

October 10, 2024

VIA ELECTRONIC MAIL TO: john_schlosser@kindermorgan.com

Mr. John Schlosser
President and Chief Executive Officer
Kinder Morgan Liquid Terminals, LLC
1001 Louisiana Street, Suite 1000
Houston, TX 77002

CPF No. 1-2024-003-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 2, 2024. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure: Consent 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, Assistant General Counsel, Kinder Morgan,
mary_lyons@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)	
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Kinder Morgan Liquid Terminals, LLC)	CPF No. 1-2024-003-NOPV
)	
Respondent.)	
)	

CONSENT ORDER

By letter dated March 28, 2024, 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, KMLT contested the alleged violations, the proposed civil penalty, and the proposed compliance order, and requested a hearing. Respondent also requested to meet informally with PHMSA to discuss the matters raised in its Response. Respondent and PHMSA (the Parties) subsequently met several times. As a result of those discussions, the Parties have agreed to a Consent Agreement by which PHMSA makes findings of violations for each of the Items alleged in the Notice, Respondent will pay a reduced civil penalty in the amount of **\$125,400** 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, 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.

October 10, 2024

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. 1-2024-003-NOPV

CONSENT AGREEMENT

From January 4 through April 6, 2023, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of Title 49, United States Code (U.S.C.), conducted an investigation of Kinder Morgan Liquid Terminals, LLC (KMLT or Respondent) regarding the January 4, 2023, accident (Accident) which occurred at KMLT's Argo, Illinois terminal. The Accident occurred during maintenance activities at the Argo Terminal and resulted in the release of an estimated 26 barrels of hazardous liquids (jet fuel).

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated March 28, 2024, a Notice of Probable Violation and Proposed Compliance Order and Proposed Civil Penalty (NOPV or Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that KMLT committed three violations of 49 C.F.R. Parts 195 and 199 (Items 1 – 3), proposed ordering Respondent to take certain measures to correct the alleged violation in Item 1, and proposed a total civil penalty of \$177,400. Other probable violations (Items 4 – 6) were brought as warnings, advising Respondent to correct the probable violations or face potential future enforcement action.

KMLT responded to the Notice by letter dated April 25, 2024 (Response). Respondent contested the alleged violations, the proposed civil penalty, and the proposed compliance order, and requested a hearing. KMLT also requested to meet informally with PHMSA to discuss the matters raised in its Response.

PHMSA and Respondent (the Parties) subsequently met several times to discuss the issues raised in the Response. As a result of those discussions and as explained in more detail below, the Parties have agreed to a Consent Agreement by which PHMSA makes findings of violations for each of the Items alleged in the Notice. Respondent will pay a reduced civil penalty in the amount of **\$125,400** and will complete certain compliance actions.

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 U.S.C. § 60101, *et seq.* and 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 Consent Agreement (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 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 for the Dispute Resolution provisions set forth herein. Respondent agrees to withdraw its request for an administrative hearing regarding the Notice.

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 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.

II. Findings of Violation:

11. *Item 1 - 49 C.F.R. § 195.402(a)*: The Notice alleged KMLT failed to follow its written procedures under § 195.402(a) for conducting maintenance activities. Specifically, KMLT failed to follow its Hazardous Energy Control Program – T-O&M 152, dated September 26, 2022 (Energy Procedure), regarding developing, documenting, and utilizing site-specific energy control procedures. Respondent acknowledged records relevant to the allegation in Item 1 were not provided during PHMSA's investigation, but contested Item 1, asserting that it met the requirements in its written procedures under § 195.402(a). KMLT provided additional records (primarily, a record pre-dating the Accident indicating employee compliance in 2021 with a site-specific procedure under KMLT's Energy Procedure) with the Response and subsequently thereafter during settlement discussions. Upon review of the additional documentation, PHMSA agrees to a reduced civil penalty assessment for this alleged violation as discussed in Paragraph 19 below. Respondent also requested the Proposed Compliance Order be withdrawn, or in the alternative that the proposed compliance terms be revised. After settlement discussions, the Parties agree to amend the proposed compliance actions to address site-specific procedures applicable to the activity that was underway when the January 4, 2023, Accident occurred, and also to require KMLT to provide PHMSA with confirmation of KMLT's notice to

employees/persons performing work at the Argo, Illinois terminal of the location and availability of applicable site-specific procedures. PHMSA finds a violation of § 195.402(a).

12. **Item 2 - 49 C.F.R. § 195.402(a):** The Notice alleged KMLT failed to follow its written procedures for § 195.402(a) for conducting maintenance activities. Specifically, KMLT failed to follow its T-O&M 103 – Safety Permits, dated October 8, 2020 (Safety Procedure) regarding safe work permits. Respondent acknowledged relevant documents were not provided during PHMSA’s investigation, but contested Item 2, asserting that it met the requirements in its written procedures under § 195.402(a). KMLT provided additional records (primarily a past work order addressing a filter vessel changeout) with the Response and subsequently thereafter during settlement discussions. Upon review of the additional documentation, PHMSA agrees to a reduced civil penalty assessment for this alleged violation as discussed in Paragraph 20 below. PHMSA finds a violation of § 195.402(a).

13. **Item 3 - 49 C.F.R. § 199.105(b)(1):** The Notice alleged KMLT failed to conduct post-accident drug tests on each employee whose performance of a covered function either contributed to the Accident or cannot be completely discounted as a contributing factor to the Accident. Specifically, KMLT failed to conduct drug testing of the three KMLT terminal operators who were assigned to the filter element changeout task on the day of the Accident. Respondent acknowledged relevant documents were not provided to PHMSA during the investigation, but contested Item 3. KMLT provided additional information and records with the Response (primarily, post-accident supervisors records dated April 24, 2024, addressing drug and alcohol testing determinations after the January 4, 2023, Accident). As a result of the additional information presented, PHMSA agrees that KMLT violated 49 C.F.R. § 199.105(b)(2) after the Accident by failing to prepare and maintain its decision stating the reasons why the test was not promptly administered, and to a reduced civil penalty assessment for this alleged violation as discussed in Paragraph 21 below. PHMSA finds a violation of § 199.105(b)(2).

