

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS DELIVERY

July 1, 2022

Mr. Steve J. Kean
President and Chief Executive Officer
Kinder Morgan Liquid Terminals, LLC
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

CPF 1-2022-038-NOPV

Dear Mr. Kean:

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 Kinder Morgan Liquid Terminals, LLC's (KMLT) procedures, records and facilities in Cincinnati and Dayton, Ohio, Indianapolis, Indiana, and Chicago O'Hare, Argo, and Wood River, Illinois.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 194.105 Worst case discharge.**
 - (a) ...
 - (b) **The worst case discharge is the largest volume, in barrels (cubic meters), of the following:**
 - (1) ...

(3) If the response zone contains one or more breakout tanks, the capacity of the single largest tank or battery of tanks within a single secondary containment system, adjusted for the capacity or size of the secondary containment system, expressed in barrels (cubic meters).

KMLT failed to adequately conduct its worst case discharge calculations. Specifically, KMLT failed to adequately conduct the worst case discharge calculations for its breakout tanks at the Cincinnati, Ohio and Chicago O'Hare, Illinois facilities in accordance with § 194.105(b)(3).

During the inspection PHMSA requested records for the worst case discharge calculations for the Cincinnati, Ohio and Chicago O'Hare, Illinois facilities. KMLT provided its *Cincinnati North Terminal FRP-EPA-PHMSA, dated 07/02/21* (Cincinnati FRP) and *O'Hare FRP-EPA PHMSA, dated 06/09/21* (O'Hare FRP).

The O'Hare FRP indicated the worst case discharge calculation for its breakout tanks was based on a non-jurisdictional breakout tank (Tank 3). The Cincinnati FRP indicated the worst case discharge calculation for its breakout tanks was based on a non-jurisdictional breakout tank (Tank 14). During the inspection PHMSA asked KMLT about the worst case discharge calculations. KMLT stated that incorrect breakout tanks and tank capacities were used in the worst case discharge calculations for these two terminals.

Therefore, KMLT failed to adequately conduct its worst case discharge calculations in accordance with § 194.105(b)(3).

2. § 194.107 General Response Plan Requirements.

(a) ...

(c) Each response plan must include:

(1) A core plan consisting of –

(i) ...

(viii) Equipment testing

KMLT failed to follow its facility response plan regarding equipment testing. Specifically, KMLT failed to inspect and test all KMLT owned response equipment at the specified inspection intervals for calendar years 2019 and 2020 in accordance with § 194.107(c)(1)(viii).

During the inspection PHMSA requested 2019 and 2020 facility response plan equipment inspection and test records for the Argo, Illinois terminal. KMLT provided its Argo facility response plan, *Argo Terminal FRP, dated 04012020* (Argo FRP).

The Argo FRP Figure 4.2 listed each type of KMLT owned response equipment. The Argo FRP Figure 4.3 identified a general inspection frequency of quarterly. When PHMSA re-requested the 2019 and 2020 response equipment records, KMLT stated that it did not have any records to provide. After the inspection KMLT provided *Kinder Morgan Argo Boat PM Maximo Work Order, dated 06/01/21* (Boat Work Order) and *Monthly Spill Response Boat PM, dated 06/29/20* (Boat Record). However, the Boat Work Order and Boat Record failed to indicate an adequate inspection and test for all KMLT owned response equipment at the required inspection intervals.

Therefore, KMLT failed to follow its facility response plan regarding equipment testing for calendar years 2019 and 2020 in accordance with § 194.107(c)(1)(viii).

3. § 195.55 Reporting safety-related conditions.

(a) Except as provided in paragraph (b) of this section, each operator shall report in accordance with § 195.56 the existence of any of the following safety-related conditions involving pipelines in service:

(1) ...

(3) Any material defect or physical damage that impairs the serviceability of a pipeline.

KMLT failed to report a safety-related condition for an extreme weather event that impaired the serviceability of a pipeline. Specifically, KMLT failed to report a safety-related condition for a May 27, 2019 tornado which occurred at its Dayton, Ohio facility in accordance with § 195.55(a)(3).

During the inspection PHMSA requested records related to extreme weather or natural disaster events. KMLT mentioned the May 27, 2019 tornado which occurred at its Dayton, Ohio facility that caused extensive property damage to the facility and associated breakout tanks, and activated the emergency response system as well as resulted in a shutdown of the facility for approximately nine months. KMLT provided *Emergency Tornado Drill Record, dated 05/27/19* and *Pictures from Tornado, dated 05/27/19*. The records confirmed that the tornado impacted the Dayton, Ohio facility on May 27, 2019.

When PHMSA asked KMLT if it filed a safety-related condition report, KMLT asserted that a report was not necessary and that it did not file one. However, KMLT records indicated that material defects and physical damage to the facility impaired the serviceability of the pipeline (breakout tanks), thus requiring a safety-related report to be filed with PHMSA.

Therefore, KMLT failed to report a safety-related condition for a tornado that impaired the serviceability of a pipeline in accordance with § 195.55(a)(3).

4. § 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(a) ...

(e) For normal/emergency relief venting and pressure/vacuum-relieving devices installed on aboveground breakout tanks after October 2, 2000, compliance with paragraph (d) of this section requires the following for the tanks specified:

(1) ...

(2) Normal/emergency relief venting installed on atmospheric pressure tanks (such as those built to API Std 650 or its predecessor Standard 12C) must be in accordance with API Std 2000 (incorporated by reference, see § 195.3).

KMLT failed to maintain records of the installation and inspection of pressure vacuum relieving devices on its breakout tanks. Specifically, KMLT failed to maintain records of pressure vacuum relieving device installation on breakout tanks S1, S2 and 63-1 at its Argo, Illinois facility in accordance with § 195.264(e)(2).¹

During the inspection PHMSA requested records related to § 195.264 for breakout tanks S1, S2 and 63-1. KMLT confirmed that these three breakout tanks had pressure vacuum relieving devices but it did not have any associated installation or inspection records for these tanks.

After the inspection KMLT provided *S1 and S2 Sizing Reports, dated 05/02/2016* (Sizing Reports). The Sizing Reports, however, were not installation records of pressure vacuum relieving devices on breakout tanks S1, S2 or 63-1. After the inspection via email correspondence on September 2, 2021, KMLT stated that it did not have installation records for Tank 63-1, but did provide new analysis on 63-1, as well as updated analysis for S-1 and S- 2.

Therefore, KMLT 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 in accordance with § 195.264(e)(2).

5. § 195.310 Records.

(a) A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

KMLT failed to maintain adequate pressure test records on its aboveground breakout tanks. Specifically, KMLT failed to maintain adequate pressure tests for three breakout tanks at its Argo, Illinois facility (Tank S1, Tank S2, and Tank 63-1) in accordance with § 195.310(a).²

During the inspection PHMSA requested hydrostatic test records for KMLT's breakout tanks constructed after October 2, 2000. KMLT provided the *S1-S2 and 63-1 Hydrotest Records, dated 10/31/02* (Hydrostatic Test Records). The Hydrostatic Test Records for Tank 63-1 did not record any of the following required data: pressure recording charts, test instrument calibration data, the name of the person responsible for making the test, the name of the company used, the minimum test pressure, an explanation of any pressure discontinuities, including test failures, that appear on the pressure recording chart, temperature of the test medium, sign-off or approval of the hydrotest. The Hydrostatic Test Records for Tanks S1 and S2 did not record any of the following required data: pressure recording charts, test instrument calibration data, the minimum test pressure, an explanation of any pressure discontinuities, including test failures, that appear on the pressure

¹ API Std 2000 section 7.1 requires that operators maintain installation records of all venting equipment.

² 49 C.F.R. § 195.307 requires pressure testing for aboveground breakout tanks.

recording chart and temperature of the test medium.

During the inspection PHMSA re-requested information regarding the missing data fields on the Hydrostatic Test Records. KMLT stated that there were no records with this information and agreed that the three hydrostatic test records lacked the required information.

Therefore, KMLT failed to maintain adequate pressure test records on its aboveground breakout tanks S1, S2 and 63-1 at its Argo, Illinois facility in accordance with § 195.310(a).

This violation is a repeat of violations found in CPF No. 1-2018-5004, Item No.1.

6. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator must prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to ensure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

KMLT failed to follow its manual of written procedures. Specifically, KMLT failed to follow its *T-O&M 003 Procedure Review, dated 09/12/18* and *T-O&M 003 Procedure Review, dated 04/10/19* (Procedure Reviews) in accordance with § 195.402(a).

The Procedure Reviews stated that “Directors and Managers will coordinate the procedure review assignments within their own regions and systems. Assignments will be documented on T-OM000-03, Procedure Review Form.” The Procedures Reviews also stated that “Subject Matter Experts (SME) shall review the manual for appropriate current operations/maintenance/inspection practices, tools and equipment. The review shall be documented on T-OM 000-03, Procedure Review Form.”

During the inspection PHMSA requested the annual review records for the emergency manuals for calendar years 2019 and 2020. KMLT provided the *Emergency Manual Excel Spreadsheet, dated 12/15/20* (ERP Spreadsheet) and the *Facility Response Plans* (FRPs). KMLT stated that the revision logs in the FRPs and the ERP Spreadsheet contained the annual review records. However, these documents failed to follow the Procedure Reviews for documenting annual reviews during calendar years 2019 and 2020 on the proper T-OM 000-03 Procedure Review Form.

When PHMSA inquired further about the emergency manual annual reviews being documented in accordance with its Procedure Review, KMLT did not provide a response. After the inspection KMLT provided *MOC Summary 26290 - 1900 Annual Review, dated 07/11/19* and *MOC Summary 26290 - 1900 Annual Review, dated 04/30/20* (MOC Records). However, these documents were also not completed on the proper T-OM 000-03 Procedure Review Form.

Therefore, KMLT failed to follow its manual of written procedures for documenting its annual reviews in accordance with § 195.402(a).

7. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator must prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to ensure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

KMLT failed to follow its manual of written procedures. Specifically, KMLT failed to follow its *T-O&M1101-Response to Notice of Emergency or Abnormal Operations, dated 03/11/2020* (AO Procedure) and *T-O&M179-Incident Investigation, dated 11/12/2020* (Incident Procedure) for its abnormal operating records in accordance with § 195.402(a).

During the inspection PHMSA requested KMLT's procedures and 2019 - 2020 calendar year records related to § 195.402(d)(1).³ KMLT provided its AO Procedure, Incident Procedure, its *Abnormal Operating Condition Data Gathering Report, dated 07142019* and its *Abnormal Operating Condition Data Gathering Report, dated 02122020* (AOC Records).

The AO Procedure Section 3.4.1 stated in part:

Each emergency and abnormal operating condition will be responded to and investigated to determine the cause and appropriate corrective action. T-O&M Procedure 179, Incident Investigation Section 3.9 Failure Investigation shall be followed to determine the extent of the investigation, and Table 3 of the same procedure provides guidance on who should be on the investigative team.

The Incident Procedure Section 2 stated in part:

This procedure establishes the minimum requirements for the investigation of all incidents (accidents and near misses). This includes but is not limited to accidents and/or near misses involving employees, contractors, visitors, or assets of the Kinder Morgan Terminals

³ 49 C.F.R. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) ...

(d) Abnormal operation. The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of:

(i) Unintended closure of valves or shutdowns;

(ii) Increase or decrease in pressure or flow rate outside normal operating limits;

(iii) Loss of communications;

(iv) Operation of any safety device;

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which could cause a hazard to persons or property.

business unit. ALL incidents are required to be investigated and shall require either an immediate cause (informal) or a root cause (formal) analysis be completed depending on the risk assessment associated with the actual and/or potential incident.

Regarding documentation of the investigation and corrective actions for abnormal operations, the Incident Procedure Section 4.4.2 stated in part, “Managers/Supervisors are responsible for taking part in the investigation of all incidents. Managers/Supervisors are responsible for ensuring all incidents are entered into IMPACT within 24 hours of notification that the event occurred or the next regular business day. Managers are responsible for validating the successful closure of all corrective actions prior to the incident being closed in IMPACT.” The AO Procedure Section 3.4.2 stated in part, “Once the investigation has been completed, any identified corrective actions will be reviewed by SME’s and implemented as required.”

For the AOC Records provided, KMLT’s managers failed to validate the successful closure of all corrective actions prior to the incident being closed. Specifically, the AOC Records failed to include a manager’s approval signature indicating the successful closure of all identified corrective actions. PHMSA requested additional information regarding how KMLT followed its AO Procedure and Incident Procedure. KMLT stated that the reports were closed, but that there is no further documentation.

In addition to failing to follow its manual of written procedures, KMLT’s existing written procedures were inadequate to ensure safe operation of a pipeline facility. Specifically, the 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. Neither Section 3.9 Failure Investigation nor Table 3, referenced in the AO Procedure, were present in the Incident Procedure.

Therefore, KMLT failed to follow its manual of written procedures in accordance with § 195.402(a).

8. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) ...

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

(1) ...

(13) Periodically reviewing 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.

KMLT 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 as required by § 195.402(c)(13).

During the inspection the PHSMA inspector requested records related to § 195.402(c)(13) for calendar years 2019 and 2020. KMLT provided *ADC Annual Review of T-O&M Procedures, dated 12/17/19* (ADC Records). The ADC Records indicated an annual review of the T-O&M procedures, not an effectiveness review pursuant to § 195.402(c)(13). The ADC Records failed to indicate what reviews were conducted of the work done, what procedure was reviewed by operator personnel in normal operation and maintenance tasks, and what corrective actions were taken if any deficiencies were found.

Therefore, KMLT 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 in calendar years 2019 and 2020 in accordance with § 195.402(c)(13).

9. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)...

(d) *Abnormal operation.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) ...

(5) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

KMLT 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 as required by § 195.402(d)(5).

During the inspection PHMSA requested records related to § 195.402(d)(5) for calendar years 2019 and 2020. KMLT was unable to provide any post-event effectiveness review records. KMLT stated that it has no further information related to post-event effectiveness review records.

Therefore, KMLT failed to conduct post-event reviews during calendar years 2019 and 2020 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 in accordance with § 195.402(d)(5).

10. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) ...

(e) *Emergencies.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs:

(1) ...

(9) Providing 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.

KMLT's written procedures were inadequate to ensure safe operation of a pipeline facility. Specifically, KMLT 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 in accordance with § 195.402(e)(9).

During the inspection PHMSA requested records for § 195.402(e)(9) for calendar years 2019 and 2020. KMLT provided its *IMPACT incident reports, dated 10/12/19* (IMPACT Records) for the four incidents which took place during 2019 and 2020 at KMLT affected facilities. Additionally, KMLT provided the *ERL Alert- KMLT Email Correspondence, dated 11/18/19* (ERL Emails) and *ERL Report for Business Segments, dated 01/01/19* (ERL Report).

The IMPACT Records, ERL Emails and ERL Report failed to document any post accident review of employee activities to determine whether the procedures were effective. During the inspection KMLT stated that the post accident effectiveness reviews were documented by the "yes or no" data field on the IMPACT Records, which asked whether the procedures were effective based on a review of personnel activities. In further discussions however, KMLT was unable to identify any supporting information which justified its response, such as who the employee was, what procedures were used, how effectiveness was determined, as well as a documented process for conducting the effectiveness review.

Furthermore, KMLT's *T-O&M 179 Incident Investigation, dated 11/12/20* (Incident Procedure) failed to include procedures to provide a post-accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective actions where deficiencies are found.

During the inspection, PHMSA requested KMLT's procedures regarding the § 195.402(e)(9) requirements. KMLT described a process in its IMPACT internal database system where "yes and no" demonstrate whether a review was conducted. However, the Incident Procedure did not mention a post-accident review of employees' activities, nor did it include details to determine whether the procedures were effective in each emergency.

Therefore, KMLT 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 in accordance with § 195.402(e)(9).

11. § 195.403 Emergency response training.

(a) ...

(c) Each operator shall 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 to ensure compliance.

KMLT 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. Specifically, KMLT failed to provide adequate records demonstrating compliance with § 195.403(c).

During the inspection PHMSA requested emergency response supervisor training records for calendar years 2019 and 2020. KMLT provided its *Egress & Emergency Action Plan Sign-In-Sheets, dated 01/01/2018* (Egress Records) and *Excel Spreadsheet-Emergency Evacuation - Getting Out Alive Training, dated 01/01/19* (Emergency Evacuation Records). PHMSA subsequently requested additional information on how supervisors maintain knowledge of the emergency response procedures for which they are responsible for ensuring compliance. KMLT stated that all KMLT personnel in emergency response take the same training, and there is no specific training or requirements for emergency response supervisors. KMLT stated that there is a test system given to employees but that it is not documented in its written procedures. Furthermore, KMLT stated that the Egress Records and Emergency Evacuation Records were trainings related to supervisors reviewing the procedures. The Egress Records and the Emergency Evacuation Records did not demonstrate that KMLT verified that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance.

Furthermore, KMLT's *T-O&M 1900 Abnormal Operating Conditions and Emergency Response Plan, dated 03/09/18* (ERP Procedure) and its *T-O&M 7101 Terminals Training Program, dated 10/16/20* (Training Program) failed to include an adequate process for requiring and verifying that supervisors be knowledgeable of emergency response procedures for which they are responsible for as required by § 195.403(c).

During the inspection PHMSA requested KMLT's procedures regarding emergency response supervisor training. KMLT provided the ERP Procedure Section 4 which stated in part:

Supervisors are required to maintain a thorough knowledge of the portion of the emergency response procedures for which they are responsible to ensure compliance. A review of the Emergency Response procedures (refer to T-O&M Procedure 003, Procedure Review) and participation in Hazwoper training will serve to verify continued knowledge.

The ERP Procedure and the Training Program did not mention any specific details regarding how KMLT requires and verifies that its supervisors are knowledgeable of the emergency response procedures for which they are responsible for, as well as how and where these requirements are documented.

Therefore, KMLT 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 during calendar years 2019 and 2020 in accordance with § 195.403(c).

12. § 195.430 Firefighting equipment.

Each operator shall maintain adequate firefighting equipment at each pump station and breakout tank area. The equipment must be—

(a) In proper operating condition at all times;

KMLT failed to maintain adequate firefighting equipment in proper operating condition at all

times. Specifically, KMLT failed to conduct various 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 in accordance with § 195.430(a)

During the inspection PHMSA requested fire protection equipment records related to § 195.430 for KMLT's four facilities. KMLT failed to provide any records related to firefighting equipment inspection and maintenance. After the inspection KMLT provided its *Fire Extinguisher Records, dated 2019 and 2020* (Fire Records).

Based on a review of the Fire Records, KMLT failed to conduct its firefighting protection equipment inspections for the following:

- Wood River, Illinois annual fire extinguisher records for calendar years 2019 and 2020
- Indianapolis, Indiana monthly fire extinguisher records for calendar year 2019
- Indianapolis, Indiana annual fire extinguisher records for calendar years 2019 and 2020
- Chicago O'Hare, Illinois monthly fire extinguisher records for calendar years 2019 and 2020
- Dayton, Ohio annual fire extinguisher records for calendar years 2019 and 2020
- Dayton, Ohio monthly fire extinguisher records for calendar years 2019 and 2020

Therefore, KMLT to maintain adequate firefighting equipment in proper operating condition at all times in accordance with § 195.430(a).

13. § 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 7 1/2 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.

KMLT failed to inspect and test its overfill protection devices. Specifically, KMLT failed to inspect and test the overfill protection devices on breakout tank 13 at its Chicago O'Hare facility for calendar years 2019 and 2020 in accordance with § 195.428(a).

During the inspection PHMSA requested the records for inspection and testing of overfill protection devices on breakout tank 13. KMLT stated that it did not have a record and did not provide further information. After the inspection via email, *KMLT-PHMSA Email Correspondence, dated 09022021* KMLT stated it could not locate Tank 13 overfill protection device records for 2019 and 2020.

Therefore, KMLT failed to inspect and test its overfill protection devices on breakout tank 13 at its Chicago O'Hare facility for calendar years 2019 and 2020 in accordance with § 195.428(a).

14. § 195.573 What must I do to monitor external corrosion control?

(a) ...

(d) Breakout tanks. You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API RP 651 (incorporated by reference, see § 195.3). However, this inspection is not required if you note in the corrosion control procedures established under § 195.402(c)(3) why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank.

KMLT failed to inspect each cathodic protection system used to control corrosion on the bottom of aboveground breakout tanks. Specifically, KMLT failed to inspect the cathodic protection systems on breakout tanks 12 and 13 during calendar year 2020 at its Chicago O'Hare, Illinois facility in accordance with § 195.573(d).

During the inspection PHMSA requested records related to § 195.573(d) for breakout tanks 12 and 13 at the Chicago O'Hare, Illinois facility. KMLT provided its *O'Hare CPDM Survey Report, dated 10/02/19* (2019 CPDM). KMLT failed to provide a 2020 CPDM report. KMLT stated that prior to 2021 the cathodic protection system could be inspected, but it chose not to inspect or test the system as it monitored the corrosion growth rate analysis of the tanks. KMLT stated that in 2021 readings will be taken to monitor the impressed current system. KMLT provided its *O'Hare DOT Tank CP Plan, dated 03/10/21* (CP Plan).

The CP Plan Section 5.1.1(c) stated in part, "Prior to 2021 the impressed current CP systems had not been monitored and KM was using the corrosion rate monitoring program to evaluate the integrity of the tank. Testing that occurred in early 2021 indicates the tanks could potentially meet 100 mV criteria after further polarization of the tank floors. The tanks listed below will be added to the annual cp survey route to evaluate the effectiveness of the impressed current system."

When PHMSA re-requested the missing 2020 CPDM report, KMLT also stated that cathodic protection readings on the installed tank systems were not meeting KMLT criteria, therefore it is using a corrosion growth rate analysis. KMLT failed to specify how the inspection of each cathodic protection system on breakout tanks 12 and 13 were not required based upon its corrosion growth analysis conducted in 2020, in the CP Plan.

Further, KMLT 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. *T-O&M 903 External Corrosion Control for Buried or Submerged Pipelines, dated 01/13/21* (Corrosion Manual) Section 3.5.2.4 stated in part:

Annual structure-to-soil potential surveys should be performed and rectifiers should be checked for proper operation every two months, in accordance with ANSI/API RP 651. However, due to unexpected delays and to allow flexibility in scheduling, annual surveys may extend to 15 months (but at least once each calendar year) and rectifier inspections may extend to 2 ½ month (but at least 6 times per year). This is consistent with the

reasoning of Amendment 195-24, which extended all periodic inspection intervals.

Therefore, KMLT failed to inspect each cathodic protection system on breakout tank 12 and 13 during calendar year 2020 at its Chicago O'Hare, Illinois facility and failed to note in its corrosion control procedures established under § 195.402(c)(3) why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank in accordance with § 195.573(d).

15. § 195.573 What must I do to monitor external corrosion control?

(a) ...

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

KMLT failed to correct identified deficiencies in corrosion control. Specifically, KMLT failed to correct the below criteria cathodic protection readings on four breakout tanks at its Argo, Illinois, Chicago O'Hare, Illinois and Indianapolis, Indiana facilities in accordance with § 195.573(e).

During the inspection PHMSA requested breakout tank cathodic protection records. KMLT provided *Argo CPDM Survey Report, dated 06/26/19* (Argo CPDM), *Indianapolis CPDM Survey Report, dated 04/09/19* (Indy CPDM), and *O'Hare CPDM Survey Report, dated 10/02/19* (O'Hare CPDM). The CPDM records indicated the following tanks had below criteria cathodic protection readings: Argo tank 63-1 (2019 and 2020), Indianapolis tank 2, and O'Hare tank 12 and 13 (2019, 2020 no record). When PHMSA requested records related to correction of the low cathodic protection readings on the breakout tanks, KMLT was unable to provide any records. KMLT stated that it had taken readings on these tanks but was unable to meet criteria and had not made any repairs, and therefore it was now monitoring these tanks based upon the corrosion growth rate analysis. Using the corrosion growth rate analysis does not correct identified deficiencies on these four breakout tanks. Further, KMLT failed to make any repairs on these breakout tank cathodic protection systems to bring them into compliance.

Therefore, KMLT failed to correct the below criteria cathodic protection readings on four breakout tanks at its Argo, Illinois, Chicago O'Hare, Illinois and Indianapolis, Indiana facilities in accordance with § 195.573(e).

16. § 195.579 What must I do to mitigate internal corrosion?

(a) ...

(d) Breakout tanks. After October 2, 2000, when you install a tank bottom lining in an aboveground breakout tank built to API Spec 12F (incorporated by reference, see § 195.3), API Std 620 (incorporated by reference, see § 195.3), API Std 650 (incorporated by reference, see § 195.3), or API Std 650's predecessor, Standard 12C, you must install the lining in accordance with API RP 652 (incorporated by reference, see § 195.3). However, you don't need to comply with API RP 652 when installing any tank for which you note in the corrosion control procedures established under § 195.402(c)(3) why compliance with all or certain provisions of API RP 652 is not necessary for the safety of the tank.

KMLT failed to maintain breakout tank lining installation records for breakout tank 63-1 at the Argo, Illinois facility as required by API RP 652 in accordance with § 195.579(d).

During the inspection PHMSA requested records related to § 195.579(d). KMLT stated that breakout tank 63-1 had a lining installed. KMLT was unable to provide any records which demonstrated compliance. After the inspection KMLT provided *Breakout Tank Purchase Order Records, dated 11/01/02* (Purchase Order Records). The Purchase Order Records failed to indicate any installation of a lining on breakout tank 63-1. Further, the Records failed to indicate the lining was installed in accordance with API RP 652 or any analysis done demonstrating why compliance with API RP 652 was not necessary for the safety of the tank.

Therefore, KMLT failed to maintain breakout tank lining installation records for breakout tank 63-1 at the Argo, Illinois facility in accordance with § 195.579(d).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$455,200 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$36,600
5	\$141,300
8	\$36,600
9	\$36,600
12	\$122,600
15	\$81,500

Warning Items

With respect to item numbers 1, 3, 4, 6, 13, 14, and 16, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to item numbers 7, 10, and 11, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Kinder Morgan Liquid Terminals, LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 C.F.R. § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 1-2022-038-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Kinder Morgan Liquid Terminals, LLC (KMLT) a Compliance Order incorporating the following remedial requirements to ensure the compliance of KMLT with the pipeline safety regulations:

- A. In regard to Item 7 of the Notice pertaining to responding to abnormal operating conditions, KMLT must modify its procedures to include details for responding to, investigating, and correcting the cause of abnormal operating conditions within **60** days of receipt of the Final Order.
- B. In regard to Item 10 of the Notice pertaining to post accident reviews of employee activities, KMLT must modify its incident investigation procedures to include a process which provides a post-accident review of employee activities to determine whether the procedures were effective in each emergency in accordance with § 195.402(e)(9) within **60** days of receipt of the Final Order.
- C. In regard to Item 11 of the Notice pertaining to emergency response supervisor training, KMLT must modify its emergency response procedures to establish an adequate process for requiring and verifying that its supervisors are knowledgeable of the emergency response procedures for which they are responsible for in accordance with § 195.403(c) within **60** days of the Final Order. Additionally, KMLT must train and verify its emergency response supervisors in accordance with the modified procedures within **90** days of receipt of the Final Order.
- D. It is requested (not mandated) that Kinder Morgan Liquid Terminals, LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies, and analyses, and 2) total cost associated with replacements, additions, and other changes to pipeline.