

**Before the
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. 1-2023-036-NOPV
Respondent.)	Notice of Probable Violation

Request for Hearing, Statement of Issues, and Response to NOPV

I. Introduction

The Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued a Notice of Probable Violation (NOPV), proposed civil penalty, and proposed compliance order (PCO) to Kinder Morgan Liquid Terminals, LLC (KMLT or the Company) on May 5, 2023. The NOPV alleged four probable violations of the 49 C.F.R. Part 195 regulations. Two allegations were issued as warning items and two allegations were issued as probable violations, one which included a proposed civil penalty of \$75,200 and one which included a PCO obligation. As provided by 49 C.F.R. § 190.208, KMLT's response to the allegations in the NOPV is due June 4, 2023. Therefore, this response is timely.

PHMSA issued the NOPV after an inspection of KMLT's procedures, records, and facilities in Carteret and Perth Amboy, New Jersey that occurred from June 13, 2022 through November 4, 2022. KMLT is committed to pipeline safety and integrity of its terminal facilities. Toward this end, KMLT believes that certain allegations require clarification of the facts at issue, existing documentation, and the applicable law.

KMLT is, without admission and in the spirit of cooperation, electing not to contest two of the NOPV Items given the clarifications provided in this response, both of which were issued as Warning Items, NOPV Items 3 and 4. At this time, KMLT believes the remaining issues set forth in the NOPV are capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Eastern Region.

To preserve its rights in the event the parties are unable to resolve this matter via an informal conference, KMLT is filing this response pursuant to 49 C.F.R. §§ 190.208 and 190.211 to request a hearing to address the factual and legal issues presented by the remaining NOPV Items 1 and 2. Specifically, KMLT is contesting the proposed civil penalty associated with NOPV Item 2 (\$75,200), and the associated PCO obligation with NOPV Item 1.

If the Eastern Region is amenable to an informal settlement conference, KMLT requests that the scheduling of a hearing be postponed to allow for a settlement meeting(s). In the event the parties proceed to a hearing, KMLT will be represented by in-house counsel as well as outside counsel with Bracewell LLP.

II. Background

In relevant part, KMLT operates three complex terminals in the Northeast region, including terminal and a separate, truck rack facilities in Carteret, New Jersey and a terminal in Perth Amboy, New Jersey. These facilities are each comprised of PHMSA jurisdictional and non-jurisdictional piping, tankage, and equipment. Given the mixed use and complexity of these facilities, different piping, tankage, and equipment may be subject to regulatory requirements imposed by PHMSA, the U.S. Environmental Protection Agency (EPA), the U.S. Coast Guard, and/or other agencies with jurisdiction, including related to emergency and facility response planning.

The three facilities range in complexity and include: a smaller truck rack facility with pipeline and marine services and two larger facilities that include truck, rail, pipelines, and marine services. The number of tanks, including both PHMSA jurisdictional and non-jurisdictional tanks, at each facility includes:

- Carteret, NJ Terminal – 172 tanks ranging in size from 210 to 277,800 barrels.
- Carteret, NJ Truck Rack – 26 tanks ranging in size from 3 to 125,692 barrels.
- Perth Amboy, NJ Terminal – 72 tanks ranging in size from 72 to 313,600 barrels.

KMLT took over operations of the Carteret Truck Rack facility in 2016 after KM Phoenix Holdings LLC purchased the site. KM Phoenix Holdings LLC is a joint venture between a Kinder Morgan affiliate and an independent, third party. KMLT owns and operates the other two terminal facilities. Additionally, the service of any piece of equipment or tank at any of these terminal facilities may have changed over time, impacting the PHMSA jurisdiction and pipeline safety regulatory requirements applicable to the equipment.

III. Uncontested NOPV and Warning Items

Without admission, KMLT is electing not to contest two (2) of the NOPV Items given relevant clarifications set forth below. This includes the warning items alleged under NOPV Items 3 and 4, which primarily consist of minor discrepancies with little to no impact on pipeline safety. After the inspection, KMLT completed actions, or actions are currently underway, to address these items as further detailed below.

A. NOPV Item 3 (Warning)

PHMSA Allegation

§ 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 Integrity Management Program – IMPM, dated 10/05/22 (IMPM) for conducting its integrity management program effectiveness reviews, in accordance with § 195.402(a).

Section 10.3.1 of the IMPM requires, in part, the collection of integrity performance measures in an annual integrity management program presentation and review conducted by the integrity team and director. Section 10.3.1 indicates this annual review is to evaluate and track the effectiveness of the IMPM.

During the inspection, PHMSA requested records related to measuring its integrity management program effectiveness for the annual IMP presentation for calendar years 2019 and 2020. KMLT provided its Annual IMP Performance Review, dated 05/13/20 and its Annual IMP Performance Review, dated 10/26/22 (IMP Annual Records). KMLT discussed how the annual review covered the performance metrics for the year prior (in this case for 2019 and 2021). When PHMSA re-requested the 2020 calendar year records, KMLT did not have a response. Subsequent to the inspection, PHMSA re-requested the 2020 records and KMLT stated the 2019 and the 2021 records were uploaded to external SharePoint site.

Therefore, KMLT failed to follow its manual of written procedures for conducting its annual integrity management effectiveness presentation review for calendar year 2020, in accordance with § 195.402(a).

KMLT Response

Without admission, KMLT is not contesting NOPV Item 3 issued as a Warning Item. Kinder Morgan's Pipeline Integrity Management Program (IMP) and portions of the Operations and Maintenance (O&M) procedures were developed in accordance with PHMSA's Integrity Management regulations, 49 C.F.R. § 195.452: *Pipeline Integrity Management in High Consequence Areas*. Section 7 of the KMLT's IMP specifies how to measure program effectiveness in accordance with 49 C.F.R. §§ 195.452(f)(7) and 195.452(k). The IMP effectiveness review process includes identifying performance goals, metrics to support goal tracking, metric-specific data collection, trending, and analysis. During the inspection, KMLT presented the annual Operations Management System (OMS) program review for 2020 and 2021. The OMS reviews

included evaluations of the IMP goals, objectives, and targets regarding line pipe located such that they could affect high consequence areas. The PHMSA inspector specifically asked about the IMP effectiveness review regarding terminal facility piping. KMLT has since revised the IMP to include criteria for Facility Performance Metrics (new Table 7.2). Future IMP effectiveness reviews will include performance metrics for line pipe as well as facility piping. Relevant documentation can be made available to PHMSA upon request.

B. NOPV Item 4 (Warning)

PHMSA Allegation

§ 195.402 Procedural manual for operations, maintenance, and emergencies. (a) General. Each operator shall 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 insure 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 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).

During the inspection, PHMSA requested the annual review records for KMLT's emergency manuals for calendar years 2019 and 2020. KMLT provided the Annual Procedure Review Record – Perth Amboy Terminal, dated 05/08/19 and 09/16/20 (Annual ERP Review). The interval between the 2019 and 2020 calendar year Annual ERP Review exceeded the permitted 15-month interval. When PHMSA inquired further about the emergency manual annual review being conducted late, KMLT did not provide any further information.

Therefore, KMLT failed to timely conduct its calendar year 2020 annual review of its Perth Amboy emergency manual at the required interval in accordance with § 195.402(a).

KMLT Response

KMLT is, without admission, electing not to contest NOPV Item 4 issued as a Warning Item. KMLT will utilize our OpsInfo tool to create an actionable task for the annual ERP review and ensure it is assigned to the responsible position. This will ensure subsequent annual reviews are conducted and completed within the required time period.

IV. KMLT Response to Contested Items

Without admission and in the interest of cooperation, KMLT is contesting the proposed civil penalty associated with NOPV Item 2 and the PCO obligations associated with NOPV Item 1. Specifically, KMLT is seeking a reduction to the proposed civil penalty for NOPV Item 2 and a modification of the timeframe provided for the PCO associated with NOPV Item 1.

A. NOPV Item 2

PHMSA Allegation

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

(a) General. Each operator shall 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 insure 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 500 – Pump Emergency Shutdown, dated 09/14/16 and 12/10/20 (ESD Procedure) for conducting its emergency shutdown tests, in accordance with § 195.402(a).

Section 3.5 of the ESD Procedure requires, in part, that KMLT must operate its ESD system at least once per calendar year (but not exceeding 15 months) to verify that the system works. Such operation must also be documented.

During the inspection, PHMSA requested records related to emergency shutdown test for calendar years 2020 and 2021 across its three facilities – Carteret, Carteret Truck Rack and Perth Amboy. KMLT provided its, Emergency Shutdown Test- Carteret, dated 09/11/20 and Emergency Shutdown Test- Perth Amboy, dated 03/30/20 (ESD Records). KMLT failed to provide the following records: 2020 ESD Record for Carteret Truck Rack, 2021 ESD Record for Carteret, 2021 ESD Record for Perth Amboy and 2021 ESD Record for Carteret Truck Rack. Subsequent to the inspection, PHMSA re-requested the 2020 and 2021 records. KMLT stated via email correspondence on December 2, 2022 that they have shared all of the records that are available and that no additional records for 2020 or 2021 were available.

Therefore, KMLT failed to follow its manual of written procedures for conducting its emergency shutdown tests for calendar years 2020 and 2021, in accordance with § 195.402(a).

KMLT Response

Without admission and in the interest of cooperation, KMLT is contesting NOPV Item 2 as it relates to the associated proposed civil penalty of \$75,200. There is no evidence that the emergency shutdown (ESD) systems were ever impaired in 2020 or 2021. As reflected in documentation provided to PHMSA, KMLT performed ESD testing of all three facility locations for 2022 which all passed without issue. KMLT requests that PHMSA significantly reduce the proposed civil penalty associated with NOPV Item 2 to appropriately reflect application of the civil penalty factors.

B. NOPV Item 1

PHMSA Allegation

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

(a) ...

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, see § 195.3);

(i) Impoundment around a breakout tank must be installed in accordance with section 22.11.2; and

(ii) Impoundment by drainage to a remote impounding area must be installed in accordance with section 22.11.1.

KMLT failed to provide adequate records for its Carteret and Perth Amboy, New Jersey facility breakout tanks built post October 2, 2000, demonstrating adequate impoundments in accordance with NFPA-30 and § 195.264(b)(1).1

During the inspection, PHMSA requested records for the Perth Amboy and Carteret facilities related to breakout tanks going into service after 10/02/00 demonstrating they have an adequate impoundment. KMLT provided the Perth Amboy PHMSA Breakout Tank Form and the Carteret PHMSA Breakout Tank Form, dated 2022 (BOT Form). The BOT Form indicated there are 26 breakout tanks at Carteret and 9 breakout tanks at Perth Amboy that are built in accordance with API 650, post-10/02/00. PHMSA requested records demonstrating these breakout tanks had adequate tank impoundment calculations. KMLT provided the following (Tank Impoundment Records):

- Carteret Volosin Associates, LLC Report, dated 2014-2019
- Carteret Volosin Associates, LLC Report, dated 09/30/13
- Aboveground Storage Tank Secondary Containment Construction and Capacities- Carteret, dated 10/22
- Main Facility Area Containment Summary, dated 03/17/14
- Perth Amboy Tank 27 Dike Containment, dated 02/26/20
- SPCC Section 8.0 – Secondary Containment, dated 01/22
- Table 1- Aboveground Storage Tanks, dated 01/22

During the inspection, PHMSA requested where the tank impoundment records were located and what documentation supported the calculations on the various documents. KMLT stated its Above ground Storage Tank Secondary Containment Construction and Capacities- Carteret, dated 10/22 and its Table 1- Aboveground Storage Tanks, dated 01/22 contained this data, and that the Volosin Reports document the calculations. The Tank Impoundment Records, however, 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. PHMSA asked how this information is recorded properly and where it is documented. KMLT's breakout tank subject matter expert discussed how the data does not align properly, the calculations are incorrect, and they are unaware which document contains the updated and correct information. Subsequent to the inspection via email correspondence, KMLT-PHMSA Email Correspondence, dated 01/19/2023 (Email Record). KMLT discussed its plans to update its records, including performing aerial fly-over surveys to gather data for updating the dike volume calculations.

Therefore, KMLT failed to provide adequate records demonstrating that its Carteret and Perth Amboy, New Jersey facility breakout tanks built post October 2, 2000 have adequate impoundments in accordance with NFPA-30 and § 195.264(b)(1).

KMLT Response

Without admission and in the interest of cooperation, KMLT is contesting in part the PCO obligation for NOPV Item 1 to allow for additional time to perform relevant surveys. The PCO would require the following:

within 90 days of receipt of the Final Order, KMLT must gather its prior records and update its tank impoundment calculation records for its Carteret and Perth Amboy, New Jersey facilities. If the tank impoundment records are unable to be validated with sufficient documentation, KMLT must conduct a survey or field verification to support the tank impoundment calculation data within 180 days of receipt of the Final Order

KMLT will conduct new surveys of the Carteret and Perth Amboy facilities to obtain sufficient data to support the updated tank impoundment calculation data. KMLT requires additional time – at least 270 days – to conduct surveys or field verifications to support the tank impoundment calculation data. The additional time is necessary because the aerial surveys during spring/summer months may experience interference from vegetation growth, which results in additional instances where aerial survey gaps may need to be verified by in-field surveys. KMLT will use the new survey information to recalculate the tank impoundment volumes and incorporate this data into the certified plan.

V. Summary and Request for Relief

For all of the reasons identified above, and in consideration of other matters as justice may require, KMLT respectfully requests that the proposed civil penalty associated with NOPV Item 2, be reduced and the PCO obligations associated with NOPV Item 1 be modified to allow for 270 days. In advance of the requested settlement meeting and hearing should it be necessary, KMLT requests a copy of the complete case file in this matter pursuant to 49 C.F.R. § 190.209, including the Pipeline Safety Violation Report, associated exhibits, and the Proposed Civil Penalty Worksheet.

As noted above, KMLT believes these issues are capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Eastern Region. To this end, Mr. Jaime Hernandez at 713-369-9443 will be the technical point of contact for resolving this matter. Please feel to contact him at your convenience to discuss.

Respectfully submitted,

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