

October 19, 2022

VIA ELECTRONIC MAIL: kurt.cheramie@kineticallc.com

Mr. Kurt Cheramie
Senior Vice President
Kinetica Partners, LLC
1001 McKinney Street, Suite 900
Houston, Texas 77002

Re: CPF No. 4-2022-007-NOPV

Dear Mr. Cheramie:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws two of the allegations of violation, makes other findings of violation, assesses a civil penalty of \$46,600, and specifies actions that need to be taken by Kinetica Deepwater Express, LLC, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc:

Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

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In the Matter of)	
)	
Kinetica Deepwater Express, LLC,)	CPF No. 4-2022-007-NOPV
 a subsidiary of Kinetica Partners, LLC,)	
)	
Respondent.)	
)	

FINAL ORDER

From June 21, 2021, through October 18, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected Kinetica Deepwater Express, LLC’s (KDE or Respondent) repair records following an incident that occurred on July 13, 2021, on its pipeline ID 341, El Paso Platform 327-A, in Eugene Island, Louisiana. Kinetica Parnters, LLC, the parent company of KDE, owns and operates over 1,800 miles of natural gas transmission and gathering pipelines.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 11, 2022, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that KDE had violated 49 C.F.R. parts 191 and 192, proposed assessing a civil penalty of \$46,600 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional warning item pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violation or face possible future enforcement action.

KDE responded to the Notice by letter dated March 25, 2022 (Response). Respondent contested all the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. parts 191 and 192, as follows:

¹ Kinetica Partners, LLC website, Pipeline Safety Portal, *available at* <https://app.smartsheet.com/b/publish?EQBCT=225f8d51ee3041a3827b5f1dfcd39b20> (last accessed Oct. 13, 2022).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 191.15(a),² which states:

§ 191.15 Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Incident report.

(a) *Transmission or Gathering.* Each operator of a transmission or a gathering pipeline system must submit DOT Form PHMSA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5 of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 191.15(a) by failing to submit DOT Form PHMSA F 7100.2 (incident report) as soon as practicable, but not more than 30 days after detection, of a reportable incident involving its 6-inch, 341 pipeline on the Eugene Island – 327 A platform. Specifically, the Notice alleged that KDE did not timely file the incident report following the July 13, 2021 release of natural gas.

In its Response, KDE argued that the July 13, 2021 release of natural gas did not constitute an “incident” as that term is defined by 49 C.F.R. § 191.3, because no injuries occurred, the total property damage was estimated to be less than \$122,000, the unintentional estimated gas loss was less than three million cubic feet, and the leak was not deemed significant in the judgment of the operator. Therefore, respondent argued, submission of an incident report was not required.

In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the alleged violation of § 191.15(a). I agree with this recommendation.

Accordingly, after considering all of the evidence and the legal issues presented, I hereby order that Notice Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 191.17(a),³ which states:

§ 191.17 Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Annual report.

(a) *Transmission or Gathering.* Each operator of a transmission or a gathering pipeline system must submit an annual report for that system on DOT Form PHMSA 7100.2.1. This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted on June 15, 2011.

The Notice alleged that Respondent violated 49 C.F.R. § 191.17(a) by failing to submit complete and accurate annual reports using DOT Form PHMSA 7100.2.1 (annual report). Specifically,

² The NOPV and this Final Order quotes 49 C.F.R. § 191.15(a) as published on November 26, 2010, which was in effect at the time of the violation. The regulation was most recently amended on June 13, 2022.

³ The NOPV and this Final Order quotes 49 C.F.R. § 191.17(a) as published on November 26, 2010, which was in effect at the time of the violation. The regulation was most recently amended on June 13, 2022.

the Notice alleged that KDE's annual reports for calendar years 2016, 2017, 2018, 2019, and 2020 did not include mileage for pipelines acquired from ANR Pipeline Company on April 1, 2016.

In its Response, Respondent argued that it submitted annual reports for the pipeline mileage in question using DOT Form PHMSA 7100.2.1 under OPID 39519 for calendar years 2016, 2017, 2018, 2019, 2020, and 2021. Respondent provided copies of the reports with its Response.

In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the alleged violation of § 191.17(a). The Director noted that since Respondent was created solely to operate the pipelines acquired from ANR Pipeline Company, its annual reports are sufficient because they reflect the mileage for the acquired pipelines. I agree with this recommendation.

Accordingly, after considering all of the evidence, I hereby order that Notice Item 2 be withdrawn.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. §§ 191.29(a)(1) and (b), which states:

§ 191.29 National Pipeline Mapping System.

(a) Each operator of a gas transmission pipeline or liquefied natural gas facility must provide the following geospatial data to PHMSA for that pipeline or facility:

(1) Geospatial data, attributes, metadata and transmittal letter appropriate for use in the National Pipeline Mapping System. Acceptable formats and additional information are specified in the NPMS Operator Standards Manual available at www.npms.phmsa.dot.gov or by contracting the PHMSA Geographic Information Systems Manager at (202) 366-4595.

(2)

(b) The information required in paragraph (a) of this section must be submitted each year, on or before March 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, the operator must comply with the guidance provided in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or contact the PHMSA Geographic Information Systems Manager at (202) 366-4595.

The Notice alleged that Respondent violated 49 C.F.R. §§ 191.29(a)(1) and 191.29(b) by failing to submit complete and accurate National Pipeline Mapping System (NPMS) information required by § 191.29(a) on or before March 15 representing its assets as of December 31 of the previous year. Specifically, on April 1, 2016, KDE acquired from ANR Pipeline Company approximately 470.7 miles of offshore pipeline assets located in the Gulf of Mexico and approximately 44.52 miles of onshore pipeline assets. The Notice alleged that since the 2016 acquisition, Respondent has not submitted updates to NPMS to account for these assets.

In its Response, KDE argued that it submitted the required NPMS information for the pipeline

mileage in question under OPID 39519 for calendar years 2016, 2017, 2018, 2019, 2020, and 2021. Respondent provided screenshots from NPMS with its Response.

After reviewing the additional documentation submitted by Respondent, I find Respondent did not satisfy the requirements of §§ 191.29(a)(1) and 191.29(b). While Respondent filed NPMS information for each calendar year since 2016, these filings were incomplete. Exhibit D in the case file shows the total mileage that KDE submitted to NPMS each year was 261 miles in 2016, 219 miles in 2017, 219 miles in 2018, and 202 miles in 2019, 2020, and 2021. However, these NPMS submissions conflict with KDE's annual reports submissions for those years, wherein Respondent indicated it operated over 400 miles of pipeline each year. Respondent did not provide documentation to support its assertion that it accurately reported its total mileage to NPMS.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. §§ 191.29(a)(1) and 191.29(b) by failing to submit complete and accurate NPMS information required by § 191.29(a) on or before March 15 representing its assets as of December 31 of the previous year.⁴

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.717, which states:

§ 192.717 Transmission lines: Permanent field repair of leaks.

Each permanent field repair of a leak on a transmission line must be made by –

(a) Removing the leak by cutting out and replacing a cylindrical piece of pipe; or

(b) Repairing the leak by one of the following methods:

(1) Install a full encirclement welded split sleeve or appropriate design, unless the transmission line is joined by mechanical couplings and operates at less than 40 percent of SMYS.

(2) If the leak is due to a corrosion pit, install a properly designed bolt-on-leak clamp.

(3) If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi (267 Mpa) SMYS, fillet weld over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half of the diameter of the pipe in size.

(4) If the leak is on a submerged offshore pipeline or submerged pipeline in inland navigable waters, mechanically apply a full encirclement split sleeve of appropriate design.

(5) Apply a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

⁴ In the "Recommendation" section of the August 9, 2022 Region Recommendation, the Southwest Region wrote that it recommended withdrawing Item 4 and the associated compliance order requirements. However, it appears from the "Discussion" section that the Southwest Region did not actually recommend withdrawing this Item ("Therefore, Southwest Region recommends that the Final Order be issued finding KDE in violation of § 191.29(a) and (b) for Item 4. The Southwest Region recommends issuing the Proposed Compliance Order for Item 4 as drafted in the Notice.").

The Notice alleged that Respondent violated 49 C.F.R. §§ 192.717 by failing to complete a permanent field repair of a leak. Specifically, the Notice alleged that on July 16, 2021, KDE repaired a through-wall pinhole leak with a Belzona Superwrap II composite wrap, and documented it as a “permanent” repair on its Pipeline Repair & Replacement Field Worksheet (Maximo Ticket Number 21-91661) and in its Pipeline Inspection Report (Repair Number BBH-4482). The Notice alleged neither § 192.717 nor KDE’s written procedure (in place since July 2020) allows for through-wall leaks to be permanently repaired using composite wraps.

In its Response, Respondent contested the violation and stated that it had not updated its written procedures to account for through-wall defects. Respondent argued that pursuant to 49 C.F.R. § 192.717(b)(5), permanent field repairs of leaks may be made using a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. KDE cited several documents⁵ to support its assertion that the regulations allow operators to choose other methods to repair leaks, and it asserted that composite wraps are one such method.

While I agree that Respondent’s procedures and 49 C.F.R. § 192.717(b)(5) permit operators to use repair methods not specifically listed in the regulation, the procedures and regulation require that those repair methods must permanently restore the serviceability of the pipe, as shown by reliable engineering tests and analyses. The PHMSA documents Respondent cited in its Response reiterate that an operator’s repair method is permitted only when reliable engineering tests and analyses show that it permanently restores serviceability of the pipe. Respondent did not provide or cite to any reliable engineering tests or analyses that show that Belzona wrap permanently restores the serviceability of pipe that has a leak.

Further, in email correspondence, the Southwest Region identified two industry standards which explicitly prohibit the use of composite wraps to permanently repair leaks, including ASME B21-4 (2019) which prohibits the use of composites for repairing leaks for a permanent repair and ASME B31-8 (2018) which prohibits the use of composites for repairing leaks on a line operating over 100 psig. While Respondent is correct that these standards have not been incorporated by reference into part 192, the prohibition on the use of composite wraps to permanently repair leaks in these industry standards is evidence that using such composite wraps does not constitute a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. Further, as mentioned above, Respondent failed to provide any other tests or analyses that show the Belzona Superwrap II composite wrap can permanently restore the serviceability of pipe with a through-wall leak.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.717 by failing to complete a permanent field repair of a leak.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed

⁵ 64 Fed. Reg. 69660 (Dec. 14, 1999); PHMSA Letter of Interpretation (Nov. 18, 2010); Email from PHMSA Southwest Region.

\$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁶

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$46,600 for the violations cited above.

Item 5: The Notice proposed a civil penalty of \$46,600 for Respondent's violation of 49 C.F.R. § 192.717, for failing to complete a permanent field repair of a leak. Respondent did not argue for reduction or mitigation of the proposed civil penalty, rather argued that it did not violate § 192.717. For the reasons given above, I found Respondent in violation of § 192.717. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$46,600** for violation of 49 C.F.R. § 192.717.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$46,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 4, and 5 for violations of 49 C.F.R. §§ 191.15(a), 191.17(a), 191.29(a)(1) and 191.29(b), and 192.717, respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With regard to the violations of §§ 191.15(a) and 191.17(a) (Items 1 and 2, respectively),

⁶ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

Respondent argued that the underlying allegations of violation should be withdrawn. For the reasons stated above, Items 1 and 2 of the Notice have been withdrawn. Consequently, the Compliance Order for these Items is hereby withdrawn.

With regard to the violation of §§ 191.29(a)(1) and 191.29(b), and 192.717 (Items 4 and 5, respectively), Respondent argued that the underlying allegations of violation should be withdrawn. KDE did not provide separate argument for withdrawal or modification of the Compliance Order for these Items absent withdrawal of the underlying allegations. For the reasons stated above, the underlying allegations of violation have not been withdrawn. Consequently, the Compliance Order for these Items is not withdrawn or modified for these Items.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 191.29 (a)(1) and 191.29(b) (**Item 4**), Respondent must resubmit its calendar year (CY) 2020 NPMS submission to include assets acquired on April 1, 2016, from ANR, and provide PHMSA Southwest Region a complete and accurate record of the CY 2020 NPMS submission, within 30 days following receipt of the Final Order.
2. With respect to the violation of § 192.717 (**Item 5**), Respondent must permanently repair the leak on its Pipeline ID 341, El Paso Platform 327-A in Eugene Island, Louisiana, in compliance with its own procedures and § 192.717. Additionally, Respondent must review previous repairs made to its pipeline systems jurisdictional to 49 C.F.R. part 192, determine if any permanent repairs completed using the Belzona composite wraps remain, and provide a list of those repairs identified along with its plans for remedial action to PHMSA Southwest Region. These actions must be completed and Respondent must provide PHMSA Southwest Region with documentation verifying completion within 30 days following receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEM

With respect to Item 3, the Notice alleged probable violation of Part 191, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 191.22(c)(2)(iv) (**Item 3**) — Respondent's alleged failure to file a Type D acquisition notification through the National Registry of Operators for the acquisition of approximately 515 miles of gas transmission pipelines from ANR Pipeline Company no later than 60 days following acquisition.

Respondent, in its Response, provided additional information regarding this Item, and argued that it had not violated § 191.22(c)(2)(iv). Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

October 19, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued