



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh St., S W
Washington, D.C. 20590

MAY - 4 2004

Mr. Dwayne Burton
Vice President of Gas Operations
Kinder Morgan, Inc.
One Allen Center
500 Dallas Street - Suite 1000
Houston, TX 77002

RE: CPF No. 3-2003-1006

Dear Mr. Burton:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$81,250. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. §190.5. At such time that the terms of the compliance order are completed, as determined by the Director, Central Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Ivan Huntoon, Director, OPS Central Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
Kinder Morgan, Inc.,) CPF No. 3-2003-1006
Respondent _____)

FINAL ORDER

During the periods of June 12-16, June 26-30, July 24-28, August 7-11, August 21-25, September 18-22, October 2-6 and October 16-20, 2000 and April 2-6, April 23-27, April 30-May 4, August 13-17, August 20-24 and August 27-31, 2001 pursuant to 49 U.S.C. § 60117, representatives of the Central and Western Regions, Office of Pipeline Safety (OPS) conducted onsite pipeline safety inspections of Respondent's interstate gas transmission facilities in its Kansas, Nebraska, Colorado, and Wyoming operational areas. As a result of this investigation, the Director, Central Region, OPS, issued to Respondent, by letter dated March 20, 2003, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 192, proposed assessing a total civil penalty of \$92,000 for the alleged violations, and proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated, April 17, 2003 (Response). Respondent did not contested the allegations, but paid the proposed civil penalty, requested a hearing seeking a Consent Order and clarification of some terms of the Compliance Order. The hearing was held on June 17, 2003 in Kansas City, Missouri. After this hearing, Respondent provided a closing Response dated July 2, 2003, with additional information and a summary of the information it had presented at the hearing.

FINDINGS OF VIOLATION

Uncontested Violations

Respondent did not contest the alleged violations of §§192.619(a), 192.481, 192.739, and 192.745 (Items 3, 4, 6 and 7) in the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Part 192, as more fully described in the Notice:

49 C.F.R. §192.619(a) – failure to operate a segment of steel or plastic pipeline at an operating pressure with the lowest pressure listed in accordance with §192.619, as the regulator for pipeline #0062 the Bloomington Lateral and pipeline #0240 the Greeley Lateral were set above the MAOP.

49 C.F.R. §192.481(a) – failure to inspect 385 miles of Top-of-Ground pipe for atmospheric corrosion at the required 3 year intervals.

49 C.F.R. §192.739 – failure to test and inspect each pressure limiting device, relief device, and pressure regulating station and its equipment at intervals not exceeding 15 months, as the main line regulator and relief valves at Marienthal, KS, Healy, KS and Red Willow, KS were not set to function at the correct pressure.

49 C.F.R. §192.745 – failure to inspect and partially operate transmission line valves at intervals not exceeding 15 months, but at least once each calendar year. An examination of the mainline valve inspection records for the years 1998, 1999, and 2000 for the Clay Center and Hastings areas revealed that inspections exceeded the required inspection interval as required by §192.745.

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

As for the request for a Consent Order, Respondent explained that it viewed the Consent Order as a vehicle to demonstrate its efforts towards continuous cooperation with OPS to ensure pipeline safety and its diligence to achieve compliance. After further discussion, Respondent expressed its intent to comply with the Notice in all respects. Respondent advised that, based on clarifications received as to the nature of Consent Orders compared with Compliance Orders, its request for a Consent Order is withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a 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. The Notice proposed a total civil penalty of \$92,000 for violation of 49 C.F.R. §§192.619, 192.739, and 192.745, already paid by the Respondent.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The proposed penalty for **Item 3(a)** is \$5,000 for violation of 49 C.F.R. §192.619(a). Respondent did not contest the allegations of violation. In its Response, during and after the hearing, Respondent argued that the civil penalties were excessive and inappropriate and sought clarification regarding assessment of the penalties. OPS representatives presented testimony as to the methodology employed to assess the civil penalties. Respondent advised that it has revised its operating procedures and the regulator was reset. Nevertheless, Respondent has not shown any circumstance that would have prevented or justified its operating with the regulator set above the MAOP.

Respondent did not present any mitigating information. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000.

The proposed penalty for **Item 3(b)** is \$5,000 for violation of 49 C.F.R. §192.619(a), as Respondent operated a segment of steel or plastic pipeline that exceeded the lowest pressure required by 49 C.F.R. §195.619. Respondent did not contest the alleged violation but argued that the civil penalty was excessive and inappropriate and sought clarification regarding assessment of the penalty. OPS representatives presented testimony as to the methodology employed to assess the civil penalty. Respondent did not present any mitigating information. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000.

The proposed penalty for **Item 6(a)** is \$3,000 for violation of 49 C.F.R. §192.739, as the main line regulator and relief valve at the Marienthal, KS was not set to function at the correct pressure. Respondent did not contest the alleged violation but argued that the civil penalty was inappropriate and sought clarification regarding assessment of the penalty. OPS representatives presented testimony as to the methodology employed to assess the civil penalty. Respondent did not present any mitigating information. The MAOP of the line is 135 psi, which allows the maximum overpressure protection set point to be 148.5psi. The Marienthal, KS relief valve was set at 155 psi. Respondent has not shown any circumstance that would have prevented or justified its failure to inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment at the required intervals, which is essential to knowing that the pipeline equipment is being maintained and will function properly. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$3,000.

The proposed penalty for **Item 6(b)** is \$15,000 for violation of 49 C.F.R. §192.739, as the main line regulator and relief valve at Healy, KS was not set to function at the correct pressure. Respondent did not contest the alleged violation but argued that the civil penalty was inappropriate, as it was not commensurate with the violation. Respondent sought clarification regarding assessment of the penalty. OPS representatives presented testimony as to the methodology employed to assess the civil penalty. Respondent did not present any mitigating information. The MAOP of the line is 250 psi, which allows the maximum overpressure protection set point to be 275 psi. The Healy, KS relief valve was set at 320 psi. Inspection and testing at the required intervals are essential to knowing that the pipeline equipment is being maintained, will function properly and that the integrity of the pipeline system is not compromised. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,000.

The proposed penalty for **Item 6(c)** is \$15,000 for violation of 49 C.F.R. §192.739, as the McCook main line regulator and relief valve at Red Willow, KS was not set to function at the correct pressure. Respondent did not contest the alleged violation but argued that the civil penalty was inappropriate, not commensurate with the violation and sought clarification regarding assessment of the penalty. OPS representatives presented testimony as to the methodology employed to assess the civil penalty. Respondent did not present any mitigating information. The MAOP of the line is 400 psi, which allows the maximum overpressure protection set point to be 440 psi. The Red Willow, KS relief valve was set at 460 psi. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,000.

The proposed penalty for **Item 7** is \$49,000 for violation of 49 C.F.R. §192.745, based on the failure to inspect or partially operate each transmission line valve at intervals not exceeding 15 months. The Notice further indicated that the 98 valves consisted of 25 mainline valves, 43 blowdown valves, and 30 lateral valves. Respondent did not contest the alleged violation.

Discussions during the hearing revealed confusion as to the categorization of the 43 blowdown valves as critical safety valves. Respondent asserted that the 43 valves in question are not critical safety valves because they have bolt-on blind flanges that have to be removed before they could be used in an emergency. Respondent advised that it inspects the valves under the maintenance program but excluded the 43 blowdown valves from its emergency lists.

Testimony further revealed that discussions during previous inspections may have led Respondent to revise its procedures and to allow the categorization of the 43 valves to remain unchanged. OPS representatives clarified that the 43 blowdown valves are subject to §192.745, as an emergency could necessitate the use of the 43 blowdown valves. OPS representatives further testified that §192.179(c) requires blowdown valves on each section of a transmission line and that the blow down valves should have enough capacity to allow the transmission line to be blown down as rapidly as practicable. Each blowdown discharge must be located so the gas can be blown to the atmosphere without hazard. Therefore, the 43 blowdown valves must be inspected per §192.745.

In an emergency, the 43 blow down valves in question may be activated to reduce the amount of gas vented at the rupture or leak site on the pipeline. This would reduce the duration of the emergency and lessening the impact of the leaking gas on the public, property and the environment. Although, the bolt-on blind flange has to be removed, where there is a line section between two mainline valves and the need arises to blow down the section quickly, the blowdown valves may be used. In an instance where a home or railroad is in close proximity to the failure site reducing the time that it takes to blow down the line is critical. The 43 blowdown valves are inspected per §192.745. Respondent is to make the necessary amendments to ensure compliance and to ensure no confusion regarding the utilization of blowdown valves and the processes related thereto.

Respondent did not contest the alleged violation so there is no question that a violation was committed. However, Respondent argued that the civil penalty was not commensurate with the violation and sought clarification regarding assessment of the penalty. OPS representatives presented testimony as to the methodology employed to assess the civil penalty to address Respondent's argument that the civil penalty was not commensurate with the violation.

Based upon the post hearing documentation submitted by Respondent combined with its testimony and that of OPS representatives, I find that factors exist for an adjustment of the proposed civil penalty. 49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The primary objective of the Federal pipeline safety standards is safe operation of pipeline systems. Failure to conduct inspections at the specified intervals to find and to correct any deficiencies could adversely affect public safety. Testimony indicated that the valves were inspected as part of maintenance but not as emergency valves. I note that the degree by which the interval was exceeded in 1998, 1999, and 2000 was not great. I also note that Respondent's confusion may have been based on discussions at a prior inspection. The record suggests that the proposed civil penalty be reduced from \$500 to \$250 per blowdown valve. Accordingly, having reviewed the record and considered the assessment criteria and mitigating factors, I assess Respondent a civil penalty of \$38,250.

Based upon the adjustment of the civil penalty, a request has been made to the Financial Operations Division, Federal Aviation Administration, to make a similar adjustment in the amount paid by Kinder Morgan.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 3a, 3b, 4a, and 6a-6c. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations.

1. In regards to Item 3(a), 3(b) and 6(a)-6(c) of the Notice, review the MAOP for each of your line segments to determine the correct MAOP and pressure control set points for regulators and overpressure protection devices.
 - A. Within 60 days of the receipt of this Final Order, Respondent must submit a plan and implementation schedule to evaluate each of its line segments to determine the correct MAOP and pressure control set points for regulators and overpressure protection devices to the Director, Central Region, OPS.
 - B. Within 1 year of the receipt of this Final Order, Respondent must complete the evaluation of its line segments to determine the correct MAOP and pressure control set points for regulators and overpressure protection devices.
 - C. Submit documentation, records and notice of completed actions to the Director, Central Region, OPS, 901 Locust Street, Suite 462, Kansas City, MO 64106-2641.
2. In regard to Item 4(a) of the Notice, 385 miles of TOG pipe that has not been evaluated for atmospheric corrosion:
 - A. Perform a study to determine areas of atmospheric corrosion and establish a continuing program to inspect TOG pipe for atmospheric corrosion.

- B. Within 60 days of the receipt of this Final Order, Respondent must submit a plan and implementation schedule for the study of areas of atmospheric corrosion.
 - C. Inspect and remediate any findings of active corrosion on your TOG pipe in the region in increments. The inspection and remediation shall be complete within three (3) years of receipt of this Final Order.
 - D. Submit documentation, records and notice of completed actions to the Director, Central Region, OPS, 901 Locust Street, Suite 462, Kansas City, MO 64106-2641.
3. The Director, Central Region may grant an extension of time for compliance with any of the terms of this order for good cause. A request for an extension must be in writing.

WARNING ITEMS

The Notice did not propose any civil penalties or compliance actions with respect to the following items; therefore, Respondent is warned that if it does not take appropriate corrective action to address these items and OPS finds a violation in a subsequent inspection, enforcement action will be taken.

Item 1 in the Notice alleged that Respondent failed to follow maintenance procedures to annually inspect five fire extinguishers at the Holdrege Compressor Station, as required by 49 C.F.R. § 192.605.

Item 2a in the Notice alleged inadequacies in Respondent's Operations, Maintenance and Emergencies Manual, as it incorrectly listed the MAOP for pipeline #0018, NE/KS State line to Holdrege, as 800 psi. The correct MAOP is 795 psi.

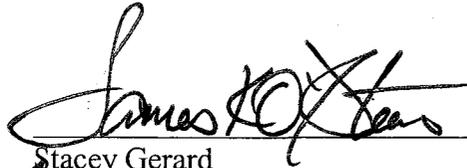
Item 2b in the Notice alleged inadequacies in Respondent's Operations, Maintenance and Emergencies Manual, as it incorrectly listed the MAOP for pipeline #0063, the Franklin Lateral, as 656 psi. The correct MAOP is 505 psi.

Item 5 in the Notice alleged that Respondent failed to test and inspect the relief device for the Guernsey Compressor Station, unit #3003, within the required 15 months interval, in accordance with 49 C.F.R. § 192.731.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective

action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

Failure to comply with any aspect of this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.



Stacey Gerard
Associate Administrator
for Pipeline Safety

MAY - 4 2004

Date Issued