14. Items 1 – 3, will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent.

III. Warning Items:

15. **Item 4 - 49 C.F.R. § 199.105(b)(2):** The Notice alleged that KMLT failed to prepare and maintain its decision stating the reasons why a post-accident drug test was not promptly administered in accordance with § 199.105(b)(2). This item was a warning and does not constitute a finding of violation. Without admission, KMLT did not contest Item 4, and acknowledged that while a record was not provided at the time of PHMSA’s investigation, that it has since completed the form documenting its determination that the operators’ actions were not a contributing factor to the Accident.

16. **Item 5 - 49 C.F.R. § 199.225(a)(1):** The Notice alleged that KMLT failed to test, as soon as practicable following an Accident, each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the Accident or cannot be completely discounted as a contributing factor to the accident. This item was a warning and does not constitute a finding of violation. KMLT contested Item 5, stating that the operators’ actions were not a contributing factor to the Accident, and as such, that it had determined that

alcohol testing was not required. KMLT acknowledged that a record documenting KMLT's determination was not provided during PHMSA's investigation.

17. **Item 6 - 49 C.F.R. § 199.225(a)(2)(i):** The Notice alleged that KMLT failed to prepare and maintain its decision stating the reasons why a post-accident alcohol test was not promptly administered in accordance with § 199.225(a)(2)(i). This item was a warning and does not constitute a finding of violation. Without admission, KMLT did not contest Item 6, and acknowledged that while a record was not provided at the time of investigation, that it has since completed the form documenting its determination that the operators' actions were not a contributing factor to the Accident.

18. Under § 190.205, Warning Items are not adjudicated. For Warning Items 4 - 6, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

V. Civil Penalty:

19. **Item 1:** The Notice proposed assessing a civil penalty in the amount of \$68,800 for Item 1. Respondent contested Item 1 and requested that the allegation and the proposed civil penalty be withdrawn. As discussed in Section II above, KMLT provided additional information and records with the Response and during settlement discussions. PHMSA agrees that a reduction to the proposed civil penalty is appropriate based on reconsideration of the gravity consideration as supported by the additional information provided by KMLT. Respondent agrees, without admission, to pay a reduced civil penalty in the amount of **\$50,200** for the violation in Item 1.

20. **Item 2:** The Notice proposed assessing a civil penalty in the amount of \$68,800 for Item 2. Respondent contested Item 2 and requested that the allegation and the proposed civil penalty be withdrawn. As discussed in Section II above, KMLT provided additional information and records with the Response and during settlement discussions. PHMSA agrees that a reduction to the proposed civil penalty is appropriate based on reconsideration of the gravity consideration as supported by the additional information provided by KMLT. Respondent agrees, without admission, to pay a reduced civil penalty in the amount of **\$39,100** for the violation in Item 2.

21. **Item 3:** The Notice proposed assessing a civil penalty in the amount of \$39,800 for Item 3. Respondent contested Item 3 and requested that the allegation and the proposed civil penalty be withdrawn. As discussed in Section II above, KMLT provided additional information and records with the Response and during settlement discussions. PHMSA agrees that a reduction to the proposed civil penalty is appropriate based on reconsideration of the nature consideration to reflect a records violation as supported by the additional information provided by KMLT. Respondent agrees, without admission, to pay a reduced civil penalty in the amount of **\$36,100** for the violation in Item 3.

22. Respondent will pay a total reduced civil penalty in the amount of **\$125,400**, 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.

VI. Compliance Order:

23. The Notice proposed certain compliance order actions to address the alleged violation in Item 1 of the Notice. Respondent initially contested the Item 1 and requested withdrawal of its accompanying Proposed Compliance Order. As discussed above, Respondent requested, and the Parties have agreed to, a revised compliance order for Item 1. KMLT agrees to perform the following actions:

In regard to Item 1 of the Notice pertaining to its site-specific energy control procedures, KMLT must review, update, or where necessary develop site-specific procedure(s) for filter vessels, including filter element changeouts at its Argo, Illinois terminal. KMLT must also provide notice to employees/persons performing work at the Argo, Illinois terminal of the location and availability of the applicable site-specific procedures that govern work within the terminal. Within 60 days of the ***Effective Date***, KMLT must submit the filter vessel procedure(s) as well as confirmation regarding the notice of the location/availability of the site-specific procedures, to the Director – Eastern Region for approval.

VII. Enforcement:

24. 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 \$266,015 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 VI (Compliance Order) are automatically incorporated into this Agreement and are enforceable in the same manner.

VIII. Review and Approval Process:

25. With respect to any submission under Section VI (Compliance Order) 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.

IX. Dispute Resolution:

26. 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 VI (Compliance Order). 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. Such request must be made in writing and provided to the Director, counsel for the Eastern Region, and to the Associate Administrator, no later than ten 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.

X. Effective Date:

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

XI. Recordkeeping and Information Disclosure:

28. 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, unless a longer period of time is required pursuant to 49 C.F.R. parts 190-199. 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.

XII. Modification:

29. 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.

XIII. Termination:

30. This Agreement will remain in effect until the Civil Penalty in Section V is paid in full and the Compliance Order in Section VI 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.

XIV. Ratification:

31. 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.

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

For Kinder Morgan Liquid Terminals, LLC:

Date

For PHMSA:

Director, Eastern Region, Office of Pipeline Safety

Date