**APR 2 2010**

Mr. M. Dwayne Burton
Vice President
Gas Pipeline Operations & Engineering
Kinder Morgan Inc.
One Allen Center
500 Dallas Street, Suite 1000
Houston, TX 77002

**Re: CPF No. 5-2007-1008**

Dear Mr. Burton:

Enclosed is this agency's decision denying your company's Petition for Reconsideration in this case. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure:

Cc: Mr. Chris Hoidal, Director, Western Region, PHMSA
Robert Hogfoss, Counsel

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2377]**

**U.S. DEPARTMENT OF TRANSPORTATION**
**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**
**OFFICE OF PIPELINE SAFETY**
**WASHINGTON, D.C. 20590**

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| **In the Matter of** | ) | |
| **Kinder Morgan, Inc.,** | ) | **CPF No. 5-2007-1008** |
| **Respondent.** | ) | |

## DECISION ON PETITION FOR RECONSIDERATION

On September 1, 2009, I found that Kinder Morgan, Inc. (Kinder Morgan or Petitioner) had violated 49 C.F.R. § 192.905(a), the regulation that requires an operator to identify all of the high consequence areas (HCA) that could be affected by the operation of a natural gas pipeline system. I assessed Kinder Morgan a civil penalty of $39,000 for committing that violation and withdrew a separate allegation of probable violation for evidentiary insufficiency.[1]

On October 5, 2009, after receiving an extension of the 20-day filing deadline, Kinder Morgan filed a Petition for Reconsideration (Petition) of the September 1, 2009 Final Order. In that Petition, Kinder Morgan requested that certain "inaccurate language" be stricken from the Assessment of Penalty section of that Final Order and argued that the assessed civil penalty had to be reduced to properly reflect the facts of the case.[2] Petitioner also introduced a chart with a comparison of its HCA mileage on December 31, 2005, and October 27, 2007, to support these assertions.[3] Kinder Morgan did not, however, dispute the finding that its employees failed to follow the company's written procedures for identifying HCAs.

Having fully considered the record in this matter, I find that Kinder Morgan has not presented any persuasive factual or legal basis in support of reconsideration. I will, therefore, deny this Petition and affirm the September 1, 2009 Final Order without modification.

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[1] *In the Matter of Kinder Morgan, Inc.*, Final Order, C.P.F. No. 1-2009-1001 (Aug. 9, 2009) (available at www.phmsa.dot.gov/pipeline/enforcement).

[2] Petition at 1-2.

[3] Petition at Appendix A.

## I. Discussion

The Pipeline Safety Regulations permit the filing of a petition for reconsideration of a final order. However, this is not a right of appeal or to seek a de novo review of the record.[4] Rather, reconsideration is an opportunity to present the agency with previously unavailable information and, if appropriate, to request that any errors in the final order be corrected. That is why the Associate Administrator does not consider repetitious information or arguments on reconsideration. It is also why a petitioner must provide a valid reason for consideration of facts or arguments that were not raised in a timely manner.

With that in mind, I will now consider the merits of this Petition. Kinder Morgan requests that certain language be stricken from the Assessment of Penalty section of the Final Order. The language in question reads:

> Respondent failed without justification to follow its own written procedure and that failure led to a significant under-reporting of the HCAs that could be affected by the operation of the company's pipeline system. If left uncorrected, such an error would diminish the effectiveness of the other risk-based requirements imposed by the IMP regulations and create a potential threat to public safety.

Kinder Morgan takes exception to the use of the term "significant" and the phrase "create a potential threat to public safety" in this part of the Final Order. That language, Petitioner believes, does not comport with the record in this case, including "the reality… that 86% of the time . . . the procedure was followed correctly" and the fact that any errors would have been quickly identified by the company during its annual HCA-mileage review.

I do not find these arguments persuasive.

First, an operator's obligation to follow the Pipeline Safety Regulations does not vary on a percentage basis, and Petitioner does not dispute that a violation of 49 C.F.R. § 192.905(a) occurred in this case. Moreover, any agency charged with protecting public safety would consider a 14% rate of regulatory noncompliance to be significant. Therefore, I reject Kinder Morgan's request on reconsideration to strike that language from the Final Order.

Second, the fact that an operator may discover a violation at some future point does not mean that its conduct never "create[d] a potential threat to public safety." To the contrary, the Pipeline Safety Regulations are the minimum standards that an operator must meet to ensure public safety and the protection of the environment, and any violation of those standards creates a potential threat to those interests. Accordingly, I reject Petitioner's request to strike this language from the Final Order as well.

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[4] 49 C.F.R. § 190.215(a)-(e).

## II. Conclusion

For the reasons stated in Part I of this Decision, I am denying this Petition and affirming the September 1, 2009 Final Order without modification. This is the final administrative action in this proceeding.

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Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued