

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY**

UPS NEXT DAY AIR

June 15, 2012

Mr. M. Dwayne Burton
Vice President, Operations and Engineering
Rockies Express Pipeline, LLC
Kinder Morgan Energy Partners, L.P.
500 Dallas Street, Suite 1000
Houston, Texas 77002

CPF 3-2012-1005

Dear Mr. Burton:

In 2006, pursuant to 49 U.S.C. §60118(c) and 49 C.F.R. §190.341, Rockies Express Pipeline, LLC (REX) filed a special permit request with the Pipeline & Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), for a waiver from certain provisions of 49 C.F.R. §192 (§192.111 and §192.201). PHMSA issues special permits to pipeline operators if the agency determines that a waiver of a particular regulation or standard is not inconsistent with pipeline safety. On July 5, 2006, PHMSA issued an order granting REX a special permit with certain conditions and limitations (Order). *See* PHMSA-2006-23998.

The western portion of REX's pipeline system (REX West) is a 713-mile, 42-inch diameter pipeline that transports natural gas from Weld County, Colorado, to Audrain County, Missouri. In calendar years 2007 and 2008, Kinder Morgan Energy Partners, L.P. (KM) built and began its operation.

On numerous occasions, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected the pipeline facilities and records on REX West to confirm the company's compliance with the Order.

As a result of the inspection, it appears that you have committed a probable violation of the Order. As stated in 49 C.F.R. §190.203(f), when information obtained from an inspection indicates that further OPS action is warranted, OPS may initiate one or more enforcement proceedings prescribed in §§190.207 through 190.235.

The item inspected and the probable violation is:

1. Condition 17 - Order Granting Special Permit [Docket No. PHMSA-2006-23998; Notice 2] Pipeline Safety: Grant of Waiver; Rockies Express Pipeline

Depth of Cover: The soil cover must be a minimum of 36 inches except in areas where threats from chisel plowing or other activities require the top of the pipeline to be installed one foot below the deepest penetration.

In July 2006, PHMSA issued an order granting REX a special permit with certain conditions and limitations (Order). KM did not install REX West with a minimum soil cover of at least 36 inches in 27 areas as required by the Order. A depth of cover survey conducted by KM (at the request of PHMSA) in December of 2008 found 27 areas, totaling approximately 713 feet in length, with a depth of cover less than the 36 inches that is required by the Special Permit. The areas of shallow cover were located on Spreads 2 and 3 in southwest Nebraska. KM later remediated these areas of shallow cover.

Proposed Civil Penalty

Under 49 United States Code, §60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$61,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$61,800

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 3-2012-1005** and for each document you submit, please provide a copy in electronic format whenever possible.

Right to Modify, Suspend, or Revoke a Special Permit

Issuance of this enforcement action does not preclude PHMSA's authority to seek modification, suspension or revocation of the special permit issued under PHMSA-2006-23998 at any time, as provided in 49 C.F.R. §190.341(h)(1).(v). If such action is taken, PHMSA will provide REX with the opportunity to show cause why the proposed action should not be taken.

Sincerely,

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*