

September 29, 2023

VIA ELECTRONIC MAIL TO: john_schlosser@kindermorgan.com

Mr. John Schlosser
President, Terminals
Kinder Morgan Liquid Terminals, LLC
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

CPF No. 1-2023-001-NOPSO

Dear Mr. Schlosser:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Kinder Morgan Liquid Terminals, LLC, which was executed on September 26, 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 otherwise as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure: Order and Consent Agreement

cc: Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, Office of Pipeline Safety, PHMSA
Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Annie Cook, Esq., Bracewell LLP, Outside Counsel for Kinder Morgan Liquid Terminals, LLC, annie.cook@bracewell.com

Mr. Joshua Etzel, Vice President, Operations and Engineering, Kinder Morgan Liquid Terminals,
LLC, joshua_etzel@kindermorgan.com
Mr. Jaime Hernandez, Director, Engineering: Codes and Standards, Kinder Morgan Liquid
Terminals, LLC, jaime_hernandez@kindermorgan.com

CONFIRMATION OF RECEIPT REQUESTED

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

In the Matter of

Kinder Morgan Liquid Terminals, LLC,

Respondent.

CPF No. 1-2023-001-NOPSO

CONSENT ORDER

By letter dated February 23, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, issued a Notice of Proposed Safety Order (Notice) to Kinder Morgan Liquid Terminals, LLC's (KMLT or Respondent).

In accordance with 49 C.F.R. § 190.239, the Notice alleged that conditions exist at Respondent's Wood River Terminal in Hartford, Illinois, that pose an integrity risk to public safety, property, or the environment. The Notice also proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

In response to the Notice, Respondent requested an informal consultation, whereupon the parties engaged in good-faith settlement discussions that have resulted in the Consent Agreement attached to this Consent Order that settles all of the allegations in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The 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 U.S.C. § 60122 and 49 C.F.R. § 190.223, or in referral to the Attorney General for appropriate relief in a district court of the United States.

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

September 29, 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. 20590**

In the Matter of

Kinder Morgan Liquid Terminals, LLC,

Respondent.

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CPF No. 1-2023-001-NOPSO

CONSENT AGREEMENT

Pursuant to Chapter 601 of title 49, United States Code, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), initiated an investigation of the pipeline system of Kinder Morgan Liquid Terminals, LLC (Respondent or KMLT) Wood River Terminal in Hartford, Illinois. The Wood River Terminal is owned by KM Phoenix Holdings LLC and operated by KMLT, since acquisition of the terminal in 2016. PHMSA initiated its investigation in response to a December 23, 2022, release of 11,694 barrels of gasoline at the Wood River Terminal, all of which was fully contained within the Terminal's secondary containment. The release occurred after the failure of a girth weld on an above-grade short suction 12-inch pipeline segment at the Wood River Terminal, in an area of the Terminal that was originally constructed in the 1950s. In response to the release, KMLT tagged and locked out a portion of the short suction segment in proximity to the failure. Pending further evaluation, the entire short suction pipeline (defined in Section II.) has now been taken out of service, with the line tagged, locked out, and drained.

As a result of the investigation, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated February 23, 2023, a Notice of Proposed Safety Order (Notice). The Notice alleged that conditions exist on Respondent's pipeline system that pose a pipeline integrity risk to public safety, property, or the environment. The Notice also proposed that KMLT take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the alleged integrity risk.

On March 22, 2023, KMLT responded to the Notice by timely submitting a request for an informal consultation under 49 C.F.R. § 190.239(b)(2). Multiple informal consultation meetings were held beginning on April 13, 2023.

As a result of the informal consultation, PHMSA and Respondent (the Parties) agree that settlement of this proceeding by entry into this Consent Agreement (Agreement) is the most appropriate means of resolving the issues raised in the Notice, will avoid further administrative

proceedings or litigation, and is in the public interest. Therefore, pursuant to 49 C.F.R. § 190.239(b)(2), without adjudication of any issue of law or fact, and upon consent and agreement, the Parties agree to the following terms and conditions.

I. General Provisions

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced 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. Respondent agrees, for purposes of this Agreement, to address the integrity risks identified in the Notice by completing the actions specified in Section II of this Agreement (Corrective Measures) and to abide by the terms of this Agreement.

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

4. 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.

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

6. 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 Director no later than 60 days after the transfer occurs.

7. 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.

8. 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.

9. 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.

10. 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.

11. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative 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. Respondent does not admit or deny the alleged integrity risks identified in the Notice, but agrees, for purposes of this Agreement, to address the alleged integrity risks identified in the Notice by completed the actions specified in Section II. of this Agreement (Corrective Measures) and to abide by the terms of this Agreement.

II. Corrective Measures:

12. Upon issuance of the Consent Order, Respondent agrees to perform the Corrective Measures set forth below.

13. Definitions:

- (A). "Director" means the Director, Eastern Region, OPS;
- (B). "Effective Date" means the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement;
- (C). "Affected Facility" means PHMSA jurisdictional pipeline assets at the Wood River Terminal operated by KMLT;

(D). “Wood River Terminal MOP Determination Procedure” means the KMLT Site Specific Procedure (SSP) previously approved by PHMSA; and

(E). “Short Suction Segment” means from the most southern flange within containment of the empty tank bottom south of breakout tank 107, to the most northern flange within containment of breakout tank 205.

14. ***Mechanical and Metallurgical Analysis.*** The Notice proposed KMLT must conduct testing and failure analysis of the failed girth weld and submit the results to the Director (proposed corrective measure No. 1 in the Notice). On April 28, 2023, KMLT provided the Director a “Final Metallurgical Report and Chain of Custody” document addressing the failed girth weld. The Parties agree proposed corrective measure No. 1 in the Notice has been completed.

15. ***Testing and MOP Validation of Short Suction Segment.*** Within 30 days of the Effective Date, KMLT must complete the planned non-destructive examination (NDE) phased array testing and stress analysis on the 12-inch diameter Short Suction Segment on which the December 23, 2022, failure occurred. Prior to resuming service on the Short Suction Segment, KMLT shall:

(A) Perform ultrasonic testing and other appropriate NDE to determine wall thickness and pipe grade;

(B) Determine the internal design pressure of the segment under 49 C.F.R. § 195.106; and,

(C) Validate the maximum operating pressure (MOP) and the percent of specified minimum yield strength (SMYS) at which this segment operates pursuant to KMLT’s Wood River Terminal MOP Determination Procedure.

KMLT must seek the Director’s prior approval for its plan to determine the internal design pressure and to validate the MOP and percent of SMYS for this segment. Within 60 days of the Director’s approval, KMLT must submit to the Director the results of such testing and analysis, and include the results of its review of historical information obtained from the prior operator if relevant records are located. The additional analysis in (A), (B), and (C) is not required if KMLT elects to permanently remove the Short Suction Segment from service through abandonment under Part 195.

16. ***Pipeline Inventory and MOP Validation.*** Within 90 days of the Effective Date, KMLT must submit to the Director a detailed inventory of the records for each pipeline¹ within the entire Affected Facility (except as provided in paragraph 15). The inventory must include for each pipeline: pipeline diameter, wall thickness, coating and seam type, percent SMYS, and a validated MOP. If KMLT is unable produce certain information via traceable, verifiable, and complete records, KMLT must submit to the Director for approval a plan for identifying and

¹ PHMSA jurisdictional pipeline segments and their components.

verifying the properties listed above in this paragraph, to include the determination of internal design pressures and validation of MOP and percent of SMYS pursuant to KMLT's Wood River Terminal MOP Determination Procedure. The plan must address how KMLT will acquire or create records verifying the missing information, including through the use of conservative assumptions and/or additional field testing or other methods and the timeline for completion of such. The records verifying the missing information must be provided no later than 120 days after the Effective Date, unless modified pursuant to paragraph 23. Where available in historical records, KMLT will provide pipeline year of construction, grade of pipe, and pipeline manufacturer.

17. ***Remedial Work Plan.*** Within 30 days of submitting the detailed inventory of the records in paragraph 16, KMLT must submit to the Director for approval a written remedial work plan (Work Plan) that includes any necessary corrective measures. The Work Plan must include provisions that address:

(A) The performance of potential additional field and/or metallurgical testing, inspections, and/or evaluations – if warranted – to determine whether and to what extent the conditions described in the Notice are present elsewhere in the Affected Facility;

(B) The performance of repairs or other corrective measures that fully remediate the identified risk condition(s) on the Affected Facility piping. Include provisions for continuing long-term periodic testing and integrity verification measures to ensure the ongoing safe operation of the pipeline considering the results of the analyses, inspections, and corrective measures undertaken pursuant to the Agreement; and,

(C) A proposed schedule for completion of the actions required by paragraphs (A) and (B) of this paragraph 17.

18. KMLT must revise the Work Plan to incorporate new information obtained during the evaluations and associated remedial activities. Any such plan revisions must be submitted to the Director for prior approval.

19. The Director may approve Work Plan elements incrementally. The Work Plan shall become incorporated into this Agreement.

20. Implement the Work Plan as it is approved by the Director, including any revisions to the Work Plan that may become necessary.

21. ***Quarterly Reports.*** Submit quarterly reports to the Director that: (1) include available data and results of the testing and evaluations; and (2) describe the progress of the repairs and other remedial actions being undertaken.

22. ***Documentation of Costs.*** It is requested (not mandated) that KMLT maintain documentation of the safety improvement costs associated with fulfilling this Agreement and submit the total to the Director. 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 infrastructure.

23. ***Extensions of Time.*** The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for the extension. The Director shall respond in writing to any such request.

III. Review and Approval Process:

24. With respect to any submission under Section II (Corrective Measures) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified, reasonable conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all actions as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

IV. Dispute Resolution:

25. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Section II (Corrective Measures). 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 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.

V. Enforcement:

26. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$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 the determinations made by the Director, or in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223. All work plans and

associated schedules set forth or referenced in Section II are automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Recordkeeping and Information Disclosure:

27. 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.

VII. Modification:

28. 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.

VIII. Termination:

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

IX. Ratification:

30. 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.

31. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For Kinder Morgan Liquid Terminals, LLC :

Date

For PHMSA:

Director, Eastern Region, Office of Pipeline Safety

Date