

MAY 5, 2014

Mr. Carlos T. Munguia
Vice President – Operations
Kinder Morgan Liquids Terminals, LLC
8500 W. 68th Street
Argo, IL 60501-0409

Re: CPF No. 1-2013-5004

Dear Mr. Munguia:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$500,000, and specifies actions that need to be taken by Kinder Morgan Liquids Terminals, 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, Eastern Region, OPS, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Byron Coy, PE, Director, Eastern Region, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Kinder Morgan)	CPF No. 1-2013-5004
Liquids Terminals, LLC,)	
)	
Respondent.)	
)	

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident involving pipeline facilities operated by Kinder Morgan Liquids Terminals, LLC (Kinder Morgan or Respondent) in Carteret, New Jersey. The Carteret facility is part of Respondent’s Northeast Region, covers over 200 acres, and includes over 300 storage and breakout tanks and incoming and outgoing pipelines.¹ The facility receives petroleum products from Colonial Pipeline Company’s Line L6 and transports these products to various destinations.

The investigation arose out of a March 14, 2011 accident at the Carteret facility in which “Hot Work” activities were being conducted near the GANJ Manifold at the time the facility was receiving a large shipment of unleaded gasoline from Colonial’s Line 6. Workers loosened a valve gear assembly designated as the NL Valve on the header causing a pressure surge since Line 6 was an active line. The surge separated a manifold flange causing gasoline to spray an area where other workers were using welding torches which ignited the gasoline resulting in a fire. One contract worker was injured in the fire and it caused approximately \$1.3 million in damage to the facilities, equipment, and vehicles in the area.²

As a result of the investigation, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated April 4, 2013, a Notice of Probable Violation, Proposed Civil Penalty, and proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the

¹ Respondent’s liquids terminals business unit includes approximately 50 liquids terminals that store fuels and offer blending services for ethanol and other products. Kinder Morgan is one of the largest transporters of refined petroleum products in North America and its facilities include over 8,000 miles of pipelines. PHMSA Violation Report at 1.

² PHMSA Violation Report, Exhibit A-3.

Notice proposed finding that Kinder Morgan had committed five violations of 49 C.F.R. Part 195, and proposed assessing a civil penalty of \$500,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct two of the alleged violations.

Kinder Morgan responded to the Notice by letter dated May 2, 2013 (Response). The company did not contest the allegations of violation, but provided information concerning the corrective actions it had taken. Respondent did request a reduction in the proposed civil penalty amount stating that it believed Items 1–3 in the Notice should be treated as a single violation. Kinder Morgan also indicated that it may need additional time to complete the terms of the proposed compliance order. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Kinder Morgan did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own written procedures for operating, maintaining, and repairing the pipeline system that were established pursuant to § 195.402(c)(3) (O&M procedures). Specifically, the Notice alleged that Kinder Morgan failed to follow written procedure *T-O&M 103 Safety Permits* which required its personnel to obtain a “Safe Work Permit” for the NL Valve repair project. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow written procedure *T-O&M 103 Safety Permits* and obtain a “Safe Work Permit” for the NL Valve repair project.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow its own written procedures for operating, maintaining, and repairing the pipeline system that were established pursuant to § 195.402(c)(3). Specifically, the Notice alleged that Kinder Morgan failed to follow its written procedure *T-O&M 152 Lockout and*

Tagout which required its personnel to lockout and tagout any energy isolating device when performing maintenance or repairs—in this case the lines upstream of the NL Valve.³ Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its written procedure *T-O&M 152 Lockout and Tagout* and ensuring the lockout and tagout of an energy isolating device when performing repair work.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to prepare and follow procedures for operating, maintaining, and repairing the pipeline system in accordance with § 195.402(c)(3). Specifically, the Notice alleged that Kinder Morgan did not have a written procedure in place for performing the NL Valve repair in a safe manner. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to prepare and follow a written procedure for performing the NL Valve repair in a safe manner.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states:

§ 195.406 Maximum operating pressure.

(a) ...

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure at the GANJ Manifold to exceed 110 percent of maximum operating pressure (MOP) during a surge or other variation from normal operation. Specifically, the Notice alleged that Kinder Morgan allowed the pressure to exceed 523 psig at the GANJ Manifold during the event, far exceeding its MOP of 285 psig. The Notice further alleged that Respondent failed to provide adequate controls and protective equipment to control the pressure on Line L6. According to the Notice, in a post-accident analysis of the overpressure protection system at the Carteret Terminal, Kinder Morgan acknowledged that there was no pressure relief system connected to the GANJ Manifold and that over-pressurization protection on the line was not up to industry standard. The lack of adequate overpressure controls on Line L6 allowed the flanges on Valves G1 and G2 to separate due to the pressure surge and served as a contributing cause of the Accident. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure at the GANJ Manifold to exceed 110 percent of MOP during a surge or other variation from normal operation and failing to provide adequate controls and protective equipment to control the pressure on Line L6.

³ Ensuring devices such as closed valves are locked out and tagged out prevents them from being inadvertently opened and causing unsafe releases of energy products during repair work.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

§ 195.422 Pipeline Repairs.

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a) by failing to ensure that a repair to its pipeline system was made in a safe manner so as to prevent damage to persons or property. Specifically, the Notice alleged that the NL Valve repairs were not made in a safe manner because, in addition to the failure to have and then follow the various written procedures described in Item 3 above, the valve work crew continued with its work even after the crew became aware that the L6 Line was in operation, was under pressure, was receiving a shipment of unleaded gasoline through the valve that was undergoing repair, and an oxy-acetylene torch was being used 20 feet away. According to the Notice, there was also inadequate communication and coordination among the work crews. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.422(a) by failing to ensure that a repair to its pipeline system was made in a safe manner so as to prevent damage to persons or property.

With respect to Respondent's suggestion that Items 1 – 3 should be treated as a single violation, Item 1 involved failure to obtain a Safe Work Permit, Item 2 involved failure to perform lockout and tagout, and Item 3 involved failure to have a procedure for the performance of the repair itself. These are different violations because each arises from different conduct at different stages, involves a different O&M provision, and stands on different evidence.⁴ Therefore, I do not accept Respondent's suggestion that violations 1 – 3 be combined into one violation.

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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. 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; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 \$500,000 for the violations cited above.

⁴ There are situations where the same O&M provision can be violated at multiple locations or on multiple occasions and these are also considered separate violations.

Item 1: The Notice proposed a civil penalty of \$100,000 for Respondent’s violation of 49 C.F.R. § 195.402(a), for failing to follow written procedure *T-O&M 103 Safety Permits* and obtain a “Safe Work Permit” for the NL Valve repair project. In its Response, Kinder Morgan requested that the proposed civil penalty be reduced by combining Items 1-3 into one violation. For the reasons discussed above, I did not accept this argument.

With respect to the nature, circumstances, and gravity of this violation, the use of safety permits is a key part of ensuring that work areas are safe and that personnel fully plan for and communicate with each other about any work being performed. Prior to the accident, Kinder Morgan failed to follow various provisions in *T-O&M 103*, including documenting the scope of the NL Valve repair project and that the area and equipment have been prepared and deemed safe to work on or near. This violation contributed to a serious fire and evacuation. Respondent is culpable for the violation because Kinder Morgan was obligated to ensure company personnel followed the procedure and if a Safe Work Permit had been secured, the work crew would likely have been directed to take field safety precautions to conduct the work safely—or the idea of doing the work while a fuel delivery was underway may have even been rejected by the company official responsible for issuing such permits.

In its Response, Kinder Morgan expressed the view that its efforts to correct the deficiencies following the accident demonstrated good faith. While good faith may apply to an operator’s efforts to achieve compliance prior to the discovery of the non-compliance by OPS for purposes of a possible penalty reduction, I would note that it does not apply to corrective actions taken afterwards. In this case, nothing in the record constitutes a good faith effort to comply prior to the accident.

Kinder Morgan neither contested the violation nor presented any information or arguments that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a).

Item 2: The Notice proposed a civil penalty of \$100,000 for Respondent’s violation of 49 C.F.R. § 195.402(a), for failing to follow its written procedure *T-O&M 152 Lockout and Tagout* and ensuring the lockout and tagout of an energy isolating device when performing repair work. With respect to the nature, circumstances, and gravity of this violation, proper lockout and tagout are key to safe repairs because these procedures are designed to directly protect personnel from unexpected startup or energy releases during maintenance or repair projects. Respondent is culpable for the violation because lockout and tagout are basic precautions prior to performing repairs and according to the company’s own internal report, “the incident was caused by failure to follow the lock-out/tag-out procedure. . . .”⁵ Nothing in the record constitutes a good faith effort to comply prior to the accident.

Kinder Morgan neither contested the violation nor presented any information or arguments that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess

⁵ PHMSA Violation Report, Exhibit A-3.

Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a).

Item 3: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to prepare and follow a written procedure for performing the NL Valve repair in a safe manner. With respect to the nature, circumstances, and gravity of this violation, while Respondent's O&M manual had a procedure *T-O&M 301, Inspecting and Servicing Pipeline Valves*, it did not address maintenance or repairs or provide instructions as to how they should be performed on a manually operated valve, such as the NL Valve, to ensure the work is performed in a safe manner. In particular, *T-O&M 301* did not address whether or how valve maintenance or repairs could be made safely on an active line. In its internal report, Kinder Morgan stated that it was company policy to perform repair work only on inactive lines, but it did not have written procedures that implemented this policy. Respondent is culpable for the violation because Kinder Morgan had an obligation to prepare and implement adequate written procedures for maintaining or repairing valves safely and so as to prevent damage to persons or property. If it had, it is entirely possible that the company would not have conducted the NL Valve work on an active line and the accident may not have occurred. Nothing in the record constitutes a good faith effort to comply prior to the accident.

Kinder Morgan neither contested the violation nor presented any information or arguments that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a).

Item 4: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 406(b), by permitting the pressure at the GANJ Manifold to exceed 110 percent of MOP during a surge or other variation from normal operation and failing to provide adequate controls and protective equipment to control the pressure on Line L6. With respect to the nature, circumstances, and gravity of this violation, controlling pipe pressure within maximum limits is a fundamental part of safe operations. The sudden closing of the NL Valve resulted in a pressure surge to over 523 psig and caused the flanges on the upstream Valves G1 and G2 to separate and spray gasoline around the GANJ Manifold area and over a nearby access road and be ignited by the torch resulting in an injury, evacuation, and extensive damage. Respondent is culpable for the violation because it failed to take steps that would have made the pressure surge less likely. In its post-accident analysis of the overpressure protection system at the Carteret Terminal, Kinder Morgan acknowledged that there was no pressure relief system connected to the GANJ Manifold and that over-pressurization protection on the line was "not up to industry standard." The lack of adequate overpressure controls on Line L6 allowed the flanges on Valves G1 and G2 to separate due to the pressure surge and served as a contributing cause of the Accident. Nothing in the record constitutes a good faith effort to comply prior to the accident.

Kinder Morgan neither contested the violation nor presented any information or arguments that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.406(b).

Item 5: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.422(a), for failing to ensure that a repair to its pipeline system was made in a safe manner so as to prevent damage to persons or property. With respect to the nature, circumstances, and gravity of this violation, recognizing and reacting to hazards is a key part of ensuring adverse circumstances and hazardous situations do not deteriorate into accidents and emergencies. In this case, Respondent allowed the work crew to continue with its work even after the crew became aware that the L6 Line was in operation, was under pressure, was receiving a shipment of unleaded gasoline through the valve that was undergoing repair, and an oxy-acetylene torch was being used 20 feet away. Respondent is culpable for the violation because it could have taken steps such as ensuring effective communications to facilitate the likelihood of a safe repair but failed to do so. Nothing in the record constitutes a good faith effort to comply prior to the accident.

Kinder Morgan neither contested the violation nor presented any information or arguments that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.422(a).

As discussed above, the record supports the assessment of penalties for all five Items as five separate violations. In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$500,000**.

Payment of the civil penalty must be made within 20 days of service. 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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$500,000 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 3 and 4 in the Notice for violations of 49 C.F.R. §§ 195.402(a) and 195.406(b), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. 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 § 195.402(a) (**Item 3**), Respondent must develop procedures for valve operation, maintenance, and repair in accordance with § 195.422 that incorporate “lessons learned” from the March 14, 2011 accident at the Carteret facility. The procedures must include safety instructions for the repair of all valve types located at the Carteret facility including the incorporation of manufacturers’ specific recommended practices.
2. With respect to the violation of § 195.406(b) (**Item 4**), Respondent must perform a comprehensive surge analysis of the GANJ Manifold at the Carteret facility. Based on the results, Kinder Morgan must make all necessary modifications to the GANJ Manifold to account for potential surges. In addition, Respondent must test and verify that the manifold does not exceed 110 percent of the operating pressure limit established under the MOP for surges or other variations from normal operations.
3. Within 150 calendar days following receipt of this Final Order, Respondent must submit a summary report and supporting documentation demonstrating completion of the requirements set forth in this Order to Mr. Byron Coy, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, Suite 103, 820 Bear Tavern Road, West Trenton, NJ 08628.
4. It is requested (not mandated) 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 or revision of plans, procedures, studies, and analyses; and (2) total cost associated with repairs, replacements, additions, and other changes to physical pipeline facilities.

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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order [CPF No. 1-2013-5004]. Should Respondent elect to do so, the petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued