



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials
Safety Administration**

840 Bear Tavern Road, Suite 300
West Trenton, NJ 08628
609.771.7800

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

OVERNIGHT EXPRESS DELIVERY

March 28, 2024

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

CPF 1-2024-003-NOPV

Dear Mr. Schlosser:

From January 4, 2023 through April 6, 2023 , 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.) investigated Kinder Morgan Liquid Terminals, LLC's (KMLT) pipeline failure which occurred at its terminal in Argo, Illinois.

As a result of the investigation, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR), The items investigated, and the probable violations are:

1. § 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 written procedures for conducting maintenance activities. Specifically, KMLT failed to follow its *Hazardous Energy Control Program – T-O&M 152, dated 09/26/22* (Energy Procedure), regarding developing, documenting, and utilizing site-specific energy control procedures.

Section 6.2 of the Energy Procedure included requirements for KMLT to develop, document and utilize site-specific energy control procedures (lockout/tagout) for maintenance activities, and included a minimum list of the types of equipment required to have such procedures.

During the failure investigation, PHMSA asked KMLT if its list of equipment contained in the Energy Procedure included the filter vessel or sump pump involved in the accident on January 4, 2023. KMLT stated that the filter vessel would be included, that they are developing a site-specific procedure for this equipment, and that a procedure did not exist prior to the accident. Pumps are specifically listed in Section 6.2 as equipment for which site-specific energy control procedures at this terminal must be developed and documented.

Therefore, KMLT failed to follow its Energy Procedure regarding developing, documenting, and utilizing site-specific energy control procedures to include procedures covering the filter vessel, in accordance with § 195.402(a).

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 written procedures for conducting maintenance activities. Specifically, KMLT failed to follow its *T-O&M 103 – Safety Permits, dated 10/08/20* (Safety Procedure) regarding safe work permits.

Section 5.7 of the Safety Procedure included requirements for a general safe work permit for any tasks performed where a standard maintenance procedure or site-specific procedure does not exist.

During the failure investigation, PHMSA requested from KMLT documentation related to safe work permits for the maintenance work being performed on the day of the accident, January 4, 2023. KMLT provided *Work Order No. 34403, dated 01/05/23* (Work Order). KMLT stated that the only permit created was for the cleanup activities and that the original work did not require a permit, so therefore one was not created. KMLT also confirmed that a site-specific procedure was not in place for the work performed on the filter vessel, in violation of the Section 5.7 requirement for a safe work permit when any task is performed “that does not have a Standard Maintenance

Procedure (SMP) OR Site Specific Procedure (SSP).” KMLT failed to provide a work order or any safe work permits related to the work being done which led to the accident on January 4, 2023.

Therefore, KMLT failed to follow its Safety Procedure to document a safe work permit for the filter vessel tasks performed, in accordance with § 195.402(a).

3. § 199.105 Drug tests required.

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) ...

(b) *Post-accident testing.*

(1) As soon as possible but no later than 32 hours after an accident, an operator must drug test each surviving covered employee whose performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident..

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, January 4, 2023.

During the failure investigation, PHMSA requested records related to post-accident drug testing and KMLT stated that a drug test was not completed, and not required to be conducted. KMLT stated it did not conduct post-accident drug test of the three involved Terminal Operators. Further, KMLT did not provide any information demonstrating if and how it had decided that the three employees' performance was not a contributing factor, or could be completely discounted as a contributing factor, to the accident during the required testing timeframe.

Therefore, KMLT failed to conduct post-accident drug tests on three employees for the presence of a prohibited drug as soon as possible but no later than 32 hours after an accident, in accordance with §199.105(b).

4. §199.105 Drug tests required.

(a) ...

(b) *Post-accident testing*

(1) ...

(2) If a test required by this section is not administered within the 32 hours following the accident, the operator must prepare and maintain its decision stating the reasons why the test was not promptly administered. If a test required by paragraph (b)(1) of this section is not administered within 32 hours following the accident, the operator

must cease attempts to administer a drug test and must state in the record the reasons for not administering the test.

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).

Section V. of KMLT's *Anti-Drug and Alcohol Misuse Prevention Plan, dated 01/01/23 (D&A)*, included provisions for KMLT to decide not to perform post-accident drug testing if based on specific information demonstrating that employee performance played no role in the cause or severity of an accident. The D&A also required that these decisions supporting the determination be documented, and included an Appendix F form meant to capture this and other pertinent information about post-accident/incident drug and alcohol testing.

During the failure investigation, PHMSA requested from KMLT documentation stating why a post-accident drug test was not administered. KMLT stated that this was a decision made by executive management and there are no records available. KMLT did not provide any records to support why a drug test was not completed following the accident on January 4, 2023, pursuant to both § 199.105(b)(2) and its D&A recordkeeping requirements.

Therefore, KMLT failed to prepare and maintain its decision stating the reasons why the drug test was not promptly administered in accordance with § 199.105(b)(2).

5. § 199.225 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.*

(1) As soon as practicable following an accident, each operator must test 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. The decision not to administer a test under this section must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident.

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. Specifically, KMLT failed to test the three KMLT Terminal Operators, who were performing a covered function during the accident on January 4, 2023, for alcohol.

During the failure investigation, PHMSA requested records related to post-accident alcohol testing. KMLT stated that an alcohol test was not performed, nor was it required to be conducted. However, KMLT did not provide any specific information demonstrating if and how it had decided that the three employees' performance had no role in the cause or severity of the accident during the required testing timeframe.

Therefore, KMLT failed to conduct post-accident alcohol tests on three employees for the presence of alcohol as soon as practicable following an accident, in accordance with § 199.225(a)(1).

6. § 199.225 Alcohol tests required.

(a) Post-accident.

(1) ...

(2) ...

(i) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by paragraph (a) is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

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).

Section VI. of KMLT's *Anti-Drug and Alcohol Misuse Prevention Plan*, dated 01/01/23 (D&A) included provisions for KMLT to decide not to perform post-accident alcohol testing if based on specific information demonstrating that employee performance played no role in the cause or severity of an accident. The D&A also required that these decisions supporting the determination be documented, and included an Appendix F form meant to capture this and other pertinent information about post-accident/incident drug and alcohol testing.

During the failure investigation, PHMSA requested from KMLT documentation stating why a post-accident alcohol test was not administered. KMLT stated that this was a decision made by executive management and there are no records available. KMLT did not provide any records to support why an alcohol test was not completed following the accident on January 4, 2023, pursuant to both § 199.225(a)(2)(i) and its D&A recordkeeping requirements.

Therefore, 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).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023, and before December 28, 2023, the maximum penalty may not 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.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of 177,400 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$ 68,800
2	\$ 68,800
3	\$ 39,800

Proposed Compliance Order

With respect to Item 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 Items 4, 5 and 6, 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 item(s). Failure to do so may result in additional enforcement action.

Response to this Notice

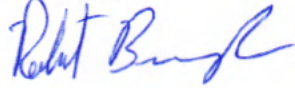
Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that 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 1-2024-003-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Burrough".

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 KMLT's compliance with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice pertaining to its site specific energy control procedures, KMLT must develop site-specific procedure(s) for filter vessels, including filter element changeouts. KMLT must also perform a systematic review of its Hazardous Energy Control Program procedures and determine if any further site-specific procedures must be developed based on the equipment located at its Argo, Illinois terminal. Within 60 days of receipt of the Final Order, KMLT must submit the filter vessel procedure(s) as well as any other developed or revised procedures, to the Director – Eastern Region for approval.
- 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.