U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration
8701 S. Gessner, Suite 630
Houston TX 77074

March 25, 2022

Subject: Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order

CPF 4-2022-007-NOPV

This letter serves as our response to CPF 4-2022-007-NOPV, which Kinetica Deepwater Express, LLC ("Kinetica") received on February 11, 2022.

CPF 4-2022-007-NOPV states the following:

1. ***§ 191.15 Transmission Systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Incident report.***

   (a) Transmission or Gathering. Each operator of a transmission or a gathering pipeline system must submit DOT Form PHMSA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5 of this part.

Kinetica failed to submit DOT Form PHMSA F 7100.2 (incident report) as soon as practicable, but not more than 30 days after detection, of a reportable incident involving its 6-inch 341 pipeline on the Eugene Island - 327A platform. On July 13, 2021, pipeline 341 experienced a pinhole leak which resulted in the release of natural gas. Kinetica has not filed the incident report as required by § 191.15.

Kinetica Response:

49 CFR § 191.3 *Incident* means any of the following events:

(1) An event that involves a release of gas from a pipeline, gas from an underground natural gas storage facility (UNGSF), liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:

(i) A death, or personal injury necessitating in-patient hospitalization;

(ii) Estimated property damage of $122,000 or more, including loss to the operator and others, or both, but excluding the cost of gas lost. For adjustments for inflation observed in calendar year 2021 onwards, changes to the reporting threshold will be posted on PHMSA's website. These changes will be determined in accordance with the procedures in appendix A to part 191.

(iii) Unintentional estimated gas loss of three million cubic feet or more.

(2) An event that results in an emergency shutdown of an LNG facility or a UNGSF. Activation of an emergency shutdown system for reasons other than an actual emergency within the facility does not constitute an incident.

(3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition.

The leak on Eugene Island 327A Platform that occurred on July 13, 2021 did not meet the criteria of an *incident* according to 49 CFR § 191.3 to warrant the completion of DOT Form PHMSA F 7100.2 (incident report).

Specifically, Kinetica notes the following in response to the above allegations:

49 CFR § 191.3 (1)(i) – No injuries occurred.

49 CFR § 191.3 (1)(ii) – Total property damage is estimated to be $15,300.

49 CFR § 191.3 (1)(iii) - Unintentional estimated gas loss was less than three million cubic feet.

49 CFR § 191.3 (2) – Is not applicable.

49 CFR § 191.3 (3) – The event was not deemed significant by the operator.

CPF 4-2022-007-NOPV states the following:

2. ***§ 191.17 Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Annual report.***

   (a) Transmission or Gathering. Each operator of a transmission or a gathering pipeline system must submit an annual report for that system on DOT Form PHMSA 7100.2.1. This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted by June 15, 2011.

Kinetica failed to submit complete and accurate annual reports using DOT Form PHMSA 7100-2.1 for five consecutive years. Kinetica's annual reports for calendar years 2016, 2017, 2018, 2019, and 2020, do not include mileage for pipelines acquired from ANR Pipeline Company on April 1, 2016. The mileage associated with the acquisition of the ANR Pipeline Company facilities is required to be reported on Kinetica's 2016 Annual Report, and all subsequent annual reports as long as the pipeline is operated/retained by Kinetica.

Kinetica Response:

Kinetica submitted annual reports for the pipeline mileage in question using DOT Form PHMSA 7100-2.1 under OPID 39519 for calendar years; 2016, 2017, 2018, 2019, 2020, and 2021. Copies of the submitted reports are included with this response.

CPF 4-2022-007-NOPV states the following:

3. ***§ 191.22 National Registry of Operators.***

(a) . . .
(c) Changes. Each operator of a gas pipeline, gas pipeline facility, UNGSF, LNG plant, or LNG facility must notify PHMSA electronically through the National Registry of Operators at https://portal.phmsa.dot.gov of certain events.
(1) . . .
(2) An operator must notify PHMSA of any of the following events not later than 60 days after the event occurs:
(i) . . .
(iv) The acquisition or divestiture of 50 or more miles of a pipeline or pipeline system subject to part 192 of this subchapter;

Kinetica failed to file a Type D acquisition notification through the National Registry of Operators for the acquisition of approximately 515 miles of gas transmission pipelines from ANR Pipeline Company no later than 60 days following acquisition in accordance with § 191.22(c)(2)(iv). Kinetica acquired gas transmission assets from ANR Pipeline Company on April 1, 2016, and did not provide notice to PHMSA's National Registry of Operators until December 2, 2021, which is 2,010 days beyond the 60-day notification period as required by § 191.22.

Kinetica Response:

On April 1, 2016, Kinetica Partners, LLC acquired all of the membership interest in TC Offshore, LLC ("TCO") from TransCanada and changed the name of the company to Kinetica

Deepwater Express, LLC ("KDE"). ANR Pipe Line Company (OPID #405), a subsidiary of TransCanada, had spun-down these assets to TCO sometime prior to 2016. ANR did not acquire a separate OPID for TCO at the time of the asset spin-down or at any other time during its ownership of TCO. In addition, ANR failed to submit a divestiture notice to PHMSA regarding the spin-down of these assets to TCO. When Kinetica Partners acquired TCO, the associated pipelines were still held in ANR's name despite the fact that Kinetica Partners had been assured by ANR that TCO was an independent and separate company. As a result, Kinetica Partners had no reason to believe it did not have a separate OPID until it discovered the situation a few months after the sale.

ANR (OPID #405) submitted a divestiture notice (Form 1000.2) to PHMSA and erroneously listed Kinetica Energy Express, LLC ("KEE") (OPID #38987) as the new operator of these pipelines. This was incorrect. Kinetica, in fact, planned to operate its existing KEE pipelines separately from the pipelines acquired in the TCO acquisition, as KDE and KEE are separately regulated by FERC and have separate FERC-approved Tariffs.

Kinetica discussed with PHMSA staff the best way to clear up the error and ANR's failure to apply for a separate OPID for TCO. Kinetica was instructed to submit Form 1000.1 for Kinetica Deepwater Express, LLC and state which pipelines were acquired from TCO/ANR. As per PHMSA staff instructions, Kinetica Partners submitted an OPID Assignment Request (Form 1000.1) on June 6, 2016 to PHMSA for KDE and described the pipelines as being those acquired from TCO/ANR. KDE received its OPID (OPID #39519) on August 25, 2016, after ANR had submitted the divestiture notice that erroneously listed KEE as the operator of the KDE pipelines.

Annual Reports for KDE have been submitted every year since the date of the acquisition, April 1, 2016. NPMS submittals have also been completed every year since the date of the acquisition. Furthermore, the following activities have been completed by PHMSA on the KDE assets under OPID 39519:

Activities

Operator Activity Reports
Based on Activity Effort Start Date
Time run: 3/25/2022 9:33:17 AM

SMART - Data as of 3/24/2022 6:48:36 PM
WMS - Data as of 3/24/2022 9:30:06 PM

INSPECTION

Activity ID	Activity Unit CSV	Activity Created Date	Activity Effort Start Date	Activity Closure Date	Activity Type	Activity Status	Lead Person
21-230161	86314	12/1/2021	7/22/2021		SPECIALIZED	Open	NORMAN, NAKEYA
167985	86314	11/15/2019	9/11/2019	4/17/2020	INTEGRATED INSPECTION	Closed	MENDOZA, JUAN
167984	3164	11/15/2019	9/9/2019	4/17/2020	INTEGRATED INSPECTION	Closed	MENDOZA, JUAN
165525	3164, 86314	5/20/2019	5/14/2019	4/17/2020	OPERATOR INTEGRATED INSPECTION	Closed	ASHE, ALEXANDER

SPECIAL ASSIGN

Activity ID	Activity Unit CSV	Activity Created Date	Activity Effort Start Date	Activity Closure Date	Activity Type	Activity Status	Lead Person
155439		1/23/2017	2/6/2017	9/21/2018	SPECIAL ASSIGNMENT	Closed	WRIGHT, ANTHONY

Export

In summary, Kinetica Deepwater Express, LLC (OPID 39519) filed an acquisition notification, as directed by PHMSA staff, covering the 515 miles of gas transmission pipelines it owned when the transaction with ANR closed on April 1, 2016. KDE has been the operator of record for these pipelines since April 1, 2016, and the notification submitted meets the requirement of 192.22(c)(2)(iv).

ANR failed to submit a divestiture notice to PHMSA when the pipelines were spun-down to TCO, and erroneously listed Kinetica Energy Express, LLC (OPID 38987) as the operator of the pipelines subsequent to the sale.

As noted in the NOPV, KDE filed Form 1000.2 on December 2, 2021 after being notified by PHMSA that it did not consider KDE's original acquisition notice to have met the requirements of 191.22. However, KDE considers its submission of the original notification via Form 1000.1, at the direction of and in reliance on PHMSA staff's instructions, to fully meet the requirements of 191.22. Therefore, KDE considers the 2,010 days of alleged non-compliance cited in the NOPV to be in error. `

CPF 4-2022-007-NOPV states the following:

4. ***§ 191.29 National Pipeline Mapping System.***

(a) Each operator of a gas transmission pipeline or liquefied natural gas facility must provide the following geospatial data to PHMSA for that pipeline or facility:

(1) Geospatial data, attributes, metadata and transmittal letter appropriate for use in the National Pipeline Mapping System. Acceptable formats and additional information are specified in the NPMS Operator Standards Manual available at www.npms.phmsa.dot.gov or by contacting the PHMSA Geographic Information Systems Manager at (202) 366-4595.

(b) The information required in paragraph (a) of this section must be submitted each year, on or before March 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, the operator must comply with the guidance provided in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or contact the PHMSA Geographic Information Systems Manager at (202) 366-4595.

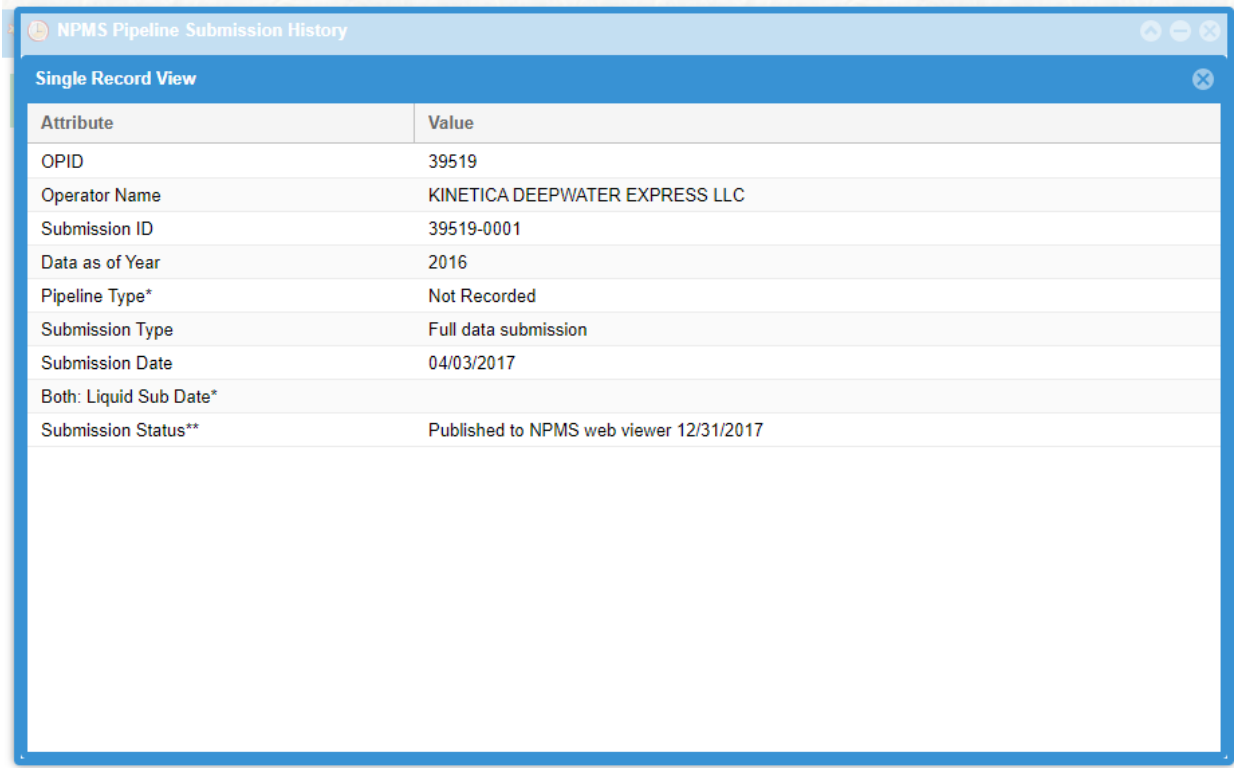
Kinetica failed to submit complete and accurate National Pipeline Mapping System (NPMS) information required by § 191.29(a) on or before March 15 representing its assets as of December 31 of the previous year.

Specifically, on April 1, 2016, Kinetica acquired from ANR Pipeline Company approximately 470.7 miles of offshore pipeline assets located in the Gulf of Mexico, and approximately 44.52 miles of

onshore pipeline assets, including the Patterson Liquid Terminal, Grand Chenier Liquid Handling Facility, and liquid handline portions of the Patterson Compressor Station, in St. Mary Parish, Louisiana. Since the 2016 acquisition, Kinetica has not submitted updates to NPMS to account for these assets.

Kinetica Response:

Kinetica submitted National Pipeline Mapping System (NPMS) information for the pipeline mileage in question under OPID 39519 for calendar years; 2016, 2017, 2018, 2019, 2020, and 2021. Screenshots from NPMS are included below.



NPMS Pipeline Submission History

Single Record View

Attribute	Value
OPID	39519
Operator Name	KINETICA DEEPWATER EXPRESS LLC
Submission ID	39519-0001
Data as of Year	2016
Pipeline Type*	Not Recorded
Submission Type	Full data submission
Submission Date	04/03/2017
Both: Liquid Sub Date*	
Submission Status**	Published to NPMS web viewer 12/31/2017

NPMS Pipeline Submission History

Single Record View

Attribute	Value
OPID	39519
Operator Name	KINETICA DEEPWATER EXPRESS LLC
Submission ID	39519-0002
Data as of Year	2017
Pipeline Type*	Not Recorded
Submission Type	Edits to existing data
Submission Date	12/22/2018
Both: Liquid Sub Date*	
Submission Status**	Published to NPMS web viewer 04/15/2019

NPMS Pipeline Submission History

Single Record View

Attribute	Value
OPID	39519
Operator Name	KINETICA DEEPWATER EXPRESS LLC
Submission ID	39519-0003
Data as of Year	2018
Pipeline Type*	Not Recorded
Submission Type	No change confirmation
Submission Date	07/01/2019
Both: Liquid Sub Date*	
Submission Status**	Published to NPMS web viewer 10/07/2019

NPMS Pipeline Submission History

Single Record View

Attribute	Value
OPID	39519
Operator Name	KINETICA DEEPWATER EXPRESS LLC
Submission ID	39519-0004
Data as of Year	2019
Pipeline Type*	Gas Transmission
Submission Type	Full data submission
Submission Date	03/15/2020
Both: Liquid Sub Date*	
Submission Status**	Published to NPMS web viewer 02/18/2021

NPMS Pipeline Submission History

Single Record View

Attribute	Value
OPID	39519
Operator Name	KINETICA DEEPWATER EXPRESS LLC
Submission ID	39519-0005
Data as of Year	2020
Pipeline Type*	Gas Transmission
Submission Type	No change confirmation
Submission Date	03/11/2021
Both: Liquid Sub Date*	
Submission Status**	Submission Processed; In Queue for Publishing

NPMS Pipeline Submission Status
Time run: 3/25/2022 9:30:03 AM

Portal - Data as of **3/24/2022 9:30:06 PM**

Operator ID: 39519 **Operator Name:** KINETICA DEEPWATER EXPRESS LLC

Calendar Year	NPMS Compliance	Status	Type	Submission Received	Extension Granted	Operator Error Delays (Count)
2016		Published to NPMS web viewer 12/31/2017	Full data submission	4/3/2017	8/2/2017	4
2017		Published to NPMS web viewer 04/15/2019	Edits to existing data	12/22/2018	12/31/2018	2
2018		Published to NPMS web viewer 10/07/2019	No change confirmation	7/1/2019		1
2019		Published to NPMS web viewer 02/18/2021	Full data submission	3/15/2020	9/3/2020	3
2020		Published to NPMS web viewer 03/16/2022	No change confirmation	3/11/2021	10/2/2021	1
2021	No	Submission Issue; Pending Operator Correction	No change confirmation	3/15/2022	3/31/2022	1

CPF 4-2022-007-NOPV states the following:

5. ***§ 192.717 Transmission lines: Permanent field repair of leaks.***

Each permanent field repair of a leak on a transmission line must be made by-
(a) Removing the leak by cutting out and replacing a cylindrical piece of pipe; or
(b) Repairing the leak by one of the following methods:
(1) Install a full encirclement welded split sleeve of appropriate design, unless the transmission line is joined by mechanical couplings and operates at less than 40 percent of SMYS.
(2) If the leak is due to a corrosion pit, install a properly designed bolt-on-leak clamp.
(3) If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi (267 Mpa) SMYS, fillet weld over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half of the diameter of the pipe in size.

(4) If the leak is on a submerged offshore pipeline or submerged pipeline in inland navigable waters, mechanically apply a full encirclement split sleeve of appropriate design.
(5) Apply a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

Kinetica failed to complete a permanent field repair of a leak in accordance with § 192.717 and its own written procedures. Specifically, on July 16, 2021, Kinetica repaired a through wall pinhole leak with a Belzona Superwrap II composite wrap documented as a "permanent" repair in its Pipeline Repair & Replacement Field Worksheet (Maximo Ticket Number 21-91661) and in its Pipeline Inspection Report (Repair Number: BBH-4482).

Kinetica's written Pipeline Operating Procedures Manual, Section 401 – Pipeline Repair, Table 401-2 Permanent Pipeline Repair Methods (Revision Date: 7/20/2020) and its Operations & Maintenance Procedures, 401-Pipeline Repair, Steel Pipelines Operated at a Pressure That Produces a Hoop Stress of 20% or More SMYS, 2. Leaks (Date: 10/13/2018), states:

2. Leaks
a. Each permanent field repair of a leak on a transmission line must be made by:
i. Cutting out and replacing a cylindrical piece of pipe; or
ii. Repairing the leak by one of the following methods:
1. Install a full-encirclement welded split sleeve of appropriate design, unless the transmission line is joined by mechanical couplings and operates at less than 40% SMYS;
2. If the leak is due to a corrosion pit, install a properly designed bolt-on leak clamp, or other methods approved by Operations and Engineering;
3. If the leak is on a submerged offshore pipeline or submerged pipeline in inland navigable waters, mechanically apply a full encirclement split sleeve of appropriate design;
4. Apply a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

Kinetica's Pipeline Operating Procedures Manual, Section 401 – Pipeline Repair, Table 401-2 Permanent Pipeline Repair Methods (Revision Date: 7/20/2020) addresses permanent repairs based on defect type. Kinetica's written procedure and Table 401-2 do not allow for through wall leaks to be permanently repaired using composite wraps. Furthermore, § 192.717 does not allow for leaks to be repaired with composite wraps.

Kinetica Response:

Kinetica's Pipeline Operating Procedures Manual, Section 401 – Pipeline Repair, Table 401-2 Permanent Pipeline Repair Methods (Revision Date: 7/20/2020) addresses permanent repairs based on defect type. Kinetica's written procedure and Table 401-2 had not been updated to allow for through wall defects. However, 49 § 192.717 (b)(5) allows operators to "Apply a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe." Section 401 of Kinetica's Pipeline Operating Procedure manual also allows this.

"Furthermore, § 192.717 does not allow for leaks to be repaired with composite wraps."

