

February 3, 2023

VIA ELECTRONIC MAIL TO: joshua_etzel@kindermorgan.com

Mr. Joshua Etzel
Vice President – Northern Area
Kinder Morgan Liquid Terminals, LLC
78 Lafayette Street
Carteret, New Jersey 07008

CPF No. 1-2022-038-NOPV

Dear Mr. Etzel:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration and Kinder Morgan Liquid Terminals, LLC, which was executed on February 2, 2023. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, 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. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Mary Clair Lyons, Assistant General Counsel, Kinder Morgan,
mary_lyons@kindermorgan.com
Ms. Catherine Little, outside counsel for Kinder Morgan, Bracewell, LLP,
catherine.little@bracewell.com
Ms. Annie Cook, outside counsel for Kinder Morgan, Bracewell, LLP,
annie.cook@bracewell.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Washington, D.C.**

In the Matter of	)	
	)	
	)	
Kinder Morgan Liquid Terminals, LLC	)	CPF No. 1-2022-038-NOPV
	)	
Respondent.	)	
	)	

CONSENT ORDER

By letter dated July 1, 2022, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to Kinder Morgan Liquid Terminals, LLC (Respondent).

In response to the Notice, Respondent contested twelve (12) of the sixteen (16) alleged violations, associated proposed civil penalties, and the associated proposed compliance order items, and requested a hearing in this matter. Respondent also asked for the opportunity to meet informally with PHMSA to discuss the issues raised in its response. Respondent and PHMSA (the Parties) subsequently met and conferred on several occasions. As a result of those discussions, PHMSA agreed to withdraw certain allegations of violation and Respondent agreed to certain findings of violation without admission, subject to the agreed terms of the Parties. Respondent agreed to pay reduced civil penalties and take certain corrective actions as detailed in the accompanying Consent Agreement.

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.

February 3, 2023

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.**

_____)
In the Matter of _____)

Kinder Morgan Liquid Terminals, LLC _____)

Respondent. _____)

CPF No. 1-2022-038-NOPV

CONSENT AGREEMENT

From June 21, 2021, through September 15, 2021, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected the procedures, records and facilities of Kinder Morgan Liquid Terminals, LLC (KMLT) in Cincinnati and Dayton, Ohio, Indianapolis, Indiana, and Chicago O'Hare, Argo, and Wood River, Illinois.

As a result of the inspection, the Director, Eastern Region, Office of Pipeline Safety (Director) issued to Respondent by letter dated July 1, 2022, a Notice of Probable Violation (NOPV), Proposed Civil Penalties (PCP), and a Proposed Compliance Order (PCO) (collectively, the Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent committed sixteen (16) probable violations and proposed a civil penalty of \$455,200 for six (6) violations and a PCO obligation for three (3) violations. Seven (7) probable violations were brought as warning items.

In response to the Notice, Respondent contested twelve (12) of the allegations, requested a hearing, and asked for the opportunity to meet informally with PHMSA to discuss the remaining alleged violations for Items 1, 2, 5, 7, 8, 9, 10, 11, 12, 14, 15, and 16 (Response). The Respondent elected not to contest four (4) of the NOPV Items, specifically, Warning Items 3, 4, 6, and 13.

PHMSA and Respondent (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions and as explained in more detail below, Respondent, without admission, has agreed to withdraw its hearing request and accept the warning items and findings of violation for Items 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, pay a reduced civil penalty in the amount of **\$165,700** for Items 2, 8, 9, 12, and 15, and undertake corrective measures for Items 7, 10, and 11. Further, as a result of those discussions and as explained in more detail below, PHMSA has agreed to withdraw Items 1, 5, and 16.

As a result of the settlement discussions, the Parties agreed that settlement of this enforcement action will avoid further administrative proceedings or litigation and will serve the public interest

by promoting safety and protection of 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 administrative 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, a representative of PHMSA 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 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 compliance schedules to all of its officers, employees, and agents whose duties might reasonably include responsibility for 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 Eastern 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. This Agreement does not constitute a finding of violation of any Federal law or regulation, except as specifically noted in this Agreement, 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 a 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.

11. 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.

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

II. Warning Items:

13. **Item 3: 49 C.F.R. § 195.55(a)(3):** The Notice alleged that Respondent failed to report a safety-related condition associated with a May 27, 2019 tornado which occurred at its Dayton, Ohio facility. At the time of the event, Respondent did not believe it triggered PHMSA safety-related condition reporting requirements given that there was no impact to the serviceability of the line pipe at the facility and Respondent was already coordinating with PHMSA and others regarding the event.

