

October 13, 2021

VIA ELECTRONIC MAIL TO: tom_martin@kindermorgan.com

Tom Martin
President, Gas Pipelines
Kinder Morgan, Inc.
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

Re: CPF No. 3-2021-042-NOPV

Dear Mr. Martin:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes other findings of violation, and specifies actions that need to be taken by Kinder Morgan Utopia, LLC 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 electronic mail is effective upon the date of transmission 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. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Kenneth Grubb, Chief Operating Officer, Natural Gas Pipelines, Kinder Morgan,
kenneth_grubb@kindermorgan.com
Mr. Jaime Hernandez, Director, Engineering, Codes and Compliance, Kinder Morgan,
jaime_hernandez@kindermorgan.com

CONFIRMATION OF RECEIPT REQUESTED

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

In the Matter of)	
)	
Kinder Morgan Utopia, LLC, a subsidiary of Kinder Morgan, Inc.,)	CPF No. 3-2021-042-NOPV
)	
Respondent.)	
)	

FINAL ORDER

From March 4, 2019, through September 27, 2019, pursuant to 49 U.S.C. § 60117, representatives 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 Kinder Morgan Utopia, LLC (KM Utopia or Respondent) in Ohio and Michigan, specifically, KM Utopia’s roughly 266 miles of pipeline that transports natural gas liquids, primarily ethane, from Harrison County, Ohio through Detroit, Michigan and across the Detroit River into Ontario, Canada.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 24, 2021, 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 KM Utopia had committed two violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$17,200 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional two warning items pursuant to 49 C.F.R. § 190.205, which required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

KM Utopia responded to the Notice by letter dated June 23, 2021 (Response). Respondent contested one of the allegations, 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.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.310(a), which states:

§ 195.310 Records.

(a) A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

The Notice alleged that Respondent violated 49 C.F.R. § 195.310(a) by failing to have complete pressure test records. At the time of inspection, KM Utopia provided pressure test records for its pipeline segments 1a, 1b, 2ab, 2c, 2d, 2e1, and 2e2 that were either missing information required by § 195.310(b), incomplete according to Respondent's procedure L-O&M1600 Section 8.1e, or both. Specifically, the Notice alleged that KM Utopia failed to provide temperature recorder calibration certificates and associated records for segment 1b and pressure recorder calibration certificates and associated records for segment 2ab, as required by § 195.310(b). Further, the Notice alleged Respondent's "Hydrotest Test Report"¹ records for segments 1a, 1b, 2ab, 2c, 2d, 2e1, and 2e2 failed to identify the serial numbers of the deadweight tester and the pressure and temperature chart recorder as their procedures required. KM Utopia's records for segments 2c, 2d, 2e1, and 2e2 also indicated the use of a pressure recorder but no corresponding pressure calibration records were submitted by the Respondent.

In its Response, KM Utopia contested PHMSA's allegations and noted that, while all of the relevant pressure test information had not been provided during the inspection, the Respondent had records of nearly all of the information required to comply with § 195.310(a) at that time. Respondent asserted that, if PHMSA had more specifically identified its concerns, it would have been able to provide PHMSA with the records needed to show compliance. KM Utopia also noted that it had been able to acquire the one record it was missing from a vendor.² As part of its Response, KM Utopia provided PHMSA with the additional records.

Upon review of these documents, the Regional Director submitted a written evaluation of the response material pursuant to § 190.209(b)(7) confirming the records evidence compliance with the requirements of § 195.310(a). Accordingly, after considering all of the evidence, I withdraw the alleged violation.

In the future, Respondent is reminded that it must provide all reasonable assistance during an inspection and must make records and information available when requested by PHMSA to facilitate a compliance review. Respondent may not wait until enforcement has commenced before providing records previously requested by PHMSA as evidence of compliance.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

§ 195.412 Inspection of rights-of-way and crossings under navigable

¹ The Notice describes these records as the "Hydrotest Test Reports" while the Response describes these records as "Hydrostatic Test Reports." For consistency, I will use the term "Hydrotest Test Reports." *Compare* Notice, at 3, *with* Response, at 4.

² KM Utopia conceded that it did not realize that a vendor had failed to provide the company with the temperature recorder calibration certificate for segment 1b until after receipt of the Notice. *See* Response, at 4–5.

waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) by failing to use appropriate methods to inspect the surface conditions on or adjacent to certain pipeline rights-of-way. Specifically, the Notice alleged that KM Utopia failed to employ appropriate methods for inspecting the surface conditions on or adjacent to the pipeline right-of-way at one location in PHMSA Unit 84290 and at eight locations in PHMSA Unit 89739.³ PHMSA inspectors reviewed Respondent's aerial patrol information for PHMSA Unit 84290 and walked portions of the right-of-way in PHMSA Unit 89739 and noted these locations as areas where aerial patrol was inappropriate but where KM Utopia was unable to provide records that it had employed an alternative appropriate means of inspecting the surface conditions.

In its Response, KM Utopia did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to use appropriate methods to inspect the surface conditions on or adjacent to pipeline rights-of-way at one location in PHMSA Unit 84290 and at eight locations in PHMSA Unit 89739.

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.⁴

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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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

³ The locations were in PHMSA Unit 84290 near Ridge Road and Strasburg Bolivar Road and in PHMSA Unit 89739 at Sandusky River crossing, at Wolfe Creek crossing, at Muskellunge Creek, at the Rock Quarry near the marker that still referenced Plains Pipeline at the time of inspection, at the railroad crossing near Mile Post 169.1, near 1031 Kieswetter Road in Holland, Ohio, at Oak Valley road, and near 8716 Willow Boulevard in Sylvania, Ohio. See Notice, at 4–5.

⁴ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

proposed a total civil penalty of \$17,200 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$17,200 for Respondent's alleged violation of 49 C.F.R. § 195.310(a). Since this alleged violation has been withdrawn, the proposed penalty is not assessed.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 4 in the Notice for violation of 49 C.F.R. § 195.412(a). 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.412(a) (**Item 4**), Respondent must submit a plan and schedule of action that includes clearing the right-of-way and for using other methods of inspection when clearing is not possible or has not yet occurred for the identified locations. The plan must include identifying sections of pipeline right-of-way throughout the system that are overgrown and will remain overgrown for a period of time while awaiting clearing or will not be cleared. For these sections identified in Item 4, if KM Utopia has already performed clearing actions since the time of the inspection and receipt of this Final Order, the records associated with this action must be provided as part of the plan submitted. KM Utopia must use an alternate means of inspection, as opposed to flying, to comply with inspection of the surface conditions on or adjacent to the pipeline right-of-way as required by § 195.412 until cleared. KM Utopia must provide the plan and action schedule within 30 days from the date of receipt of the Final Order to the Director, Central Region. KM Utopia must implement the plan and schedule within 120 days from the date of receipt of the Final Order. Inspection records for the cleared and uncleared locations in Item 4 shall be provided to the Director, Central Region for six months following receipt of the Final Order.

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

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties

not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), 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.

WARNING ITEMS

With respect to Items 1 and 3, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.49 (**Item 1**) — Respondent’s alleged failure to comply with the DOT Form PHMSA F 7000-1.1 instructions by failing to report accurate HCA-related mileage in 2019 and by reporting no commercially navigable river mileage despite the pipeline crossing the Detroit River, a commercially navigable river; and

49 C.F.R. § 195.402(a) (**Item 3**) — Respondent’s alleged failure to follow its written procedures by failing to conduct the 2018 annual review of its Emergency Response Plan as required under § 195.402, KM Utopia’s procedure L-O&M-003 titled “Procedure Review,” and its Emergency Response Plan.

KM Utopia requested withdrawal of Item 3, because it contends that PHMSA has mischaracterized the requirements of KM Utopia’s procedures and § 195.402(a). Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of the order, including corrective action, remain in effect 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.

October 13, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued