

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

VIA ELECTRONIC MAIL TO: tom_martin@kindermorgan.com ,
jaime_hernandez@kindermorgan.com , and quintin_frazier@kindermorgan.com

May 24, 2021

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

RE: Kinder Morgan Utopia, LLC

CPF 3-2021-042-NOPV

Dear Mr. Martin:

From March 4, 2019, through September 27, 2019, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) Central Region, pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected procedures, facilities, and records relevant to the Kinder Morgan Utopia, LLC (KM Utopia) system in Ohio and Michigan.

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

1. **§ 195.49 Annual report.**

Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

KM Utopia failed to submit an annual report in 2019 with accurate HCA-related mileage as required by § 195.49 and the DOT Form PHMSA F 7000-1.1 instructions. The pipeline was operational in 2018. The initial annual report filed with PHMSA on June 10, 2019, indicated 0 miles of HCA-related pipeline in Ohio. However, documents provided by KM Utopia during the inspection indicated HCA-related mileage in Ohio (“2017 Utopia HVL HCA & EFRD Analysis” and “2017 KMEP Utopia HCA Results”).

Further, the revised 2019 annual report (submitted for 2018 assets), filed with PHMSA on February 5, 2020, reported no commercially navigable river crossing mileage yet the pipeline crosses the Detroit River, which is a commercially navigable river.

PHMSA recognizes that, after the inspection, KM Utopia corrected and amended its HCA mileage in its annual report. However, at the time of the inspection, KM Utopia had failed to accurately identify its HCA mileage. Moreover, KM Utopia still failed to correctly identify the Detroit River as a commercially navigable water crossing even in its revised submittal.

Therefore, KM Utopia failed to comply with the DOT Form PHMSA F 7000-1.1 instructions as required under § 195.49.

2. **§ 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.

KM Utopia failed to have pressure test records for PHMSA Unit 84290 and KM Utopia pipeline segments 1b and 2ab, as required by § 195.310. Under § 195.310(a), each operator must make a record of each pressure test, and retain that record for as long as the facility is in use. Section 195.310(b) identifies what the operator must include in the required record. The record must include:

- (1) The pressure recording charts;
- (2) Test instrument calibration data;
- (3) The name of the operator, the name of the person responsible for making the

- test, and the name of the test company used, if any;
- (4) The date and time of the test;
 - (5) The minimum test pressure;
 - (6) The test medium;
 - (7) A description of the facility tested and the test apparatus;
 - (8) An explanation of any pressure discontinuities, including test failures, that appear on the pressure recording charts;
 - (9) Where elevation differences in the section under test exceed 100 feet (30 meters), a profile of the pipeline that shows the elevation and test sites over the entire length of the test section; and
 - (10) Temperature of the test medium or pipe during the test period.

PHMSA reviewed the hydrostatic test records for the KM Utopia Pipeline segment 1b (Station 980+00 to 2207+04) and segment 2ab (Station 2207+04 to 3522+00) and determined that these records did not contain the required information. The temperature recorder calibration certificates and associated records were missing for segment 1b and the pressure recorder calibration certificates and associated records were missing for segment 2ab.

Further, KM Utopia's records titled, "Hydrotest Test Report" for KM Utopia segments 1a, 1b, 2ab, 2c, 2d, 2e1, and 2e2 were incomplete. The records did not identify in the data fields titled, "Description of Test Apparatus", the serial numbers of the deadweight tester, pressure and temperature chart recorder, as outlined on the form, and as required by KM Utopia's procedure L-O&M1600 Section 8.1e. KM Utopia's records for segments 2c, 2d, 2e1, and 2e2 indicated the use of a pressure recorder, but the operator did not provide the corresponding pressure calibration records (3613 recorder). Without confirmation of how KM Utopia configured this pressure recorder in the description of the test apparatus, PHMSA cannot confirm that KM Utopia used the 3613 pressure recording equipment only as a backup piece of pressure recording equipment.

3. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies...

