



VIA E-MAIL AND FED EX OVERNIGHT DELIVERY

September 7, 2016

Attention: Mr. Rod M. Seeley
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration
Southwest Region Office
8701 S. Gessner, Suite 360
Houston, Texas 77074

**RE: Notice of Probable Violation and Proposed Civil Penalty, CPF No. 4-2016-5026
Response and Request for Hearing, Request for Documents, and Preliminary Statement of Issues**

Dear Mr. Seeley:

Kinder Morgan Wink Pipeline LLC (KM Wink or the Company) received the above referenced Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (NOPV or Notice) on August 8, 2016. This response is therefore timely. The Notice alleges that KM Wink committed five probable violations of the federal pipeline safety regulations and proposes a total civil penalty of \$183,800. KM Wink is not contesting Items 1, 3, 4 or 5 and provides responses to those alleged violations below for consideration of penalty mitigation, pursuant to 49 C.F.R. Part 190.208(a)(2). With respect to Item 2, however, KM Wink is contesting that alleged violation, proposed penalty and compliance order and respectfully submits the attached Request for Hearing, Request for Documents and Preliminary Statement of Issues, pursuant to 49 C.F.R. Part 190.211.

KM Wink Response to Items 1, 3, 4, and 5

1. **§ 195.404 Maps and records.**
 - (c) **Each operator shall maintain the following records for the periods specified:**
 - (1) **The date, location, and description of each repair made to pipe shall be maintained for the useful life of the pipe.**

KM Wink failed to have records documenting the date, location, and description of pipeline repairs from previous years.

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 states, "Properly document all leaks and pipe repairs on L-OM200-02 Pipeline Inspection/Repair Report"

From October 2013 through June 2014, KM has conducted seven (7) dig-inspections on identified anomalies called by current ILI runs only to discover that the anomalies have been previously repaired with composite or Type B sleeves.

KM Wink Response: Our documentation provides the locations for historical digs. KM Wink purchased the Wink System in September 2004, and began making repairs based on the 2003 ILI run completed by the previous operator. Between 2004 and 2008, 1,126 digs were completed. Those anomaly dig locations utilized ILI odometer (ODO) information to identify and document repairs; however, this method of identification is not capable of replication. In 2008, KM Wink adopted the Kinder Morgan Liquids Operations and Maintenance Manual (L-O&M), and in accordance with those procedures began using joint numbers to identify anomaly locations. This method proves more effective for maintaining replicable anomaly location information, archiving, and historical reference. KM Wink continues to advance documentation processes including the transfer of historical repair records into the Pipeline Open Data Standard (PODS) system to efficiently verify prior repairs. Anytime there is a need to confirm the extent of repairs by actual excavation, KM Wink does not hesitate to do so.

3. § 195.432 Inspection of in-service breakout tanks.

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653 (incorporated by reference, see § 195.3). 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).

KM Wink failed to inspect the physical integrity of in-service atmospheric and low-pressure aboveground breakout tanks at the required intervals according to API Standard 653. The operator failed to comply with the required interval of 5 years for the External In-Service inspection and the Ultrasonic Thickness inspection.

Six KM Wink low pressure breakout tanks have not received external and ultrasonic thickness inspections at the required interval pursuant to API 653. Specifically, tanks 3, 7, 8, 27, 28, and 29 have not received external inspections at the required five-year interval pursuant to API 653.

The details are as follows:

- Tank No. 3: Reviewed December 7, 2012 Report for EC/UT In-service Inspection, and the previous inspection was on February 3, 2005. Thus, Tank No. 3 exceeded the 5-year inspection period required by API 653.
- Tank No. 27: Reviewed Out-of-Service inspection report dated July 7, 2009, documentation that an inspection was required in July 2014. Tank No. 27 was inspected on November 11, 2014, which exceeded the 5-year inspection period required by API 653.
- Tank No. 7: The tank was last inspected on December 4, 2012, external only, and was previously inspected on April 24, 2006. Thus, Tank No. 7 exceeded the 5-year inspection period required by API 653.
- Tank No. 8: The In-Service EC/UT inspection report dated December 4, 2012 was reviewed. The prior inspection was done on October 9, 2006. Thus, Tank 8 exceeded the 5-year inspection period required by API 653.

- Tank 28: An Out-of-Service inspection was done on January 1 - February 3, 2012. The prior inspection was done on August 12, 2005. Thus, Tank 28 exceeded the 5-year inspection period required by API 653.
- Tank 29: An Out-of-Service inspection was done on April 5-6, 2011. The prior In-Service inspection was done on August 12, 2005. Thus, Tank 29 exceeded the 5-year inspection period required by API 653.

KM Wink Response: Prior to the inspection, KM Wink identified the overdue tank inspections during an internal records review, and took action to coordinate and expedite the scheduling of those inspections. At the time of the PHMSA inspection, all tanks had been inspected in compliance with 195.432(b), although KM Wink did exceed the required intervals from the previous tank inspection cycle. KM Wink tank inspection intervals have been added to OpsInfo, a software application utilized by all KM entities, designed to manage compliance activities. In addition, any recommendations identified during tank inspections will be included in an action plan, addressed, and completion documented, as appropriate, in compliance with Part 195 and KM Wink procedures.

