

March 15, 2024

VIA ELECTRONIC MAIL TO: wayne_simmons@kindermorgan.com

Wayne Simmons
Chief Operating Officer, Products Pipelines
Kinder Morgan, Inc.
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

CPF No. 5-2021-056-NOPSO

Dear Mr. Simmons:

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, Inc., which was executed on March 4, 2024. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Consent Order and Consent Agreement

cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Zach Ragain, Director, Engineering, Codes and Standards, Kinder Morgan, Inc.,
zach_ragain@kindermorgan.com
Ms. Annie Cook, Esq., Outside Counsel for Kinder Morgan, Inc., Bracewell LLP,
annie.cook@bracewell.com
Ms. Jessica Toll, Esq., Assistant General Counsel, Kinder Morgan, Inc.,
jessica_toll@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

Kinder Morgan, Inc.,

Respondent.

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CPF No. 5-2021-056-NOPSO

CONSENT ORDER

By letter dated October 21, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or Agency), issued a Notice of Proposed Safety Order (Notice) to Kinder Morgan, Inc. (KMI or Respondent).

In accordance with 49 C.F.R. § 190.239, the Notice alleged that conditions appear to exist on certain pipeline facilities operated by Respondent that pose pipeline integrity risk to public safety, property, or the environment. The Notice also proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

In response to the Notice, Respondent timely requested an informal consultation. During the informal consultation meetings from December 2021 to January 2024, the parties engaged in good-faith discussions that have resulted in the Consent Agreement attached to this Consent Order that settles all of the allegations in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The respondent is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

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.R.F. § 190.223, or in the 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.

March 15, 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, DC 20590**

In the Matter of

Kinder Morgan, Inc.,

Respondent.

CPF No. 5-2021-056-NOPSO

CONSENT AGREEMENT

On October 21, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, issued a Notice of Proposed Safety Order (Notice) to Kinder Morgan, Inc. (KMI or Respondent). Following an internal audit of its liquid integrity management program, KMI voluntarily notified PHMSA on April 7, 2021, that it had discovered anomalies that were not evaluated and remediated within 180 days based on application of 49 C.F.R. § 195.452(h)(4)(iii)(H).¹ PHMSA issued the Notice after it initiated an investigation of applicable hazardous liquid pipeline segments in Alabama, Arizona, California, Georgia, Florida, Louisiana, Michigan, Mississippi, Nevada, New Mexico, North Carolina, Oregon, Texas, and Virginia.

At the time that KMI received the final relevant inline inspection (ILI) data, KMI did not consider these conditions to qualify as corrosion of or along a longitudinal seam weld that required excavation or repair within 180 days through application of its integrity management program (IMP). KMI submitted an integrity assurance notification to PHMSA and relevant certified state agencies on May 20, 2021, regarding up to 2,715 anomalies on certain products pipelines, which was subsequently updated in August 2021 to include an additional 581 anomalies.² Since learning of the issue and in coordination with PHMSA, KMI has prioritized excavation and remediation of the applicable anomalies based on risk and has less than 5% anomalies remaining.³ Until it could complete relevant repairs, KMI also implemented pressure restrictions, aerial or ground right of way patrols, and/or continued implementation of its corrosion control program with remote monitoring and alert tracking of select locations and systems.

The Notice alleged that the anomalies must be remediated and that they could worsen and impair the serviceability of the pipelines if left unaddressed or could develop on other areas. Specifically,

¹E.g., PHMSA Interpretation issued to Plains Pipeline, PI-17-0014 (Apr. 26, 2018).

² In an abundance of caution, KMI's integrity assurance notifications were over inclusive as the anomalies reported by KMI and referenced in the Notice included some anomalies which Kinder Morgan had already evaluated and remediated.

³ Among the over 95% of completed anomaly repairs, KMI reports it has completed repair of all anomalies with metal loss depth greater than 40% with a Type B Sleeve or through pipe replacement.

PHMSA alleged that the depth and length of the anomalies, combined with the known manufacturing processes of the seam type of the pipelines, pose a potential pipeline integrity risk to public safety, property, or the environment. The Notice proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from potential risk.

On November 18, 2021, KMI responded to the Notice by timely submitting a request for an informal consultation. More than a dozen informal consultations were held virtually from December 14, 2021, to April 20, 2023. Through the course of informal consultation and in coordination with PHMSA, KMI excavated and remediated more than 95% of anomalies through installation of Type B sleeves or pipe replacement; among these repairs, KMI has completed repair of all anomalies with metal loss depth greater than 40%. With courtesy notifications to PHMSA and PHMSA's express agreement, KMI has returned over 86% of the relevant pipeline segments to normal operating pressure and patrol frequencies once repairs were complete.

As a result of informal consultations, PHMSA and KMI (collectively, the Parties) agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry into this Consent Agreement (Agreement) is the most appropriate means of resolving the issues raised in the Notice. Pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, KMI and PHMSA hereby agree as follows.

I. General Provisions

1. Respondent acknowledges that as the operator of hazardous liquid pipeline facilities in Alabama, Arizona, California, Georgia, Florida, Louisiana, Michigan, Mississippi, Nevada, New Mexico, North Carolina, Oregon, Texas, and Virginia, Respondent is 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 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. Except as set forth herein, this Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault, or liability, or as evidence of the 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. Respondent neither admits nor denies any allegation or conclusion in the Notice or this Agreement, but agrees, for purposes of this Agreement, to address the actions specified in Section III of this Agreement (Corrective Measures) and to abide by the terms of this Agreement.

3. After Respondent returns this signed Agreement to PHMSA, an agency 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 the Agreement.

4. Respondent consents to the issuance of the Consent Order that is consistent with this Agreement, 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 in this case, except as set forth herein.

5. This Agreement shall apply to and be binding upon PHMSA, and upon 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.

6. For all transfers of ownership or operating responsibility of KMI's pipeline segments subject to this Agreement which occur while this Agreement is in effect, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. KMI will provide written notice of the transfer to the PHMSA Western Region Director (Director) no later than 60 days after the transfer occurs. Upon notice to PHMSA, the transferee will be responsible for compliance with the obligations in this Agreement, as the owner and operator of the relevant pipeline segments, instead of KMI.

7. 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.

8. 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.

9. 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. Respondent agrees that the activities to be performed pursuant to Section III may go beyond the minimum federal pipeline safety regulations.

10. 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.

11. Upon issuance of the Consent Order, the Parties agree to the following terms.

II. Definitions

12. “Affected Anomalies” means seam weld metal loss anomalies subject to the Notice that have not been excavated and remediated as of the Effective Date of this Agreement, set forth in Appendix A.

13. The “Director” means the Director, Pipeline and Hazardous Material Safety Administration, Office of Pipeline Safety, Western Region.

14. “Effective Date” means the date the Consent Order is issued.

15. "Interim Safety Measures" means the temporary pressure restrictions, additional right of way patrols, and other mitigative measures previously agreed to by the parties set forth in Appendix B.

III. Corrective Measures

16. ***Prioritization Schedule.*** KMI shall prioritize the Affected Anomalies for repair expeditiously based on location, completion of relevant permitting and approvals, and as crews are available. KMI must complete repair of Affected Anomalies on or before July 31, 2024, unless extended and/or KMI has applied for a special permit per Paragraph 20.

17. ***Repairs.*** Respondent must repair the Affected Anomalies in accordance with the approved remedial work plan described in Paragraph 19 with Type B Sleeves pursuant to ASME-B31.4-2006 – Table 451.6.2(b)(1) or, alternatively, must replace the relevant pipe segment(s), unless addressed pursuant to Paragraph 20.

18. ***Interim Safety Measures.*** Respondent must maintain Interim Safety Measures, including temporary pressure restrictions where applicable, on pipeline segments set forth in Appendix B until such time that the Affected Anomalies are repaired pursuant to Paragraph 17 or PHMSA has granted a special permit pursuant to Paragraph 20 which Respondent is implementing. Once Respondent has remediated the Affected Anomalies pursuant to Paragraph 17 or is implementing a special permit pursuant to Paragraph 20 on the relevant pipeline segment(s) in Appendix B, KMI must notify the Director in writing to request that the Interim Safety Measures be lifted.

19. ***Work Plan.*** Respondent must implement the written remedial work plan that includes the corrective measures set forth in this Agreement in paragraphs 16, 17, 18, 21, and 23, and which has been previously approved by the Director. KMI must:

- A. Revise the remedial work plan as necessary to incorporate new information obtained during the evaluations and associated remedial activities. Submit any such plan revisions in writing to the Director for prior approval. The Director may approve plan elements incrementally. The remedial work plan is incorporated into the Agreement.
- B. Implement the remedial work plan as approved by the Director, including any revisions to the plan.
- C. Make the results of the inspections, field excavations, and evaluations performed under the remedial work plan available to PHMSA or its representative upon request.

20. ***Special Permits.*** In lieu of repair under Paragraph 17, Respondent may submit a special permit application to address Affected Anomalies to PHMSA pursuant to 49 C.F.R. § 190.341. Respondent must submit such special permit applications to PHMSA on or before March 31, 2024, and must respond to information requests made by PHMSA pursuant to such applications within 30 days of each request. The status of special permit applications filed by Respondent to address Affected Anomalies under this Agreement must be included in the quarterly reports (see Paragraph 24). For any special permit applications filed to address Affected Anomalies under this Agreement, Respondent agrees to cooperate fully in the special permit process per 49 C.F.R. § 190.341. If any special permit application under this Agreement is denied by PHMSA or withdrawn by Respondent, Respondent must repair the Affected Anomalies pursuant to Paragraph 17 within 180 days of the denial/withdrawal of the special permit request, as extended pursuant to this Agreement, including but not limited to Paragraphs 25, 31, 32, and 33.

21. ***Close Interval Surveys.*** KMI must conduct an “on and off” current Close Interval Survey (CIS) at a maximum 5-foot spacing along the entire length of each Affected Anomaly within 6 months of the Effective Date, as described below:

- A. KMI must evaluate each Affected Anomaly area in accordance with 49 C.F.R. §§ 195.571 and 195.573(a)(2), and accomplish the objectives of Paragraph 10.1.1.3 of NACE SP 0169.
- B. For inadequate cathodic protection (CP) level determination, KMI must conduct a CIS in both directions (a minimum of 1,000 feet) from the Affected Anomaly and until the CIS ends at test stations with adequate cathodic protection (CP) levels.
- C. KMI must remediate any findings within 12 months of completion of the CIS.
- D. A CIS will not be required where inadequate potentials are a result of an electrical short to an adjacent foreign structure, a rectifier malfunction, an interruption of power source, or an interruption of CP current. KMI must document and repair these instances.

22. ***Guidance Materials Review.*** Respondent will use its Monthly Regulatory Verification tool and process to track PHMSA pipeline safety guidance materials published in the Federal Register, including frequently asked questions, advisory bulletins, and other guidance documents. Respondent must prepare a written report summarizing its process and send it to the Director within 90 days of the Effective Date.

23. ***Historical Records Review.*** During implementation of the remedial work plan, Respondent will compare and validate findings in the field per § 195.452(g)(1)(i-ii) with pipeline records and update those records as needed where they conflict with field findings with respect to material records, pressure test records, diameter, wall thickness, seam type, and coating type. Where pipe specified minimum yield strength is unknown, Respondent will validate yield strength through destructive or non-destructive testing. Respondent will utilize destructive testing as the validation method when pipe is removed and replaced, and non-destructive testing when repair is completed with a Type B Sleeve. Non-destructive testing will be performed based on availability of crews and equipment pursuant to the spacing requirements of 192.607(c)-(e). Destructive testing will be performed with tensile testing.

24. ***Quarterly Reports.*** Respondent will submit quarterly reports to the Director that: (1) include results of the testing required by this Agreement; and (2) describe the progress of the repairs and other remedial actions being undertaken as required by this Agreement. The first report will be due 45 days from the Effective Date.

25. ***Extensions of Time.*** The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for an extension. The Director shall respond in writing to any such request.

26. ***Appeals.*** Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator will be final.

IV. Review and Approval Process

27. With respect to any submission under Section III (Corrective Measures) 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, KMI will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section V with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide KMI with a written notice of the deficiencies. Respondent will correct all deficiencies within a reasonable time specified by the Director and resubmit it for approval.

V. Dispute Resolution

28. The Director and KMI will informally attempt to resolve any disputes arising under this Agreement. If Respondent and the Director are unable to informally resolve the dispute within 15

calendar days of submittal of Respondent's invoking dispute resolution, KMI may request in writing, within 10 days thereafter, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing, which constitutes 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, except as agreed by the Director or the Associate Administrator in writing.

VI. Enforcement

29. This Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All procedures set forth or referenced in Section III will be automatically incorporated into this Agreement and are enforceable in the same manner.

VII. Recordkeeping and Information Disclosure

30. Unless otherwise required in this Agreement, KMI agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least 5 years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, KMI 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. KMI must mark the claim of confidentiality in writing on each page and include a statement specifying the grounds for each claim of confidentiality. PHMSA will determine the 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.

VIII. Force Majeure

31. Respondent agrees to perform the terms of this Agreement within the timeframes established under the remedial work plan, including pursuant to extensions under Paragraph 25 or modifications under Paragraph 34, unless performance is delayed by a force majeure. For purposes of this Agreement, a force majeure is defined as an event arising from causes beyond the control of the Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under the Agreement despite Respondent's commercially reasonable efforts to fulfill the obligation.

32. If a force majeure event occurs or has occurred that may delay the performance of a term of this Agreement beyond the approved timeframe, Respondent shall notify the Director in writing, within 5 business days of when Respondent knew that the event might cause a delay. Such notice shall identify the cause of the delay or anticipated delay and the anticipated duration of the delay; state the measures taken or to be taken to prevent or minimize the delay; and estimate the timetable

for implementation of those measures. Failure to comply with the notice provision of this paragraph and to undertake reasonable efforts to avoid and minimize the delay shall waive a claim of force majeure by Respondent.

33. If the Director determines, upon notification by Respondent, that a delay or anticipated delay in performance is or was attributable to a force majeure, then the Director will extend the time period for the performance of that term for a reasonable period. The Director will notify Respondent, in writing, of the length of any extension of performance of such terms affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other terms of this Agreement which are not affected by the force majeure.

IX. Modification

34. 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.

X. Termination

35. This Agreement will terminate upon submission, approval where specified, and completion of the deliverables set forth in Section III. Specifically, once Respondent has completed the repair or replacement pursuant to Paragraph 17 or obtained a special permit pursuant to Paragraph 20 for the Applicable Anomalies and completed the obligations in Section III, this Agreement will terminate. Nothing in this Agreement prevents KMI from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XI. Ratification

36. 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.

37. The Parties hereby agree to all conditions and terms of this Agreement.

For Respondent:

Wayne G. Simmons
Chief Operating Officer – Product Pipelines
Kinder Morgan, Inc.

Date: _____

For PHMSA:

Dustin Hubbard
Director, Western Region, Office of Pipeline Safety

Date: _____