

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

)	
In the Matter of)	
)	
Kinder Morgan Liquids Terminals, LLC,)	CPF No. 1-2011-5009
)	
Respondent.)	
)	

CONSENT AGREEMENT AND ORDER

On November 15-19, 2010, pursuant to Chapter 601 of 49 United States Code, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site inspection of the pipeline facilities of Kinder Morgan Liquids Terminals, LLC (KMLT or Respondent), at its terminal facilities in Carteret, New Jersey (Terminal).

As a result of this inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 12, 2011, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), a copy of which is attached hereto as Appendix A. In accordance with 49 C.F.R. § 190.207, the Notice proposed (1) finding that Respondent had committed various violations of 49 C.F.R. Part 195, (2) assessing a total civil penalty of \$89,800 for five of the alleged violations, and (3) ordering Respondent to take certain measures to correct the alleged violations.

KMLT responded to the Notice by letter dated November 11, 2011, and requested a hearing, which was held on August 7, 2012. KMLT has proposed, as part of this proceeding and a related enforcement action, CPF No. 1-2011-5008, to resolve both matters via administrative consent agreements.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA (Parties), the Parties agree as follows:

I. General Provisions.

1. For purposes of this Consent Agreement and Order (Agreement), Respondent acknowledges that as operator of the Terminal, KMLT and its pipeline system located at the Terminal are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101, *et seq.*, and the regulations and

administrative orders issued thereunder.¹ As used in this Agreement, the terms “pipeline system” and “pipeline facility” shall be defined as in 49 C.F.R. Part § 195.2. 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. Respondent consents to the issuance of this Agreement, 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 Agreement, including all rights to administrative or judicial hearings or appeals.

3. This Agreement shall apply to and be binding upon PHMSA and upon 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 KMLT’s officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

4. For all transfers of ownership or operating responsibility of Respondent’s pipeline system at the Terminal, KMLT shall provide a copy of this Agreement to the prospective transferee at least 60 business days prior to such transfer and simultaneously provide written notice of the prospective transfer to the Director and the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement and its appendices.

6. Nothing in this Agreement affects or relieves KMLT 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 its authority to bring any enforcement action 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. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to KMLT or its 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.

¹ For a map showing the jurisdictional components of Respondent’s system at the Terminal, see drawings entitled, “Kinder Morgan Carteret, NJ, Liquids Terminal, East & West Tank Field P&ID’s,” prepared by STV Incorporated, consisting of 105 sheets, dated May 6, 2013 (on file with PHMSA Eastern Region).

8. 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 (DOT) 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. KMLT agrees to hold harmless DOT, 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 the work required by this Agreement.

9. Except as otherwise provided in this Paragraph, the Parties agree that the facts are as alleged in each item of the Notice and that each item may be considered by PHMSA to be a prior offense in any future PHMSA enforcement action against KMLT. This Agreement, however, does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

As for Item 5 of the Notice, PHMSA has reviewed the evidence and determined that the records submitted by KMLT in response to the alleged violation of 49 C.F.R. § 195.412(b) do, in fact, satisfy the inspection requirements of that regulation. Therefore, this Item is hereby withdrawn.

10. Respondent agrees to complete the corrective actions specified in Section II (Work to be Performed) of this Agreement and to pay the civil penalties specified in Section VI (Civil Penalties).

II. Work to be Performed.

11. KMLT agrees to perform all the corrective actions set forth in the proposed Compliance Order, as included in the Notice and incorporated herein as part of Appendix A, except for Item 2 (see Paragraph 12 below), Item 5 (see paragraph 13 below), and Item 7 (see Paragraph 14 below).

12. With respect to Item 2 of the proposed Compliance Order, Respondent agrees to perform all the corrective actions set forth in Appendix B to this Agreement, entitled "Carteret Terminal MOP Substantiation" (Carteret Project), which is hereby incorporated into this Agreement. The Carteret Project may be revised to incorporate new information obtained during the evaluations and remedial activities performed as a part of the Carteret Project. Respondent must submit any proposed Carteret Project revisions to the Director for approval. The Director may approve proposed revisions in whole or in part, or may direct KMLT to revise or modify the Carteret Project as necessary, as set forth in Section III (Review and Approval Process) and Section IV (Dispute Resolution) below.

13. As discussed above, Item 5 of the Notice has been withdrawn. Accordingly, there is no work to be performed for this Item.

14. With respect to Item 7 of the proposed Compliance Order, Respondent agrees to complete all corrective actions within 270 days of the Effective Date of this Agreement, as defined below.

15. The Director may grant an extension of time for completion of any of the work to be performed under this Section II upon Respondent's timely, written request that demonstrates both good cause for an extension and provides sufficient detail to enable the Director to evaluate Respondent's request.

III. Review and Approval Process.

16. With respect to any submission under Section II (Work to be Performed) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) disapprove the submission on specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. In the event of approval in whole, in part, or upon conditions, KMLT will proceed to take all actions required by the submission as modified by the Director, subject to Respondent's right to invoke the procedures in Section IV (Dispute Resolution) with respect to any conditions identified by the Director. In the event that the Director does not approve all or any portion of the submission, the Director will provide KMLT with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for acceptance. If Respondent fails to correct the specified deficiencies, the Director may invoke the dispute resolution process provided in Section IV below.

IV. Dispute Resolution.

17. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement. If KMLT and the Director are unable to informally resolve the dispute within 15 business days, Respondent may request in writing, within 10 business days, a written determination resolving the dispute by the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, Respondent will provide the Associate Administrator with all information KMLT believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a written determination that shall be final. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall 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 Regional Director or the Associate Administrator in writing.

V. Enforcement of Agreement and Order.

18. This Agreement, including all plans and schedules incorporated by reference, 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 \$200,000 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 Carteret Project and all other work plans and associated schedules developed under Section II shall be automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Civil Penalties.

19. As discussed above, Item 5 of the Notice has been withdrawn. Therefore, the proposed civil penalty of \$26,700 for such Item is also withdrawn.

20. Within 15 days from the execution of this Agreement, Respondent agrees to pay to the United States a total civil penalty in the amount of Sixty-three Thousand One-Hundred Dollars (\$63,100.00), said amount being assessed by PHMSA for the following alleged violations set forth in the Notice:

- a. \$30,500, as proposed for Item 3 in the Notice, for the alleged violation of 49 C.F.R. § 195.402(a);
- b. \$10,500, as proposed for Item 4 in the Notice, for the alleged violation of 49 C.F.R. § 195.266;
- c. \$10,500, as proposed for Item 6 in the Notice, for the alleged violation of 49 C.F.R. § 195.555; and
- d. \$ 11,600, as proposed for Item 7 in the Notice, for alleged violation of 49 C.F.R. § 195.585(a)(1).

21. Payment of the \$63,100 must be made within 15 days of the Effective Date, as defined below. 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." Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P. O. Box 269039, Oklahoma City, Oklahoma 73125. The telephone number of the Division is (405) 954-8893.

22. Failure to pay the penalty set forth above within 15 days of the Effective Date will result in the 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 of a Notice of Late Payment. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

VII. Miscellaneous.

23. PHMSA will have the right to inspect the records and facilities of KMLT or any contractor or agent thereof upon reasonable notice, to confirm that the Carteret Project and other compliance terms of this Agreement are being undertaken in conformity with the terms of this Agreement.

24. Except as otherwise provided herein, this Agreement may be modified only by the mutual agreement of the Parties and set forth in writing and signed by both Parties.

25. Each undersigned representative of the Parties certifies that he is fully authorized by the party represented to enter into the terms and conditions hereof and to execute and legally bind that party to it.

VIII. Effective Date and Term.

26. The “Effective Date” as used herein is the date on which this Agreement is signed by both KMLT and PHMSA. Unless specified to the contrary, all deadlines for actions required by the Agreement run from the Effective Date of the Agreement.

IX. Termination.

27. This Agreement will terminate upon payment of the full penalty amount set forth in Section VI (Civil Penalties) and the completion of all terms set forth in Section II (Work to Be Performed), as determined by the Director. Respondent may request, and PHMSA will provide, written confirmation when this Agreement is terminated. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for herein.

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

For PHMSA:

For Kinder Morgan Liquids Terminals, LLC:

Jeffrey D. Wiese
Associate Administrator for
Pipeline Safety, PHMSA

Carlos Munguia
Vice-President
Kinder Morgan Liquids Terminals, LLC

APPENDIX A

[INSERT COPY OF NOPV]



Kinder Morgan Liquids Terminals, LLC

TERMINALS PROCEDURE

Substantiation of Terminal Piping Maximum
Operating Pressure (MOP)

Carteret Terminal, Carteret, NJ

1.0 APPLICABILITY

Refined Products/Natural Gasoline.

