

October 22, 2021

**VIA ELECTRONIC MAIL TO: dax\_sanders@kindermorgan.com**

Dax A. Sanders  
President, Products Pipeline  
Kinder Morgan, Inc.  
1001 Louisiana Street, Suite 1000  
Houston, Texas 77002

**CPF No. 5-2021-022-NOPV**

Dear Mr. Sanders:

Enclosed please find a Consent Order incorporating the terms of the fully executed Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and SFPP, L.P., a subsidiary of Kinder Morgan, Inc., which was executed on October 20, 2021. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission, or as otherwise provided under 49 C.F.R. § 190.5.

Sincerely,

Alan K Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosures: Consent Agreement and Consent Order

Cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA  
Ms. Catherine Little, Outside Counsel for Kinder Morgan, Troutman Pepper,  
catherine.little@troutman.com

**CONFIRMATION OF RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

_____ )	
<b>In the Matter of</b> )	
)	
<b>SFPP, L.P.,</b> )	<b>CPF No. 5-2021-022-NOPV</b>
<b>a subsidiary of Kinder Morgan, Inc.,</b> )	
)	
<b>Respondent.</b> )	
_____ )	

**CONSENT ORDER**

By letter dated May 12, 2021, the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (PHMSA), issued a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice) to SFPP, L.P. (SFPP or Respondent).

In response to the Notice, Respondent contested certain allegations in the Notice and requested a hearing. Subsequently, PHMSA and Respondent (collectively referred to as the Parties) agreed that the issues in the Notice may be resolved through informal discussions. On August 9, 2021, the Parties engaged in good-faith settlement discussions that have resulted in the Consent Agreement attached to this Order that settles all of the issues in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. § 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 C.F.R. § 190.223.

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

October 22, 2021

\_\_\_\_\_  
Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

\_\_\_\_\_) )  
**In the Matter of** )

SFPP, L.P., )  
a subsidiary of Kinder Morgan, Inc. )

Respondent. )  
\_\_\_\_\_)

**CPF No. 5-2021-022-NOPV**

**CONSENT AGREEMENT**

On December 15-21, 2018, May 1-3, 2019, and June 3-5, 2019, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), responded to an incident that occurred on SFPP L.P.'s (SFPP or Respondent) 12-inch diameter El Paso-to-Tucson (SFPP 12-inch EPT) Pipeline near Anthony, New Mexico. SFPP is a subsidiary of Kinder Morgan, Inc. (KMI).

At approximately 23:40 MST on December 13, 2018, the SFPP 12-inch EPT Pipeline ruptured, resulting in a release of approximately 11,000 barrels of gasoline into a drainage ditch (Failure). The Failure site was on the partially-buried segment at or near the western bank of the Anthony Drain canal. The lower portion of the pipeline was in contact with soil. The 12-inch EPT Pipeline traverses or is in close proximity to numerous high consequence areas (HCAs), including unusually sensitive areas (USAs), as defined in 49 C.F.R. Part 195.

Following the Failure, PHMSA deployed investigators to the Failure site to conduct an investigation into the Failure and its cause(s). On December 28, 2018, PHMSA issued a Notice of Proposed Safety Order, CPF No. 5-2018-5007S, to Respondent, alleging that the continued operation of SFPP's 12-inch EPT Pipeline posed an integrity risk to public safety, property, or the environment related to the Failure (NOPSO). PHMSA proposed that Respondent take certain corrective actions to address this risk, including exposed-pipe surveys, inline inspections, data integration, remediation and repair of anomalies or defects consistent with atmospheric corrosion and integrity management regulations, emergency flow restricting devices (EFRD) studies, a root cause failure analysis, and various revisions of its operating procedures.

On January 22, 2019, Respondent responded to the NOPSO and did not contest the proposed findings or remedial actions. On August 8, 2019, PHMSA issued a final Safety Order, finding that continued operation of the SFPP 12-inch EPT Pipeline without corrective or remedial measures would pose a pipeline integrity risk. The Safety Order adopted the preliminary findings and

remedial measures set forth in the NOPSO. To date, Respondent has completed the required remedial measures, including completion of all actions required in the Remedial Work Plan as approved by PHMSA.

