

APR 7 2010

Mr. Ron McClain
Vice President, Engineering & Operations
Kinder Morgan Energy Partners, L.P.
One Allen Center
500 Dallas Street - Suite 1000
Houston, TX 77002

RE: CPF No. 2-2004-6010

Dear Mr. McClain:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the allegation of violation and closes the case. 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: Linda Daugherty, Director, Southern Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED[7009 1410 0000 2472 5347]

**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 Energy Partners, L.P.,)

Respondent.)
_____)

CPF No. 2-2004-6010

FINAL ORDER

On November 3-6, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS),¹ Southern Region, conducted an on-site pipeline safety inspection of the facilities and records of Kinder Morgan's (Respondent or Kinder Morgan) Central Florida Pipeline in Tampa, Florida. Respondent operates a 195-mile refined petroleum products pipeline system, consisting of a 16-inch gasoline pipeline and a 10-inch jet fuel and diesel pipeline. These pipelines transport product from Tampa to Orlando, Florida.

As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated May 26, 2004, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed a violation of 49 C.F.R. § 195.302 and proposed ordering Respondent to take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated June 22, 2004 (Response). Kinder Morgan contested the allegation and requested a hearing. In a letter dated November 9, 2004, Respondent submitted a supplemental response to the Notice. A hearing was subsequently held on November 10, 2004, in Atlanta, Georgia, with Renita K. Bivins, an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, the company provided additional written material for the record by letter dated November 23, 2004.

¹ This case, however, is no longer before RSPA for decision. Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005), delegating the pipeline safety functions under the statute to the Administrator, PHMSA.

FINDING OF VIOLATION

Item 1A in the Notice alleged that Respondent violated 49 C.F.R. § 195.302(c), which states:

§ 195.302 General requirements.

(a) . . .

(c) Except for pipelines that transport HVL onshore, low-stress pipelines, and pipelines covered under § 195.303, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

(1) Before December 7, 1998, for each pipeline each operator shall—

(i) Plan and schedule testing according to this paragraph; or

(ii) Establish the pipeline's maximum operating pressure under

§ 195.406(a)(5).

(2) For pipelines scheduled for testing, each operator shall—

(i) Before December 7, 2000, pressure test—

(A) Each pipeline identified by name, symbol, or otherwise that existing records show contains more than 50 percent by mileage (length) of electric resistance welded pipe manufactured before 1970; and

(B) At least 50 percent of the mileage (length) of all other pipelines; and

(ii) Before December 7, 2003, pressure test the remainder of the pipeline mileage (length).

The Notice alleged that Respondent failed to maintain records in sufficient detail to demonstrate that it operated its pipeline in accordance with § 195.302(c). At the time of the inspection, Respondent's pressure test records indicated that it was operating the line without pressure testing a segment of the Six Mile Creek Crossing (STA# 309+45 to 314+99, approximately 554 feet). At the time of the inspection, the documentation provided by Respondent only showed that a hydrostatic test had been planned in 1973 on the Six Mile Creek Crossing, which was insufficient to demonstrate that a pressure test had actually been performed. The Notice also alleged that Respondent did not provide the actual hydrostatic test records or any other documentation showing that the test had been performed.

During the hearing and in its post-hearing submission, Respondent explained that although it did not produce the logs or the recording chart of the pressure test, it had other supporting documentation to show that it had performed the hydrostatic test. Respondent explained its use of the *Risk-Based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines*, as specified in 49 C.F.R § 195.303, to maintain compliance. Respondent posed that § 195.303 allows a magnetic flux leakage (MFL) or ultrasonic internal inspection survey as an alternative to pressure testing on certain pipelines whose leak history and operating experience do not indicate the presence of leaks caused by longitudinal cracks or seam failures. Respondent requested that its alternative use of the risk-based approach specified in 49 C.F.R. § 195.303 be deemed compliant.

OPS and Respondent discussed whether the Six Mile Creek Crossing satisfied all of the conditions required by § 195.303, including Appendix B. The parties also discussed whether, in this instance, an MFL in-line inspection tool could be used as an alternative to the pressure testing requirement of § 195.302. Respondent explained that it and the previous pipeline owner had used this method as an alternative.

The Six Mile Creek Crossing was inspected by in-line low resolution MFL inspection tools in calendar year 1994 and by high-resolution MFL inspection tools in 2000. The anomalies discovered during these MFL inspections did not meet the established repair criteria stipulated in 49 C.F.R. § 195.452(h)(4). Respondent had evaluated the anomalies, using American Society of Mechanical Engineers' Standard B31G, and determined that they did not warrant repairs. Although Respondent did not locate documents supporting the specific date that the pipe was manufactured, Respondent did provide evidence that the pipe was post-1970 electric resistance welded pipe and had been manufactured using High Frequency Electric Welded process.

Based on this record, I find that Respondent did not perform a hydrostatic test as specified in 49 CFR § 195.302 or develop a plan for method of testing and a schedule for the testing. However, Respondent did provide convincing documentation that supported its use of an alternative risk-based approach to assess the integrity of the pipeline, as permitted under 49 C.F.R. § 195.303. Accordingly, I am withdrawing this allegation of violation.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with regards to Item 1 of the Notice for violation of 49 C.F.R. § 195.302(c). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. This allegation of violation has been withdrawn, so no need exists to issue a compliance order.

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

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued