

November 30, 2017

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

Re: CPF No. 4-2016-5026

Dear Mr. Martin:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Kinder Morgan Wink Pipeline, LLC. It makes findings of violations, assesses a civil penalty of \$183,800, and specifies actions that need to be taken by Kinder Morgan Wink Pipeline, LLC, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective upon the date of mailing 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: Director, Southwest Region, Office of Pipeline Safety, PHMSA
Jessica Toll, Esquire, Assistant General Counsel, Kinder Morgan Wink Pipeline, LLC,
370 Van Gordon Street, Lakewood, CO 80228
Mr. Kenneth H. Havens, Jr., Vice President-Source and Transportation, Kinder Morgan
Wink Pipeline, LLC, 1001 Louisiana Street, Suite 1000, Houston, TX 77002

CERTIFIED MAIL - RETURN 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 Wink Pipeline, LLC,)	CPF No. 4-2016-5026
a subsidiary of Kinder Morgan, Inc.,)	
)	
Respondent.)	
)	

FINAL ORDER

On multiple occasions between October 6, 2014, and February 18, 2015, 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 Wink Pipeline, LLC (KM Wink or Respondent), a subsidiary of Kinder Morgan, Inc., in Wink, Texas. KM Wink has 454 miles of crude oil pipelines and delivers approximately 145,000 barrels of oil per day.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 3, 2016, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 195.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that KM Wink had committed four violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$183,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible enforcement action.

KM Wink responded to the Notice by letter dated September 7, 2016 (Response). The company contested Item 2 only, provided an explanation of its actions, requested that the proposed civil penalty be reduced, and requested a hearing. By letter dated March 3, 2017, Respondent withdrew its challenge to Item 2 and waived its right to a hearing, but suggested that certain changes be made to the proposed Compliance Order.

¹ Pipeline Safety Violation Report (Violation Report), (Aug. 3, 2016) (on file with PHMSA), at 1; (<https://www.kindermorgan.com/pages/business/co2/pipelines/wink.aspx> (last accessed Aug. 11, 2017)).

FINDINGS OF VIOLATION

KM Wink did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3), which states:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following: . . .

(1) ...

(3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a)(3) by operating its pipeline at a pressure that exceeded eighty percent (80%) of the test pressure for any part of the pipeline that had been pressure tested under subpart E of Part 195. Specifically, the Notice alleged that for 25 pipeline segments, the stated maximum operating pressure (MOP) exceeded what should have been the actual MOP under § 195.406(a)(3). It further alleged that KM Wink exceeded the appropriate MOP because the company failed to correctly calculate the MOP using the lowest test pressure seen during the test and failed to correctly adjust the pressure for elevation. Following the inspection, KM Wink recalculated the MOP for the pipelines (Wink to El Paso, Snyder to Wink, and McCamey to Wink) using the lowest pressure recorded during the first four hours of the test, but these new results still allegedly showed several segments with an incorrect MOP.

In its Response, Respondent contested this allegation of violation and requested a hearing regarding this Item. The company subsequently withdrew its objection based on KM Wink's understanding that PHMSA would be issuing a modified compliance order. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(a)(3) by operating its pipeline at a pressure that exceeded 80% of the test pressure for any part of the pipeline that had been pressure tested under subpart E of Part 195.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a) ...

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, *see* § 195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service low-pressure above-ground breakout tanks at the required intervals according to American Petroleum Institute (API) Standard 653. Specifically, the Notice alleged that KM Wink failed to comply with the required interval of five years for performing External In-Service and Ultrasonic Thickness Inspections for six low-pressure breakout tanks. The Notice alleged that Tank Nos. 3, 7, 8, 27, 28, and 29 did not receive such inspections at the required five-year intervals.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of six in-service low-pressure above-ground breakout tanks at the required intervals according to API Standard 653.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) ...

(d) *Breakout tanks.* You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API RP 651 (incorporated by reference, *see* § 195.3). However, this inspection is not required if you note in the corrosion control procedures established under § 195.402(c)(3) why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d) by failing to inspect each cathodic protection system used to control corrosion on the bottom of an above-ground breakout tank to ensure operation and maintenance of the system are in accordance with API Recommended Practice (RP) 651. Specifically, the Notice alleged that KM Wink failed to inspect numerous cathodic protection test points for breakout tanks 7, 8, 27, 28, and 29 over the period 2012-2014. Additionally, there were test points with readings below the -850 mV criteria specified in API RP 651 for adequate cathodic protection at breakout tanks 3, 8, and 29 over the period 2012-2014.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(d) by failing to inspect each cathodic protection system used to control corrosion on the bottom of an above-ground breakout tank to ensure operation and maintenance of the systems are in accordance with API RP 651.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.571, which states:

§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic

protection contained [in] paragraphs 6.2.2, 6.2.3, 6.2.4, 6.2.5 and 6.3 in NACE SP 0169 (incorporated by reference, *see* § 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.571 by failing to have adequate cathodic protection levels to meet the criteria required by NACE SP 0169, paragraphs 6.2 or 6.3, on the El Paso to Wink pipeline. Specifically, the Notice alleged that for three consecutive years (2012 through 2014), at the same five locations, the 100 mV criteria was not attained. In addition, the native/static values were more negative than the IR free (current-off) values for 11 occasions in the 2012 data, for seven occasions in the 2013 data, and for eight occasions in the 2014 data.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.571 by failing to have adequate cathodic protection levels on the El Paso to Wink pipeline.

These findings of violation will be considered prior offenses 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.² 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; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. 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 proposed a total civil penalty of \$183,800 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$65,800 for Respondent's violation of 49 C.F.R. § 195.406(a)(3). As discussed above, I found that Respondent operated its pipeline at a pressure that exceeded 80% of the test pressure for any part of the pipeline that had been pressure-tested under subpart E of Part 195. KM withdrew its request for a hearing on this Item and no longer contests the proposed penalty. I find the record supports the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$65,800 for violation of 49 C.F.R. § 195.406(a)(3).

