

October 31, 2023

VIA ELECTRONIC MAIL TO: Dax.Sanders@kindermorgan.com

Mr. Dax Sanders
President, Products Pipeline
Kinder Morgan, Inc.
1001 Louisiana St., Suite 1000
Houston, Texas 77002

Re: CPF No. 5-2022-057-NOPV

Dear Mr. Sanders:

Enclosed please find the Final Order issued in the above-referenced case to SFPP, L.P., a subsidiary of Kinder Morgan, Inc. It makes a finding of violation and assesses a civil penalty of \$36,200. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as 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

Enclosure (Final Order)

cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Wayne Simmons, Chief Operating Officer, Products Pipelines, Kinder Morgan, Inc.,
Wayne_Simmons@kindermorgan.com
Mr. Thomas Otjen, Vice President, Pipeline Integrity, Kinder Morgan, Inc.,
Thomas_Otjen@kindermorgan.com
Mr. Jaime Hernandez, Director, Engineering: Codes and Standards, Kinder Morgan, Inc.,
Jaime_Hernandez@kindermorgan.com

CONFIRMATION OF RECEIPT REQUESTED

after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reports may be transmitted by electronic mail to InformationResourcesManager@dot.gov, or by facsimile at (202) 366-7128.

The Notice alleged SFPP failed to submit an SRC report within five working days after the existence of a condition was determined, and no later than 10 working days after the condition was discovered. Specifically, SFPP indicated on its SRC report the safety-related condition was discovered on July 27, 2022, and the relevant determination date was August 3, 2022. Therefore, the SRC report should have been filed no later than August 10, 2022. However, the SRC report was not filed until August 24, 2022.

Respondent did not contest the allegation in the Notice, but requested a reduction in the proposed civil penalty. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.56(a) by failing to submit an SRC report within five working days after the existence of a condition was determined, and no later than 10 working days after the condition was discovered.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.¹

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

Item 1: The Notice proposed a civil penalty of \$36,200 for the violation of 49 C.F.R. § 195.56(a), for failing to submit a SRC report within five working days after the existence of a condition was determined, and no later than 10 working days after the condition was discovered.

In the Response, SFPP requested a reduction of the proposed civil penalty. SFPP stated it reviewed its internal processes and procedures with the appropriate personnel after the events described in the Notice, and stated that the "delay in submitting the SRCR report did not delay any inspection of this noted feature. At no time was pipeline safety compromised." SFPP requested that PHMSA treat the

¹ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

violation of § 195.56(a) as a “records” violation in its calculation of the civil penalty rather than an “activities” violation.²

In reviewing the record in this matter, I note the Pipeline Safety Violation Report (Violation Report; *see* Part E4-Nature), correctly reflects the violation of § 195.56(a) as an “activities” violation.³ The Violation Report addresses examples of “activities” violations, which includes violations involving making required notifications and reports as occurred here.⁴ SFPP failed to affirmatively make a required notification to PHMSA within the prescribed timelines. This violation—a failure to timely notify PHMSA of a safety-related condition by submitting an SRC report—clearly falls within the “activities” category.

Further, the Violation Report (Part E6-Gravity) already accounts for Respondent’s argument that the delayed filing did not delay any inspection or compromise safety. The proposed civil penalty in this instance reflected that “pipeline safety was minimally affected”. There is no lower Gravity value to assign in calculating a civil penalty via PHMSA’s civil penalty worksheet than “pipeline safety was minimally affected”.⁵ Therefore, no reduction in the proposed civil penalty is warranted.

Based upon the foregoing, I assess the proposed civil penalty amount of **\$36,200** for the violation of 49 C.F.R. § 195.56(a).

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective actions, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this order are effective upon service in accordance with 49 C.F.R. § 190.5.

October 31, 2023

Alan K. Mayberry Date Issued
Associate Administrator
for Pipeline Safety

² *See* 81 Fed. Reg. 71,566 (Oct. 17, 2016); *available online at*: <https://www.govinfo.gov/content/pkg/FR-2016-10-17/pdf/2016-25000.pdf>.

³ Violation Report, at 6 (on file with PHMSA).

⁴ *See also* 81 Fed. Reg. at 71,567

⁵ *Id.*