

January 31, 2020

Mr. Steve Kean
Chief Executive Officer
Kinder Morgan, Inc.
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

Re: CPF No. 4-2019-1007

Dear Mr. Kean:

Enclosed please find the Final Order issued in the above-referenced case against your subsidiary, Tennessee Gas Pipeline Company, LLC (TGP). It withdraws one of the allegations of violation, makes a finding of violation and finds that TGP has completed the actions specified in the Notice to comply with the pipeline safety regulations. Therefore, this case is now 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Kenneth Grubb, Vice President – Operations and Engineering, TGP
Mr. Jamie A. Hernandez, Director Engineering – Codes and Compliance, TGP
Ms. Jessica Toll, Assistant General Counsel, TGP, 370 Van Gordon Street, Lakewood,
Colorado 80220
Ms. Katherine Little, Troutman Sanders, LLP, 600 Peachtree Street, NE, Suite 3000,
Atlanta, Georgia 30308

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)

Tennessee Gas Pipeline Company, LLC,)
a subsidiary of Kinder Morgan, Inc.,)

Respondent.)
_____)

CPF No. 4-2019-1007

FINAL ORDER

On multiple occasions between April 2, 2018, and September 21, 2018, 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 Tennessee Gas Pipeline Company, LLC (TGP or Respondent), a Kinder Morgan company,¹ in Louisiana and Texas. TGP is an approximately 11,750-mile transmission pipeline system that transports natural gas from Louisiana, the Gulf of Mexico and south Texas to the northeast section of the United States, including New York City and Boston.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 13, 2019, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TGP had violated 49 C.F.R. §§ 192.905 and 192.479 and proposed ordering Respondent to take certain measures to correct the alleged violations.

On June 18, 2019 TGP, through outside counsel, responded to the Notice by filing a Request for Hearing, Written Response, and Preliminary Statement of Issues (Response). TGP contested all of the allegations and requested a hearing. By letter dated August 26, 2019 (Withdrawal), Respondent withdrew its request for a hearing and thereby authorized the entry of this Final Order without further notice.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

¹ TGP's website, available at <https://pipeportal.kindermorgan.com/PortalUI/DefaultKM.aspx?TSP=TGPD> (last accessed January 6, 2020).

² *Id.*

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.905(b)(1), which states:

§ 192.905 How does an operator identify a high consequence area?

(a)

(b)(1) *Identified sites*. An operator must identify an identified site, for purposes of this subpart, from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.

The Notice alleged that Respondent violated 49 C.F.R. § 192.905(b)(1) by failing to properly identify an identified site as required by the regulation. Specifically, the Notice alleged that during the field inspection, PHMSA inspectors identified a playground located at Corina Peña Elementary School adjacent to the Sullivan City-Texas Garden pipeline (407D-500 to 407D-501) right-of-way and within its potential impact radius (PIR) that was not listed as an *identified site*.

In its Response, TGP contested the allegation of violation and stated that the playground is not an *identified site*, as defined by the regulation, but rather is only a “holding pond” that is infrequently used by the elementary school.³ Further, TGP proffered that it had “expressly discussed the school’s use of the vacant drainage area and school officials ... confirmed that the area is not used as an outdoor area of assembly such that it would meet PHMSA’s definition of an *identified site*”⁴ Finally, TGP argued that PHMSA must proffer sufficient evidence of use by 20 or more persons on at least 50 days in any 12-month period to make a determination that an area is an *identified site*.⁵

After reviewing the Response, the Director had further communications with the school and confirmed that the playground area did not meet the requirements of an identified site at the time of the inspection and requested that this Item be withdrawn.⁶

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent did not violate 49 C.F.R. § 192.905(b)(1) because the playground area did not meet the requirements of an *identified site* at the time of the inspection. I hereby order that Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.479, which states:

³ Response, at 2.

⁴ *Id.*

⁵ *See id.* (“PHMSA requires that there be evidence of use and the rule outlines specific criteria for that use ‘[a]t the site there needs to be evidence that the site is used by 20 or more persons on at least 50 days in any 12-month period.’”) (quoting Final Rule, 67 Fed. Reg. 50824, 50830 (Aug. 6, 2002)).

⁶ Region Recommendation, at 1-2.

§ 192.479 Atmospheric corrosion control: General

(a) Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

(b) Coating material must be suitable for the prevention of atmospheric corrosion.

(c) Except portions of pipelines in offshore splash zones or soil-to-air interfaces, the operator need not protect from atmospheric corrosion any pipeline for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will—

(1) Only be light surface oxide; or

(2) Not affect the safe operation of the pipeline before the next scheduled inspection.

The Notice alleged that Respondent violated 49 C.F.R. § 192.479 by failing to clean and coat portions of its pipeline exposed to the atmosphere at the Victoria compressor station. Specifically, the Notice alleged that PHMSA inspectors observed several portions of the compressor suction piping with deteriorating coating conditions where the coating was cracking, peeling, and disbonding. Further, the Notice alleged that although TGP provided evidence that the compression station suction piping had been cleaned and recoating shortly after the inspection, TGP's procedure titled "CorrPD-006" did not require recoating when the coating was cracked, peeled, or disbonded, and therefore did not have clear and definitive thresholds to determine grading of pipeline coating condition as required by the regulation.

In its Response TGP contested the allegation of violation on the grounds that its atmospheric corrosion procedures are "more stringent than [the] minimum requirements in 49 C.F.R. 192.479(a) and have proven to be effective in managing atmospheric corrosion."⁷ TGP further challenged the allegation of violation by arguing that the regulation cited does not always require recoating where coating is cracked, peeled, or disbonded, and PHMSA has never notified the public that it interprets the regulation in that manner.⁸

Subsequent to filing its Response, TGP and PHMSA engaged in settlement discussions in an effort to resolve the case without the necessity of a hearing. As a result of those discussions, TGP filed a Withdrawal and rescinded its appeal of Item 2 and request for a hearing.⁹

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.479 by failing to clean and coat portions of its pipeline exposed to the atmosphere at the Victoria compressor station.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

⁷ Response, at 4.

⁸ *Id.*, at 4-5.

⁹ Withdrawal, at 1-2.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. §§ 192.901(b)(1) and 192.479 respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 192.901(b)(1) (**Item 1**), this Item and proposed compliance order items are withdrawn.
2. With respect to the violation of § 192.479 (**Item 2**), Respondent has submitted amended procedures for atmospheric corrosion, which have been reviewed and approved by the Director.

Accordingly, I find that compliance has been achieved. Therefore, the compliance terms proposed in the Notice are not included in this Order.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

January 31, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued