

August 29, 2019

Ms. Kimberly Allen Dang  
President  
Kinder Morgan, Inc.  
1001 Louisiana Street, Suite 1000  
Houston, Texas 77002

**Re: CPF No. 1-2018-5016**

Dear Ms. Dang:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Kinder Morgan Liquids Terminals, LLC. It makes one finding of violation and assesses a civil penalty of \$116,800. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is effective upon the date of mailing 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. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA  
Mr. Joshua A. Etzel, President – Operations and Engineering, Northeast Region, Kinder Morgan Liquids Terminals, LLC, 78 Lafayette Street, Carteret, New Jersey 07008

CERTIFIED MAIL - RETURN 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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<b>In the Matter of</b>	)	
	)	
<b>Kinder Morgan Liquids Terminals, LLC, a subsidiary of Kinder Morgan, Inc.,</b>	)	<b>CPF No. 1-2018-5016</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

From September 11 through 13, 2017, 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 inspection of Kinder Morgan Liquids Terminals, LLC’s (KMLT or Respondent) procedures and records on breakout-tank cathodic protection in Carteret, New Jersey. KMLT operates approximately 14.6 miles of natural gas transmission pipeline, 88.4 miles of hazardous liquid transmission pipeline, and 279 breakout tanks across five different states. The facilities inspected were comprised of 2.28 miles of hazardous liquid transmission pipeline and two terminal locations in Carteret and Perth Amboy, New Jersey. The terminal locations have 87 total breakout tanks. The commodities transported are refined petroleum products.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated June 7, 2018, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that KMLT had violated 49 C.F.R. § 195.402(a) and proposed assessing a civil penalty of \$116,800 for the alleged violation.

KMLT responded to the Notice by letter dated July 13, 2018 (Response). The company contested the allegation, offered additional information in response to the Notice, and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

**FINDING OF VIOLATION**

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

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<sup>1</sup> Pipeline Safety Violation Report (Violation Report), (June 7, 2018) (on file with PHMSA), at 1.

**§ 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 for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that KMLT failed to follow its own External Corrosion procedure for taking corrective actions on its cathodic protection (CP) system, per the requirements of 49 C.F.R. § 195.573(e).<sup>2</sup> The Notice alleged that Respondent's procedures required corrective action to be taken when any deficiency in CP is discovered "before the next monitoring period," but if corrective action cannot be completed, "a corrective action plan must be established with justification . . . ." The "next monitoring period" is identified by KMLT's procedures as the next calendar year. The Notice alleged that KMLT failed to perform any corrective actions on five breakout tanks during calendar years 2015 and 2016 after low CP readings had been identified.

In its Response, KMLT requested that the proposed civil penalty and probable violation be withdrawn because "the inspection documentation previously provided to PHMSA demonstrates compliance with KMLT's T-O&M Procedure 903, External Corrosion Control for Buried or Submerged Pipelines" (*Procedure 903*).<sup>3</sup> KMLT relies on section 3.7.7 of *Procedure 903*, which states: "Corrective action must be taken when any deficiencies in cathodic protection are discovered during cathodic protection monitoring before the next monitoring period . . . . If corrective actions cannot be completed before the next monitoring period, a corrective action plan must be established with justification."<sup>4</sup>

KMLT argues that it complied with its own procedures by identifying low CP readings on Tanks 63, 120, 100-6, 100-7, and 100-9, and then taking appropriate action to address the low readings.<sup>5</sup> Namely, KMLT argues that it prepared a corrective action plan in response to the low CP readings on the identified tanks that "provides guidance on the corrective actions to be taken

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<sup>2</sup> Sections 195.401(b) and 195.573(e) require an operator to correct any identified deficiency in corrosion control within a reasonable time.

<sup>3</sup> Response, at 1 (emphasis added).

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

in the event deficiencies are found.”<sup>6</sup> Finally, KMLT states that it “determined that the low CP readings did not adversely impact the safe operation of the tanks . . . and ensured the corrective actions implemented . . . were appropriate to last until the next ANSI/API 653 OOS [out of service] inspection, at which time KMLT will determine the path forward.”<sup>7</sup>

I am not persuaded by KMLT’s position. I find that the evidence fails to demonstrate KMLT prepared a corrective action plan detailing what had to be done in response to the low CP readings prior to the next monitoring period for the five tanks identified in the Notice. First, there is no dispute that KMLT failed to take and complete corrective action to remedy the deficiencies in cathodic protection in tanks 63, 100-6, 100-7, 100-9, and 120 before the next monitoring period from 2015-2016, as provided in Section 3.7.7 of *Procedure 903*. Rather, KMLT asserts that it complied with § 195.402(a) and *Procedure 903* because it had prepared a corrective action plan that it developed and completed by 2017 and because “the low CP readings did not adversely impact the safe operation of the tanks...”<sup>8</sup>

I reject this assertion. The “corrective action plan” upon which KMLT relies was not an actual corrective action plan, as required by *Procedure 903*, because it did not detail what *actions* had to be taken to remediate the low CP readings on each of the five breakout tanks. In addition, the evidence shows that the so-called “corrective action plan” did not contain any sort of analysis or justification as to why it would take longer than a year to correct the deficiencies. Significantly, this “plan” was revised on October 23, 2017, after the next CP monitoring period (2016) had occurred, and therefore cannot be used to demonstrate compliance. The evidence demonstrates that KMLT failed to follow *Procedure 903* in this regard.

Finally, I find that the corrosion growth rate (CGR) analysis performed by KMLT fails to serve as a substitute for a corrective action plan that met the requirements of *Procedure 903*. There is no evidence to demonstrate that the CGR analysis was performed before corrective actions were due (2016 – the next monitoring period), or to demonstrate how the analysis was performed. In addition, the evidence does not show that the CGR analysis was performed as part of a “corrective action” to address the low CP readings on the five tanks before the next monitoring period, or that the CGR analysis was included in a corrective action plan prepared specifically to remediate the low readings.

Accordingly, after considering all of the evidence I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own written procedures for addressing deficiencies in its CP

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, at 3. In its Response, KMLT also argued that after extensive troubleshooting, it had taken more than a year to implement its corrective action plan but that the repairs were performed in accordance with 49 C.F.R. §§ 195.573(e) and 195.401(b), which require that non-integrity repairs be made to correct any CP deficiency “within a reasonable time.” However, in this case, the length of time that was actually taken to complete the repairs is not the issue. Instead, it is whether KMLT followed its own procedure for preparing a corrective action plan within one calendar year after discovery of CP deficiencies and whether it included a justification for taking more than a year to address known CP problems. KMLT failed to prepare such a plan. Furthermore, the “reasonable time” standard is not applicable here since the tanks at issue are located in a High Consequence Area (HCA) and therefore must be repaired more quickly.

<sup>8</sup> *Id.*

system.

This finding of violation will be considered a prior offense 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>9</sup> 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; 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 \$116,800 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$116,800 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

In its Response, KMLT requested that the proposed civil penalty be withdrawn in its entirety. In support of its request, KMLT argued that it followed its procedures and did not violate § 195.402(a). KMLT did not request that the proposed civil penalty be reduced as an alternative to complete withdrawal, nor did it present arguments specific to the calculation of the proposed civil penalty. As I found above, KMLT violated § 195.402(a). Thus, I reject KMLT's request for a complete withdrawal of the proposed civil penalty. For the reasons detailed below, I find that a civil penalty in the amount of \$116,800 is warranted.

Regarding the *nature* criterion in the Violation Report, PHMSA noted that the violation was related to a failure to perform a required activity.<sup>10</sup> KMLT asserted that it did perform the required activity. For the reasons identified above, I reject this assertion and find that KMLT failed to perform a required activity.

Regarding the *circumstances* criterion in the Violation Report, PHMSA noted that it discovered the violation, as opposed to the operator.<sup>11</sup> KMLT does not dispute that PHMSA discovered the

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<sup>9</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

<sup>10</sup> Violation Report, at 7.

<sup>11</sup> *Id.* at 8.

violation; KMLT disputes that a violation occurred at all. Having already found KMLT in violation of § 195.402(a), I find that PHMSA properly included the fact that it discovered the violation in its calculation of the proposed civil penalty.

Regarding the *gravity* criterion, PHMSA noted in the Violation Report that the alleged violation compromised pipeline safety or integrity in an HCA. As noted above, KMLT failed to complete corrective actions to remediate low CP readings on five tanks over a two-year period, and failed to prepare a corrective action plan with justification for why corrective actions could not be taken prior to the next monitoring period. As noted in the Violation Report, “the entire pipeline and terminal is in an HCA.”<sup>12</sup> A failure to correct deficiencies on five breakout tanks for a period of two years necessarily compromises the integrity of such facilities by increasing the likelihood of a release in an HCA. The absence of an actual incident during this period is not evidence sufficient to preclude a finding that the integrity of a pipeline or pipeline facility was compromised by a failure to comply with a regulation. The evidence in the record supports PHMSA’s assertion that pipeline safety or integrity was compromised in an HCA.

Regarding the *culpability* and *good faith* criteria, PHMSA noted in the Violation Report that KMLT had failed to comply with a requirement that was “clearly applicable,” and that KMLT did not have a credible justification for its non-compliance.<sup>13</sup> KMLT does not dispute that the regulation was clearly applicable, but rather argues that it complied. As noted above, this argument is rejected.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$116,800** for violation of 49 C.F.R. § 195.402(a).

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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$116,800 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.

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, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of

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<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.* at 10.

Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If KMLT submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

August 29, 2019

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued