

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

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

March 19, 2020

Mr. Ron McClain  
Vice President – Engineering and Operations  
Kinder Morgan Cochin, LLC  
500 Dallas Street, Suite 1000  
Houston, Texas 77002

**CPF 3-2020-5004**

Dear Mr. McClain:

From June 7, 2016 through October 21, 2016, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected your Kinder Morgan Cochin facilities in Kankakee, Illinois, and Rodgers, North Dakota.

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

**1. §195.307 Pressure testing aboveground breakout tanks.**

**(c) For aboveground breakout tanks built to API Std 650 (incorporated by reference, see §195.3) and first placed in service after October 2, 2000, testing must be in accordance with sections 7.3.5 and 7.3.6 of API Standard 650 (incorporated by reference, see §195.3).**

Kinder Morgan Cochin first placed in-service Tank 4 after October 2, 2000, located at Kankakee, IL terminal and failed to pressure test Tank 4, in accordance with section 7.3.5 of API Standard 650. API Std 650 section 7.3.5, Testing of the Shell, states,

*“If water is available for testing the shell, the tank shall be filled with water as follows: (1) to the maximum design liquid level.”*

Kinder Morgan’s “Technical Standard for Hydrostatic Testing” record for Kankakee Tank 4 did not show the height of the water. Tank 4 has been in service since December 1, 2014 and was in-service at the time of the PHMSA field inspection from August 22 to August 26, 2016. Kinder Morgan Cochin could not produce evidence that the water level for Tank 4 was filled to the maximum design liquid level.

**2. §195.505 Qualification program.**

**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;**

Kinder Morgan Cochin failed to follow its written operator qualification program to ensure through evaluation that individuals performing covered tasks are qualified. Kinder Morgan’s Operator Qualification program for Facilities Subject to DOT Parts 192 and 195 stated in Section 3.2, “KM employees and contractors performing covered tasks are OQ-qualified by evaluating their knowledge, skill and ability. On most tasks, this is accomplished by using a knowledge test and skill evaluation.” Kinder Morgan Cochin’s records showed that Kinder Morgan utilized contractors to perform the pig receiver modifications at the Rogers Pump Station on May 6, 2016. On May 7, 2016, a leak occurred at the Rogers Pump Station. Kinder Morgan’s internal investigation determined that the cause for the event was that the contractor did not thoroughly tighten the threaded fitting upon completion of the modification work.

After reviewing records from the Project Book for the Roger’s Receiver, PHMSA requested the operator’s qualification records for the contractors who performed the modification, to establish that they were qualified to perform the covered task. Kinder Morgan Cochin did not produce any records to demonstrate that the contractor

employee or contractor supervisor were qualified to perform the required Kinder Morgan Cochin covered task “104.14, General Pipeline Repair – Component Replacement.”

After reviewing the incident investigation summary and further email correspondence between PHMSA and Kinder Morgan Cochin, Kinder Morgan Cochin confirmed the contractor’s employee was not qualified. The contractor’s employee did not have the required third-party training elements to be operator qualified under Kinder Morgan Cochin’s operator qualification program. The contractor employee was also not under the direct supervision (span of control) of a qualified individual.

### Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, 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. The Compliance Officer has reviewed the circumstances and supporting documentation involved for the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$187,200 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$28,800
2	\$158,400

### Proposed Compliance Order

With respect to item 1 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Kinder Morgan Cochin, 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. 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2020-5004** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Allan C. Beshore  
Director, Central Region, OPS  
Pipeline and Hazardous Materials Safety Administration

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

Cc: Mr. Darren Marine  
Senior Executive  
Pembina Cochin, LLC  
4000, 585-8 AVE SW  
Calgary, Alberta T2P1G1  
Canada  
[dmarine@pembina.com](mailto:dmarine@pembina.com)

## **PROPOSED COMPLIANCE ORDER**

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

1. In regard to Item Number 1 of the Notice pertaining to section 7.3.5 and 7.3.6 of API Standard 650, Kinder Morgan Cochin, LLC must successfully test Tank 4 and sufficiently document the test for Tank 4 per API Std 650 section 7.3.5 and 7.3.6.
2. In regard to Compliance Order Item Number 1 (above) Kinder Morgan Cochin must complete this activity within 180 days of receipt of this order.
3. It is requested (not mandated) that Kinder Morgan Cochin, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Allan C. Beshore, Director, Central 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.