4. **§ 195.573 What must I do to monitor external corrosion control?**

- (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 Recommended Practice 651. However, this inspection is not required if you note in the corrosion control procedures established under § 195.402(c)(3) why compliance with all or certain operation and maintenance provisions of API Recommended Practice 651 is not necessary for the safety of the tank.**

KM Wink failed to ensure through inspection that the operations and maintenance of each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank is in accordance with API Recommended Practice 651.

During the inspection, PHMSA inspectors noted that KM Wink failed to inspect numerous test points for breakout tanks 7, 8, 27, 28, and 29 over the period 2012-2014. Additionally, there are test points below the -850 mV criteria for breakout tanks 3, 8, and 29 over the period 2012-2014.

PHMSA reviewed the cathodic protection records and found the following results:

- Tank 3 - 2012 CP read - center of tank floor below criteria from 4/28/2012 until 4/12/2014
- Tank 7 - 2012 CP reads - missing the center and mid-center reads from 4/28/2012 until 4/5/2014
- Tank 8 - 2012 CP reads - the center and mid-center reads below criteria from 4/28/2012 and missing on 5/8/2013 & 4/12/2014
- Tank 27 - 2012 CP reads - the center, mid-center, NE, NW, SE, & SW reads are missing from 4/28/2012 forward.
- Tank 28 - 2012 CP reads - all reads missing for year 2012; the center, mid-center, NE, NW, SE, & SW reads are missing from 5/08/2013 forward.
- Tank 29 - 2012 CP reads - the center and mid-center reads below criteria from 4/28/2012, and the NE, NW, SE, & SW reads are missing from 4/28/2012 forward.

KM Wink Response: KM Wink has implemented corrective actions to capture the missing tank cathodic protection readings. In addition, KM Wink confirmed that the tank cathodic protection readings meet adequate cathodic protection levels. Please note that tank 7 has a concrete bottom; therefore, no readings could be taken in the center and mid-center of the tank. In compliance with Part 195 and KM Wink procedures, inadequate tank cathodic protection readings will be included in an action plan, addressed, and completion documented, as appropriate.

5. **§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 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](#)).**

KM Wink records do not demonstrate the operator achieved 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.

The data was reviewed covered the three year period (2012-2014). Records for the El Paso to Wink, Wink to McCamie, and the Wink to Snyder pipeline segments in the CPDM system were reviewed. An -0.850 mV cathodic protection applied criteria and a 100 mV cathodic polarization criteria are identified for each test point.

Records for 2012 through 2014 on the El Paso to Wink pipeline identify numerous locations that did not meet the stated 100 mV polarization criteria. For three consecutive years (2012 through 2014), at the same 5 locations, the 100 mV criteria was not attained. Still further, the native/static values were more negative than the IR free (current-off) values for 11 occasions in the 2012 data, for 7 occasions in the 2013 data, and for 8 occasions in the 2014 data.

KM Wink Response: In 2015-2016, KM Wink performed extensive work to bring the El Paso to Wink pipeline to adequate cathodic protection levels. Our actions included hiring a Corrosion Consultant/Subject Matter Expert to review cathodic protection survey data. Based on the Subject Matter Expert and KM Wink's reviews, we completed 57 digs where survey readings were below criteria, and completed 64 digs that were identified as potential areas of cathodic protection shielding. In addition, 10 new rectifiers and ground beds have been installed to sustain adequate cathodic protection requirements. Inadequate cathodic protection readings will be included in an action plan, addressed, and completion documented, as appropriate, pursuant to Part 195 and KM Wink procedures.

As outlined above, KM Wink is already undertaking the remediation and evaluation outlined in PHMSA's proposed compliance order associated with Items 4 and 5. In light of the above responses to the uncontested allegations, KM believes that the penalty associated with Items 3, 4 and 5 warrants mitigation and reduction.

With respect to Item 2, and as outlined further in the attached Request for Hearing, KM Wink is respectfully contesting that alleged violation, the associated proposed penalty, and the proposed compliance order. The Company believes that PHMSA is incorrect as to the allegations underlying Probable Violation Item 2, and looks forward to discussing and resolving any remaining concerns of PHMSA at or before the hearing.

KM Wink takes its pipeline safety obligations seriously, as well as any allegations of violations. We believe that the above responses should clarify the circumstances regarding alleged violations nos. 1, 3, 4 and 5, and the attached Request for Hearing explains the Company's position as to the remaining alleged violation number 2.

Please do not hesitate to contact me at 303-914-7630 if you have any questions.

Respectfully submitted,

Kinder Morgan Wink Pipeline LLC

Respectfully submitted,

A handwritten signature in black ink that reads "Jessica Toll". The signature is written in a cursive style with a large, looping initial "J".

By: Jessica Toll, Esq.

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Lakewood, CO 80228

(303) 914-7630

Jessica_toll@kindermorgan.com

Counsel for Kinder Morgan Wink Pipeline LLC

Enclosures

cc: Mr. Lawrence White, Presiding Official, Office of Chief Counsel, PHMSA
Amelia Samaras, Presiding Official, Office of Chief Counsel, PHMSA
Mr. Kenneth H. Havens, Jr., Vice President of Source and Transportation, Kinder Morgan
Mr. Scott Muston, Director of Operations and Engineering, Kinder Morgan
Catherine D. Little, Hunton & Williams
Annie M. Cook, Hunton & Williams

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**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Washington, D.C.**

In the Matter of)	
)	
Kinder Morgan Wink Pipeline LLC)	CPF No. 4-2016-5026
)	Notice of Probable Violation
Respondent.)	
)	

**REQUEST FOR HEARING, REQUEST FOR DOCUMENTS
AND PRELIMINARY STATEMENT OF ISSUES**

Request for Hearing

Kinder Morgan Wink Pipeline LLC (KM Wink or the Company) respectfully requests an in-person hearing on the above referenced Notice of Probable Violation (Notice or NOPV), which includes Proposed Civil Penalty and Proposed Compliance Order, pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211(b). This NOPV was issued via certified mail on August 3, 2016 by the Pipeline and Hazardous Materials Safety Administration (PHMSA), and received by KM Wink on August 8, 2016. This request is therefore timely pursuant to 49 C.F.R. § 190.208.

As required by 49 C.F.R. § 190.211(b), this Request for Hearing includes a Statement of Issues. As required by 49 C.F.R. Part 190.211(a), please be advised that the Hunton & Williams law firm, along with KM Wink Counsel Jessica Toll, will represent the Company at any hearing that is scheduled for this matter.

KM Wink is committed to ensuring public safety, and the Company is committed to working with PHMSA to achieve that goal. As part of that overall commitment, KM Wink is filing this Request for Hearing to address issues and clarify the facts underlying Item 2 of the NOPV. As set forth below, the Company respectfully requests that Item 2 (including the associated \$65,800 Proposed Civil Penalty and associated Item 2 of the Proposed Compliance Order be withdrawn.

Request for Documents

To ensure a full and fair hearing and pursuant to 49 C.F.R. § 190.208(c), KM Wink respectfully requests that PHMSA provide a copy of its Pipeline Safety Violation Report and any accompanying evidence in this matter, including any supporting documentation reviewed by the Compliance Officer in developing the recommended civil penalty.

In addition, and pursuant to 49 C.F.R. §§ 190.212(c)(2), (c)(3) and (c)(7), as well as 5 U.S.C. § 552(a)(2)(C), KM Wink requests copies of the following materials related to the proposed civil penalty in this case:

1. Copies of any penalty calculation worksheets or work papers for the specific penalty proposed in this case;
2. Copies of any administrative staff manuals or instructions to staff, including guidance, manuals, directions, procedures or any other documents that the Presiding Official or Associate Administrator rely on to determine a final civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225.

Preliminary Statement of Issues

Without admitting the facts and conclusions set forth in the NOPV, KM Wink respectfully contests the allegation of violation and proposed civil penalty contained with respect to Item 2 in the Notice, and intends to raise the following issues at the Hearing:

1. Notice Item 2 – 49 C.F.R. §195.406(a)(3).

- a. Whether Item 2 of the NOPV should be withdrawn because the Company met its obligations under 49 C.F.R. §195.406(a)(3) and associated Agency guidance and interpretations, contrary to the allegations in the Notice that it “fail[ed] to correctly determine the MOPs for multiple pipeline systems.”
- b. More particularly, whether Item 2 of the NOPV should be withdrawn because KM Wink properly calculated the maximum operating pressure under 49 C.F.R. §§ 195.304 and 195.406, and associated Agency guidance and interpretations, including accounting for the lowest test pressure and adjusting for elevation.

2. Proposed Civil Penalty

- a. Whether PHMSA’s \$65,800 proposed civil penalty must be withdrawn or reduced in light of the clarifications provided.
- b. Whether the record supports the proposed civil penalty in this case.
- c. Whether OPS’s current method of developing, proposing and assessing administrative civil penalties is consistent with applicable law and regulations.

3. Proposed Compliance Order

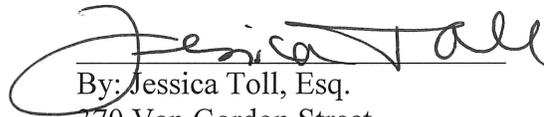
- a. Whether PHMSA's proposed Compliance Order Item 2 must be withdrawn.

At the hearing in this case, KM Wink intends to present evidence and engage in discussion with PHMSA on these issues. KM Wink reserves the right to revise and supplement this Statement of Issues at or before the Hearing. KM Wink also reserves the right to respond to any new factual assertions or arguments introduced by OPS during the proceeding of the case.

For all of these reasons identified above in this Request for Hearing and Statement of Issues, and in consideration of other matters as justice may require, the Company respectfully requests that PHMSA withdraw Item 2 of the NOPV, including the associated items of the Proposed Compliance Order and elements of the Proposed Civil Penalty.

September 7, 2016

Respectfully submitted,



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