

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 17, 2016

Mr. Gary Buchler
Vice President Operations and Engineering
Midcontinent Express Pipeline
1001 Louisiana Street
Houston, Texas 77002

CPF 4-2016-1009

Dear Mr. Buchler:

During the period from November 03, 2015 to July 11, 2016, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your records and pipeline facilities in Oklahoma, Texas, Louisiana and Mississippi.

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

1. §192.947 What records must an operator keep?

An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At minimum, an operator must maintain the following records for review during an inspection.

(d) Documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements;

Midcontinent Express Pipeline failed to maintain records and documents supporting decisions regarding identified potential threats for the written integrity assessment plan. On two separate occasions, decisions were made that affected the plan without documentation to support the decision.

The first instance would be MEP's decision to not include incorrect operations and equipment failures as threats in the initial Baseline assessment plan for the pipeline system. The second instance would be MEP's decision to amend and include incorrect operations and equipment failures as threats to be assessed for on the Midcontinent Express pipeline system in future assessments (2012).

PHMSA's review determined that Kinder Morgan identified incorrect operation and equipment failure as two new threats within the MEP waiver area during a 2012 review. When requested, Kinder Morgan could not provide records to substantiate the decision to include the two additional threats, nor could they provide records to show why these two threats were not originally considered threats when the initial assessment plan was developed.

Also the Kinder Morgan's (KM) written Integrity Management Program in section 6.1 and includes incorrect operations and equipment failures as threats to be considered and evaluated for on pipeline segments. No documentation was provided either from the risk analysis and threat assessment software's (PIRAMID, DRAS / RiskAnalyst) or reviews by any subject matter expert analysis to provide reasons why the decisions to originally exclude these threats from the assessment plan and include them in June 2012 were made.

Proposed Compliance Order

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$205,638 per violation per day the violation persists up to a maximum of \$2,056,380 for a related series of violations. For violations occurring between January 4, 2012 to August 1, 2016, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with maximum penalty not exceeding \$1,000,000 for related series of violations.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

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 Midcontinent Express Pipeline, LLC. 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. Be advised that all material you submit in response to this 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). 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 4-2016-1009** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

R.M. Seeley
Director, Southwest 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 Midcontinent Express Pipeline, LLC a Compliance Order incorporating the following remedial requirements to ensure the compliance of Midcontinent Express Pipeline, LLC with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice Midcontinent Express Pipeline, LLC shall review the procedure to document all decisions pertaining to the written integrity management plan with appropriate Midcontinent Express Pipeline, LLC personnel and shall provide PHMSA with confirmation of the completed review no later than 30 days from the issuance of the Final Order in this case.
2. It is requested (not mandated) that Midcontinent Express Pipeline, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R.M Seeley, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.