

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Washington, D.C.**

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In the Matter of)			
Kinder Morgan, LLC ¹)		CPF No. 5-2023-003-NOPV	
Respondent.)		Notice of Probable Violation	
)			

Request for Hearing, Statement of Issues, and Response to NOPV

I. Introduction

The Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued a Notice of Probable Violation (NOPV), proposed civil penalty, and proposed compliance order (PCO) to Kinder Morgan, Inc. (KM) relating to SFPP, L.P.’s pipeline from Long Beach, California to Yuma Arizona on April 11, 2023.² SFPP is an indirect subsidiary of KM and the owner and operator of the pipeline at issue. The NOPV alleged one probable violation of the 49 C.F.R. Part 195 regulations related to atmospheric corrosion. SFPP’s response to the allegations in the NOPV is due May 11, 2023. Therefore, this response is timely.

SFPP is committed to pipeline safety and integrity. Toward this end, SFPP believes that the NOPV allegations require clarification in light of the facts at issue, documentation, and the applicable law. At this time, SFPP believes these issues are capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Western Region.

To preserve its rights in the event the parties are unable to resolve this matter via an informal settlement conference, SFPP is filing this response pursuant to 49 C.F.R. §§ 190.208 and 190.211 to request a hearing to address the factual and legal issues presented by the NOPV. As set forth herein, SFPP is contesting the NOPV in its entirety, including the proposed civil penalty and the associated PCO obligation. If the Western Region is amenable to an informal settlement conference, SFPP requests that the scheduling of a hearing be postponed to allow for settlement meetings. In the event the parties proceed to a hearing, SFPP will be represented by in-house counsel as well as outside counsel with Bracewell LLP.

¹ The NOPV was issued to Kinder Morgan, LLC, which appears to be an error and should have been Kinder Morgan, Inc.

² Id.

II. SFPP Response to NOPV

SFPP is contesting the NOPV, including the alleged violation of 49 C.F.R. § 195.583(c), the associated proposed civil penalty of \$81,500, and the associated PCO obligation. PHMSA based this allegation on conclusory visual observations and a misunderstanding of SFPP's atmospheric corrosion procedures. As expressly required by 49 C.F.R. § 195.583(c), SFPP timely performed atmospheric corrosion inspections and responded as appropriate pursuant to 49 C.F.R. § 195.581 and its procedures. At no time did SFPP identify atmospheric corrosion requiring protection. Based on the qualified corrosion technician's experience and training, including with respect to the environment of the pipeline, SFPP appropriately concluded that the pipeline condition exhibited no more than a light surface oxide and that it would not affect the safe operation of the pipeline before the next scheduled inspection. This is precisely what 49 C.F.R. § 195.583(c) allows. SFPP's conclusion that there was no atmospheric corrosion present that required remediation is further supported by documentation of the conditions evaluated during the monitoring, subsequent assessments, and evaluation performed after the PHMSA inspection.

PHMSA NOPV Allegation

1. **§ 195.583 What must I do to monitor atmospheric corrosion control?**
 - (a)
 - (c) **If you find atmospheric corrosion during an inspection, you must provide protection against the corrosion as required by § 195.581.**

KM failed to protect against atmospheric corrosion as required. Specifically, during the PHMSA field inspection, atmospheric corrosion on LS-120 was identified, at a span crossing Compton Creek (MP 1.85), including excessive corrosion with pitting. LS-120 is a pipeline segment of the SFPP that carries product from Watson Station to Colton Station and crosses over Compton Creek, which is a tributary that feeds into the Los Angeles River. This span (Compton Creek Span) also has bare pipe at the surface-to-air transition. After finding atmospheric corrosion during the inspection, KM failed to provide protection against corrosion as required by § 195.581. Despite the prevalence of atmospheric corrosion on its line, KM failed to adequately clean and coat the pipeline pursuant to § 195.581(a).² Kinder Morgan stated that they were not able to perform an atmospheric inspection this past year due to challenges of inspecting that span and that they did not have the correct equipment. This is also demonstrated in the atmospheric corrosion record.

PHMSA identified additional areas of concern in regard to atmospheric corrosion on KM's SFPP pipeline. Specifically, several areas in Colton Station were found to not be properly cleaned/coated and were exposed to the atmosphere. Colton Station, launcher, and receiver area had coating peeling off, minor atmospheric corrosion, and minor pitting. Breakout Tank C-31 Valve has disbonded coating and appears to have minor atmospheric corrosion. PHMSA was unable to determine the severity of the atmospheric corrosion on this valve while performing the field inspection. This valve is located in a pit, which is a confined space. Breakout Tank C-29 Valve has bare pipe with disbonded coating. PHMSA was unable to determine the severity of the atmospheric corrosion on this valve while performing the field inspection. This valve is also located in a pit, which is a confined space. KM identified Breakout Tank C-29 Valve was already marked to be

repaired. KM identified this valve as fair on the 1/28/2020 atmospheric corrosion inspection record. KM identified this valve to have a bare pipe condition on the 1/14/2021 atmospheric corrosion inspection record, almost a full calendar year after KM identified the coating rating to be fair. At the time of the PHMSA inspection in November 2022, the valve still had a bare pipe condition.

² This does not fall within an exception in § 195.581(c) because this is not light surface oxide nor is it corrosion that otherwise would not affect the safe operation of the pipeline before the next scheduled inspection. This corrosion impacts the safe operation of the pipeline due to its location within a High Consequence Area location, and the pipeline span is located directly over Compton Creek, which feeds into the Los Angeles River.

SFPP Response

SFPP contests the NOPV in its entirety. As detailed above, PHMSA identified (1) an alleged violation of 49 C.F.R. 195.583(c) associated with a span crossing Compton Creek (MP 1.85) on LS-120 and (2) additional atmospheric corrosion “areas of concern” at Colton Station (i.e., the Colton station launcher and receiver area, Breakout Tank C-31 valve located in a pit, and Breakout Tank C-29).

SFPP disagrees with PHMSA’s assertion that SFPP discovered “atmospheric corrosion” or “areas of concern” that required remediation at the time of the relevant inspections. At no point did SFPP identify atmospheric corrosion requiring protection and remediation prior to the next scheduled inspection, let alone “excessive corrosion with pitting.” The inspections performed by qualified experienced corrosion technicians instead documented a light surface oxide with no evidence of metal loss which precisely meets the exception at 49 C.F.R. 195.581(c) and relevant PHMSA guidance.

None of the piping locations identified by PHMSA in the NOPV required remediation under the regulations or SFPP procedures beyond that which was timely and appropriately performed by SFPP. The documentation of the annual inspections and subsequent more detailed inspections of the Compton Creek span and the piping and components at Colton Station confirm that inspections were timely and the gradings of the pipe condition were appropriate. See Attachment A, LS-120 Compton Creek Crossing Atmospheric Evaluation; Attachment B, Colton Breakout Tanks Grading. Further, at all times, SFPP followed its procedures by re-evaluating the pipeline within the specified timeframe.

Applicable Law

With respect to the regulation at 49 C.F.R. § 195.583, which cross-references corrosion mitigation requirements at § 195.581, the regulation and the rulemaking make clear that operators under certain circumstances have the flexibility in their procedures to define when conditions identified in atmospheric corrosion inspections require remediation, the timing of that remediation, and the method of remediation. Not all surface oxide requires remediation. Section 195.581(c) allows for an exception from recoating where operators “demonstrate by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will (1) only be a light surface oxide; or (2) not affect the safe operation of the pipeline before the next scheduled inspection.”

In promulgating this allowance, PHMSA’s predecessor agency explained:

Final § 195.581 gives operators flexibility when deciding to coat pipelines where atmospheric corrosion will be limited to a light surface oxide, or will not affect the safe operation of the pipeline before the next scheduled inspection.³

The rulemaking preamble further clarified:

[T]he need for coating would be reviewed again in 3 years. A 3-year delay in coating a pipeline judged to be safe should not jeopardize public safety, considering that atmospheric corrosion generally progresses at a slow rate. Therefore, we did not adopt Iowa's comment. Nevertheless, mindful of Iowa's concern, we edited the final wording to clarify that any decision not to coat a particular pipeline must be supported by testing, investigation, or experience relevant to that pipeline.⁴

PHMSA guidance clarifies that a light surface oxide means “general oxidation of the metal where there is no associated loss of metal” or “the slow rusting of pipe which is not yet considered to be atmospheric corrosion because there is no evidence of metal loss.” *PHMSA Corrosion Enforcement Guidance Part 195 (Jun 22, 2016)* at 87, 90. PHMSA has further explained that “[s]ome corrosion experts consider a light surface oxide to be protective to the metal surface.” *Id.* at 90. In contrast, atmospheric corrosion warranting remediation is “an area of metal loss due to general corrosion, localized corrosion pitting, or peeling scale on the steel surface that has damaged the pipe.” *Id.* at 87. This is supported by enforcement precedent where PHMSA issued allegations based on pitting, peeling scale of the pipe steel (not the coating), and excessive corrosion.⁵ Contrary to PHMSA’s assertion in a footnote of the NOPV, SFPP is not aware of any guidance or enforcement finding that the location of a coating holiday within a high consequence area or a span is (1) the equivalent to atmospheric corrosion or (2) even relevant to whether the coating defect could affect the safe operation of the pipeline before the next scheduled inspection. The requirement targets atmospheric corrosion, and the exception focuses on the physical integrity of the pipeline rather than its location.

Relevant SFPP Procedures and Atmospheric Corrosion Monitoring and Remediation

As it relates to the Compton Creek span on LS-120 and the areas identified at Colton Station, SFPP made its decisions regarding the condition of the coating and potential atmospheric corrosion on its pipes in accordance with its atmospheric corrosion control procedures and relevant Part 195 regulations, and based on the evaluations of experienced, qualified, corrosion technicians as documented in the record. In addition, these decisions were further confirmed through subsequent evaluations performed after the PHMSA inspection. Attachment A, LS-120 Compton Creek Crossing Atmospheric Evaluation; Attachment B, Colton Breakout Tanks Grading.

³ Docket No. RSPA-97-2762; Amdt. 195-73, Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines.

⁴ *Id.* (emphasis added).

⁵ See e.g., Warning Letter, In re: Chevron, CPF 5-2019-5003W (Jan. 27, 2019) (alleging a warning item for 195.581 based on a pipeline without coating and with severe atmospheric corrosion” and appears to have existed for several years.) (emphasis added); Warning Letter, In re: Conoco Phillips Alaska, Inc., CPF 5-2017-6060W (Aug. 15, 2017) (alleging a warning item under 195.583 based on the presence of oxidation as well as scaling and pitting”) (emphasis added).

1. SFPP Inspection of Compton Creek Span (PHMSA’s Alleged “Probable Violation”)

As reflected in documentation provided during the PHMSA inspection, a SFPP operator qualified (OQ) corrosion technician performs atmospheric corrosion inspections on LS-120, Compton Creek (MP 1.85) annually, a more frequent interval than the 3-years required by 49 C.F.R. § 195.583(a). Based on the visual inspections performed on August 24, 2020, and again on December 3, 2021, the corrosion rating of the pipe was graded as “Fair” by the qualified technician. There was no evidence of metal loss, pitting or peeling scale of the pipe steel. Per L-O&M 918, Inspection for Atmospheric Corrosion (Rev 9-11-2019), Attachment 1 – Atmospheric Corrosion Inspection Guidelines a Fair grade is as follows (emphasis added):

Fair — A Fair atmospheric condition grade is defined by: 1.) Deterioration of the coating system where coating is cracking, flaking, peeling, or disbonding or, 2.) Deterioration of the topcoat that exposes the primer for significant portions of the surface area or, 3.) Atmospheric corrosion limited to uniform surface rust (the depth of which cannot be measured) of the overall surface area, or 4.) Other areas in which continued deterioration of the coating system would not impact the safe operation of the pipeline system. Representations of spot rusting, general rusting, and pinpoint rusting may be found in Industry Standards (Standards Method of Evaluating Degree of Rusting on Painted Steel Surfaces). Note: Wall loss on steel piping where uniform light rust is occurring is usually impractical to measure utilizing standard instrumentation or gauges due to the minute amount of actual wall lost. Fair atmospheric condition generally indicates that a given site will be re-evaluated in the next survey cycle at intervals not to exceed 39 months and should be brought to the attention of operations and maintenance personnel responsible for planning schedules and budgeting estimates. A site graded as Fair atmospheric condition is not considered out of compliance by applicable regulatory standards.

Pursuant to SFPP’s procedures excerpted above, a “Fair” rating requires re-evaluation within the next 39 months. SFPP timely performed such re-evaluation. In January 2023, SFPP performed a closer visual inspection and re-evaluation.⁶ At this time, certain locations (including those noted in the PHMSA inspection) were sanded and, where necessary, analyzed with an ultrasonic wall loss tool and/or measured using a pit depth gauge. The results of SFPP’s further inspection and analysis confirmed the grade of “Fair” was appropriate with no pitting evident. This inspection also confirmed that there was only light surface oxides or uniform surface rust. SFPP also ran 2 metal loss in-line inspection (ILIs) tools in 2022, the results of which confirmed that there was no metal loss at or near MP 1.82.

As such, SFPP disagrees with PHMSA’s assertion that, based on its inspections, SFPP discovered “atmospheric corrosion” or that there was a “prevalence” of corrosion that required remediation at that time. Disbonded coating by itself is not the equivalent of atmospheric corrosion. There is no evidence in the record of metal loss, pitting, or scaling of the pipe steel. Further, the location of the pipeline in a high consequence area or over a span is irrelevant to the allowance under 49 C.F.R. 195.581(c) which focuses on whether corrosion impairs the safe operation of such line.

⁶ As noted on L-OM900-03 forms for LS-120 provided during the PHMSA inspection, SFPP requested the use of a man lift in 2020 and 2021 to conduct a re-evaluation and closer visual inspection. It was not until January of 2023 that safe reevaluation could be performed. This evaluation was completed within the interval set forth in SFPP’s atmospheric corrosion procedures. Further, it confirmed that there is no evidence of metal loss or pitting.

2. SFPP Inspection of Colton Station (PHMSA Alleged “Areas of Concern”)

SFPP similarly performs annual visual atmospheric inspections of the Colton facility piping and components noted in NOPV (i.e., the Colton station launcher and receiver area, the breakout tank C-31 valve, and breakout tank C-29 valve), a more frequent interval than the 3-year period required by 49 C.F.R. § 195.583(a). SFPP’s OQ-qualified corrosion technician rated the Colton Launcher inspection in [confirm date] as “Good.” Per L-O&M 918, Inspection for Atmospheric Corrosion (Rev 9-11-2019), Attachment 1 – Atmospheric Corrosion Inspection Guidelines a “Good” grade is as follows:

Good — A Good atmospheric condition grade is defined by: 1.) A coating system that is well bonded and intact and, 2.) Topcoat degradation that is limited to “chalking” and, 3.) Atmospheric corrosion that is limited to minor surface corrosion in flanged areas, nuts, bolts, and areas affected by routine maintenance operations. Local operations personnel may perform spot repairs in order to mitigate isolated corrosion discontinuities.

Note that a “Good” rating does not require that there be no indications of atmospheric corrosion; minor surface corrosion is acceptable and does not require immediate attention.

As for the breakout tank C-31 valve, SFPP’s corrosion technician, based on a visual inspection performed from inside the pit on December 23, 2021, noted: “[w]hile the bolts are bare at the flange, the mastic coating is in good condition and there is not pitting on the flange or pipeline, only light surface rust.” The coating was not disbonded and light surface rust does not require remediation under SFPP’s procedures. With respect to breakout tank C-29 valve, SFPP’s determination, based on a visual inspection performed inside the pit, that the condition of this pipe was “Fair” was accurate in 2020 and no remediation was required at that time. Based on subsequent inspections and pursuant to SFPP’s coating maintenance program, SFPP bristle blasted tank C-29 in April of 2023 after which there was no pitting or corrosion present.

III. Statement of Issues

- A. Whether based on the facts and applicable law, PHMSA has met its burden to prove by a preponderance of the evidence that SFPP did not comply with 49 C.F.R. § 195.583(c) as alleged in NOPV Item 1.
- B. Whether PHMSA provided due process and fair notice, as required by the U.S. Constitution and the Administrative Procedure Act, in issuing an alleged violation for NOPV Item 1 based on the facts and the applicable law.
- C. Whether PHMSA’s allegations of noncompliance under NOPV Item 1 are arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).
- D. Whether the proposed civil penalty associated with NOPV Item 1 should be withdrawn or reduced to accurately reflect the statutory and regulatory penalty assessment criteria required under 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225 and to align with penalties issued in prior relevant PHMSA enforcement.

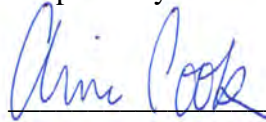
- E. Whether NOPV Item 1, the proposed civil penalty, and the PCO obligations contradict PHMSA's Pipeline Safety Enforcement Procedures and prior enforcement precedent.

IV. Summary and Request for Relief

For all of the reasons identified above, and in consideration of other matters as justice may require, SFPP respectfully requests that NOPV Item 1 be withdrawn in its entirety, including the proposed civil penalty of \$81,500, and the associated PCO obligations. PHMSA bears the burden of proof of all elements of a proposed violation in an enforcement proceeding. *See, e.g., In re ANR Pipeline Co, Final Order*, CPF No. 3-2011-1011 (Dec. 31, 2012). As set forth above, PHMSA is unable to meet its burden in this action. In the event that this allegation is not withdrawn, SFPP requests that PHMSA significantly convert the allegation to a warning or reduce the proposed civil penalty and remove or modify the PCO requirements.

As noted above, SFPP believes this issue is capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Western Region. In advance of the requested settlement meeting or hearing (should it be necessary), and pursuant to 49 C.F.R. § 190.209, SFPP requests a copy of the complete case file in this matter to include the Proposed Civil Penalty Worksheet, beyond the Pipeline Safety Violation Report which has already been provided.

Respectfully submitted,



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