

MAR 07 2007



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

901 Locust Street, Suite 462  
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION  
AND  
PROPOSED COMPLIANCE ORDER**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

March 6, 2007

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

**CPF 3-2007-5007**

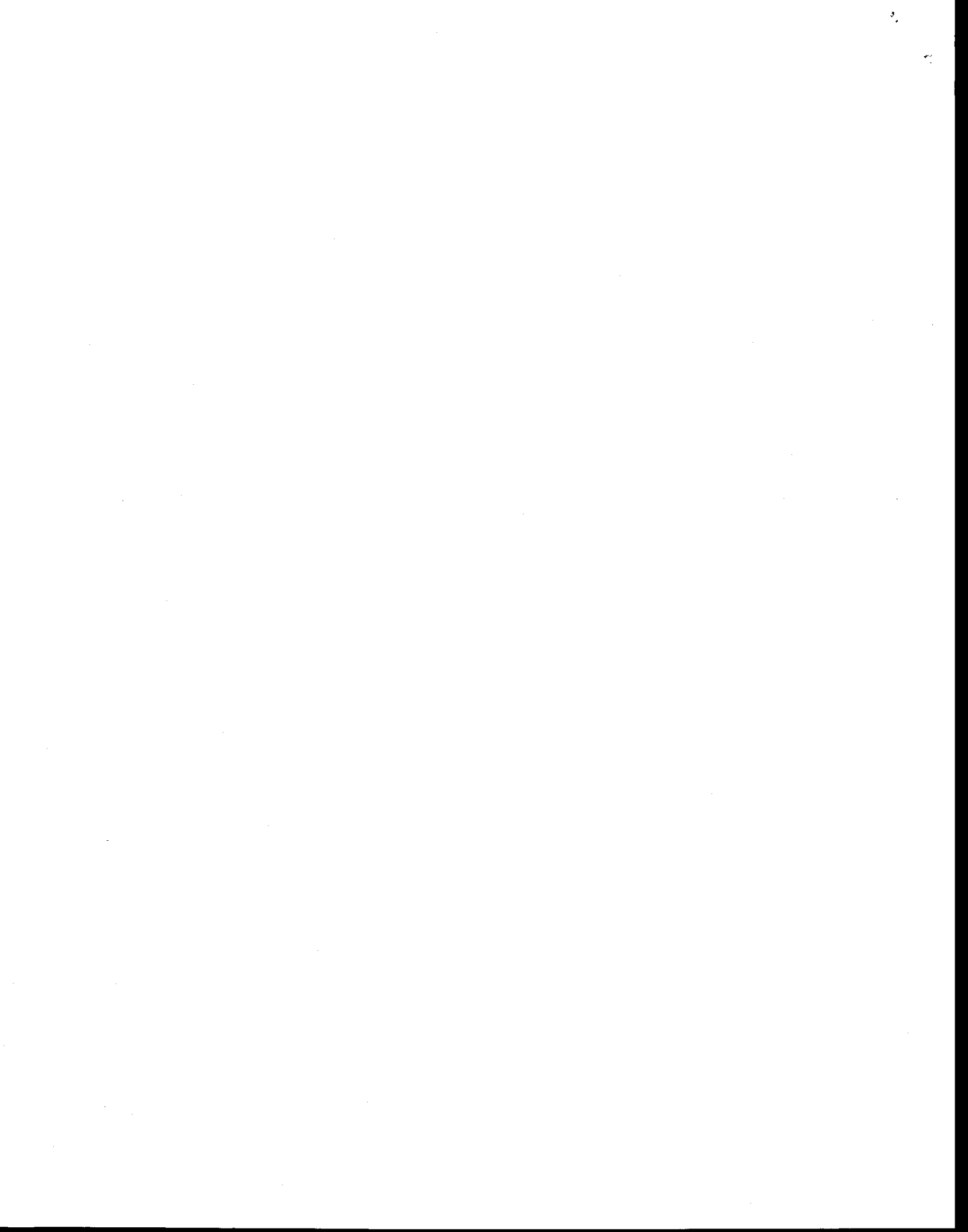
Dear Mr. McClain:

On April 4-8, April 11-15, April 25-29, and May 9-13, 2005, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your pipeline facilities in Illinois, Iowa, Kansas, Missouri, Indiana, and Nebraska.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§195.432 Breakout tanks.**
  - (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).**

Kinder Morgan has not conducted inspections of breakout tanks according to the requirements of API Standard 653. The Lemont, IL and Morris, IL facilities have one breakout tank each, spherical tanks with a maximum operating pressure (MOP) of 10 psig. The tank at Lemont was built in 1967 and the tank at Morris was built in 1975,



with both tanks constructed to API Standard 620, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks." Since the tanks were constructed per API 620, they are low-pressure breakout tanks that require inspection according to API 653 as stated in §195.432(b). Kinder Morgan inspected these two tanks according to its breakout tank inspection procedure, "Operating Manual Maintenance Inspection of Storage Tanks and Vessels, Section III, number 03-02," which does not address all the requirements listed under Section 4 of API 653. For example, as referenced by §195.432(b), API 653 specifies tank shell evaluation including shell wall thickness measurements, corrosion rate calculations, and internal tank inspections, but these items were not addressed in Kinder Morgan's procedures. Therefore, the two low-pressure breakout tanks at Lemont, IL and Morris, IL have not been inspected according to API 653 as required by §195.432(b). See Exhibit # 1 for the identification of the two breakout tanks.

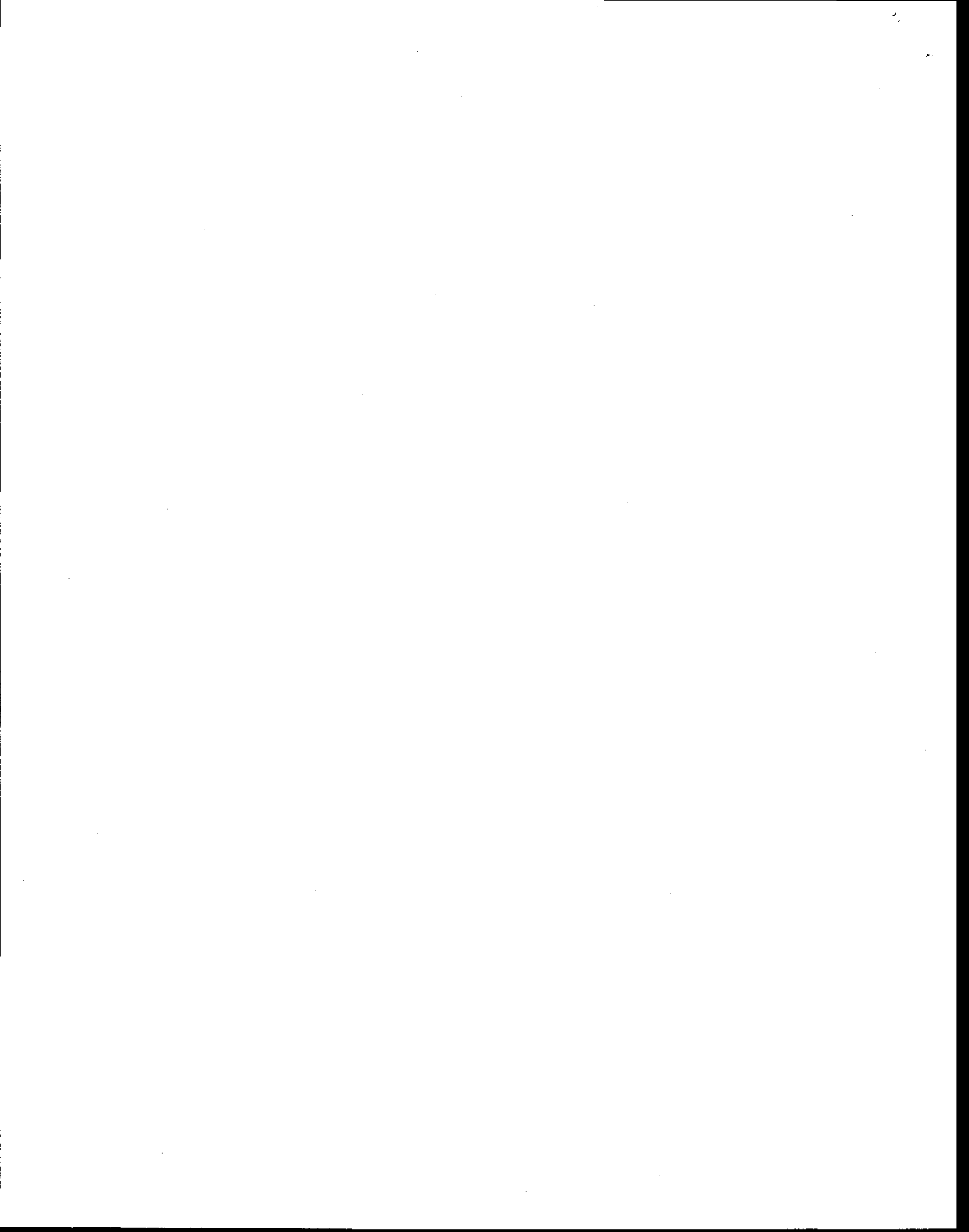
2. **§195.432 Breakout tanks.**

**(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.**

Kinder Morgan has not conducted inspections of breakout tanks according to the requirements of API 510. The Lemont, IL facility has one breakout tank, a spherical tank with a MOP of 125 psig. The Morris, IL facility has 27 breakout tanks as follows: three spherical tanks with MOP's ranging from 50 to 80 psig, and 24 bullet-type tanks each with a MOP of 250 psig. The Des Moines, IA facility has one breakout tank, a bullet-type tank with a MOP of 312 psig. The Wichita, KS facility has four breakout tanks, spherical tanks with MOP's ranging from 40 to 60 psig. Each of these 33 breakout tanks were constructed per the ASME pressure vessel code, from the years 1963 to 1990.

Editions of the API Standard 2510, "Design and Construction of LPG Installations," including the 1<sup>st</sup> edition of June 1957, state that tanks constructed per API 2510 shall meet the requirements of the ASME Boiler and Pressure Vessel Code. Since these 33 breakout tanks are ASME pressure vessels, they meet the tank design and construction standards of the prior editions of API Standard 2510, and require inspection per API 510 as stated in §195.432(c).

Kinder Morgan inspects these 33 breakout tanks according to its breakout tank inspection procedure, "Operating Manual Maintenance Inspection of Storage Tanks and Vessels, Section III, number 03-02," which does not address all the requirements listed under section 6 of API 510. For example, as referenced by §195.432(c), API 510 specifies tank shell evaluation including shell wall thickness measurements, corrosion rate calculations, and internal tank inspection, but these items were not addressed in Kinder Morgan's procedures. Therefore, the 33 breakout tanks located at Lemont, Morris, Des Moines, and Wichita have not been inspected according to API 510 as required by §195.432(c). See Exhibit # 2 for the identification of the 33 breakout tanks.



Proposed Compliance Order

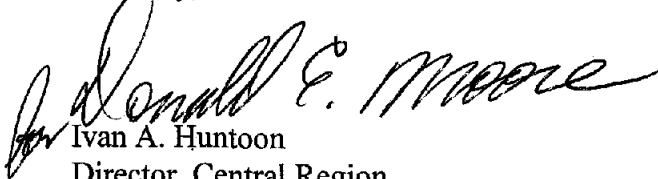
Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Kinder Morgan Energy Partners, L.P. Please refer to the *Proposed Compliance Order* that is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2007-5007** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Ivan A. Huntoon  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration

Enclosures:     *Proposed Compliance Order*  
                    *Response Options for Pipeline Operators in Compliance Proceedings*



## PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Kinder Morgan Energy Partners, L.P. a Compliance Order incorporating the following remedial requirements to ensure the compliance of Kinder Morgan Energy Partners, L.P. with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to the inspection of two low-pressure steel aboveground breakout tanks per section 4 of API 653, provide PHMSA with a plan, schedule, and procedures to inspect these tanks. At a minimum the plan shall include performing an internal inspection for each tank. The procedures that will be utilized to inspect the tanks shall be fully documented and provide a description of how each element required by API 653 is to be accomplished. Submit the plan, schedule, and procedures to the Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Room 462, Kansas City, MO 64106.
2. In regard to Item Number 2 of the Notice pertaining to the inspection of 33 breakout tanks per section 6 of API 510, provide PHMSA with a plan, schedule, and procedures to inspect these tanks. The plan shall include performing an internal inspection of each tank. The procedures that will be utilized to inspect the tanks shall be fully documented and provide a description of how each element required by API 510 is to be accomplished. Submit the plan, schedule, and procedures to the Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Room 462, Kansas City, MO 64106.
3. The proposed inspection plans, schedules, and procedures in Items 1 and 2 of the Compliance Order shall be submitted to the Director, Central Region, Pipeline and Hazardous Materials Safety Administration within 60 days following Kinder Morgan's receipt of the Final Order. The proposed internal inspections in Items 1 and 2 of the Compliance Order shall be completed within 2 years of your receipt of the Final Order.
4. As internal inspections are completed for each tank, a report for each tank shall be prepared and submitted to the Director, Central Region that includes, but is not limited to, the following: records of the inspection results, third party inspection recommendations, any resulting repairs or alterations, and other findings and outcomes of the inspections. When all appropriate actions have been completed in regard to the above items in this Compliance Order, submit a summary report and notice of completed actions to the Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Room 462, Kansas City, MO 64106.
5. Kinder Morgan shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director,





Central Region, Pipeline and Hazardous Materials Safety Administration. Costs shall be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost of replacement, additions, and other changes to the pipeline infrastructure.

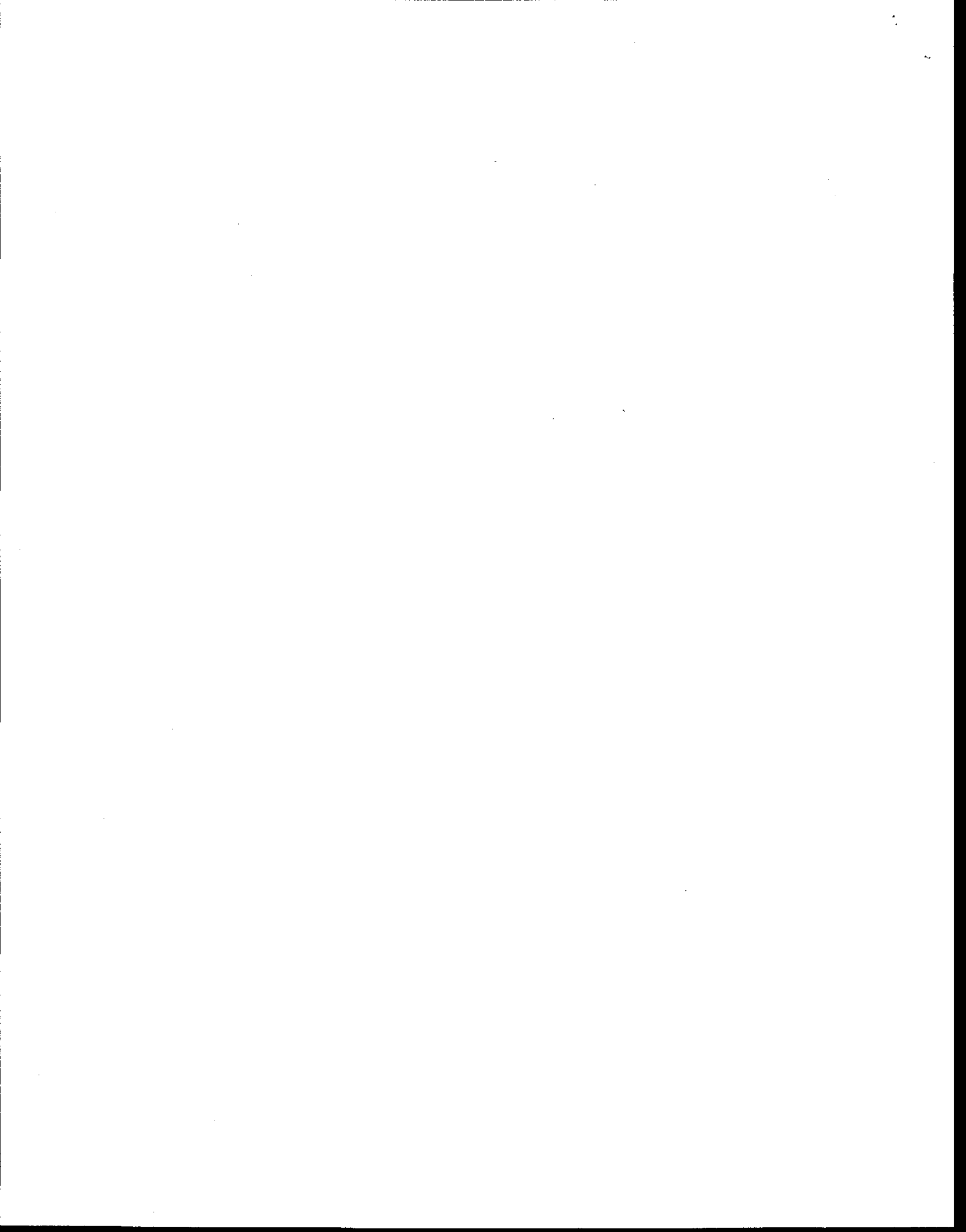


Exhibit # 1  
 2005 PHMSA Standard Inspection  
 Kinder Morgan Breakout Tanks that require inspection  
 in according to the requirements of API Standard 653

Item #	LOCATION	NAME/TAG #	Type of Tank
1	LEMONT	GASOLINE TK.	Sphere
2	MORRIS	GASOLINE TK.	Sphere

Exhibit # 2  
 2005 PHMSA Standard Inspection  
 Kinder Morgan Breakout Tanks that require inspection  
 in according to the requirements of API 510

Item #	LOCATION	NAME/TAG #	Type of Tank
1	LEMONT	SLOP TK.	Sphere
2	MORRIS	TK. #1	Bullet
3	MORRIS	TK. #2	Bullet
4	MORRIS	TK. #3	Bullet
5	MORRIS	TK. #4	Bullet
6	MORRIS	TK. #5	Bullet
7	MORRIS	TK. #6	Bullet
8	MORRIS	TK. #7	Bullet
9	MORRIS	TK. #8	Bullet
10	MORRIS	TK. #9	Bullet
11	MORRIS	TK. #10	Bullet
12	MORRIS	TK. #11	Bullet
13	MORRIS	TK. #12	Bullet
14	MORRIS	TK. #13	Bullet
15	MORRIS	TK. #14	Bullet
16	MORRIS	TK. #15	Bullet
17	MORRIS	TK. #16	Bullet
18	MORRIS	TK. #17	Bullet
19	MORRIS	TK. #18	Bullet
20	MORRIS	ISO BUTANE TK.	Sphere
21	MORRIS	BUTANE TK. #1	Sphere
22	MORRIS	BUTANE TK. #2	Sphere
23	MORRIS	PROPYLENE TK. #1	Bullet
24	MORRIS	PROPYLENE TK. #2	Bullet
25	MORRIS	PROPYLENE TK. #3	Bullet
26	MORRIS	PROPYLENE TK. #4	Bullet
27	MORRIS	PROPYLENE TK. #5	Bullet
28	MORRIS	PROPYLENE TK. #6	Bullet
29	DES MOINES	BUTANE BLEND TK.	Bullet
30	WICHITA	T-201A	Sphere
31	WICHITA	T-201B	Sphere
32	WICHITA	T-202	Sphere
33	WICHITA	T-204	Sphere



## **Response Options for Pipeline Operators in Compliance Proceedings**

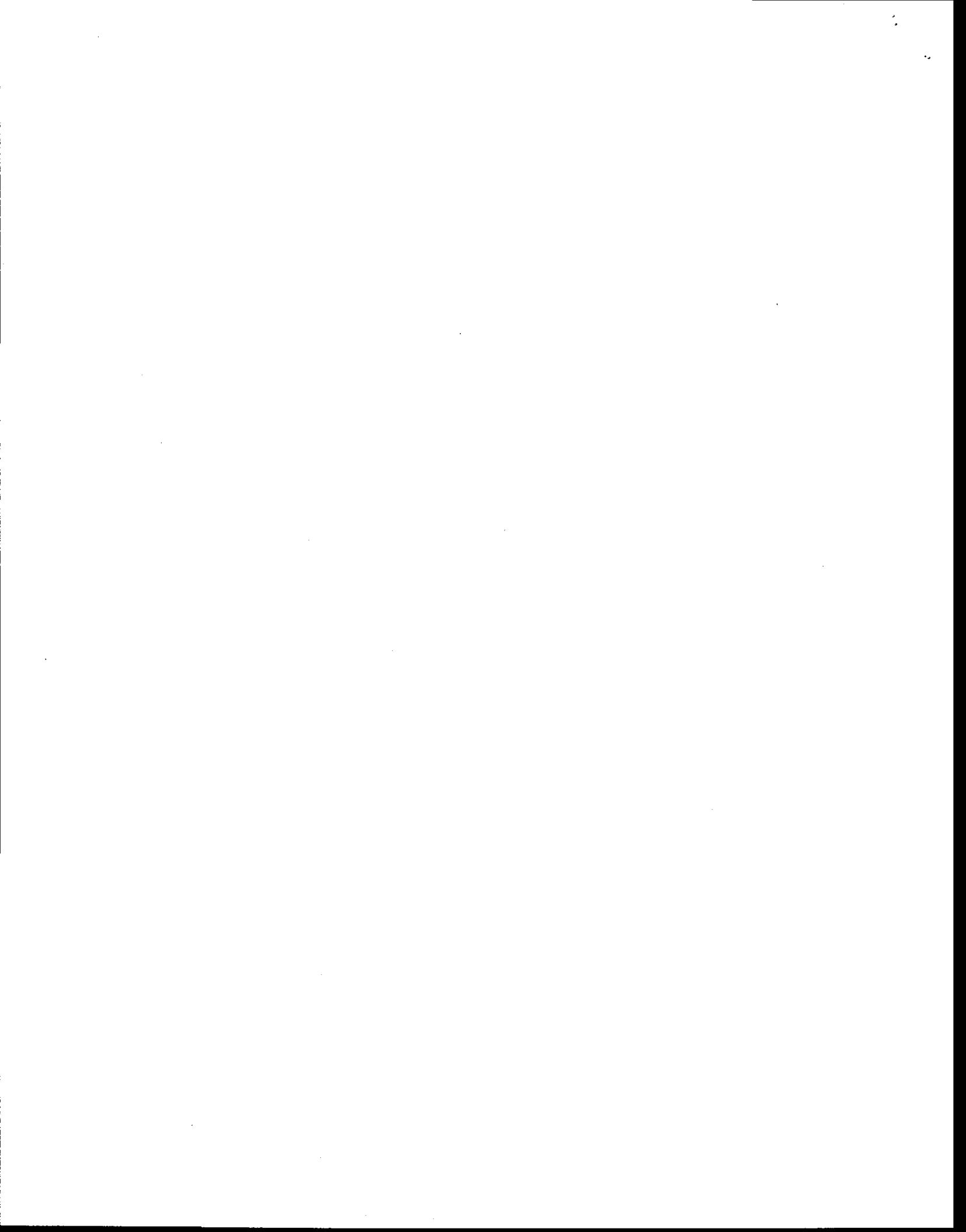
The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

### **I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:**

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. **When the Notice contains a proposed CIVIL PENALTY\* --**
  1. Pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to make findings and to close the case with prejudice to the respondent. Payment terms are outlined below;
  2. Submit written explanations, information, or other materials in response to the allegations and/or seek elimination or mitigation of the proposed civil penalty. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based; or
  3. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.
  
- b. **When the Notice contains a proposed COMPLIANCE ORDER\* --**
  1. Notify the Regional Director that you intend to take the steps in the proposed compliance order;
  2. Submit written explanations, information, or other materials in answer to the allegations in the Notice and object to or seek clarification of the proposed compliance order items in whole or in part; or
  3. Request a hearing as described below to contest the allegations and/or proposed compliance order items;
  
- c. **When the Notice contains a WARNING ITEM --**

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.



\* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

## II. Procedures for Responding to a NOTICE OF AMENDMENT\*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. Notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. Submit written explanations, information, or other materials in answer to the allegations in the Notice and/or object to or seek clarification of the proposed amendment items in whole or in part; or
- c. Request a hearing as described below to contest the allegations in the Notice.

\* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

## III. Procedure for Requesting a Hearing

A request for a hearing must be in writing and accompanied by a statement of the issues which the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

## IV. Extensions of Time

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.





V. **Freedom of Information Act**

Any material prepared by PHMSA, including the violation report, the Notice, and any order issued in this case, and any material provided to PHMSA by the respondent, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If the information you provide is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to [http://www.sba.gov/ombudsman/dsp\\_faq.html](http://www.sba.gov/ombudsman/dsp_faq.html).



## VII. PAYMENT INSTRUCTIONS

### *Civil Penalty Payments of Less Than \$10,000*

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration  
 Mike Monroney Aeronautical Center  
 Financial Operations Division (AMZ-300) P.O. Box 25082  
 Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

### *Civil Penalty Payments of \$10,000 or more*

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

### INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number



**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #1** - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5** - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

**Block #7** - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

**Block #9** - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #10** - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

**NOTE:** A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

November 2006

