



U.S. Department  
of Transportation

Pipeline and Hazardous  
Materials Safety  
Administration

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

JUN 16 2017

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

**Re: CPF No. 5-2015-1008**

Dear Mr. Martin:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the allegations of violation against El Paso Natural Gas Co., LLC, a subsidiary of Kinder Morgan, Inc. 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: Director, Western Region, Office of Pipeline Safety, PHMSA  
Mr. James Curry, Babst Calland, Counsel, El Paso Natural Gas Co., LLC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED



submitted a response to EPNG's reply. On July 27, 2016, EPNG filed a motion to strike OPS's July 5, 2016 response.

### **EPNG MOTION TO STRIKE**

Following EPNG's submission of its reply to OPS's May 6, 2016 recommendation, on June 10, 2016, OPS requested an opportunity to respond to the reply. On June 14, 2016, the Presiding Official denied OPS's request except as to certain limited issues as follows:

To the extent PHMSA's Western Region is requesting an opportunity to address the arguments raised by EPNG in this case up to and including its March 18, 2016 post-hearing filings, in the absence of good cause as to why Western Region did not address them in its May 6, 2016 Region Recommendation, your request is denied except that Western Region may submit an explanation of its views on the degree to which EPNG's post-hearing filings or other materials demonstrate completion, in whole or in part, of any of the terms of the Proposed Compliance Order and such submission must be received not later than close of business on July 14, 2016. Note that such submission does not indicate whether any finding of violation will or will not be made.

To the extent Western Region is requesting an opportunity to respond to EPNG's June 7, 2016 Reply to the Region Recommendation (Reply), your request is denied except to the extent that any new arguments were raised by EPNG in its Reply. If you have reason to believe this is the case, you may submit a response that is limited to the new argument(s) not later than the due date for your response on the Proposed Compliance Order items above. Be advised that counsel for the operator will be provided with the opportunity to object on the issue of whether any of EPNG's arguments in its Reply are new arguments and if such objection is made and sustained your response may be excluded from the record.

As EPNG correctly noted in its Motion to Strike, OPS did not provide good cause in its July 5, 2016 response for why it did not utilize its May 6, 2016 recommendation to address the arguments raised by EPNG in this case up to and including EPNG's March 18, 2016 post-hearing filings. Moreover, OPS did not establish that any of the arguments raised by EPNG in its June 7, 2016 response were new arguments that OPS did not yet have an opportunity to respond. Accordingly, I am striking OPS's July 5, 2016 response from the record.

### **WITHDRAWAL OF ALLEGATIONS**

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

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.616, which states in relevant part:

**§ 192.616 Public awareness.**

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §192.7).

(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

(1) ...

(3) Physical indications that such a release may have occurred.

The guidance in API 1162 states: "An operator should select the optimum combination of message, delivery method, and frequency that meets the needs of the intended audience"<sup>3</sup> and "Information should address how to recognize a pipeline leak through the senses of sight, unusual sound, and smell and describe any associated dangers as appropriate to the product type."<sup>4</sup>

The Notice alleged that Respondent violated 49 C.F.R. § 192.616(d)(3) by failing to develop and implement a written continuing public education program that followed the guidance in API Recommended Practice 1162. Specifically, the Notice alleged that EPNG's written public awareness messages given to the affected public failed to include relevant information about physical indications that a release may have occurred.<sup>5</sup>

OPS stated that Respondent was transporting a type of gas that has an odor that may vary, depending on which wells are used as a gas source, and could have different odors besides the normal pungent smell of mercaptan and petroleum odors.<sup>6</sup> Respondent's public awareness mailer that was provided to the affected public stated only that "either a petroleum or a pungent odor such as sulfur (rotten egg) may be present if a release of natural gas has occurred."<sup>7</sup>

OPS claimed that Respondent was aware of the broader range of odors associated with its gas, as shown by written public awareness messages to excavators and emergency response officials stating that physical indications of a release would include the odor of petroleum, mercaptan (rotten egg), or a fragrant odor.<sup>8</sup> In contrast, the public awareness mailer for the affected public

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<sup>3</sup> Public Awareness Programs, API Recommended Practice 1162, 1st Ed. (API Recommended Practice 1162), (Dec. 2003), at Section 4, Message Content.

<sup>4</sup> *Id.*, at Section 4.3.2, How to Recognize a Pipeline Leak.

<sup>5</sup> Notice, at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

did not include the same physical indications of a release of natural gas.<sup>9</sup> In its Response and at the hearing, Respondent argued that OPS had not met its burden of proof that Respondent's public mailer was inconsistent with 49 C.F.R. § 192.616 and API RP 1162.<sup>10</sup>

Respondent explained that the different mailers were targeted at different audiences.<sup>11</sup> The mailer for the affected public is "targeted to the public that live close to natural gas pipelines, whereas the mailer for excavators and emergency responders is for a broader array of natural gas, hazardous liquids and carbon dioxide pipelines."<sup>12</sup> Respondent stated that "leaks from hazardous liquid and carbon dioxide pipelines may have a broader range of potential odors than natural gas pipelines, so the mailer that covers this broader array of pipelines has a broader description of odors."<sup>13</sup>

Further, Respondent argued that it had complied with the provisions of API Recommended Practice 1162. API Recommended Practice 1162 sets out a series of performance-based measures that allow an operator to "select the optimum combination of message, delivery method, and frequency that meets the needs of the intended audience."<sup>14</sup> The guidance contained in Appendix C of API Recommended Practice 1162 provides that information on how to recognize a pipeline leak can include "By Smell—What to Smell for..."<sup>15</sup> Therefore, Respondent stated that the API standards allowed it flexibility in how it conveyed its message.<sup>16</sup> Respondent replied that the word "pungent is broad enough for people to recognize, if they smell something, to call and report it."<sup>17</sup>

Respondent argued that its public mailer accurately described "the odor of gas on the EPNG system."<sup>18</sup> Because perceptions of odor are subjective and "may differ from person to person," Respondent's public mailer used a description that is sufficiently inclusive to capture a variety of smells.<sup>19</sup> The mailer uses the word "pungent," which refers to any strong smell and provides an example of one pungent odor "such as sulfur (rotten eggs)."<sup>20</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Response, at 10-11

<sup>11</sup> *Id.*, at 9; Closing, at 20-21.

<sup>12</sup> Response, at 9.

<sup>13</sup> *Id.*

<sup>14</sup> API Recommended Practice 1162, at Section 4; Response, at 7.

<sup>15</sup> API Recommended Practice 1162, at C.3.2; Response, at 7.

<sup>16</sup> Response, at 10.

<sup>17</sup> Hearing Transcript, Vol I. (Transcript), (Feb. 3, 2016) (on file with PHMSA), at 138-39.

<sup>18</sup> Response, at 10.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, Ex. 3 (Kinder Morgan, *Our Pipelines in Your Community*), at 3; Closing, at 18; Transcript, at 138-39.

OPS responded that Respondent “failed to develop and implement a written continuing public education program that followed the guidance in API Recommended Practice 1162.

[Respondent’s] written public awareness messages given to the affected public failed to include relevant information about physical indications that a release may have occurred.”<sup>21</sup> When asked by the Presiding Official about why the differences in the mailers were material, OPS responded that the public mailer did not have enough detail about types of odors.<sup>22</sup>

Operators that rely on natural odors in the gas they transport rather than on odorant additives such as mercaptan are obligated to ensure their public education materials will facilitate detection of those odors by the general public. It is indisputable that EPNG’s public flyer could have been more specific in describing the potential smells of its gas, as was the case in its other flyers. It is in both the operator and public interest that the public have detailed information to identify a potential pipeline safety issue. An operator’s public mailer should alert the public in the most descriptive terms available about how to identify a gas leak by smell. While EPNG’s public flyer was not as specific as its other flyers, there is insufficient evidence to conclude that the public flyer did not include relevant information about physical indications of released gas that would warn the public of such a release. Accordingly, after considering all of the evidence, I find that OPS did not demonstrate that a violation occurred in this instance and I hereby order that Item 1 be withdrawn.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.625, which states:

**§ 192.625 Odorization of gas.**

(a) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

(b) After December 31, 1976, a combustible gas in a transmission line in a Class 3 or Class 4 location must comply with the requirements of paragraph (a) of this section unless:

(1) At least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

(2) The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975;

(i) An underground storage field;

(ii) A gas processing plant;

(iii) A gas dehydration plant; or

(iv) An industrial plant using gas in a process where the presence of an odorant:

(A) Makes the end product unfit for the purpose for which it is intended;

(B) Reduces the activity of a catalyst; or

(C) Reduces the percentage completion of a chemical reaction;

(1) ...

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<sup>21</sup> Transcript, at 110-11.

<sup>22</sup> *Id.*, at 111-12.

- (3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location; or
- (4) The combustible gas is hydrogen intended for use as a feedstock in a manufacturing process.

The Notice alleged that Respondent violated 49 C.F.R. § 192.625 by failing to maintain odorized gas in its pipelines as required by paragraphs (a) and (b). Specifically, the Notice alleged that two of EPNG's gas lines, numbered 1015 and 2074, located in the greater Tucson area have over 50 percent of the pipeline in Class 3 locations. Both of these lines were not odorized according to the requirements of paragraph (a).<sup>23</sup>

On June 11, 2014, a construction crew from Southwest Gas Corporation near Willcox, Arizona, which is downstream from EPNG's transmission lines, reported a lack of odorization. Consequently, the Cities of Safford and Benson and Graham County Utilities reported unodorized or low-level odorization.<sup>24</sup>

In its Response and at the hearing, Respondent stated that OPS “has not met its burden of proving that EPNG violated 49 C.F.R. § 192.625.”<sup>25</sup> Respondent claimed that the evidence in the record does not demonstrate that either of these pipelines had inadequate levels of odorant at the time of the alleged violation on June 11, 2014.<sup>26</sup> Respondent noted, as with Item 1, the majority of the odorometer readings that OPS relied upon were not from Respondent's transmission lines or meters and Respondent had many questions concerning their reliability.<sup>27</sup> Respondent stated that it was unable to correlate the “vast majority” of the local distributing company (LDC) readings to actual locations on or near Respondent's transmission pipelines.<sup>28</sup> At the few test-point locations that Respondent was able to correlate as on or near its facilities, Respondent found that its transmission pipelines did not require odorization.<sup>29</sup> None of the LDC records that OPS included with the Violation Report listed test locations that Respondent was able to correlate to locations on Lines 1015 or 2074.<sup>30</sup> Further, on June 19, 2014, Respondent performed odorant tests on Lines 1015 and 2074 and found that odorization levels on both were compliant with § 192.625(a).<sup>31</sup>

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<sup>23</sup> Notice, at 3.

<sup>24</sup> *Id.*

<sup>25</sup> Response, at 14.

<sup>26</sup> *Id.*, at 15.

<sup>27</sup> *Id.*, at 17; Transcript, at 50-52; Closing, at 9.

<sup>28</sup> Response, at 15; Closing, at 9-11.

<sup>29</sup> Response, at 15.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Respondent also noted that none of its transmission lines that serve the Cities of Benson, Safford, or Wilcox, or Graham County Utilities were required to be odorized at or near these municipalities.<sup>32</sup>

Respondent also argued that even if its lines were not properly odorized, following PHMSA precedent, a violation of 49 C.F.R. § 192.625(a) is not an automatic violation if the operator demonstrates that it took “prompt action” on discovery to increase odorant levels to acceptable limits.<sup>33</sup> Contrary to OPS’s allegation that “[o]nce the odorant issue became known EPNG failed to immediately contact the distribution Operators,”<sup>34</sup> Respondent stated that it took prompt action to correct any odorization concerns raised by LDC customers. On June 12, 2014, a customer alerted Respondent to a possible odorization issue.<sup>35</sup> On June 13, 2014, Respondent personnel initiated a series of phone calls notifying most customers of the potential odorant issues, as well as posting a statement on its Electronic Bulletin Board.<sup>36</sup> On June 14, 2014, Respondent notified customers that injection of additional odorant into certain lines would occur. On June 19, 2014, Respondent technicians took odor readings at each of Respondent’s lateral lines that are required to be odorized.<sup>37</sup> The readings demonstrated that all lateral lines were odorized at a level well within the range required for compliance with 49 C.F.R. § 192.625(a).<sup>38</sup>

At the hearing, OPS requested that Respondent provide historical records, and stated that it would reexamine the evidence presented.<sup>39</sup> Respondent provided both historical and updated data showing historical odor testing and odor levels at the pipeline at issue.<sup>40</sup> Respondent supplemented its evidence with additional odorization test records that showed readings on June 12, 2014, and June 14, 2014, at meter numbers 30148 and 30149, which are located directly on Line 1015, as well as June 13, 2014 and June 14, 2014 readings at meter 20467, directly on Line 1015. These records also show readings on June 12, 2014, in the immediate proximity of Lines 1015 and 2074, at meter numbers 30931 and 20537. The records also included readings on June 17, 2014, at meter 31558 on Line 1015.<sup>41</sup>

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<sup>32</sup> Transcript, at 16.

<sup>33</sup> PHMSA Letter of Interpretation to Columbia Gas Distribution Companies, at 2, PI-93-009; PHMSA, Operations & Maintenance Enforcement Guidance: Part 192 Subparts L and M, at 84 (Dec. 7, 2015); Transcript 94-99; Closing, at 14-15.

<sup>34</sup> Violation Report, at 21; Response, at 19.

<sup>35</sup> Response, at 15.

<sup>36</sup> *Id.*, Exs. 7 and 12.

<sup>37</sup> *Id.*, Ex. 10.

<sup>38</sup> *Id.*; Response, at 19.

<sup>39</sup> Transcript, at 60; Closing, at 11-12.

<sup>40</sup> Closing, at 9-12; Response Exs. 9-10 (“Odorometer Readings from Meters Near Phoenix and Tucson, Odorometer Certificates of Calibration, and Operator Qualification Records,” and “EPNG Odorometer Readings of Lateral Pipelines” (June 19, 2014)) both attached as Exhibit 11 and 10; Closing, Ex. C (“Odorization Test Readings Mid-June 2014”).

<sup>41</sup> Closing, Ex. C.

Respondent noted that its “historical and mid-June 2014 readings are the only evidence in the case file regarding actual odorant levels on EPNG’s pipelines and they show that they had compliant levels of odorant.”<sup>42</sup> Respondent pointed out that OPS had offered no evidence of odor levels prior to June 12, 2014, despite stating in the hearing that the basis for the alleged violation was that “it was prior to June 12th that the odorant was not being maintained.”<sup>43</sup> It stated that in light of its evidence, OPS could not “prevail simply by offering a series of cryptic LDC odorization records that are not correlated to EPNG’s system, and then failing to defend those records at the Hearing.”<sup>44</sup>

Proper odorization of pipelines that are required to be odorized is a key part of pipeline safety. Operators are obligated to conduct sufficient monitoring at appropriate locations to ensure that if odorant levels fall below adequate levels, additional odorant is injected. Although OPS had ample opportunity to review and assess the extensive records provided by Respondent in its hearing exhibits, OPS did not opine on the historical records or updated data in its recommendation. While the records produced to the OPS inspector at the time of the inspection were arguably incomplete and likely contributed to this becoming an NOPV item, OPS did not allege a failure to maintain full records. Rather OPS alleged that lines were not odorized and in this instance was unable to carry its burden of proving the allegation.

Accordingly, after considering all of the evidence, in the absence of countervailing opinion or analysis, I find that OPS has failed to demonstrate that there was a violation in this instance. Based upon the foregoing, I hereby order that Item 2 be withdrawn.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.605, which states in relevant part:

**§ 192.605 Procedural manual for operations, maintenance, and emergencies.**

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and subpart M of this part.

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<sup>42</sup> *Id.*, at 13.

<sup>43</sup> Closing, at 16; Transcript, at 108.

<sup>44</sup> Closing, at 11.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to prepare and follow a procedure that would ensure operation and maintenance of the pipeline in accordance with the requirements of § 192.625, "Odorization of Gas." Specifically, the Notice alleged that EPNG's written procedure (1026 "Natural Gas Odorization") stated that the gas must be detectable at one-fifth of the lower explosive level (LEL); however, it did not specify the actual LEL percentage. Section 192.625 states: "A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell." Without specifying the LEL, there is not sufficient information for field personnel to determine if the gas is adequately odorized.<sup>45</sup>

In its Response and at the hearing, Respondent stated that OPS had not satisfied its burden of proof to establish that Respondent violated 49 C.F.R. § 192.605(b)(1).<sup>46</sup> EPNG acknowledged that its O&M Procedure 1026 did not specify an LEL percentage, but pointed out that the pipeline safety regulations did not require that the percentage be included in the procedures.<sup>47</sup>

Respondent further explained that its practice is to direct its field personnel to use an LEL of five percent for purposes of odor readings on its system.<sup>48</sup> As part of its operator qualification process, Respondent provides training to its field technicians on the proper LEL percentage to utilize on its system and its training documentation provides that "[o]dorized gas must contain an odorant in an amount that will be readily detectable in concentrations of gas in air of 1/5 the lower explosive limit of 5% which is 1% gas in air."<sup>49</sup>

Respondent rejected OPS's claim that it had violated § 192.605 because it "does not have a consistent number that can be used as the LEL" based on different LEL percentages listed in different documents.<sup>50</sup> OPS relied on a written procedure for gas detection instruments and a presentation to first responders.<sup>51</sup> However, Respondent stated that the referenced documents did not demonstrate a violation because they do not "purport to provide the LEL percentage for purposes of odorization testing."<sup>52</sup> In fact, the presentation to first responders is a third-party

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<sup>45</sup> Notice, at 4.

<sup>46</sup> Response, at 21.

<sup>47</sup> *Id.*, Respondent's O&M Procedures are prepared by its parent company, Kinder Morgan. Kinder Morgan has prepared a unified set of O&M procedures for its numerous gas pipelines systems, each with varying chemical makeups. The Kinder Morgan odorization procedure does not include a specific LEL percentage because of this variability across systems. *Id.*

<sup>48</sup> *Id.*, at 22; Closing, at 7.

<sup>49</sup> Response at 22; Response Ex. 14 (Kinder Morgan, Measurement Standards Training, Test Gas Odorant Level, Odorization Training PowerPoint Slides), at slide 25. EPNG has also provided affidavits from its Measurement Technicians confirming that EPNG has instructed them to use a 5 percent LEL for purposes of odorant measurements through on-the-job training. Response, Ex. 15 (*Affidavits of Field Technicians*).

<sup>50</sup> Response, at 22-23; Violation Report, at 30.

<sup>51</sup> Violation Report, at 30; Transcript 20-21.

<sup>52</sup> Response, at 22-23; Closing, at 5.

training contractor's presentation designed for third-party responders who are not Respondent employees.<sup>53</sup>

In response to OPS's concern that the O&M procedures did not clearly reference Respondent's training materials, Respondent replied that its procedures did reference on-the-job training. This training provides guidance to employees who take the readings and use them "as a starting point for figuring out what the lower explosive limit is for a section of pipe."<sup>54</sup> Respondent stated that its "written procedures in conjunction with qualification training for measurement technicians, allows field personnel to determine that the gas is adequately odorized in compliance with 49 C.F.R. § 192.625."<sup>55</sup> Respondent, however, was not persuasive on this point. If training materials are to constitute procedures or supplement them, the operator has the burden of making that explicit in the O&M manual.

The procedural manual is a key part of ensuring that operator personnel have clear instructions on how to detect gas. Without proper odorization levels, operator personnel and the public are potentially placed in danger. Though EPNG's procedures correctly state that gas must be detectable at one-fifth of the LEL, failing to list a specific LEL may well complicate the ability of field personnel to determine appropriate odorization levels. However, when asked at the hearing whether there was an explicit requirement in § 192.605 that the LEL percentage be listed in the O&M, OPS replied that "it doesn't say anything, specifically, about providing the LEL."<sup>56</sup> While it appears that it would be strongly advisable for EPNG to amend its procedures and specify the LEL (often accomplished by issuance of a Notice of Amendment), that does not equate to failure to comply with the applicable code language which could have required that LEL be specified but does not.

Accordingly, after considering all of the evidence, I find that OPS has failed to demonstrate that there was a violation in this instance. Based upon the foregoing, I hereby order that Item 3 be withdrawn.

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

  
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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

JUN 16 2017

\_\_\_\_\_  
Date Issued

<sup>53</sup> Response, at 23; Transcript 20-21; Closing, at 5.

<sup>54</sup> Transcript, at 34.

<sup>55</sup> Closing, at 7.

<sup>56</sup> Transcript, at 17.