14. **Item 4: 49 C.F.R. § 195.264(e)(2):** The Notice alleged that Respondent failed to maintain records of the installation and inspection of pressure vacuum relieving devices on breakout tanks S1, S2, and 63-1 at its Argo, Illinois facility.

15. **Item 6: 49 C.F.R. § 195.402(a):** The Notice alleged that Respondent failed to follow its manual of written procedures *T-O&M 003 Procedure Review, dated 09/12/18* and *T-O&M 003 Procedure Review, dated 04/10/19* (Procedure Reviews) through failure to use the proper documentation form.

16. **Item 13: 49 C.F.R. § 195.428(a):** The Notice alleged that Respondent failed to inspect and test its overfill protection devices on breakout tank 13 at its Chicago O'Hare, Illinois facility for calendar years 2019 and 2020. Respondent believes that it performed the underlying inspections, although it was unable to locate the records at the time of the inspection.

17. **Item 14: 49 C.F.R. § 195.573(d):** The Notice alleged that Respondent failed to inspect the cathodic protection systems on breakout tanks 12 and 13 during calendar year 2020 at its Chicago O'Hare, Illinois facility. It further alleged that Respondent failed to justify in its corrosion control procedures why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank. Respondent contested this allegation on the basis that tank 13 was constructed prior to 2000 and is grandfathered and due to the allowance at 49 C.F.R. § 195.573(d) to justify why complying with all or certain provisions of API RP 651 is not necessary for the safety of the tank.

18. Items 3, 4, 6, 13, and 14 were brought as warnings. These Warning Items do not constitute findings of violation for any purpose. If PHMSA finds a violation of the regulations cited in these Warning Items in a subsequent inspection, Respondent may be subject to a future enforcement action.

III. PCO & PCP Findings of Violation:

19. **Item 2: 49 C.F.R. § 194.107(c)(1)(viii):** The Notice alleged that Respondent failed to inspect and test all of its response equipment at the specified inspection intervals for calendar years 2019 and 2020. Respondent contested the allegation on the basis that it performed inspections and testing of all listed emergency response equipment necessary to respond to incidents associated with PHMSA jurisdictional facilities at the requisite intervals for 2019 and 2020. Upon further discussions between the Parties, without admitting or denying the allegation of violation for this item, Respondent agrees to accept the finding of violation for purposes of settlement. During the informal discussions, Respondent presented arguments and records supporting a reduction of the proposed civil penalty.

20. **Item 7: 49 C.F.R. § 195.402(a):** The Notice alleged that Respondent failed to follow its *T-O&M 1101-Response to Notice of Emergency or Abnormal Operations, dated 03/11/2020* (AO Procedure) and *T-O&M 179-Incident Investigation, dated 11/12/2020* (Incident Procedure) for its abnormal operating records due to an alleged failure to include a manager's approval signature indicating the successful closure of all identified corrective actions and its Incident Procedure did not include or reference abnormal operating conditions in its scope, nor did it include details for responding to, investigating, and correcting the cause of the abnormal operating conditions. Respondent contested this allegation and maintains that these procedures do not expressly specify that a manager's approval signature is required. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation and submitted revised procedures to PHMSA as also described in Paragraph 38.

21. **Item 8: 49 C.F.R. § 195.402(c)(13):** The Notice alleged that Respondent failed to conduct periodic reviews of the work done by operator personnel to determine the effectiveness

of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found. Respondent contested the allegation on the basis that the reviews were performed and documentation of the reviews was provided to PHMSA during the inspection. Though the annual reviews do not specifically include the word “effectiveness,” Respondent maintains that is not an express regulatory requirement. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation. During the informal discussions, Respondent presented information supporting a reduction of the proposed civil penalty.

22. **Item 9: 49 C.F.R. § 195.402(d)(5):** The Notice alleged that Respondent failed to conduct post-event reviews of actions taken by operator personnel to determine the effectiveness of the abnormal operation procedures and whether corrective actions were taken when deficiencies were found. Respondent contested this allegation. Respondent conducted these reviews and at the time of the inspection Respondent documented performance of the 2019 and 2020 effectiveness review in its incident investigation database. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation. During the informal discussions, Respondent presented information supporting a reduction of the proposed civil penalty.

23. **Item 10: 49 C.F.R. § 195.402(e)(9):** The Notice alleged that Respondent failed to include procedures that provide for a post-accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective action where deficiencies are found. Respondent contested the allegation and maintains its post-accident effectiveness reviews, which are documented by the “yes or no” data field on the IMPACT records, includes confirmation of whether the procedures were effective based on a review of personnel activities. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation and submitted revised procedures as also described in Paragraph 39.

24. **Item 11: 49 C.F.R. § 195.403(c):** The Notice alleged that Respondent failed to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible for ensuring compliance. Respondent contested this allegation and maintains its terminals training program included emergency response training and the participation of supervisors in the annual drills demonstrates verification of their knowledge and documentation of the procedures for which they are responsible. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation and submitted revised procedures as also described in Paragraph 40.

25. **Item 12: 49 C.F.R. § 195.430(a):** The Notice alleged that Respondent failed to conduct firefighting protection equipment inspections for calendar years 2019 and 2020 at its Chicago O'Hare, Illinois, Dayton, Ohio, Indianapolis, Indiana, and Wood River, Illinois

facilities. Respondent contested this allegation. Respondent performed the relevant annual and monthly firefighting equipment inspections in 2019 and 2020 and maintained documentation of the inspections. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation. During the informal discussions, Respondent presented information supporting a reduction of the proposed civil penalty.

26. **Item 15: 49 C.F.R. § 195.573(e):** The Notice alleged that Respondent failed to correct the criteria cathodic protection readings on four breakout tanks at its Argo, Illinois, Chicago O'Hare, Illinois and Indianapolis, Indiana facilities (Argo Tank 63-1, Indy Tank-2, O'Hare Tank 12, and O'Hare Tank 13). Respondent contested this allegation. Respondent maintained that the tanks at issue are not subject to minimum cathodic protection criteria based on tanks that were constructed prior to 2000 and/or the allowance at 49 C.F.R. § 195.573(d) to justify why complying with all or certain provisions of API RP 651 is not necessary for the safety of the tank. Upon further discussions between the Parties, Respondent, without admitting or denying the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation for Argo Tank 63-1 and O'Hare Tank 12. During the informal discussions, Respondent presented information supporting a reduction of the proposed civil penalty.

27. In sum, PHMSA finds a violation for Items 2, 7, 8, 9, 10, 11, 12, and 15. These items may be considered by PHMSA as prior offenses in future enforcement taken against Respondent, except as set forth in Paragraph 42.

IV. Items Withdrawn:

28. **Item 1: 49 C.F.R. § 194.105(b)(3):** The Notice alleged that Respondent failed to adequately conduct the worst case discharge calculations for its breakout tanks at the Cincinnati, Ohio and Chicago O'Hare, Illinois facilities. Respondent contested this allegation on the basis that Respondent's facilities are complex facilities subject to the jurisdiction of multiple agencies, and for which it maintains worst case discharge determinations on a facility-wide basis based on the capacity of the largest tank within a common secondary containment area or the largest oil storage tank within a single secondary containment area, whichever is greater, given that Respondent does not maintain permanently manifolded tanks. Based upon the informal discussions between the Parties and additional information provided by Respondent, PHMSA agrees to withdraw Item 1 as alleged in the Notice.

29. **Item 5: 49 C.F.R. § 195.310(a):** The Notice alleged that Respondent failed to maintain adequate pressure tests for three breakout tanks at its Argo, Illinois facility (Tank S1, Tank S2, and Tank 63-1). Respondent contested this allegation on the basis that the recordkeeping requirements for pressure testing aboveground breakout tanks are set forth in 49 C.F.R. § 195.307 and these requirements depend on when a tank was constructed and the API standard to which a tank is constructed. Based upon the informal discussions between the Parties and additional information provided by Respondent, PHMSA agrees to withdraw Item 5 as alleged in the Notice.

30. **Item 16: 49 C.F.R. § 195.579(d):** The Notice alleged that Respondent failed to maintain breakout tank lining installation records for breakout tank 63-1 at the Argo, Illinois facility as required by API RP 652. Respondent contested this allegation on the basis that the regulation did not apply to the breakout tank 63-1 which was not originally installed as a PHMSA jurisdictional breakout tank. Based upon the informal discussions between the Parties and additional information provided by Respondent, PHMSA agrees to withdraw Item 16 as alleged in the Notice.

V. Civil Penalty:

31. **Item 2:** The Notice proposed assessing civil penalties in the amount of \$36,600 for Item 2. PHMSA agrees to reduce the proposed civil penalty. The reduction is based on reconsideration of the nature (recordkeeping) and gravity (number of occurrences) of the offense after consideration of additional information provided by Respondent during informal discussions supporting a reduction of the proposed civil penalty. As such, Respondent shall pay a civil penalty in the amount of **\$32,800**.

32. **Item 5:** The Notice proposed assessing civil penalties in the amount of \$141,300. For the reasons set forth above, PHMSA withdraws the underlying allegations of violation for this Item. As such, PHMSA also withdraws the proposed civil penalties associated with Item 5.

33. **Item 8:** The Notice proposed assessing civil penalties in the amount of \$36,600 for Item 8. PHMSA agrees to reduce the proposed civil penalty. The reduction is based on reconsideration of the nature (recordkeeping) and gravity (number of occurrences) of the offense after consideration of additional information provided by Respondent during informal discussions supporting a reduction of the proposed civil penalty. As such, Respondent shall pay a civil penalty in the amount of **\$32,800**.

34. **Item 9:** The Notice proposed assessing civil penalties in the amount of \$36,600 for Item 9. PHMSA agrees to reduce the proposed civil penalty. The reduction is based on reconsideration of the nature (recordkeeping) and gravity (number of occurrences) of the offense after consideration of additional information provided by Respondent during informal discussions supporting a reduction of the proposed civil penalty. As such, Respondent shall pay a civil penalty in the amount of **\$32,800**.

35. **Item 12:** The Notice proposed assessing civil penalties in the amount of \$122,600 for Item 12. PHMSA agrees to reduce the proposed civil penalty. The reduction is based on reconsideration of the nature (recordkeeping) and gravity (number of occurrences) of the offense after consideration of additional information provided by Respondent during informal discussions supporting a reduction of the proposed civil penalty. As such, Respondent shall pay a civil penalty in the amount of **\$33,800**.

36. **Item 15:** The Notice proposed assessing civil penalties in the amount of \$81,500 for Item 15. PHMSA agrees to reduce the proposed civil penalty. The reduction is based on reconsideration of the nature (recordkeeping) and gravity (number of occurrences) of the offense after consideration of additional information provided by Respondent during informal

discussions supporting a reduction of the proposed civil penalty. As such, Respondent shall pay a civil penalty in the amount of **\$33,500**.

37. Respondent shall pay a total civil penalty in the amount of **\$165,700**, to be paid no later than 20 days from the ***Effective Date*** of this Agreement.

VI. Compliance Order:

38. ***Item 7:*** The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 7. Upon further discussions between the Parties, Respondent, without admission and for purposes of settlement, submitted revised procedures to include details for responding to, investigating, and correcting the cause of abnormal operating conditions. Based upon review of these records, PHMSA finds that the terms of the compliance order action proposed in the Notice for Item 7 have been satisfied.

39. ***Item 10:*** The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 10. Upon further discussions between the Parties, Respondent, without admission and for purposes of settlement, has revised its procedure to clarify the process for post-accident review of employee activities. Based upon review of these records, PHMSA finds that the terms of the compliance order action proposed in the Notice for Item 10 have been satisfied.

40. ***Item 11:*** The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 11. Upon further discussions between the Parties, Respondent, without admission and for purposes of settlement, has revised emergency response procedures specific to supervisor verification. Based upon review of these records, PHMSA finds that the revised procedures are adequate. To fully satisfy the compliance order action for Item 11, Respondent must train and verify its emergency response supervisors in accordance with the modified procedures within 180 days of the ***Effective Date*** of this Agreement. Respondent agrees to notify the Director upon completing the training and verification process.

VII. Enforcement:

41. 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 \$ 257,664 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 49 C.F.R. § 190.223.

42. In order to provide Respondent adequate time to address the violations described above across Respondent's regulated hazardous liquid pipeline assets, for this Agreement only, PHMSA agrees to provide Respondent with 1 year from the ***Effective Date*** of this Agreement to

implement any necessary updated procedures or initiate corrective actions before alleging a prior violation of the same regulatory provisions.

VIII. Dispute Resolution:

43. 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 Eastern 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.

IX. Effective Date:

44. 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.

X. Recordkeeping and Information Disclosure:

45. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

XI. Modification:

46. 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.

XII. Ratification:

47. 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.

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

[Signature Lines on Following Page]

For Kinder Morgan Liquid Terminals, LLC:

Joshua Etzel
Vice President – Northern Area
Kinder Morgan Liquid Terminals, LLC

Date:

For PHMSA:

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety

Date: