

October 27, 2023

VIA ELECTRONIC MAIL TO: john_schlosser@kindermorgan.com

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

CPF No. 1-2023-036-NOPV

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 October 24, 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.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Order and Consent Agreement

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Joshua Etzel, Vice President, Northern Area, Kinder Morgan Liquid Terminals, LLC,
Joshua_Etzel@kindermorgan.com
Ms. Mary Clair Lyons, Esq., Assistant General Counsel, Environmental Health and Safety,
Kinder Morgan Liquid Terminals, LLC, Mary_Lyons@kindermorgan.com
Ms. Annie Cook, Esq., Bracewell LLP, Outside Counsel to Kinder Morgan Liquid
Terminals, LLC, 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. 20590**

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In the Matter of)	
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Kinder Morgan Liquid Terminals, LLC,)	CPF No. 1-2023-036-NOPV
)	
Respondent.)	
)	

CONSENT ORDER

By letter dated May 5, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to Kinder Morgan Liquid Terminals, LLC (KMLT or Respondent).

In response to the Notice, contested two (Items 1 and 2) of the alleged violations, associated proposed civil penalty, and the associated proposed compliance order, 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 to discuss the issues raised in the Response. As a result of those discussions, as explained in more detail below, Respondent agreed to certain findings of violation without admission and subject to the agreed terms of the Parties, and to pay a reduced civil penalty and take corrective action as detailed in the accompanying Consent Agreement.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. KMLT is hereby ordered to comply with the terms of the Consent Agreement pursuant to its terms.

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.

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

October 27, 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)	
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)	
Kinder Morgan Liquid Terminals, LLC)	CPF No. 1-2023-036-NOPV
)	
Respondent.)	

CONSENT AGREEMENT

From June 13 through November 4, 2022, 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.), conducted an on-site pipeline safety inspection of the facilities and records of Kinder Morgan Liquid Terminals, LLC (KMLT or Respondent) in Carteret and Perth Amboy, New Jersey. The system inspection was of interstate hazardous liquid transmission pipeline mileage totaling approximately 9.22 miles. There are 113 breakout tanks located in this system.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 5, 2023, a Notice of Probable Violation, Proposed Compliance Order, and Proposed Civil Penalty (Notice), which also included warning items pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that KMLT committed violations of two provisions of 49 C.F.R. § 195 in Items 1 and 2, and proposed ordering Respondent to take certain measures to correct an alleged violation and a civil penalty of \$75,200. The other probable violations (Items 3 and 4) were brought as warnings, advising the operator to correct the probable violations or face potential future enforcement action.

KMLT responded to the Notice by letter dated June 1, 2023 (Response). Respondent contested Items 1 and 2 in the Notice and the proposed civil penalty and the proposed compliance order and requested a hearing in this matter. Respondent also requested to meet informally with PHMSA to discuss the issues raised in the Response and stated that, without admission, it was electing not to contest the two warning items in the Notice.

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, for Item 1 the Parties have agreed to extend the timeframe to complete the PCO to 270 days. For Item 2, the parties have agreed to a reduced civil penalty of **\$39,400**.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 C.F.R. Part 190, and upon consent and agreement, 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 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 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 Consent Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

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

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

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

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

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the PHMSA 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. Except as set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of 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. Except as otherwise specified below, 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. Findings of Violation:

13. *Item 1- 49 C.F.R. § 195.264(b)(1)*: The Notice alleged Respondent failed to provide adequate records for its facility breakout tanks built after October 2, 2000, demonstrating adequate impoundments in accordance with NFPA-30 and § 195.264(b)(1). Specifically, the Notice alleged that KMLT Tank Impoundment Records had many discrepancies such as incorrectly referenced breakout tank numbers, incorrect dike area containment and tank volumes, dike areas incorrectly labeled as well as unsupported calculations. KMLT challenged Item 1 on the grounds it would need more time to perform the relevant surveys to support tank impoundment calculation data. The Parties agreed to a timeframe of 270 days to conduct all surveys and field verification due to potential interference in aerial surveys by vegetation growth and the need to re-verify aerial gaps.

14. **Item 2- 49 C.F.R. § 195.402(a):** The Notice alleged Respondent failed to follow its manual of written procedures. Specifically, the Notice alleged that KMLT failed to follow its Emergency Shutdown Procedure, *T-O&M 500 – Pump Emergency Shutdown*, dated 09/14/16 and 12/10/20, for conducting its emergency shutdown tests. KMLT challenged Item 2 on the grounds that there is no evidence that the emergency shutdown system was ever impaired in 2020 or 2021. KMLT provided available SCADA data to PHMSA demonstrating that safety systems were effective and operable during the period in question. KMLT conceded that these tests were not recorded in the appropriate form as required its procedure. As a result of the data provided, the Parties agreed to a reduced Civil Penalty of \$39,400.

15. Items 1 and 2 will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent for the five (5)-year period following the **Effective Date** of this Agreement.

III. Warning Items:

16. **Item 3- 49 C.F.R. § 195.402(a):** The Notice alleged that KMLT failed to follow its manual of written procedures. Specifically, the Notice alleged that KMLT failed to follow its *Integrity Management Program – IMP*, dated 10/05/22 (IMP) for conducting its integrity management program effectiveness reviews, in accordance with § 195.402(a). This Item was brought as a warning Item and does not constitute a finding of violation. Without admission, KMLT stated in the Response it has revised the IMP to include criteria for Facility Performance Metrics.

17. **Item 4- 49 C.F.R. § 195.402(a):** The Notice alleged KMLT failed to conduct its 2020 calendar year annual review of its emergency manual for the Perth Amboy, New Jersey facility at the required interval in accordance with § 195.402(a). Specifically, the Notice alleged that KMLT exceeded the permitted 15-month interval between the 2019 and 2020 calendar year Annual ERP Review. This Item was brought as a warning Item and does not constitute a finding of violation. Without admission, KMLT stated in the Response it will utilize its OpsInfo tool to create an actionable task for annual ERP review.

18. For Warning Items 3 and 4, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

IV. Civil Penalty:

19. **Item 2:** The Notice proposed assessing a civil penalty in the amount of \$75,200 for Item 2. Respondent requested a reduction of the proposed civil penalty. After consideration of additional information provided by Respondent PHMSA agrees to reduce the civil penalty. The reduction is based on SCADA data provided to PHMSA demonstrating that safety systems were effective and operable during the period in question. KMLT conceded that these tests were not recorded in the appropriate form as required by its procedures. It has been determined Item 2 minimally affected pipeline safety. Respondent agrees to pay a civil penalty in the amount of **\$39,400** for the violation in Item 2.

20. Respondent shall pay a total civil penalty in the amount of **\$39,400**, pursuant to the payment instructions at 49 C.F.R. § 190.227(a), to be paid in full no later than 20 days from the *Effective Date* of this Agreement.

V. Compliance Order:

21. **Item 1:** The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 1. The Notice proposed that KMLT must conduct a survey or field verification to support the tank impoundment calculation data within 180 days of receipt of a Final Order in this matter. As discussed above, Respondent requested, and the Parties agreed to, a timeframe of 270 days to conduct all surveys and field verification to satisfy the compliance actions.

VI. Enforcement:

22. 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 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.

VII. Dispute Resolution:

23. 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 Central Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

VIII. Effective Date:

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

IX. Recordkeeping and Information Disclosure:

25. 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.

X. Modification:

26. 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.

XI. Ratification:

27. 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.

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

XIII. Termination:

29. This Agreement will remain in effect until the Compliance Order in Section V is 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.

For Kinder Morgan Liquid Terminals, LLC :

Date

For PHMSA:

Director, Eastern Region, Office of Pipeline Safety

Date