On June 17, 2020, PHMSA issued its Failure Investigation Report, which determined that the Failure was caused by external corrosion underneath tape-wrapped coating and that the corrosion had progressed to the point that the remaining pipe wall thickness could no longer support the internal pipe pressure. Contributing causes to the Failure included Respondent's failure to conduct atmospheric corrosion inspections on the exposed span and Respondent's failure to provide its controllers with adequate information to recognize this event as a pipeline failure.

As a result of the investigation, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated May 12, 2021, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated seven provisions of 49 C.F.R. Part 195, and proposed ordering Respondent to take certain measures to correct the alleged violations, and to pay a civil penalty in the amount of \$2,231,779. Two of the alleged violations were brought as warning items pursuant to 49 C.F.R. § 190.205.

Respondent responded to the Notice by letter dated June 11, 2021 (Response). Respondent contested some of the allegations of violation and provided additional information in response to the Notice. Specifically, Respondent did not contest the allegations of violation in Items 1 and 4-7, and the Proposed Compliance Order (PCO) for Items 4 and 5. Respondent contested the allegations of violation in Items 2 and 3, along with the proposed penalty for each of those allegations, and the PCO for Item 3. Respondent requested a hearing and informal settlement conference on Items 2 and 3.

On August 9, 2021, Respondent and PHMSA (collectively the Parties) met telephonically to discuss a possible resolution of the case. During the informal settlement conference and subsequent follow-up discussions, the Parties offered additional information regarding the allegations, and an agreement was reached that resolves all of the issues in the Notice.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of people, property, and the environment, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of Respondent and PHMSA, the Parties hereby agree as follows:

## **I. General Provisions**

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced hazardous liquid pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the PHMSA Western Regional Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent

agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. Respondent neither admits nor denies any allegation or conclusion in the Notice or this Agreement, but agrees, for purposes of this Agreement, to comply with the terms of this Agreement.

11. Upon issuance of the Consent Order, the Parties agree to the following terms.

## **II. Findings of Violation**

11. **Item 1 of the Notice:** With respect to Item 1 of the Notice, which Respondent did not contest, PHMSA finds that Respondent violated 49 C.F.R. § 195.583(a) by failing to conduct atmospheric corrosion inspections at the required intervals, as alleged in the Notice. This finding of violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent.

12. **Item 2 of the Notice:** With respect to Item 2 of the Notice, PHMSA finds that Respondent violated 49 C.F.R. § 195.583(b) by failing to give particular attention to pipe at soil-to-air interfaces and under disbanded coatings during atmospheric corrosion inspections, as alleged in the Notice. This finding of violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent.

13. **Item 3 of the Notice:** With respect to Item 3 of the Notice, PHMSA finds that Respondent violated 49 C.F.R. § 195.452(g) by failing to periodically evaluate the integrity of each pipeline segment by analyzing all available information about the integrity of the entire pipeline and the consequences of a failure, including data gathered through integrity assessments and data gathered in conjunction with other inspections, tests, surveillance and patrols required by Part 195. This finding of violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent.

14. **Item 4 of the Notice:** With respect to Item 4 of the Notice, which Respondent did not contest, PHMSA finds that Respondent violated 49 C.F.R. § 195.446(c) by failing to provide its controllers with the information, tools, processes, and procedures necessary for the controllers to carry out the roles and responsibilities Respondent defined for abnormal and emergency operation. This finding of violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent.

15. **Item 5 of the Notice:** With respect to Item 5 of the Notice, which Respondent did not contest, PHMSA finds that Respondent violated 49 C.F.R. § 195.452(i)(4) by failing to properly evaluate swiftness of leak detection and pipeline shutdown capabilities, and release volume, when it conducted its Emergency Restricting Flow Device (EFRD) analysis. This finding of violation shall be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent.

### **III. Civil Penalties**

16. **Item 1 of the Notice:** Without admission, Respondent agrees to pay the proposed civil penalty amount of \$46,600 for Item 1 as set forth in the Notice.

17. **Item 2 of the Notice:** Without admission, Respondent agrees to pay an adjusted civil penalty amount of \$46,600 for Item 2 of the Notice, representing a reduction in the number of instances of violation from two to one in the civil penalty assessment factor for the gravity of the violation. The remaining civil penalty assessment factors for this Item, as set forth in the Pipeline Safety Violation Report for this case, remain unchanged.

18. **Item 3 of the Notice:** Without admission, Respondent agrees to pay an adjusted civil penalty amount of \$1,400,000 for Item 3 of the Notice, representing a credit in the civil penalty assessment factor for other matters as justice may require to account for the corrective actions Respondent has taken pursuant to the Safety Order and beyond. The remaining civil penalty assessment factors for this Item, as set forth in the Pipeline Safety Violation Report for this case, remain unchanged.

19. Respondent agrees to pay the full civil penalty amount of **\$1,493,200** within 30 calendar days of the Effective Date of this Agreement. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMK-325), 6500 S. MacArthur Blvd, Oklahoma City, Oklahoma 79169. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. 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.

20. Failure to pay the **\$1,493,200** 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.

### **IV. Compliance Requirements**

21. **Item 3 of the Notice:** Respondent agrees to complete annual interim reviews of its Data Integration Program to ensure compliance with the requirements set forth in 49 C.F.R. § 195.452(g). This review must be performed by Managers representing Pipeline Integrity, Corrosion Control, and Operations. Respondent agrees to revise its Integrity Management Plan to include this requirement and must implement it within 90 days of the Effective Date of this Agreement.

22. **Item 4 of the Notice:** Respondent agrees to complete annual interim reviews of its

L-O&M 1101 – Sections 3.8 and 3.9 to ensure compliance with the requirements set forth in 49 C.F.R. § 195.446(c). This review must be performed by the Control Room Supervisor and his/her Manager. Respondent agrees to revise its L-O&M procedures to include this requirement and must implement it within 90 days of the Effective Date of this Agreement.

23. **Item 5 of the Notice:** Respondent agrees to revise its L-O&M procedures to ensure its EFRD analyses include consideration of accurate information and all the relevant risk factors, including, but not limited to, those set forth in § 195.452(i)(4). Specifically, Respondent agrees to revise its L-O&M procedures to include these requirements and implement the procedures within 90 days of the Effective Date of this Agreement. As noted in the PCO, it is also recommended, but not required, that Respondent implement similar procedures for its Leak Detection Analyses under § 195.452(i)(3).

#### **V. Warning Items:**

24. **Item 6 of the Notice:** With respect to Item 6 of the Notice, this Item was issued as a warning item, requiring no further action by Respondent.

25. **Item 7 of the Notice:** With respect to Item 7 of the Notice, this Item was issued as a warning item, requiring no further action by Respondent.

#### **VI. Enforcement**

26. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101 *et seq.* and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$222,504 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See, e.g.,* Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

#### **VII. Dispute Resolution**

27. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including but not limited to any decision of the Director. If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Western Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except

as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

**VIII. Effective Date**

28. The term “Effective Date,” as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

**IX. Modification**

29. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

**X. Termination**

30. This Agreement shall remain in effect until the Corrective Order items are satisfied, as determined by the Director. The Consent Agreement shall not terminate until the Director confirms, in writing, that the Consent Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

**XI. Ratification**

31. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

32. The Parties hereby agree to all conditions and terms of this Agreement.

**For SFPP, L.P.:**

By: Kinder Morgan Operating LLC “D,” its general partner

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Dax A. Sanders, President, Products Pipeline

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Date

**For PHMSA:**

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Dustin B. Hubbard, Director, Western Region, OPS

\_\_\_\_\_  
Date