Item 3: The Notice proposed a civil penalty of \$37,800 for Respondent's violation of 49 C.F.R. § 195.432(b). As discussed above, I found that Respondent failed to inspect the physical integrity of six in-service low-pressure above-ground breakout tanks at the required intervals

² These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

according to API Standard 653. KM Wink did not contest the allegations of violation but requested that the penalty be mitigated because it had identified the overdue tank inspections and taken action “to coordinate and expedite the scheduling of those inspections” prior to the OPS inspection.³ Respondent explained the compliance actions it had taken to ensure that the violation would not be repeated, including the implementation of new compliance-management software and appropriate action plans.

Although KM Wink may have identified and expedited the overdue tank inspections prior to the 2014-15 PHMSA inspection, I find the information presented by Respondent insufficient to justify mitigation of the proposed penalty. First, by the time KM Wink identified the late inspections, they were long overdue, in some cases by as much as two years, and thus could not be re-done or corrected. Second, the company has not presented any documentation or other evidence showing when it discovered the non-compliances or how the cause of the non-compliances was subsequently corrected. While it is commendable that KM Wink discovered the violation and took action to prevent a recurrence in the future, the fact remains that safety was compromised by the company’s failure to conduct timely inspections. I therefore find no justification to reduce the proposed penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$37,800 for violation of 49 C.F.R. § 195.432(b).

Item 4: The Notice proposed a civil penalty of \$37,800 for Respondent’s violation of 49 C.F.R. § 195.573(d). As discussed above, I found that Respondent failed to inspect each cathodic protection system used to control corrosion on the bottom of above-ground breakout tanks. KM Wink did not contest these allegations of violation but requested that the penalty be mitigated based on compliance actions it had taken since the PHMSA inspection. I do not find that such actions justify a civil penalty reduction, because any prudent operator is expected to take appropriate corrective actions once a violation has been discovered during the course of a PHMSA inspection.⁴ Respondent failed to take appropriate action to comply with a requirement that was clearly applicable, and as a result, pipeline integrity was compromised. This violation was discovered by PHMSA. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$37,800 for violation of 49 C.F.R. § 195.573(d).

Item 5: The Notice proposed a civil penalty of \$42,400 for Respondent’s violation of 49 C.F.R. § 195.571, for failing to have adequate cathodic protection levels to meet the criteria required by NACE SP 0169, paragraphs 6.2 or 6.3, on the El Paso to Wink pipeline. KM Wink did not contest this allegation of violation but requested that the penalty be mitigated based on compliance actions it had taken since the PHMSA inspection. As stated above, I do not find that such actions justify a civil penalty reduction, because any prudent operator is expected to take appropriate corrective actions once a violation has been discovered during the course of a PHMSA inspection. Respondent failed to take appropriate action to comply with a requirement

³ Response at 3.

⁴ See, e.g., *Citgo Pipeline Co.*, Final Order, CPF No. 4-2005-5012, at 3 (July 14, 2005) (stating that corrective action taken after the OPS inspection did not justify reducing the proposed penalty).

that was clearly applicable, and as a result, pipeline integrity was compromised. This violation was discovered by PHMSA. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$42,400 for violation of 49 C.F.R. § 195.571.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$183,800**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$183,800 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2, 4, and 5 in the Notice for violations of 49 C.F.R. §§ 195.406(a)(3), 195.573(d), and 195.571, respectively. 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 § 195.406(a)(3) (**Item 2**), Respondent must calculate the MOP of each pipeline segment as required by § 195.406 and establish the proper MOP for each line segment. KM Wink must reset all over-pressure protection along each line segment. KM Wink has determined the MOP for each line segment according to the procedure and calculations discussed and agreed upon with the Region in the February 15, 2017 meeting held between the parties. KM Wink must reset all affected over-pressure protection within 90 days following the receipt of this Final Order.
2. With respect to the violation of § 195.573(d) (**Item 4**), Respondent must remediate low and missing reads for each cathodic protection system used to control corrosion on the bottom of each aboveground breakout tank in accordance with API RP 651. This requirement refers to breakout tanks 3, 7, 8, 27, 28, and 29. KM Wink must

complete the remediation work within 180 days from receipt of this Final Order.

3. With respect to the violation of § 195.571 (**Item 5**), Respondent must remediate the cathodic protection system along the El Paso to Wink pipeline to meet adequate CP levels and achieve the criteria established by NACE SP 0169, sections 6.2 to 6.3. KM Wink must complete the remediation work on the El Paso to Wink pipeline CP system to meet adequate CP levels within one year from receipt of this Final Order.

It is requested (not mandated) that KM Wink maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. 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.

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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (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 ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.404(c)(1) (**Item 1**) — Respondent’s alleged failure to have records documenting the date, location, and description of pipeline repairs from previous years. Specifically, the Notice alleged that from October 2013 through June 2014, KM Wink conducted seven dig-inspections on identified anomalies called by current ILI runs, only to discover that the anomalies had been previously repaired with composite or Type B sleeves. *KM Liquid O&M Manual Procedure L-O&M 213, Section 5 “Documentation, 5.1 Per requirements of DOT and NEB (OPR Section 41 and CSA Z662 Section 10.3.3), 5.1.1”* requires that employees “[p]roperly document all leaks and pipe repairs on L-OM200-02 Pipeline Inspection/Repair Report.”

KM Wink presented information in its Response showing that it had taken certain actions to address this cited item. If OPS finds a violation of this provision 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 filing of a petition automatically stays the payment of any civil penalty assessed. The other 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.

November 30, 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued