

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

**VIA ELECTRONIC MAIL TO: [steve.kean@kindermorgan.com](mailto:steve.kean@kindermorgan.com)**

May 5, 2023

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

**CPF 1-2023-036-NOPV**

Dear Mr. Kean:

From June 13, 2022 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 integrated inspection of Kinder Morgan Liquid Terminals, LLC's (KMLT) pipeline facilities in Carteret and Perth Amboy, New Jersey.

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. **§ 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).<sup>1</sup>

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 *Aboveground 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.

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<sup>1</sup> Section 195.264(b)(1) currently cites the incorporated by reference (IBR) tank impoundment requirements in Sections 22.11.1 and 22.11.2 of the 2012 edition of NFPA-30. See § 195.3. Previous iterations of § 195.264(b)(1) cited other sections of NFPA-30, because the relevant tank impoundment requirements in that IBR have been re-numbered and updated over time (*e.g.*, the 1999 final rule (64 Fed. Reg. 15,935 (Apr. 2, 1999)) adopting § 195.264(b)(1) cited the tank impoundment requirements in Sections 2-3.4.2 and 2-3.4.3 of the 1996 edition of NFPA-30). The allegations here regarding the lack of demonstration of adequate impoundment involves IBR tank impoundment calculation requirements that are consistent across the editions of NFPA-30 that have been cited in § 195.264(b)(1).

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).

**2. § 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).

**3. § 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 *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).

**4. § 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).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not 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 violation and recommend that you be preliminarily assessed a civil penalty of \$75,200 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$75,200

Proposed Compliance Order

With respect to Item number 1, 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.

Warning Items

With respect to Item numbers 3 and 4, 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.

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 your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. 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. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 1-2023-036-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 1 of the Notice pertaining to breakout tank impoundment records, 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.
  
- B. 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 infrastructure.