

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
Kinder Morgan Energy Partners, L.P.,)
)
Respondent)
_____)

CPF No. 5-2005-5025H

2005 AUG 11 PM 11:10
PHMSA
OFFICE OF PIPELINE SAFETY

CONSENT AGREEMENT

On August 24, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation, issued Corrective Action Order (CAO) No. 5-2005-5025H to Kinder Morgan Energy Partners, L.P. (Respondent). Having agreed that settlement of the CAO is in the public interest and that entry of this Consent Agreement is the most appropriate means of resolving the CAO, without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA (“the Parties”), the following is agreed upon:

I. General Provisions

1. PHMSA issued CAO No. 5-2005-5025H to Respondent pursuant to 49 U.S.C. § 60112 and 49 C.F.R. § 190.233. The CAO directed Respondent to take certain corrective action with regard to its 3,900-mile Pacific Operations unit of hazardous liquid pipeline systems located in Arizona, California, Nevada, New Mexico, Oregon, and western Texas. The Pacific Operations unit includes, among Respondent’s hazardous liquid systems in the above-mentioned states, the CALNEV and Sante Fe Pacific Pipelines systems and associated bulk terminals; it does not include the Carbon Dioxide system or the Cypress system. The CAO was predicated on PHMSA’s determination that continued operation of the Pacific Operations unit absent specified corrective actions would be hazardous. Respondent filed a Request for Hearing on September 6, 2005, which disputed the factual and legal bases of the CAO, after which Respondent and PHMSA engaged in informal settlement discussions resulting in this Consent Agreement.

2. Respondent’s participation in this Consent Agreement shall not constitute or be construed as an admission of liability. By entering into this Consent Agreement,

Respondent does not admit to any fact, allegation, or conclusion contained in CAO No. 5-2005-5025H.

3. Respondent hereby waives any right to administrative or judicial hearing or appeal on any issue of law or fact set forth in CAO No. 5-2005-5025H.

4. This Consent Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees. This Consent Agreement applies to the entirety of all hazardous liquid pipeline systems within Respondent's Pacific Operations unit as defined in Paragraph 1 herein existing at the time of execution of this Consent Agreement and is not limited to segments of the pipeline that could affect a high consequence area (HCA), as defined by 49 C.F.R. § 195.450. These pipeline systems described in Paragraph 1 will remain subject to this Consent Agreement in the event that Respondent changes the name or organizational structure of the Pacific Operations unit or the pipeline systems within the unit.

5. Nothing in this Consent Agreement limits or modifies any of PHMSA's authorities under the Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*, regulations promulgated thereunder, or any other applicable law, including PHMSA's authorities to bring enforcement actions against Respondent pursuant to any applicable laws or regulations. This Consent Agreement does not waive or modify any requirements that are applicable to Respondent's pipeline systems under the Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*, regulations promulgated thereunder, or any other provision of Federal or state law.

6. Pursuant to 49 U.S.C. § 60112(c), PHMSA has provided appropriate state officials notice and opportunity to comment on the agreement to resolve this matter.

7. Respondent agrees to fully and completely perform all of the terms of this Consent Agreement. In exchange for this agreement by Respondent, PHMSA agrees to withdraw the CAO and hazardous facility determination set forth therein. These agreements and such withdrawal shall be effective on the Effective Date of this Consent Agreement.

8. Upon the Effective Date of this Consent Agreement, Respondent's Request for Hearing shall be withdrawn.

9. This Consent Agreement constitutes the final, complete and exclusive agreement between the Parties with respect to the settlement embodied in this Consent Agreement, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Agreement.

II. Work to Be Performed

10. Respondent will conduct a comprehensive analysis of all accidents that have occurred since March 31, 2001 on the Pacific Operations unit that were required to be reported under 49 C.F.R. §§ 195.50 or 195.52 and all documented occurrences with regard to the Pacific Operations unit that field or control room staff responded to because of potential safety impacts to persons or property (“near misses”). The “near misses” will be identified through operation notes available from 2003 forward, product movement logs since 2001, and inline inspection dig logs since March 2001. The analysis of these accidents and documented occurrences will identify all potential and existing threats to the integrity of the Pacific Operations unit. Potential and existing threats include, but are not limited to: ongoing maintenance issues, environmental changes, original construction practices, outside force damage, line marking, one-call procedures, internal and external corrosion susceptibility (prevention and mitigation), human errors, personnel training, and Supervisory Control and Data Acquisition (SCADA) capabilities.

A. Respondent will execute a remediation plan to address the threats identified by the comprehensive analysis. The remediation plan will contain all planned pipeline repairs or changes to operations and maintenance, personnel qualification or training, or corrosion control procedures or activities required to address all threats identified by the analysis and will contain a schedule for these repairs or changes. In addition, the remediation plan will provide for implementation of Respondent’s East Coast Products Pipeline Near Miss Tracking System throughout the Pacific Operations unit.

B. Respondent will repair all conditions defined under 49 C.F.R. § 195.452(h)(4)(i) through (iv) that are revealed by the comprehensive analysis or any activity related to the analysis within the timeframes set out in 49 C.F.R. § 195.452(h)(4) and in compliance with 49 C.F.R. § 195.422.

C. Respondent will incorporate into its Integrity Management Program, required by 49 C.F.R. § 195.452, any information resulting from the comprehensive analysis relevant to a pipeline or facility that could affect an HCA. Based on the comprehensive analysis, Respondent will modify as necessary its Integrity Management Program elements including, but not limited to, improvements to its baseline assessment plan, information analysis, criteria for remedial actions to address integrity issues, assessment and evaluation methods, preventive and mitigative measures to protect HCAs, and employee qualifications to review integrity assessment results and information analyses.

D. Respondent will provide a list of all accidents and documented occurrences subject to the comprehensive analysis to the Director, Western Region, Office of Pipeline Safety (OPS) for review and approval within 45 days of the Effective Date of this Consent Agreement. Respondent will submit the comprehensive

analysis and remediation plan for review and approval to the Director within 6 months of the Effective Date. Respondent will submit proposed changes to its Integrity Management Program to the Director for review and approval within 4 months of the Effective Date. Respondent will implement the remediation plan on the schedule approved by the Director and will make all changes to its Integrity Management Program within 30 days of receiving approval from the Director.

E. When submitting for review the comprehensive analysis, the remediation plan, and proposed changes to its Integrity Management Program, Respondent will include separate certifications as to the veracity of the factual information contained in each submission signed by a director or officer for Respondent.

F. Respondent will retain (see Paragraph 18) an independent risk assessment expert(s) to review the comprehensive analysis and remediation plan prior to submitting these items to the Director, Western Region, OPS. The independent expert will review the development of the analysis and remediation plan, verifying that Respondent has included all known accidents and occurrences, has properly identified potential and existing threats, and will adequately address the identified threats through the remediation plan. Respondent will also retain an independent risk assessment expert(s) to review its Integrity Management Program in order to verify that Respondent has adequately identified Integrity Management Program elements requiring improvement. The expert will review all proposed changes to the Integrity Management Program before Respondent submits them to the Director, verifying that the proposed changes will adequately address the potential and existing threats identified in areas of the Pacific Operations unit that could affect a high consequence area.

11. Respondent will create a system to integrate all data relevant to the integrity of the Pacific Operations unit for use in its operations and maintenance procedures and Integrity Management Program. The system will be based on Respondent's existing natural gas GIS PODS system and will graphically incorporate, at a minimum, internal inspection tool data, close interval and cathodic protection survey data, coating survey data, excavation and inspection data, foreign line crossing data, pipeline materials specifications, and HCA data. The system will be capable of graphically displaying all integrated data by location and will link the aforementioned data to the uniform right-of-way stationing system developed pursuant to Paragraph 14H of this Section. Respondent will submit a proposal detailing the design of the system and a proposed schedule for populating the system with relevant data no later than 2 months after the Effective Date of this Consent Agreement for the approval of the Director, Western Region, OPS.

12. Respondent will perform an outside force damage assessment by internally inspecting all Pacific Operations unit pipelines within 5 years of the Effective Date of this Consent Agreement.

A. Within 6 months of the Effective Date, Respondent will submit to the Director, Western Region, OPS for review and approval a description of all tools that will be used to internally inspect any segment of the Pacific Operations unit along with an explanation as to why the tool is the most technically appropriate selection to assess outside force damage for that segment. All internal inspection tools proposed by Respondent for the Director's approval will be capable of assessing axial gouges that are not associated with dents. Upon the approval of the Director, Respondent will carry out that assessment within the 5-year timeframe.

B. In the event that Respondent determines a segment of the Pacific Operations unit is incapable of receiving any internal inspection tool, Respondent will submit a proposal to the Director within 6 months of the Effective Date for the assessment of that segment within the 5-year timeframe using hydrostatic testing or a technology better suited to assess outside force damage, subject to the Director's approval. Upon the approval of the Director, Respondent will carry out that assessment within the 5-year timeframe.

C. If a more effective technology for assessing outside force damage becomes available after the Director has approved Respondent's proposed internal inspection tool(s), Respondent may seek the Director's approval to use the newly-available technology.

D. Respondent will repair all gouges and other conditions defined under 49 C.F.R. § 195.452(h)(4)(i) through (iv) that are revealed by the assessment on a schedule that comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4) and in compliance with 49 C.F.R. § 195.422.

E. The requirements of the preceding subparagraphs (A through D) shall apply to all hazardous liquid pipeline systems covered by this Consent Agreement unless Respondent demonstrates to the satisfaction of the Director, Western Region, OPS through a risk assessment verified by an independent risk assessment expert, that any particular pipeline segment has not been subject to outside force damage in the form of undetected third party damage, mechanical pipe damage inflicted during construction of the pipeline, or other mechanical damage inflicted by outside forces. In such case, after approval of the Director, the Respondent may exclude such segment from the internal inspection otherwise required by the preceding subparagraph. In no event shall the performance of such a risk assessment alter the deadlines established under the preceding subparagraphs.

13. Respondent will assess the adequacy of its corrosion control systems, performing close interval surveys of all of the Pacific Operations unit hazardous liquid pipeline systems within 10 years of the Effective Date of this Consent Agreement.

A. Respondent will propose a schedule to be approved by the Director, Western Region, OPS for the close interval surveys that ensures that the 50% of the Pacific Operations unit pipeline mileage considered most susceptible to corrosion will be evaluated within 5 years of the Effective Date. As part of the schedule, Respondent may propose to include close interval surveys performed on the Pacific Operations unit on or after January 1, 2003. Respondent will determine the susceptibility of all Pacific Operations unit pipeline segments to corrosion based on all available relevant data, including data pertaining to coating conditions, cathodic protection readings, and inline inspections. These determinations will be provided to the Director with the proposed schedule for completing close interval surveys.

B. Respondent will perform the close interval surveys in accordance with National Association of Corrosion Engineers (NACE) standard RP0169-96. With respect to each location where the cathodic protection fails to conform to the standard set forth in NACE RP0169-96, hereinafter the "Performance Standard," Respondent will bring the cathodic protection at each location into compliance with the Performance Standard within 1 year of the date of the close interval survey, except for interference currents, which will be eliminated within 60 days. Respondent will verify that these measures comply with the Performance Standard through pipe-to-soil readings measured in accordance with NACE standard RP0169-96.

C. Respondent will submit written corrosion control status reports to the Director, Western Region, OPS at least once every 6 months beginning on the first of the month 3 months after the Effective Date of this Consent Agreement. The first written corrosion control status report will include the proposed schedule for the close interval surveys required under this Paragraph. The status reports submitted to the Director thereafter will include a description of all corrosion control-related work performed pursuant to this Consent Agreement, an identification of each location on the pipeline (using, at a minimum, the stationing system developed pursuant to Paragraph 14H of this Consent Agreement) that the close interval survey has identified as falling below the Performance Standard, a description of the corrective measures to be taken to bring that location up to the Performance Standard, and, once those measures have been completed at that location on the schedule required herein, a certification that Respondent has performed pipe-to-soil readings measured in accordance with NACE standard RP0169-96, and that the cathodic protection system at such location meets the Performance Standard.

D. In conjunction with the close interval surveys, and within 3 months after the close interval survey has been performed at a particular location, Respondent will integrate the data obtained from the close interval surveys with data regarding corrosion obtained from internal surveys (along with all other relevant data) to identify areas on the pipeline where the coating may be disbonded or damaged. For those areas where the integrated data indicates that the coating may be

disbonded or damaged, Respondent will, within 6 months thereafter, verify whether the coating is disbonded or damaged at that location and make appropriate repairs to achieve compliance with the Performance Standard. Respondent will verify that these measures have in fact achieved compliance with the Performance Standard through pipe-to-soil readings measured in accordance with NACE standard RP0169-96.

E. Respondent will provide for approval by the Director, Western Region, OPS, a schedule of no greater than 10 years for follow-up close interval surveys for each line segment of the Pacific Operations. The Director will consider a reassessment schedule that is greater than 10 years, if sufficient technical justification is provided in writing by Respondent.

14. Respondent will develop a program to enhance the value of internal inspections for identifying integrity threats. In addition to the work to be performed as described in the subparagraphs below, the program will integrate all data obtained through the work performed within its operations and maintenance procedures and Integrity Management Program, where applicable. Respondent will ensure that all internal inspections conducted after the Effective Date of this Consent Agreement comport at a minimum with the requirements of all subparagraphs below and the requirements of 49 C.F.R. § 195.452(c)(1)(i)(A) unless the Director, Western Region, OPS provides written permission allowing an assessment to be performed via hydrostatic testing or other technology that will be more effective for assessing the integrity of the pipeline.

A. Respondent will develop algorithms for assessing data obtained from metal loss tools utilizing interaction lengths that consider both general corrosion and localized pitting. Assessment of metal loss anomalies will consider tool tolerances and corrosion growth based on recognized industry practices or Respondent's operating knowledge. Respondent will submit the algorithms for approval to the Director, Western Region, OPS within 3 months from the Effective Date of this Consent Agreement. Upon approval, Respondent will use the algorithms in assessing data obtained from all metal loss tools, including magnetic flux leakage and ultrasonic devices.

B. Respondent will evaluate all internal inspection tool data regarding general corrosion in accordance with NACE standard RP-102-2002 Section 8.4.3.2.3. Respondent may revise the interaction length detailed in the NACE standard if it presents field data to the Director, Western Region, OPS demonstrating that a shorter interaction length would be equally effective to identify integrity-threatening corrosion, and if the Director approves this revision.

C. Respondent will develop a methodology to identify the growth of corrosion in a single joint of pipe where individual corrosion anomalies may not require excavation and remediation under 49 C.F.R. Part 195, but that, based on the rate

of corrosion growth, pose a risk to the joint of pipe. Respondent will submit the methodology to the Director, Western Region, OPS within 3 months from the Effective Date of this Consent Agreement for approval. Upon approval, Respondent will apply the methodology with respect to all internal inspection data obtained regarding corrosion. With respect to each location on the pipeline determined through application of the methodology to be at risk from corrosion, Respondent will promptly make repairs and take all other measures necessary to ensure the integrity of the pipeline. Respondent will repair all conditions defined under 49 C.F.R. § 195.452(h)(4)(i) through (iv) on a schedule that comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4) and in compliance with 49 C.F.R. § 195.422.

D. Respondent will reevaluate magnetic flux leakage internal inspections conducted on all hazardous liquid pipelines in the Pacific Operations unit since 1997 in accordance with the above subparagraphs A, B, and C within 6 months from the Effective Date of this Consent Agreement. Respondent will re-determine the safe operating pressure for the Pacific Operations pipeline systems based on the results of the reevaluation and will not exceed P-Safe operating pressure on any system. Respondent will repair all defects identified through the reevaluation on a schedule, to be submitted to the Director, Western Region, OPS within 6 months of reevaluation of each pipeline system for approval, that at a minimum comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4). All conditions defined in 49 C.F.R. § 195.452(h)(4)(i) through (iv) will be repaired in compliance with 49 C.F.R. § 195.422.

E. In all internal inspections after the date of this Consent Agreement, any geometry tools used by Respondent will be capable of accurate characterization of features that include dents, ovalities, wrinkles, and buckles. The tool will possess adequate sensor spacing to ensure data obtained will allow accurate strain analyses calculations. The tool will meet, at a minimum, the following specifications:

- i. Capable of detecting dents with depths of greater than .15 inches in pipelines of up to 24 inches in diameter at a 90 percent probability of detection;
- ii. Capable of detecting ovalities of less than 1.0 percent of the nominal pipeline diameter for pipelines greater than 10 inches in diameter at a 90 percent probability of detection;
- iii. Capable of characterizing dent depths to +/- 1.0 percent of the nominal pipeline diameter at 85 percent confidence;

- iv. Capable of detecting dents with areal dimensions greater than 1.0 inch width by 1.0 inch length;
- v. Possessing circumferential accuracy within +/- 1 o'clock position; and
- vi. Possessing axial accuracy within +/- 1 percent of a reference point.

F. Respondent will reevaluate all internal inspections in the Pacific Operations unit since 1997 that utilized geometry tools, taking into account the tolerances of each tool used, within 6 months of the Effective Date of this Consent Agreement. Alternatively, within 5 years of the Effective Date of this Consent Agreement, Respondent will re-inspect all hazardous liquid pipelines in the Pacific Operations unit that have been internally inspected with a geometry tool since 1997 utilizing a tool that meets, at a minimum, the specifications required in the above subparagraph E. Respondent will repair all defects identified through the reevaluation or re-inspection on a schedule that at a minimum comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4). Respondent will repair all conditions defined in 49 C.F.R. § 195.452(h)(4)(i) through (iv) and in compliance with 49 C.F.R. § 195.422.

G. Respondent will establish a documented feedback process within 3 months from the Effective Date of this Consent Agreement for approval by the Director, Western Region, OPS. The feedback process will provide accurate information from Respondent's personnel to any internal inspection tool vendor regarding the correlation of field non-destructive examinations and internal inspection tool data. The process will include procedures to perform excavations and assess pipeline conditions and anomalies in the field, and to correlate the information obtained in the field with internal inspection data. Upon approval of the Director, Respondent will comply with all aspects of the required process and its procedures. In addition, Respondent will provide comprehensive and effective training to all personnel responsible for non-destructive testing to ensure their ability to implement these requirements.

H. Respondent will develop a uniform right-of-way stationing system that utilizes, at a minimum, girth weld position numbering to correlate internal inspection tool data with pipeline locations. Respondent will submit a proposal within 3 months from the Effective Date of this Consent Agreement for the system to be used to the Director, Western Region, OPS for approval. Upon approval, Respondent will use this stationing system to correlate pipeline locations with internal inspection tool data, cathodic protection and close interval survey data, and any other pipeline inspection data.

15. Within 60 days of the Effective Date of this Consent Agreement, Respondent will submit for review and approval by the Director, Western Region, OPS, the procedure(s)

that define its one-call damage prevention activities for excavations along its pipeline right-of-way(s). The procedures must include provisions to provide on-site monitoring during mechanized excavation activities in close proximity to Respondent's pipeline facilities.

16. Respondent will incorporate all work products and data resulting from Paragraphs 11 through 15, as applicable, into its Integrity Management Program procedures and manual for Operations, Maintenance, and Emergencies.

17. Respondent will create a secure, encrypted website, accessible only by OPS and its agents acting pursuant to Federal authorization, that enables access to all technical final documents, required submissions, and status of work pursuant to this Consent Agreement. Wherever applicable, information on the website will be correlated to the uniform stationing system developed pursuant to Paragraph 14H. The website will be operational within 3 months of the Effective Date of this Consent Agreement. The website will be populated with relevant data on a rolling basis, with any submissions required under this Consent Agreement being posted to the website on or before the specified deadline. Respondent may make all assertions and claims available pursuant to Section VII (Information Disclosure) regarding information posted on this website.

