3 years for "welding on existing pipeline systems" (KM covered task 104.21).

KM follows the Clock Spring manufacturer's recommended requalification interval of 1 year for personnel performing this task. The KM OQ specifies a requalification interval of every 3 years for "general pipeline repair – Clock Spring" (KM covered task 104.12).

**Kinder Morgan's Response:** Kinder Morgan agrees with the evaluation intervals with respect to Clock Spring and will revise CT 104.12 accordingly. However, we believe PHMSA is confusing the Subpart D §195.222 Welders: Qualification of welders requirements, which cover new construction welding, as well as maintenance welding, with the Subpart G §195.505 Qualification program requirements. While Kinder Morgan does accept API 1104 and ASME Section 9 welding qualification tests as evidence individuals have the knowledge, skills and abilities to perform the welding task, these tests are only one component of our welding OQ qualification (covered task 104.21). Maintenance welders must also be able to recognize and react to Abnormal Operating Conditions to be OQ qualified, and as such, are required to successfully complete an acceptable AOC test every 3 years to remain OQ qualified for the welding task. Since welders are already required to qualify per §195.222, which as previously stated is a separate requirement from Subpart G, Kinder Morgan elected to establish a 3 year OQ requalification interval for the welding task based on the AOC requirement.

4. §195.505 Qualification program.

**§195.505 (g) Each operator shall have and follow a written qualification program. The program shall include provisions to: (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed.**

The OQ Program does not specify the number of times an individual will be allowed to attempt to pass the evaluation process before a qualification is revoked.

**Kinder Morgan's Response:** Kinder Morgan disagrees with this alleged inadequacy as we do address revocation of a task after a failed attempt to pass the evaluation process in three different areas of our OQ Program.

Section 3.3.2 "Re-Evaluation after a Failed OQ Qualification" of our OQ Plan (see Attachment C) indicates the employees are "non-OQ qualified" once they fail the OQ qualification and cannot perform the task unless they are directed and observed in accordance with section 4 of our OQ Plan. Essentially this means the employee is revoked from performing the failed task until they receive training and subsequently pass the evaluation.

Pages 8 and 19 (see Attachments D and E) of our Evaluator/Proctor Training Manual also require the Evaluator/Proctor to make sure the employee's supervisor is immediately informed of the failed evaluation and that the employee is "non-OQ qualified" from the moment they fail an evaluation. Again, this means the employee is revoked from performing the failed task until they receive training and subsequently pass the evaluation.

In addition to the Evaluator/Proctor notifying the employee's supervisor, Kinder Morgan's computer knowledge testing system immediately sends an automatic email to the employee's supervisor any time a knowledge test is failed with the following verbiage: "(Employee Name)

failed the following OQ knowledge test on (date) (OQ task knowledge test name). As required by Kinder Morgan's OQ Plan, (Employee Name) cannot perform this task on a DOT jurisdictional pipeline facility until he/she successfully passes this test, or is directed and observed by an individual who is qualified on it."

Although each of these areas of our OQ Program indicate that an employee is revoked from performing a covered task after a failed evaluation, Kinder Morgan acknowledges that the term "revoked" is not explicitly stated. To ensure this ambiguity is addressed we will modify our OQ Plan document accordingly. An amended OQ Plan will be submitted for PHMSA's review by September 30, 2010.

Finally, Kinder Morgan would like to note that we do not believe it is a requirement of 195.505(g) to specify the number of times an individual will be allowed to attempt to pass the evaluation process before a qualification is revoked. We believe that 195.505(g) requires the operator to identify their list of covered tasks and the re-evaluation intervals for the tasks. Kinder Morgan's list of Hazardous Liquids tasks, as well as the re-evaluation intervals for each task, is found in Appendix B of our OQ Plan.

is able to perform all parts of that covered task. (Initially, a covered task may describe a broad area of expertise which includes several sub-tasks that would not be performed by all individuals performing the broad covered task. Therefore, a sub-task may be broken out into a separate new covered task in order to more effectively assign evaluation requirements.) Additionally, a covered task may be written in general terms for several types of components with evaluations written for specific types of components. These specific evaluations will be identified as such in the evaluation title.

### 2.3. Abnormal Operating Conditions

AOCs are covered in two ways. First, several AOCs are associated with the actual performance of a task, and are included as knowledge questions and skills checklist steps within the evaluations for that task. In addition, there are other AOCs that an individual could encounter while performing a covered task but which are not directly related to that task. These AOCs are listed in Section 10.

Training on how to recognize and respond to AOCs is provided initially to new employees and regularly to all individuals who may encounter an AOC on the job. Contractors are trained on site specific AOCs in accordance with Section 2.7 of Kinder Morgan's Contractor Safety Manual.

AOCs are considered during investigation of a DOT accident/incident to ensure the AOCs identified and used in evaluating individuals are representative of those that could reasonably be anticipated during performance of covered tasks. Any noted deficiencies are recorded in Kinder Morgan's Incident/Near Miss database (STARs), and an automatic notification email is sent to the OQ Administrator.

### 2.4. Covered Task Assignments

Since job responsibilities may vary based on location regardless of job title, covered tasks will be assigned on a per-employee basis by the employee's supervisor. See App. G & H of this plan.

### 2.5. Essential Variables-Equipment

KM has a wide variety of equipment throughout the Company. The OQ Development Team, composed of field subject matter experts representing all operations groups, recognized that most of the equipment within each equipment group (such as high level alarms, line locators or gauging tools) has enough similarities that each equipment group may be evaluated using the same evaluation tools, even though the equipment may have different brand names. In evaluating the proper use of the equipment, reference back to the manufacturer's instruction for use, maintenance, repair and calibration is essential. For many of these equipment groups, the manufacturer's instructions are the primary source of information, and these instructions have not been included in many of KM's procedures, due to the obvious disadvantages of duplicating information in several different manuals or files. KM's OQ Development Team used an informal analysis of essential variables to determine if an equipment group needed individual evaluation tools.

## **KNOWLEDGE EVALUATION TESTS**

All knowledge evaluation tests are stored in the KM Web Tester database by covered task number. The tests are refined and updated regularly in this database to continuously improve the quality and validity of these tools.

KM Web Tester will provide tests with randomly selected questions, so the desired test will differ somewhat each time a test is requested.

The number of questions on each test will vary depending on the complexity of the task, **and test takers are expected to get an 80% or better grade to pass.**

Covered task resource information is also provided in the OQ Covered Task Library to help individuals prepare for a test. The OQ Covered Task Library can be found on the KMONLINE Operator Qualification Intranet website.

Detailed instructions on the use of KM Web Tester to select and administer tests are also found on the KMONLINE Operator Qualification Intranet website.

Note that the employee has 60 min. on line before there is an automatic server time out. Therefore, monitor the employee's work so that they do not get logged out in the middle of a test, as they will lose that work and have to start again when they log back on.

Your OQ Coordinator will always be available to answer questions and provide coaching on this software.

Association of Corrosion Engineers (NACE) or American Society of Mechanical Engineers (ASME) have existing programs which pertain to specific covered tasks. The OQ Administrator will review all requests to utilize Vendor and Industry organization programs. If a Vendor or an Industry organization qualification is to be used for KM's evaluation, KM will obtain a copy of the qualification program and review it with appropriate KM Subject Matter Experts before that qualification can be accepted as part of this OQ Program. Once the Vendor or Industry organization program is approved by the OQ Administrator, an Evaluatee will be considered OQ qualified for that specific covered task when the qualification documentation is received. The OQ Administrator will monitor all approved Vendor and Industry programs and review any changes to ensure continued compatibility with KM's OQ Program. See Appendix F for the list of Vendor or Industry organization programs approved for KM employees' OQ Evaluations.

### 3.3. Re-evaluation

#### 3.3.1. Re-evaluation at subsequent Intervals

OQ qualified Evaluatees who perform the specific covered task will be evaluated before or during the final year of the subsequent OQ qualification interval for that task (third year). If the subsequent OQ qualification does not take place before December 31 of the third (or final) year of the interval, the Evaluatee will be deemed unqualified to perform that task.

This OQ qualification level cannot be met by reviewing work history as the sole evaluation method; the evaluation must include one of the other evaluation methods.

Each Evaluatee should be aware of his/her own schedule for subsequent OQ qualification. The Evaluatee will be able to coordinate subsequent OQ evaluations with their trained KM Evaluator and/or Proctor and their Regional OQ Coordinator. However, the individual's direct Supervisor will be responsible for ensuring that the individual remains current in his/her OQ qualifications.

#### 3.3.2. Re-Evaluation after a Failed OQ qualification

If an Evaluatee fails an evaluation on a covered task, that individual will follow existing KM policies and procedures for retraining, as appropriate. If no specific policies and procedures for retraining exist, the individual must notify the Supervisor and must review the reference material for that covered task and discuss the failed questions with a Subject Matter Expert before going through the evaluation process again. The employee must spend a period of time retraining, at the discretion of local management, before being allowed to retake a failed evaluation. Under normal circumstances, this period of retraining and re-evaluation time should be 24 to 48 hours. A non-OQ qualified individual may perform a covered task under the guidelines listed in Section 4.

#### 3.3.3. Post-Accident Re-evaluation

Each DOT accident/incident will be reviewed in accordance with KM's procedure, which may vary slightly by KM Business Unit. In most cases, an

## **PROCTOR: PROCEDURE IN THE EVENT OF A FAILED EVALUATION**

It is the responsibility of the individual who fails an evaluation to inform their supervisor; however, the evaluator should make sure the supervisor gets notified immediately.

Here is what the Kinder Morgan Operator Qualification Plan states about a failed evaluation:

"Re-evaluation after a Failed OQ qualification - If an Evaluatee fails an evaluation on a covered task, that individual will follow existing KM policies and procedures for retraining, as appropriate. If no specific policies and procedures for retraining exist, the individual must notify the Supervisor and must review the reference material for that covered task and discuss the failed questions with a Subject Matter Expert before going through the evaluation process again. The employee must spend a period of time retraining, at the discretion of local management, before being allowed to retake a failed evaluation. Under normal circumstances, this period of retraining and re-evaluation time should be 24 to 48 hours. A non-OQ qualified individual may perform a covered task under the guidelines listed in the Use of Non-OQ qualified Workers section of this OQ Program."

As the proctor, your role is to be supportive while strictly following procedure. ***Kinder Morgan cannot stand the harsh light of a DOT inspection that identifies an inconsistent process, nor can we look our fellow employees in the eye if we cut some corners for one person while being tough and to the letter with someone else.*** There are no judgment calls to be made on the knowledge evaluations – either an individual passes or they do not.

Strictly follow your local KM policies and procedures for retraining an individual who fails a test. A period of time, which is a judgment call by the individual's supervisor, must be taken for the individual to get the appropriate retraining, reviewing reference material, discussion with a subject matter expert, etc. before rescheduling the test. **Retraining is not the proctor's role.** Your role is to coordinate the rescheduling of the test and, of course, administering the new test.

And remember, the individual is "non-OQ qualified" from the moment they fail an evaluation. As such, they must be directly supervised on the covered task in question if they perform that task while they are "non-OQ qualified." Even though the individual may still be able to safely and properly perform the covered task and may still be "qualified" based on their subsequent qualification interval not having run out yet, the failure still results in a "non-OQ qualified" status.

## **EVALUATOR: PROCEDURE IN THE EVENT OF A FAILED EVALUATION**

It is the responsibility of the individual who fails an evaluation to inform their supervisor; however, the evaluator should make sure the supervisor gets notified immediately.

Here is what the Kinder Morgan Operator Qualification Plan states about a failed evaluation:

“Re-evaluation after a Failed OQ qualification - If an Evaluatee fails an evaluation on a covered task, that individual will follow existing KM policies and procedures for retraining, as appropriate. If no specific policies and procedures for retraining exist, the individual must notify the Supervisor and must review the reference material for that covered task and discuss the failed questions with a Subject Matter Expert before going through the evaluation process again. The employee must spend a period of time retraining, at the discretion of local management, before being allowed to retake a failed evaluation. Under normal circumstances, this period of retraining and re-evaluation time should be 24 to 48 hours. A non-OQ qualified individual may perform a covered task under the guidelines listed in the Use of Non-OQ qualified Workers section of this OQ Program.”

As the Evaluator, your role is to be supportive while strictly following procedure. ***Kinder Morgan cannot stand the harsh light of a DOT inspection that identifies an inconsistent process, nor can we look our fellow employees in the eye if we cut some corners for one person while being tough and to the letter with someone else.*** While professional observation and judgment are involved in skill evaluations, failing an individual on an evaluation should be based on a clear omission or incorrect performance of a critical task or task step as described on the skill evaluation checklist.

Strictly follow your local KM policies and procedures for retraining an individual who fails an evaluation. A period of time, normally 24 hours or the next working day, must be taken for the individual to get the appropriate retraining, reviewing reference material, discussion with a subject matter expert, etc., before rescheduling the evaluation. **Retraining is not the Evaluator’s role.** Your role is to coordinate the rescheduling of the evaluation and, most likely, conducting the evaluation. Be very careful not to let the first evaluation bias any subsequent evaluations. If this will be difficult, or in any way unfair to the individual, arrange for subsequent evaluations to be conducted by a different evaluator.

And remember, the individual is “non-OQ qualified” from the moment they fail an evaluation. As such, they must be directly supervised on the covered task in question if they perform that task while they are “non-OQ qualified.” Even though