



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

901 Locust Street, Suite 462  
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION  
and  
PROPOSED COMPLIANCE ORDER**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

August 29, 2012

Mr. Dwayne Burton  
Vice President of Operations  
Kinder Morgan Interstate Gas Transmission Company  
One Allen Center  
500 Dallas Street, Suite 1000  
Houston, Texas 77002

**CPF 3-2012-1007**

Dear Mr. Burton:

On September 13-17, October 18-22, October 25-29, November 15-19, 2010, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected Kinder Morgan Interstate Gas Transmission Company (KMIGT) procedures for operations and maintenance in Kearney, Nebraska. KMIGT is a subsidiary of a Master Operating Entity, Kinder Morgan Energy Partners, L.P. (KMEP).

As a result of the inspection, it appears that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The item inspected and the probable violation is:

**1. §192.605 Procedural manual for operations, maintenance, and emergencies**

**(c) Abnormal operation. For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:**

**(4) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.**

KMIGT did not perform periodic reviews of personnel responses to certain abnormal operations. KMIGT personnel informed PHMSA during the records review that they

did not regard the operation of a relief valve as an abnormal operation. PHMSA requested documentation of instances of relief valve operation and a document was provided titled "Loss Causation Report" which described a March 3, 2010, release of gas from a relief valve due to a malfunctioned regulator pilot. The release is by definition an abnormal operation for transmission lines because the relief valve is a safety device where the set point of the regulator is the design limit. Operating design limits include all mechanical or electrical control parameters and set points necessary for normal operation. Per §192.605(c)(1) abnormal operations occur when there are any of the following: unintended valve closure or shutdowns, increases or decrease in pressure or flow rate outside normal operating limits, loss of communications, or the operation of any safety device. KMIGT did not conduct a review of this release because its O&M Procedure 1902 does not identify the operation of any safety device as an abnormal operation, but rather states, "Improper operation or operation outside of design parameters of any safety device, e.g., relief valve not resetting."

#### Proposed Compliance Order

With respect to item 1 pursuant to 49 United States Code §60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Kinder Morgan Interstate Gas Transmission Company. Please refer to the Proposed Compliance Order, which is enclosed and made a part of this Notice.

#### Response to this Notice

Enclosed as part of this Notice is a document entitled Response Options for Pipeline Operators in Compliance Proceedings. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document, you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to CPF 3-2012-1007 and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



David Barrett  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*  
*Response Options for Pipeline Operators in Compliance Proceedings*

## PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code §60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to KMIGT a Compliance Order incorporating the following remedial requirements to ensure the compliance of KMIGT with the pipeline safety regulations:

1. In regard to Item number 1 of the Notice pertaining to KMIGT's failure to record and periodically review its abnormal operations, KMIGT must:
  - i. Make modifications to its Operations and Maintenance Manual of procedures, including O&M Procedure 1902, so that it is clear that exceeding "operating design limits" applies to all applicable system design parameters, including all mechanical and electrical safety device settings associated with §192.605(c)(1)(i) through (v). The procedures must also make it clear that exceeding MAOP is not a requirement for an abnormal operation to occur.
  - ii. Make modifications to its Operations and Maintenance Manual of procedures, including O&M Procedure 1902, to clarify that an abnormal operation includes "operation of any safety device."
  - iii. Develop necessary training material and schedule training of appropriate personnel on the modified procedures and incorporate as necessary into the Operator Qualification program required by **Part 192 Subpart N**.
  - iv. Identify previous abnormal operations, as defined by the modified procedures required by (i) and (ii) above, using records of loss causation reports and similar records for 1 year prior to the date of issuance of a Final Order, and conduct a review of the results, including determination of corrective actions.
  - v. Submit for review and approval a Summary of all results and actions taken as required by this Proposed Compliance Order to the Director, PHMSA Central Region within 90 days of receipt of a Final Order.

## **Response Options for Pipeline Operators in Compliance Proceedings**

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

### **I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:**

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. When the Notice contains a proposed CIVIL PENALTY\* --
  1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
  2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
  3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
  4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER\* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

\* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT\*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

\* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

### III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

### IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

### V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to [http://www.sba.gov/ombudsman/dsp\\_faq.html](http://www.sba.gov/ombudsman/dsp_faq.html).

VII. **Payment Instructions**

***Civil Penalty Payments of Less Than \$10,000***

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration  
Mike Monroney Aeronautical Center  
Financial Operations Division (AMZ-341) P.O. Box 269039  
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

***Civil Penalty Payments of \$10,000 or more***

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

## INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

|   |  |
|---|--|
| (1) <u>RECEIVER ABA NO.</u><br>021030004                                    | (2) <u>TYPE/SUB-TYPE</u><br>(Provided by sending bank)   |
| (3) <u>SENDING BANK ABA NO.</u><br>(Provided by sending bank)               | (4) <u>SENDING BANK REF NO.</u><br>(Provided by sending bank)  |
| (5) <u>AMOUNT</u>   | (6) <u>SENDING BANK NAME</u><br>(Provided by sending bank)   |
| (7) <u>RECEIVER NAME</u><br>TREAS NYC                                       | (8) <u>PRODUCT CODE</u><br>(Normally CTR, or as provided by sending bank)                            |
| (9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u><br>BNF = /ALC-69-14-0001 | (10) <u>REASONS FOR PAYMENT</u><br>Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number |

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #1** - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5** - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

**Block #7** - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

**Block #9** - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #10** - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

**NOTE:** A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009