



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Avenue SE  
Washington DC 20590

JUN 01 2018

Mr. Thomas A. Martin  
President, Natural Gas Pipelines Group  
Kinder Morgan, Inc.  
1001 Louisiana Street, Suite 1000  
Houston, TX 77002

**Re: CPF No. 5-2016-6005**

Dear Mr. Martin:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$154,800 against Colorado Interstate Gas Company, LLC, a subsidiary of Kinder Morgan, Inc. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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. Mark A. Kissel, Principal Executive Officer and President, Colorado Interstate Gas Company, LLC  
Ms. Jessica Toll, Esq., Assistant General Counsel, Kinder Morgan, 370 Van Gordon Street, Lakewood, CO 80228  
Ms. Catherine D. Little, Esq., Hunton & Williams, Bank of America Plaza, Suite 5200, 600 Peachtree Street, N.E., Atlanta, GA 30308

CERTIFIED MAIL - RETURN RECEIPT REQUESTED



**FINDINGS OF VIOLATION**

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(4), which states, in relevant part:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a) ...

(h) What actions must an operator take to address integrity issues?

(1) ...

(4) Special requirements for scheduling remediation

(i) ...

(ii) 60-day conditions. Except for conditions listed in paragraph (h)(4)(i) of this section, an operator must schedule evaluation and remediation of the following conditions within 60 days of discovery of condition.

(A) A dent located on the top of the pipeline (above the 4 and 8 o'clock positions) with a depth greater than 3% of the pipeline diameter (greater than 0.250 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12).

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(4) by failing to schedule evaluation and remediation of an anomalous condition within 60 days of its discovery following an integrity assessment. Specifically, the Notice alleged that CIG failed to classify a dent discovered on January 16, 2013, on the top of Line 188-A located above the 4 and 8 o'clock positions with a depth greater than three percent of the pipeline diameter (Line 188-A dent) as mandating the 60-day requirement for scheduling remediation. In its Response and at the hearing, CIG did not contest the allegation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h)(4) by failing to classify a dent on the top of the pipeline located above the 4 and 8 o'clock positions with a depth greater than three percent of the pipeline diameter as mandating the 60-day requirement for scheduling remediation.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(3), which states:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a)...

(h) What actions must an operator take to address integrity issues?

(1)...

(3) Schedule for evaluation and remediation. An operator must complete remediation of a condition according to a schedule prioritizing the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must explain the reasons why it cannot meet the schedule and how the changed schedule will not jeopardize public safety or environmental protection.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(3) by failing to complete remediation of an anomalous condition according to a schedule prioritizing the conditions for evaluation and remediation or alternatively explaining the reasons why it could not meet the

schedule and how a changed schedule would not jeopardize public safety or environmental protection. Specifically, the Notice alleged that CIG did not complete the remediation of the Line 188-A dent until May 1, 2014, which was over 60 days following discovery, nor did it explain the reasons why it could not meet the schedule and how the changed schedule would not jeopardize public safety or environmental protection. In its Response and at the hearing, CIG did not contest the allegation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h)(3) by failing to complete remediation of a condition according to a schedule prioritizing the conditions for evaluation and remediation or alternatively explaining the reasons why it could not meet the schedule and how a changed schedule would not jeopardize public safety or environmental protection.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(1), which states, in relevant part:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a)...

(h) What actions must an operator take to address integrity issues?

(1) General requirements. An operator must take prompt action to address all anomalous conditions the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure the condition is unlikely to pose a threat to the long-term integrity of the pipeline. An operator must comply with §195.422 when making a repair.

(i) Temporary pressure reduction. An operator must notify PHMSA, in accordance with paragraph (m) of this section, if the operator cannot meet the schedule for evaluation and remediation required under paragraph (h)(3) of this section and cannot provide safety through a temporary reduction in operating pressure.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(h)(1) by failing to notify PHMSA about the lack of prompt action when the scheduled period for evaluation and remediation of an anomalous condition that could reduce a pipeline's integrity was not met. Specifically, the Notice alleged that CIG did not notify PHMSA when the scheduled period for evaluation and remediation of the Line 188-A dent was not met and safety was not provided through a temporary reduction in operating pressure. In its Response and at the hearing, CIG did not contest the allegation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(h)(1) by failing to notify PHMSA about the lack of prompt action when the scheduled period for evaluation and remediation of an anomalous condition that could reduce a pipeline's integrity was not met.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

**§ 195.420 Valve maintenance.**

(a)...

(b) Each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve at intervals not exceeding 7½ months, but at least twice each calendar year. Specifically, the Notice alleged that the valve inspections for three CIG pipelines having two mainline valves each were conducted annually rather than twice each year between 2012 and 2014. In its Response and at the hearing, CIG did not contest the allegation.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve at intervals not exceeding 7½ months, but at least twice each calendar year.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

**§ 195.428 Overpressure safety devices and overfill protection systems.**

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test each pressure relief valve to ensure adequate capacity, reliability, good condition, and proper functioning at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that pressure relief valve PCV-93 was not inspected in 2013 and 2014 and that pressure relief valves PSV-114 and 115 were not inspected in 2013. In its Response and at the hearing, CIG did not contest the allegation.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test each pressure relief valve to ensure adequate capacity, reliability, good condition, and proper functioning at intervals not exceeding 15 months, but at least once each calendar year.

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.<sup>3</sup> 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 \$198,000 for the five violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$43,200 for Respondent's violation of 49 C.F.R. § 195.452(h)(4), for failing to classify a dent on the top of the pipeline located above the 4 and 8 o'clock positions with a depth greater than three percent of the pipeline diameter as mandating special requirements for scheduling remediation.

In its Response and at the hearing, CIG contended that the proposed penalties in the Notice were duplicative, excessive, and failed to account for and appropriately apply the penalty consideration factors.<sup>4</sup> Respondent pointed to the fact that Items 1, 2, and 3 involved the same failure to address the dent anomaly identified on Line 188-A on November 13, 2002, and argued that the Notice effectively alleged the same violation three separate times.<sup>5</sup> CIG submits that the proposed penalties for Items 2 and 3 should be withdrawn because they are duplicative of Item 1.<sup>6</sup> Respondent also argued for a reduction in the Item 1 penalty amount.

For its part, OPS disagreed that Items 1, 2, and 3 were duplicative and argued that they relied on different evidence. Specifically, OPS argued that the regulation cited in Item 1 was intended to ensure repairs would be properly prioritized in developing the schedule and cited the absence of the schedule. OPS argued that the regulation cited in Item 2 focused on performing the repair and noted that it was possible to schedule repairs but not complete them and vice versa. OPS also explained that Item 3 focused on the reporting requirement which involved yet a different act or omission.

Having considered the arguments of both parties, I find that OPS was able to establish that Items 1, 2, and 3 are separate violations because the evidence for each does not entirely overlap with any other. I also find, however, that Respondent raised a compelling fairness concern in arguing that the proposed civil penalties for these items overlapped insofar as Items 1 and 2 are concerned. The particular regulatory language cited in the Item 2 violation involving failure to complete remediation "according to a schedule..." in effect re-codified the matter of scheduling

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<sup>3</sup> 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).

<sup>4</sup> Pre-Hearing Submittal at 4.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> Post-Hearing Submittal at 3.

into the repair requirement making an additional citation to the scheduling regulation in Item 1 generally unnecessary in cases where an operator failed to schedule and repair. The manner in which these particular regulations were drafted, whether inadvertently or not, included both scheduling and repair in the regulation cited in Item 2, making it partially overlap with the requirement for a schedule in the regulation cited in Item 1.

Two Notice items can be upheld as separate violations because they do not overlap entirely in terms of evidence. With respect to imposing penalties, however, to the extent that at least some of the conduct required (or prohibited) by two given regulations overlaps, fairness can compel the merging of the proposed penalty for the narrower violation with that of the broader violation under the “other matters as justice may require” factor. In this instance, CIG had no way of knowing which fraction of the proposed penalty for the broader Item 2 violation (i.e., schedule and complete a repair) was for the conduct that went beyond the conduct prohibited by the narrower Item 1 violation (i.e., a schedule only). The agency’s enforcement goals are not furthered by the aggregation of penalties under the code sections cited in the Notice in this particular case. Based upon the foregoing, I withdraw the proposed penalty amount for violation of 49 C.F.R. § 195.452(h)(4). The penalty for failing to schedule and complete the repair will be assessed below in Item 2.

**Item 2:** The Notice proposed a civil penalty of \$43,200 for Respondent’s violation of 49 C.F.R. § 195.452(h)(3), for failing to complete remediation of a condition according to a schedule prioritizing the conditions for evaluation and remediation or alternatively explaining the reasons why it could not meet the schedule and how a changed schedule would not jeopardize public safety or environmental protection. In its Response and at the hearing, Respondent argued that the proposed penalties for Items 1, 2, and 3 were duplicative and involved the same failure to address the dent anomaly identified on Line 188-A. As discussed above, the penalty proposed for Item 1 has been withdrawn based on the “other matters as justice may require” factor and I will now apply the penalty factors to this item.

With respect to the nature and circumstances of CIG’s violation of § 195.452(h)(3), an effective integrity management program is a key part of sound pipeline operations. With respect to the gravity of the offense, the failure to take prompt remedial action following the discovery of a dent with metal loss continued for over one year, well beyond the 60-day regulatory deadline and represents a significant compromise to the safe operation of the pipeline. Although the length of pipe affected was not extensive when compared with the overall size of the system, it transported highly volatile liquids which are among the highest risk products transported by pipeline if an accidental release should occur. With respect to culpability, CIG explained that the violation was the result of maintenance intervals for gas pipelines under Part 192 inadvertently being used for this hazardous liquid system.<sup>7</sup> OPS countered that even if CIG believed it was operating under Part 192, the discovery of the dent with metal loss should have triggered prompt remedial action such as a reduction in operating pressure which did not occur. CIG also noted that the non-compliance was corrected by the operator prior to the OPS inspection, however a credit for this was already reflected in the proposed civil penalty amount. In addition, the record supports the proposed treatment of the factors for prior offenses and good faith. Respondent has

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<sup>7</sup> *Id.* at 2.

presented no information or arguments that would warrant a reduction in the amount of the civil penalty proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,200 for violation of 49 C.F.R. § 195.452(h)(3).

**Item 3:** The Notice proposed a civil penalty of \$43,200 for Respondent's violation of 49 C.F.R. § 195.452(h)(1), for failing to notify PHMSA about the lack of prompt action when the scheduled period for evaluation and remediation of an anomalous condition that could reduce a pipeline's integrity was not met. In its Response and at the hearing, Respondent argued that the proposed penalties for Items 1, 2, and 3 were duplicative and involved the same failure to address the dent anomaly identified on Line 188-A. As discussed above, the penalty proposed for Item 1 has been withdrawn based on the "other matters as justice may require" factor. Respondent's argument that Item 3 was duplicative with another penalized item was unpersuasive. Respondent's obligation to notify PHMSA concerning the lack of prompt action did not arise until after the 60-day period following discovery of the condition and therefore constituted a distinct act or omission that did not involve any overlapping conduct with Item 2.

With respect to the nature and circumstances of CIG's violation of § 195.452(h)(1), an effective integrity management program is a key part of sound pipeline operations. With respect to the gravity of the offense, failure to comply with the notification requirement in the absence of prompt remedial action following the discovery of a dent with metal loss impedes other steps from being taken to protect the public where necessary which represents a significant compromise to safe operation of the pipeline. With respect to culpability, CIG explained that the violation was the result of maintenance intervals for gas pipelines under Part 192 inadvertently being used for this hazardous liquid system. OPS countered that even if CIG believed it was operating under Part 192, the discovery of the dent with metal loss should have triggered prompt remedial action such as a reduction in operating pressure which did not occur. CIG also noted that the non-compliance was corrected by the operator prior to the OPS inspection, however a credit for this was already reflected in the proposed civil penalty amount. In addition, the record supports the proposed treatment of the factors for prior offenses and good faith. Respondent has presented no information or arguments that would warrant a reduction in the amount of the civil penalty proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,200 for violation of 49 C.F.R. § 195.452(h)(1).

**Item 4:** The Notice proposed a civil penalty of \$34,200 for Respondent's violation of 49 C.F.R. § 195.420(b), for failing to inspect each mainline valve at intervals not exceeding 7 ½ months, but at least twice each calendar year. With respect to the nature and circumstances of CIG's violation of § 195.420(b), the timely inspection of mainline valves is a basic code requirement. With respect to the gravity of the offense, ensuring the proper functioning of mainline valves is a key part of safety because the failure of such a valve to fully close when needed could compromise safety. With respect to culpability, CIG explained that the violation was the result of maintenance intervals for gas pipelines under Part 192 inadvertently being used for this hazardous liquid system. OPS countered that even if CIG believed it was operating under Part 192, the discovery of the dent with metal loss should have triggered prompt remedial action such as a reduction in operating pressure which did not occur. CIG also noted that the non-

compliance was corrected by the operator prior to the OPS inspection, however a credit for this was already reflected in the proposed civil penalty amount. In addition, the record supports the proposed treatment of the factors for prior offenses and good faith. Respondent has presented no information or arguments that would warrant a reduction in the amount of the civil penalty proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$34,200 for violation of 49 C.F.R. § 195.420(b).

**Item 5:** The Notice proposed a civil penalty of \$34,200 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect and test each pressure relief valve to ensure adequate capacity, reliability, good condition, and proper functioning at intervals not exceeding 15 months, but at least once each calendar year. With respect to the nature and circumstances of CIG's violation of § 195.428(a), inspecting pressure relief devices is a basic code requirement. With respect to the gravity of the offense, ensuring the proper functioning of these devices is a key part of safety because the failure of a pressure relief valve can compromise safety in the event of a pressure surge or other abnormal event. With respect to culpability, CIG explained that the violation was the result of maintenance intervals for gas pipelines under Part 192 inadvertently being used for this hazardous liquid system. OPS countered that even if CIG believed it was operating under Part 192, the discovery of the dent with metal loss should have triggered prompt remedial action such as a reduction in operating pressure which did not occur. CIG also noted that the non-compliance was corrected by the operator prior to the OPS inspection, however a credit for this was already reflected in the proposed civil penalty amount. In addition, the record supports the proposed treatment of the factors for prior offenses and good faith. Respondent has presented no information or arguments that would warrant a reduction in the amount of the civil penalty proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$34,200 for violation of 49 C.F.R. § 195.428(a).

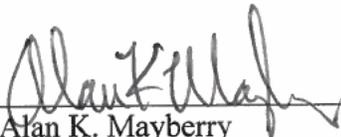
In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$154,800**.

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 \$154,800 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.

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, 2<sup>nd</sup> 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 the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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 01 2018  
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Date Issued