

**NOV 16 2010**

Mr. Ron McClain  
Vice President, Operations  
Kinder Morgan Energy Partners, L.P.  
500 Dallas Street, Suite 1000  
Houston, TX 77002

Mr. Wes Christensen  
Senior Vice President, NGL Operations  
ONEOK North System, L.L.C.  
100 West 5th Street  
Tulsa, Oklahoma 74103

**Re: CPF No. 3-2007-5007**

Dear Mr. McClain and Mr. Christensen:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and specifies actions that need to be taken by the pipeline's current owner and operator, ONEOK North System, L.L.C., to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Central Region, 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. David Barrett, Director, Central Region, PHMSA

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 0633 & 0862]**

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

	)	
<b>In the Matter of</b>	)	
	)	
<b>Kinder Morgan Energy Partners, L.P.</b>	)	<b>CPF No. 3-2007-5007</b>
<b>and</b>	)	
	)	
<b>ONEOK North System, L.L.C.,</b>	)	
	)	
<b>Respondents.</b>	)	
	)	

**FINAL ORDER**

On April 4-8, 11-15, and 25-29, and May 9-13, 2005, 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 on-site pipeline safety inspection of the facilities and records of the North System pipelines then operated by Kinder Morgan Energy Partners, L.P. (Kinder Morgan), in Illinois, Missouri, Indiana, Iowa, Kansas, and Nebraska, later acquired by ONEOK North System, L.L.C.(ONEOK). The North System is comprised of approximately 1629 miles of pipelines carrying refined petroleum products and highly volatile liquids.<sup>1</sup>

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Kinder Morgan, by letter dated March 6, 2007, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Kinder Morgan had violated 49 C.F.R. § 195.432 and proposed ordering Kinder Morgan to take certain measures to correct the alleged violations.

Kinder Morgan responded by letter dated April 12, 2007 (Response). Kinder Morgan contested the allegations, but submitted a plan for satisfying the Proposed Compliance Order. The Director replied to Kinder Morgan on July 13, 2007, and rejected its proposed plan finding it inconsistent with the terms of the Proposed Compliance Order.

Kinder Morgan notified PHMSA on August 10, 2007, of its plan to sell its North System pipeline facilities to ONEOK and suggested that ONEOK, rather than Kinder Morgan, should have the opportunity to respond in relation to the Proposed Compliance Order in the Notice. PHMSA had no objection and provided ONEOK with the opportunity to respond to the Notice.

---

<sup>1</sup> On October 5, 2007, ONEOK North System, L.L.C. (ONEOK), acquired the North System from Kinder Morgan and became the operator of this system. ONEOK is a subsidiary of ONEOK Partners, L.P.

ONEOK responded to the Notice by letter dated December 12, 2007, in which it confirmed its acquisition of Kinder Morgan's North System and that it had received Notice of this ongoing compliance proceeding in connection with the acquisition and reserved its right to a hearing. ONEOK also provided information to PHMSA on its efforts to satisfy the terms of the Proposed Compliance Order and requested a meeting. OPS regional staff met with ONEOK on July 31, 2009 at which time ONEOK submitted a proposed plan and schedule to satisfy the Proposed Compliance Order. ONEOK withdrew its request for a hearing by e-mail dated December 17, 2009, and thereby waived its right to a hearing.

### **FINDINGS OF VIOLATION**

**Item 1:** The Notice alleged that Kinder Morgan violated 49 C.F.R. § 195.432(b), which states:

**§ 195.432 – Inspection of in-service breakout tanks.**

- (a) . . . .
- (b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

The Notice alleged that Kinder Morgan violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of two in-service low-pressure steel aboveground breakout tanks, one in Lemont, Illinois, and the other in Morris, Illinois, in accordance with API Standard 653.<sup>2</sup> Specifically, the Notice alleged that although inspections of these tanks were performed, the procedure used to perform the inspections did not meet the requirements of API Standard 653. API Standard 653 requires shell wall thickness measurements every five years, routine monthly in-service inspections, and scheduled internal inspections, but Kinder Morgan's internal procedure, entitled "Operating Manual Maintenance Inspection of Storage Tanks and Vessels, Section III, number 03-02," did not contain these requirements.

In its Response, Kinder Morgan acknowledged that it had not carried out internal inspections of tanks, which are required by API Standard 653, but contended that it was not out of compliance because the inspections of these tanks were governed by § 195.432(a) and its procedures conformed to § 195.432(a). I find this argument unpersuasive. Section 195.432(a) does not apply to the breakout tanks at issue. These tanks are in-service low-pressure steel aboveground breakout tanks and therefore must be inspected as provided in § 195.432(b) and (c). Thus, § 195.432(a) is irrelevant.

---

<sup>2</sup> Section 195.432(b) provides that operators must inspect certain tanks according to section 4 of API Standard 653. However, Section 6, not Section 4, now contains the relevant provisions relating to inspections of the in-service breakout tanks described in Item 1. As PHMSA explained in a letter to Kinder Morgan dated July 13, 2007, API Standard 653 was revised in 1999, and the revised version was subsequently incorporated by reference into the Pipeline Safety Regulations. Section 4 of the earlier version addressed inspections, while inspections are covered by Section 6 of the revised standard.

Kinder Morgan further argued that under API Standard 653 it was not required to carry out the tank inspections until 2009. It based this argument on § 195.432(d), which states that inspection intervals for inspections required under § 195.432(b) and (c) “begin on May 3, 1999, or on the operator’s last recorded date of inspection, *whichever is earlier.*” I find this argument unpersuasive. API Standard 653 requires internal inspections of tanks every ten years. The regulation thus requires an operator to identify the date of the last inspection and schedule another inspection within ten years of that date. Unless the company can substantiate that the tanks were not previously inspected, the company is not permitted to calculate the inspection deadline for its tanks simply by adding ten years to May 3, 1999. This approach would be inconsistent with the requirements of API Standard 653 and the regulations.

Finally, Kinder Morgan argued that its procedures did require tank wall thickness to be measured every five years consistent with API Standard 653. However, Kinder Morgan’s procedures required such measurements only for tanks in corrosive service, while API Standard 653 requires wall thickness measurements of all tanks, whether in corrosive service or not.

Accordingly, based upon a review of all of the evidence, I find that Kinder Morgan violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of the two specified in-service low-pressure steel aboveground breakout tanks in accordance with API Standard 653.

**Item 2:** The Notice alleged that Kinder Morgan violated 49 C.F.R. § 195.432(c), which states:

**§ 195.432 – Inspection of in-service breakout tanks.**

(a) . . . .

(c) Each operator shall inspect the physical integrity of in-service steel aboveground breakout tanks built to API Standard 2510 according to section 6 of API 510.

The Notice alleged that Kinder Morgan violated 49 C.F.R. § 195.432(c) by failing to inspect the physical integrity of certain in-service steel aboveground breakout tanks built to API Standard 2510 according to section 6 of API Standard 510. Specifically, the Notice alleged that Kinder Morgan inspected 33 breakout tanks, in Lemont, Illinois; Morris, Illinois; Des Moines, Iowa; and Wichita, Kansas, according to the company’s relevant internal procedure, and that this procedure did not meet the requirements of API Standard 510. API Standard 510 provides that tank inspections should include shell wall thickness measurements, corrosion calculations, and scheduled internal inspections, but Kinder Morgan’s internal procedure, which is the same one referenced in Item 1, did not include these requirements.

In its Response, Kinder Morgan acknowledged that it did not carry out internal inspections of the tanks but contended that it was not required to inspect the 33 specified tanks according to API Standard 510 because the tanks were not built to API Standard 2510. Kinder Morgan argued that tanks built in conformity with the ASME Boiler and Pressure Vessel Code (ASME Code) do not automatically need to meet the requirements of API Standard 2510. I find this argument unpersuasive. Because the tanks were built according to ASME Code, and because API Standard 2510 requires that breakout tanks be built according to that code, the tanks at issue were built according to API Standard 2510. There is no evidence that API Standard 2510 contains any requirements with respect to the construction of breakout tanks other than that they

be built according to the ASME Boiler and Pressure Code. Therefore, any tank built according to the ASME Code was built in conformity with API Standard 2510. Accordingly, these tanks were built in conformity with API Standard 2510 and were required to be inspected according to API Standard 510.

Kinder Morgan further argued that it was not required to carry out the tank inspections until 2009. It presented the same argument it advanced in Item 1 with respect to the inspection deadline. For the reasons discussed above, in the absence of evidence that the tanks were not previously inspected, the regulations do not permit Kinder Morgan to calculate the inspection deadline for its tanks simply by adding ten years to May 3, 1999.

Accordingly, based upon a review of all of the evidence, I find that Kinder Morgan violated 49 C.F.R. § 195.432(c) by failing to inspect the physical integrity of specific in-service steel aboveground breakout tanks in accordance with section 6 of API Standard 510.

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

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for the violations of 49 C.F.R. § 195.432. 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. In its letter of July 31, 2009, ONEOK expressed its intent to complete the actions set forth in the proposed compliance order and described the actions it had initiated thus far. These actions included:

1. ONEOK submitted a plan and schedule to inspect the tanks described in Items 1 and 2 (Plan). As to the tanks discussed in Item 1, the Plan provided for inspections consistent with API Standard 653. As to the tanks discussed in Item 2, the Plan provided for inspections consistent with API Standard 510.
2. ONEOK has completed the tank inspections described in the Plan.

ONEOK has thus partially satisfied the proposed compliance order, but not all aspects of the proposed compliance order are fully completed. Accordingly, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, ONEOK is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations<sup>3</sup>:

1. ONEOK must submit copies of the written procedures it used to conduct the tank inspections.

---

<sup>3</sup> As the current operator, it is now ONEOK's responsibility to bring the facilities into compliance with the regulations and complete the terms of the Compliance Order.

2. ONEOK must submit to the Director, Central Region, tank inspection reports for the inspections that it carried out pursuant to the Plan. Such reports must include, at a minimum, records of inspection results, third-party inspection recommendations, any resulting repairs or alterations, and other findings and outcomes of the inspections.
3. ONEOK must submit a summary report and notice of completed actions to the Director, Central Region including all required documentation within 6 months of receipt of this Final Order.
4. ONEOK must maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Central Region. Costs must be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies, and analyses, and 2) total cost associated with replacements, additions, and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 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. 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, 2<sup>nd</sup> 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. Unless the Associate Administrator, upon request, grants a stay, the 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