KM Utopia did not follow its written procedures, as required under § 195.402(a), by failing to conduct the 2018 annual review under L-O&M-003 titled "Procedure Review" and its Emergency Response Plan. Specifically, Kinder Morgan's procedure L-O&M-003 states in Section 2 Scope, "This procedure outlines the process for the review of the operations and maintenance, abnormal operations, and emergency procedures. Starting in Calendar year 2018, this annual review process will include site specific procedures." Under KM Utopia's procedures, the operator was to begin the annual review process in 2018.

KM Utopia's Emergency Response Plan, "Kinder Morgan Utopia LLC/LTD Pipeline" (Emergency Response Plan) states in Section 1.4, Plan Review and Update Procedures, that KM Utopia must review the plan once each calendar year, at intervals not to exceed 15 months. The Emergency Response Plan was created in October 2017 and the Utopia Pipeline system became operational in January 2018.

PHMSA requested all versions of the Emergency Response Plan from 2017, to 2019, including any revision logs. KM Utopia's revision log for the Emergency Response plan, as well as other responses from Kinder Morgan, did not include any documentation that the operator conducted a review of the Emergency Response Plan in 2018, as required by KM Utopia's procedures.

4. § 195.412 Inspection of rights-of-way and crossings under navigable 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.

KM Utopia failed to use appropriate methods to inspect the surface conditions on or adjacent to each pipeline right-of-way as required by § 195.412(a).

PHMSA reviewed information regarding Kinder Morgan's aerial patrols including the stretch of canopy near Ridge Road and Strasburg Bolivar Road located in PHMSA Unit 84290. The operator responded to PHMSA that this area is considered Protected Wilderness Tract and no clearing is allowed. The operator did not provide any records indicating it employed any other appropriate methods to inspect the surface conditions on or adjacent to the pipeline right-of-way.

In addition, PHMSA inspectors walked portions of the right-of-way and observed conditions for the following locations associated PHMSA Unit 89739:

- At Sandusky River crossing, tree canopy and/or vegetation was overgrown.
- At Wolfe Creek crossing, (near MBV 153), tree canopy and/or vegetation was overgrown.
- At Muskellunge Creek, tree canopy and/or vegetation was overgrown.
- At the Rock Quarry (near the marker that still referenced Plains Pipeline at the time of the inspection), vegetation was overgrown.
- The rail road crossing near Mile Post 169.1, vegetation was overgrown.
- Kieswetter Rd (west), tree canopy and/or vegetation was overgrown near 1031 Kieswetter Rd in Holland, Ohio.
- At Oak Valley Rd, tree canopy and/or vegetation was overgrown.

- At Willow Pond Blvd, tree canopy and/or vegetation was overgrown near 8716 Willow Pond Blvd in Sylvania, Ohio.

Kinder Morgan did not provide records for PHMSA Unit 89739 (KM UTOPIA - OH EDS), applicable to the locations noted above, that indicated the operator used any other inspection methods beyond aerial patrol to inspect the surface conditions on or adjacent to the pipeline right-of-way. Therefore, the operator failed to comply with the requirements of § 195.412(a).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019, and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018, and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015, and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$17,200 as follows:

<u>Item number</u>	<u>PENALTY</u>
Item 2	\$17,200

Warning Items

With respect to Items 1 and 3, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these Items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to Item 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Kinder Morgan Utopia LLC. Please refer to the *Proposed Compliance Order*, which 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 Enforcement Proceedings*. Please refer to this document and note the response options. All

material you submit in response to this enforcement action may be 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2021-042-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

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

CC: Quintin Frazier, Director-Compliance Codes/Standards,
quintin_frazier@kindermorgan.com
Jaime Hernandez, Director – Engineering: Codes and Standards,
jaime_hernandez@kindermorgan.com

PROPOSED COMPLIANCE ORDER

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

1. In regard to Item number 4 of the Notice pertaining to inspection of specific locations on the rights-of-way and crossings under navigable waters, KM Utopia 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 number 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.
2. It is requested (not mandated) that KM Utopia maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. Ochs, Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Room 462, Kansas City, MO 64106. 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 costs associated with replacements, additions and other changes to pipeline infrastructure.