2.0 PURPOSE AND SCOPE

This document provides Kinder Morgan Liquids Terminals, LLC (KMLT) North East Region procedures for establishing and documenting MOP for each DOT jurisdictional segment of pipe at its terminal facility located in Carteret, New Jersey (the Carteret Project or Project), as required pursuant to the Consent Agreement and Order between PHMSA and KMLT regarding CPF No. 1-2011-5009, dated

The Project includes 100 piping segments, and will involve pressure testing each jurisdictional segment in order to substantiate MOP in accordance with the pipeline safety regulations, found at 49 C.F.R. Part 195. The Carteret Terminal operates under an established MOP of 285 psi, based on maximum pressure rating of installed flanges. The following procedures and schedule is designed to substantiate the established MOP in accordance with 49 C.F.R. Part 195. This procedure follows existing KMLT O&M Procedure T-O&M 1600 (Strength and Leak Testing) (attached), as applicable.

3.0 TESTING PROCEDURES

KMLT will implement the following methods for executing the Project:

3.1 Identify line segments and internal design pressure

3.1.1 Using Piping and Instrumentation Diagrams (P&ID's), break down piping systems or segment details, number of flanges, appurtenances, measurements, etc.

3.1.2 Identify line segments for manageable testing.

3.1.3 Research and document to ensure that all pipe components of the line segment are capable of the target test pressures. (Refer to test pressures in 3.3.1)

3.2 Testing Preparation

3.2.1 Develop an air elimination procedure to mitigate risk of air being injected into tanks and potentially causing floating roof damage and/or sinking of roofs.

3.2.2 Assemble and issue specifications for piping, valves, blinds, fittings, flanges, gaskets, studs, and nuts, etc.

3.2.3 Secure and/or have on stand-by replacements for piping, valves, fittings,

gauges, gaskets, etc.

- 3.2.3 Evacuate line segments to appropriate storage tank.
- 3.2.4 Drain line segments of any residual products to vacuum trucks and into storage tanks.
- 3.2.5 Remove and plug all appurtenances on line segments, except for 1-2 low point drains.
- 3.2.6 Install slip blinds for segments to be tested. Employ Lock-Out Tag-Out.
- 3.2.7 Review contractor pressure test equipment calibration and verify equipment records.

3.3 Conduct pressure tests²

- 3.3.1 Conduct pressure tests at 1.25 x 285 psi or 357 psi for four hours for above-ground pipe and an additional four hours at 1.10 x 285 psi or 314 psi for underground pipe. Pressure test must be conducted in accordance with §195.304.
- 3.3.2 Use water as a test medium for each line segment.
- 3.3.3 Commence pressure test by slowly ramping up pressure in increments until the test pressure is met. Four hours at 357 psi and an additional four hours at 314 psi, depending on line segment. (Refer to calculations in 3.3.1)
- 3.3.4 Record pressure, ambient temperature and pipe temperature and monitor pressure changes.
- 3.3.5 Inspect line segment for leakage for the duration of the test.
- 3.3.6. If a leak and/or failure occur, then that line segment must be retested.
- 3.3.7 Evaluate chart recorder and check that the test meets 49 C.F.R. Part 195 requirements.

3.4 Completion

- 3.4.1 Upon completion, begin system drain of test medium to vacuum trucks.

² For a map showing the jurisdictional components of Respondent's system, see drawings entitled, "Kinder Morgan Carteret, NJ, Liquids Terminal, East & West Tank Field P&ID's," prepared by STV Incorporated, consisting of 105 sheets, dated May 6, 2013 (on file with PHMSA Eastern Region).

- 3.4.2 Place test medium in Baker style tanks for reuse in other pipe segments.
- 3.4.3 De-water with nitrogen to remove as much water as possible from low point drains.
- 3.4.4 Re-install appurtenances on pipe segments, utilizing new Flexitallic gaskets and new nuts and bolts.
- 3.4.5 Remove Lock-Out Tag-Out controls and isolation blinds and returns segment back to service.

4.0 TESTING SAFETY

- 4.1 Testing procedures should be in place to protect all employees, contractors, and members of the public, including “essential personnel” who are or might be in proximity to the facilities undergoing testing.
- 4.2 Maintaining a safe distance for everyone, or providing adequate barriers or other protections, if necessary to have personnel in the vicinity of the facilities being tested.
- 4.3 Everyone on site during the test must be informed of the procedures and a pre-start up safety review must be conducted.
- 4.4 The testing team should also be asked to survey the site to identify and remove, as appropriate, any loose material that might present a hazard in the event of failure.
- 4.5 Do not use swell plugs or plumber’s plugs/night caps for performing pressure tests.

5.0 PROJECT SCHEDULE

KMLT has developed a schedule to complete all jurisdictional segment testing on the Carteret Terminal by May 31, 2015. This schedule will best accommodate KMLT’s efforts to conduct the work safely and with minimal fuel-supply disruption to local markets. The following table reflects KMLT’s projected schedule for segment testing, which will resume in the spring of 2013. Designation and sequencing of specific segments for testing during a given season will be at KMLT’s discretion and guided by risk assessment principles. As outlined further below, KMLT will provide periodic progress reports to PHMSA so that the agency may track implementation of the Carteret Project. In the first progress report, KMLT will also include documentation of the segments tested in 2012 for PHMSA’s review.

Proposed Carteret Project Execution Plan

Total Segments	2012 Segments	2013 Segments	2014 Segments	2015 Segments
100	Total: 3	Total: 45	Total: 43	Total: 9

6.0 **TRAINING**

Personnel performing the Project must meet the requirements of the KM Operator Qualification program.

7.0 **DOCUMENTATION**

Specific records identified in this section are to be retained in accordance with T-O&M Procedure 1404, Maps and Records and 49 C.F.R. Part 195.310.

7.1 **Test Reporting**

Prepare a test report for every pressure test using T-OM1600-01, Pressure Test Report. This report will be a permanent record and may be used to satisfy regulatory agencies. Retain the test report for as long as the facility is in use. Be sure that the data is complete, self-explanatory, and in accordance with 49 C.F.R. 195.310. Attach the following to the test report:

- 7.1.1 Pressure recording chart signed by the person responsible for making the test.
- 7.1.2 Temperature recording chart signed by the person responsible for making the test.
- 7.1.3 Dead weight gauges and pressure recorder calibration certification.
- 7.1.4 Where elevation difference in the section under test exceeds 100 feet, a profile of the pipeline that shows the elevation and test sites over the entire length of the test section.

7.1.5 Complete all sections of T-OM1600-01, Pressure Test Report. If a part of the form is not applicable, insert N/A (not applicable) so every section is completed. A company representative must sign all reports.

7.1.6 The “Pressure Test Report” shall contain the following information:

- Kinder Morgan’s Business Unit’s name.
- The name of the person responsible for making the test (Test Supervisor).
- The name of the test company used, if any (Test Contractor).
- The date and time of the test.
- The minimum test pressure.
- The test medium.
- A description of the facility tested and the test apparatus.
- A description of any pressure discontinuities, including test failures and temperature deviations that appear on the pressure recording charts.

7.2 Additional Testing Reports

In addition to the strength test report, complete the following if applicable when testing pipeline facilities:

7.2.1 T-OM200-02, Pipeline Inspection/Repair Report distribute as stated on form.

7.2.2 Retain Survey Notes: Include all pressure test report numbers in the survey notes. Forward completed notes to the project management group.

7.3 PHMSA Reporting

PHMSA has requested that KMLT provide progress reports and other opportunities for information-sharing during implementation of the Project.

7.3.1 Commencing no more than 90 days after the Effective Date of the Agreement and continuing every 90 days thereafter, until the Carteret Project Completion Report, as described below, has been filed and accepted by PHMSA, KMLT will submit quarterly progress reports to PHMSA, describing all work performed during the preceding quarter and the safety impacts and implications of the Carteret Project to date.

The quarterly reports will include a segment completion inventory spreadsheet, attached as Attachment A.

7.3.2 Within 90 days after completion of the Carteret Project. KMLT will file a Carteret Project Completion Report with the Director. Said report will contain, at minimum, the following information:

- A detailed description of the work performed, as implemented;
- The total itemized costs of the work performed; and
- Certification that the works has been implemented pursuant to the provisions of the Project plan.
- Verification that all jurisdictional assets have been pressure tested.

7.3.3 All reports, including the Carteret Project Completion Report, shall be submitted to the Director. As the person responsible for monitoring Respondent's compliance with the terms of this Agreement, the Director may request any additional documentation, studies, or reports reasonably necessary to verify compliance with the terms of the Project plan.

* * * *

ATTACHMENT A

**QUARTERLY PROGRESS
REPORT**

[DATE]

**Kinder Morgan Liquids Terminals,
LLC**

Terminal Maximum Operating Pressure (MOP) Substantiation Project

CARTERET TERMINAL, CARTERET, NJ

Segment Name	P&ID Numbers	Test Date	Pass / Fail	Test Pressure (psi)	Test Medium

ATTACHMENT B

**[INSERT COPY OF KMLT O&M PROCEDURE
T-O&M 1600 (STRENGTH AND LEAK TESTING)]**