On December 14, 1999, PHMSA published FR 99-32274, which has been attached to this response. PHMSA went into further details about the final rule in a response to a comment. A letter of interpretation was also published by PHMSA, which has been attached to this response. See also https://www.govinfo.gov/content/pkg/FR-1999-12-14/html/99-32274.htm

This is the relevant part of PHMSA's Response to the referenced comment:

In the NPRM, we described the "reliable engineering tests and analyses" that would be necessary to show that a particular repair method will perform as required. We said the tests and analyses need only be what a reasonable and prudent professional engineer would consider adequate to demonstrate compliance with the performance standard. We recognize that licensed professional engineers may differ on what information is necessary to demonstrate the performance of particular technologies in particular circumstances. But the experience of Clock Spring and Armor Plate wraps can serve as a model in determining the technical issues to resolve and the relevant substantiating tests and analyses. We will look to this experience to guide our inspections for compliance with the final rule. In this regard, we would welcome opportunities to preview new pipeline repair technologies in the development stage to avert possible compliance issues later on when the technologies are marketed.

With the growth of repair technology, we expect that voluntary efforts will respond to any possible demand for uniform testing criteria. As mentioned above, Stress Engineering has already moved in this direction for certain composite wraps. And other firms and organizations may develop additional criteria for different repair techniques. Such criteria could be incorporated in voluntary standards, such as ASME B31.4 or B31.8, or in publications such as GPTC/ANSI Z380.1, Guide for Gas Transmission and Distribution Piping Systems. We now use these documents as a guide to

acceptable practices in judging compliance with many performance standards in Parts 192 and 195.

In the Federal Register / Vol. 64, No. 239 / Tuesday, December 14, 1999, the below is also stated for permanent repair of leaks with composite wraps.

Leak Repairs

Duke Energy, CMS Energy, and Enron further suggested that the proposed performance standard under Sec. 192.713(a) for non-leaking defects should apply to leaking defects as well. This change, they said, would be consistent with the purpose of the rulemaking and allow the removal of Sec. 192.717, which requires specific repair methods for transmission line leaks.

We did not propose to apply the proposed performance standard to methods of repairing pipe leaks because the impetus for this rulemaking, Clock Spring wrap, is not designed to repair leaks. Still, as explained in the NPRM, the purpose of this rulemaking is to make the pipe repair regulations more flexible so that operators have incentives to innovate and greater freedom in selecting repair methods. And, as the commenters indicated, achieving this goal does not depend on whether the defect to be repaired is leaking nor on the availability of a non-traditional leak repair method that qualifies under the proposed performance standard. In fact, adopting the proposed performance standard to authorize alternative leak repair methods is likely to foster the development of new methods of leak repair.

Therefore, since the proposed performance standard is suitable for both non-leaking and leaking defects and applying the standard to the repair of leaking defects furthers the purpose of the NPRM, we have added the proposed performance standard to Sec. 192.717 to cover the permanent repair of leaks on transmission lines. As discussed below, our gas pipeline safety advisory committee supported this action.

In an email from Mary McDaniel (PHMSA), Kinetica was told the following:

"As discussed yesterday, our position is that the Belzona wrap used as a permanent repair is not acceptable. To support our position that composite wraps cannot be used to repair a leak, I refer to:

ASME B31-4 – 2019 (451.6.2.9.3) Prohibits the use of composites for repairing leaks for a permanent repair. It does not prohibit them for a temporary repair.

ASME B31-8 2018 (851.4) – Prohibits the use of composites for repairing leaks on a line operating over 100psig."

Kinetica Response:

Kinetica must bring to PHMSA's attention, however, that neither ASME B31.4 nor B31.8, were incorporated in their entirety by reference into the Sec. 192 requirements. Certain sections were adopted, but not the entirety of either of the referenced ASME standards above.

In light of the requirements of CFR Chapter 49 § 192.717 (b)(5), the guidance publish by PHMSA and the fact that "*Other methods proven by reliable engineering analyses and approved by the appropriate Engineering Director" (Kinetica POP Manual Section 401)* were used, the Belzona Superwrap II composite wrap repair completed on the Eugene Island 327A platform is in compliance with all applicable requirements.

Kinetica appreciates the opportunity to respond to the NOPV. We are prepared to discuss this response at your convenience.

Regards,

Kurt Cheramie, Sr. Vice President