18. Within 30 days of the date of this Consent Agreement, Respondent will submit to the Director, Western Region, OPS, a list of names of proposed independent experts to be retained by Respondent for each task that requires utilization of an independent expert. Each expert proposed by Respondent must be qualified to carry out the applicable requirements of the task for which that expert is proposed. No expert proposed will have been previously or materially involved in the development of the activity he or she will be reviewing. Respondent will submit information sufficient for the Director to determine whether each expert possesses the necessary qualifications. After reviewing the information submitted by Respondent, the Director may approve one or more of the names submitted or disapprove any or all of the names.

III. Review and Approval Process

19. With respect to each submission that under this Consent Agreement requires the approval of the Director, Western Region, OPS, the Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. In the event of approval, approval in part, or approval upon conditions, Respondent will proceed to take all action required by the submission as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section VI with respect to any conditions identified by the Director. In the event that the Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval. In the event that a

resubmitted item is disapproved in whole or in part, the Director may again require Respondent to correct the deficiencies in accordance with the foregoing procedure, subject to Respondent's right to invoke the dispute resolution procedures in Section VI.

IV. Force Majeure

20. Respondent agrees to perform all terms of this Consent Agreement within the timeframes established under this Consent Agreement, unless performance is delayed by a force majeure. For purposes of this Consent Agreement, a force majeure is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under this Consent Agreement despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete activities required under Section II (Work to Be Performed), increased cost of performance, or changes in Respondent's business or economic circumstances.

21. If an event occurs or has occurred that may delay the performance of any term of this Consent Agreement beyond the approved timeframe, whether or not caused by a force majeure event, Respondent shall verbally notify the Director, Western Region, OPS within 5 business days of when Respondent knew or should have known that the event might cause a delay. Such notice shall identify the cause of the delay or anticipated delay and the anticipated duration of the delay; state the measures taken or to be taken to prevent or minimize the delay; and estimate the timetable for implementation of those measures. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

22. If the Director, Western Region, OPS determines that a delay or anticipated delay in performance is or was attributable to a force majeure, then the time period for the performance of that term will be extended as deemed necessary by the Director. The Director will notify Respondent, in writing, of the length of any extension of performance of such terms affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other terms of this Consent Agreement which are not directly affected by the force majeure.

V. Stipulated Penalties

23. In the event that Respondent fails to comply with any requirement of this Consent Agreement, Respondent shall be liable for stipulated penalties unless a force majeure event has occurred and PHMSA has approved the extension of a deadline, in accordance with Section IV (Force Majeure). Compliance with this Consent Agreement by Respondent includes completion of any term of this Consent Agreement within the timeframe approved under this Consent Agreement.

24. The following stipulated penalties shall be payable per instance of failure to comply per day: \$1,000 per day for the 1st through 10th days of noncompliance; \$5,000 per day for the 11th through 30th days of noncompliance; and \$10,000 per day for each day of noncompliance thereafter. Penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of completion or correction of the activity. Payment shall be due within 30 days of receipt of a demand letter from PHMSA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate instances of noncompliance with this Consent Agreement. With respect to any noncompliance which is contested in accordance with the dispute resolution procedures set forth in Section VI of this Consent Agreement, stipulated penalties shall continue to accrue as provided in this Paragraph during dispute resolution, but need not be paid until the resolution of the dispute in accordance with that Section. In such event, all stipulated penalties due shall be paid within 15 days of the issuance of the determination by the Director, Western Region, OPS, or if that determination is appealed to the Associate Administrator, within 15 days of the decision of the Associate Administrator. In the event Respondent prevails in a claim subject to dispute resolution under Section VI of this Consent Agreement, Respondent shall not owe any stipulated penalties based on such claim.

25. Respondent shall make payments of any stipulated penalties by wire transfer through the Federal Reserve Communications System to the account of the U.S. Treasury in accordance with the procedures PHMSA has established under 49 C.F.R. § 89.21. Upon making a payment, Respondent shall send a separate notification of that payment to the Chief Counsel, Office of Chief Counsel, PHMSA, U.S. Department of Transportation, Room 8417, 400 7th Street SW, Washington DC, 20590.

26. Payments of penalties shall not alter Respondent's obligation to comply with the terms and conditions of this Consent Agreement. The stipulated penalties set forth herein do not preclude PHMSA from pursuing any other remedies or sanctions which may be available to PHMSA by reason of Respondent's failure to comply with the Consent Agreement.

VI. Dispute Resolution

27. PHMSA and Respondent will informally attempt to resolve any disputes arising under this Consent Agreement. Respondent and a lead inspector to be designated by the Director, Western Region, OPS will first confer in an effort to resolve the dispute. If Respondent and the lead inspector are unable to informally resolve the dispute within 15 days, Respondent may request in writing, within 10 days, a written determination resolving the dispute by the Director, Western Region, OPS. The request will provide all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Director will issue a determination in writing. Respondent shall notify the Director in writing within 7 days of receipt of the Director's

determination whether Respondent intends to proceed in accordance with the Director's determination. The Director's determination shall no longer be subject to dispute pursuant to this Consent Agreement, unless within 7 days of receipt of the Director's determination, Respondent files an appeal with the Associate Administrator for Pipeline Safety. The Associate Administrator will issue a written decision after receipt of Respondent's appeal. Respondent shall notify the Director and the Associate Administrator in writing within 7 days of receipt of the Associate Administrator's decision whether Respondent intends to proceed in accordance with the Associate Administrator's decision.

28. PHMSA reserves all of its rights to seek enforcement of this Consent Agreement and/or any other appropriate relief in the event that Respondent does not proceed in accordance with the Director's determination, or if appealed, in accordance with the Associate Administrator's decision. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of a term imposed by this Consent Agreement during the pendency of the dispute resolution process except as agreed by the Director in writing.

VII. Information Disclosure

29. For any deliverables required to be submitted to PHMSA pursuant to this Consent Agreement, Respondent may assert a claim of business confidentiality, or for any other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to the terms of this Consent Agreement. The claim of confidentiality shall be in writing, shall accompany the submission of information to be covered, and shall include a statement specifying the grounds for the claim of confidentiality. If Respondent has submitted such claim accompanying the submission of information, PHMSA shall consider the claim as a statement of objection to release of the information. PHMSA shall release information submitted pursuant to this Consent Agreement only in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, and other applicable regulations and Executive Orders.

30. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide PHMSA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports, data, or other information required to be created or submitted to PHMSA pursuant to the requirements of this Consent Agreement shall be withheld from PHMSA on the grounds that they are privileged.

31. Nothing in this Consent Agreement shall be construed to limit PHMSA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to the Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*, or regulations promulgated thereunder.

VIII. Timeliness

32. Unless otherwise specified herein, all actions, decisions or determinations required to be undertaken pursuant to this Consent Agreement shall be made in a timely manner.

IX. Effective Date

33. The "Effective Date" as used herein is the date on which this Consent Agreement has been signed by both Respondent and PHMSA. Unless specified to the contrary, all deadlines for actions required by this Consent Agreement run from the Effective Date of the Consent Agreement.

X. Termination

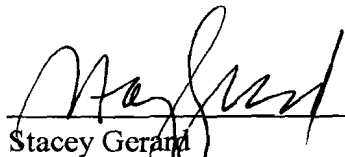
34. This Consent Agreement shall terminate upon the completion of all terms set forth in Section II (Work to Be Performed). Respondent may request written confirmation from PHMSA when this Consent Agreement is terminated. Further, prior to termination, but not earlier than 5 years after the Effective Date, Respondent may request confirmation from PHMSA that all of the requirements of Section II (Work to Be Performed), with the exception of those set forth in Paragraph 13, have been completed by Respondent.


XI. Ratification

35. The Parties hereby agree to all conditions and terms of this Consent Agreement:

For PHMSA:

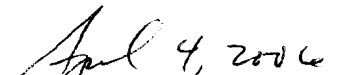
For Respondent:


Stacey Gerard
Associate Administrator
for Pipeline Safety


Thomas A. Bannigan
President, Products Pipelines,
Kinder Morgan Energy Partners

MAR 29 2006

Date


Date