



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

APR 10 2006

Dwayne M. Burton  
Vice President, Gas Pipelines Operations  
Natural Gas Pipeline Company of America  
Kinder Morgan, Inc.  
500 Dallas St., Suite 1000  
Houston, TX 77002-4718

Re: CPF No. 4-2005-1012

Dear Mr. Burton:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$9,500, and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590**

|  |   |                            |
|--|---|----------------------------|
| <b>In the Matter of</b>  | ) |                            |
| <b>Natural Gas Pipeline Company of America,<br/>a subsidiary of Kinder Morgan, Inc.,</b> | ) | <b>CPF No. 4-2005-1012</b> |
| <b>Respondent</b>  | ) |                            |

**FINAL ORDER**

On June 14–18, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration’s Office of Pipeline Safety (PHMSA) conducted an on-site pipeline safety inspection of Respondent’s facilities and records in Texas and Oklahoma. As a result of the inspection, the Director, Southwest Region, PHMSA, issued to Respondent, by letter dated June 15, 2005, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 192.745 and proposed assessing a civil penalty of \$9,500 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated July 20, 2005 (Response). Respondent contested the allegation of violation, offered information to explain the allegation, and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing, and therefore has waived its right to one.

**FINDING OF VIOLATION**

The Notice alleged Respondent violated 49 C.F.R. § 192.745(a) by failing to partially operate several transmission line valves and document their operation. Section 192.745(a) requires Respondent to inspect and partially operate each transmission line valve that might be required during an emergency at intervals not exceeding 15 months, but at least once each calendar year.

In its Response, Respondent acknowledged that inspection forms used to record several valve inspections did not show that the valves had been partially operated. Respondent stated that the valves were operated at the time of their inspection, but the employee performing the inspection inadvertently did not record their operation on the designated inspection form. Respondent submitted copies of the original inspection forms subsequently corrected to show that the valves

had been operated at the time of their inspection. Respondent also submitted three affidavits, all dated July 12, 2005, signed by Respondent's Operations Specialist, Respondent's Operations Supervisor and a contractor. The affidavits state that the valves were operated by Respondent's Operations Specialist in accordance with Respondent's procedures at the time of the valves' inspection.

The original valve inspection forms witnessed by PHMSA inspectors during their inspection did not record that the valves had been operated in accordance with § 192.745(a). When PHMSA inspectors drew attention to the apparent noncompliance, Respondent corrected the forms by having the employee responsible for the inspections mark on the forms that the valves had been operated. Although Respondent stated in its response that the employee merely "finished completing" the forms in front of the inspectors, the original valve inspections were performed several months before the PHMSA inspection in June 2004. In a few cases, the valve inspections occurred almost two years before the PHMSA inspection. Accordingly, I cannot find that the employee was merely completing the forms when he made changes to the forms during the PHMSA inspection. Nor do I find the affidavits submitted, which were signed between several months and almost two years after the valve inspections occurred, are sufficient to demonstrate compliance with § 192.745(a) and Respondent's procedures, which require Respondent to inspect and partially operate the valves at intervals not exceeding 15 months (but at least once each calendar year) and to document compliance on the designated inspection form. Accordingly, I find Respondent violated § 192.745(a) by failing to partially operate transmission line valves that might be necessary during an emergency and document the operation.

#### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations. The Notice proposed a total civil penalty of \$9,500 for the violation of § 192.745(a).

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Respondent did not provide information in mitigation of the proposed civil penalty beyond its challenge to the violation. A violation of § 192.745(a) concerns the safety of valves that may be needed during an emergency. Emergency valves must be operable at all times in order to prevent and minimize danger to the public and environment during an emergency. Respondent's failure to ensure the safe and reliable operation of emergency valves threatened public safety and the environment.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$9,500 for the violation of § 192.745(a). Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-300), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$9,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to the violation of 49 C.F.R. § 192.745(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must—

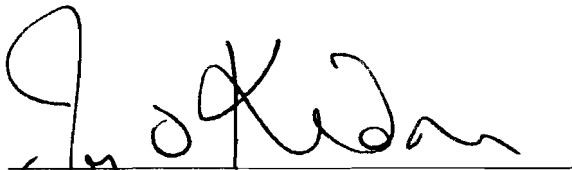
1. Achieve compliance with 49 C.F.R. § 192.745(a) for each transmission line valve in the Fritch District that might be required during an emergency. For the purpose of this Order, the Fritch District includes Balko, Stinnet and Pampa Districts. Demonstrate compliance by submitting sufficient evidence to show that each valve has been inspected during the most recent calendar year(s) in accordance with § 192.745(a) and Respondent's Operations and Maintenance (O&M) procedure number 301 and Planning Guide procedure I-0306.
2. Complete Item 1 and submit documentation of compliance within 30 days of receipt of this Order to the Director, Southwest Region, Office of Pipeline Safety, 8701 S. Gessner Dr., Suite 1110, Houston, TX 77074-2949.

The Director, Southwest Region, may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.

for



Stacey Gerard  
Associate Administrator  
for Pipeline Safety

APR 10 2006

\_\_\_\_\_  
Date Issued