

U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh Street, S.W
Washington. D.C. 20590

MAY 4 2004

Ms. Michelle Lingo
Attorney
Office of General Counsel
Railroad Commission of Texas
1701 North Congress Avenue
Austin, Texas 78711-2967

Dear Ms. Lingo:

We have considered your letter of December 9, 2003, notifying us that the Railroad Commission of Texas (Commission) has granted Kinder Morgan, Inc., a waiver from compliance with 49 CFR 192.612(b)(3), *Underwater inspection and re-burial of pipelines in the Gulf of Mexico and its inlets*. The waiver allows Kinder Morgan to use concrete mattresses as an alternative to re-burial of the exposed pipeline to protect two sections of pipeline from damage.

Section 192.612(b)(3) requires an operator to re-bury an exposed pipeline 36 inches below the seabed for normal excavation or 18 inches for rock excavation "within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is later than November 1 of the year the discovery is made."

We concur with the Commission that the placement of concrete mattresses over the exposed pipeline sections will provide a level of safety equal to or greater than that provided by re-burial of the pipeline. Therefore, we have no objection to the waiver as granted.

Sincerely,
Stacey L. Gerard
Associate Administrator for Pipeline Safety

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL

December 10, 2003

TO ALL PARTIES OF RECORD

Re: Gas Utilities Docket No. 9340,
Kinder Morgan, Inc. for a Waiver of
49 CRF Part 19612(b)(3) as it
pertains to the Inspection of their Pipeline in Galveston Bay

SIGNED ORDER

Please find attached a copy of the Order signed by the Commissioners in open conference on Tuesday, December 10, 2003 regarding the above-referenced docket.

Sincerely,
Loretta Howard
Legal Secretary
Gas Services Section

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL

December 9, 2003

Ms. Stacey Gerard
Associate Administrator
Office of Pipeline Safety
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington D.C. 20590

RE: DOCKET NO. 9340, APPLICATION OF KINDER MORGAN, INC. FOR A WAIVER OF 49 CFR PART 192.612(b)(3) AS IT PERTAINS TO THE INSPECTION OF THEIR PIPELINE IN GALVESTON BAY

Dear Ms. Gerard:

On December 9, 2003, the Railroad Commission of Texas (Commission) issued the enclosed Order, waiving compliance of 49 CFR §192.612 to Kinder Morgan, Inc. (Kinder Morgan).

As fully described in the Order, the waiver will allow Kinder Morgan to substitute placement of concrete mattresses over existing pipeline in the Gulf of Mexico rather than lowering the pipeline to a depth of thirty-six inches below the seabed.

Please consider this correspondence and the enclosed Order to be the written notification by the Commission to the United States Secretary of Transportation as required under 49 U.S.C.A. §60118 (West 1997 and Supp. 2002). In accordance with this provision, the waiver will become effective in sixty days, unless the Secretary makes a written objection.

Should you find any conflict or have any input regarding the Commission's Order approving the waiver, please contact me at (512) 463-7014 or by E-mail at michelle.lingo@rrc.state.tx.us. As well, Mary L. McDaniel, Director of the Safety Division, may be reached at (512)463-7166 or mary.mcdaniel@rre.state.tx.us.

Sincerely,
Michelle Lingo
Attorney
Office of General Counsel

RAILROAD COMMISSION OF TEXAS

APPLICATION OF KINDER §
MORGAN, INC. FOR A WAIVER §
OF 49 CFR PART 192.612(b)(3) AS § GAS UTILITIES DOCKET NO. 9340
IT PERTAINS TO THE §
INSPECTION OF THEIR PIPELINE §
IN GALVESTON BAY §

ORDER

Kinder Morgan, Inc. (Kinder Morgan) requested the Railroad Commission of Texas (Commission) to waive the requirements of 49 Code of Federal Regulations (CFR) §192.612(b)(3) (2002) to allow for substitution of the placement of concrete mattresses over existing pipeline in the Gulf of Mexico, rather than lowering the pipeline to a depth of 36 inches below the seabed. The Commission approves Kinder Morgan's request for waiver, as amended.

Notice of Open Meeting to consider this order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551 (Vernon 1994 and Supp. 2003).

FINDINGS OF FACT

1. Kinder Morgan, Inc. (Kinder Morgan), is an owner and operator of a pipeline and pipeline facilities subject to the jurisdiction of the Railroad Commission of Texas (Commission).
2. Title 49 CFR §192.612(b)(3) (2002) requires pipelines that are located in the Gulf of Mexico and its inlets and that are exposed, to be re-buried such that the top of the pipeline is thirty- six inches below the seabed.
3. On April 23, 2002, Kinder Morgan filed with the Commission an application for waiver from 49 CFR §192.612(b)(3) (2002), applicable to Project Area No. 2, which is located near Smith Point.
4. Kinder Morgan's application for waiver from Title 49 CFR §192.612(b)(3) was designated by the Commission as Gas Utilities Docket No. 9340.
5. The pipeline for which the waiver is sought is located across Galveston Bay from Dollar Point (Galveston County) to Smith Point (Chambers County).
6. The waiver requested by Kinder Morgan will allow the company to substitute placement of articulating concrete mattresses over existing pipeline rather than lowering pipeline to a depth of thirty-six inches below the seabed.
7. On April 24, 2003, Kinder Morgan filed with the Commission a modification of its application for waiver. Kinder Morgan requested that it also receive a waiver applicable to Project Area No.1, which is located near Dollar Point

Protect Area No. 1 (Dollar Point)

8. The U.S. Army Corps of Engineers (COE) designated Kinder Morgan's application for waiver from 49 CFR §192.612(b)(3) (2002), applicable to Project Area No. 1 (Dollar Point) as Permit Application No. 22876.

9. The pipeline in Project Area No. 1 (Dollar Point), Work Location A and Work Location B, for which waiver is sought is located in Galveston Bay off Dollar Point in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled "Texas City, Texas." Approximate UTM coordinates for the beginning point of the Project Area are Zone 15; Easting: 316752; Northing: 3257375. Approximate UTM coordinates for the end point of the Project Area are Zone 15; Easting: 316851; Northing: 3257473.
10. In Project Area No. 1 (Dollar Point), concrete mattresses will be placed in Galveston Bay in two sections totaling 660 feet. The first location is approximately 750 feet into Galveston Bay from Dollar Point. Approximately 460 linear feet of articulated concrete mattresses will be placed over exposed pipeline in this section. The second location in Project Area No. 1 is approximately one mile into Galveston Bay from Dollar Point. Kinder Morgan will install approximately 200 linear feet (.05 acre) of articulated concrete mattresses.
11. The COE issued notice of Permit Application No. 22876 for Project Area No. 1 (Dollar Point) on December 10, 2002.
12. The COE notice included the precise location of Project Area No. 1 (Dollar Point), a detailed description of the project, specifications of the concrete mattresses, and solicited comments and public participation from a variety of entities and individuals including federal, state, and local agencies, as well as Indian tribes, adjacent land owners, and interested persons.
13. Comments to the notice by the U.S. Corps of Engineers for Application No. 22876, Project Area No. 1 (Dollar Point), were due by January 13, 2003. No comments or protests were filed that were adverse to granting the waiver.
14. To avoid adverse impact and degradation of the both the oyster reef and habitants located in Project Area No. 1 (Dollar Point), Kinder Morgan conducted a study entitled "Evaluation of Oyster Reefs and Other Marine Habitats Adjacent to a Gas Transmission Pipeline in Galveston Bay" (November 2001).
15. Kinder Morgan will cap the concrete mattresses in Project Area No. 1 (Dollar Point) with limestone to aid in the restoration of oyster reefs, in accordance with COE Permit No. 22876.
16. The COE approved Permit No. 22876, Project Area No. 1 (Dollar Point), on April 28, 2003.

Project Area No. 2 (Smith Point)

17. The COE designated Kinder Morgan's application for waiver from 49 CFR §192.612(b)(3) (2002), applicable to Project Area No. 2 (Smith Point) as Permit Application No. 22871.
18. The pipeline in Project Area No. 2 (Smith Point) for which the waiver is sought is located on the eastern side of East Galveston Bay, immediately north of Farm to Market Road 562. The project can be located on the U.S.G.S. quadrangle map entitled "Smith Point, Texas." Approximate UTM coordinates are Zone 15; Easting: 328300; Northing: 3267466.
19. For Project Area No. 2 (Smith Point), Kinder Morgan will place approximately 140 feet of articulating concrete mattresses over the last 150 feet of pipeline located in the water and on the beach; the remaining approximately nine miles of pipeline meet adequate cover requirements.
20. The COE issued notice of Permit Application No. 22871 for Project Area No. 2 (Smith Point) on November 13, 2002.

21. The COE notice included the precise location of Project Area No. 2 (Smith Point), a detailed description of the project, and specifications of the concrete mattresses, and solicited comments and public participation from a variety of entities and individuals including federal, state, and local agencies, as well as Indian tribes, adjacent land owners, and interested persons.
22. Comments to the notice by the U.S. Corps of Engineers for Application No. 22871 (Smith Point) were due by December 16, 2002. No comments or protests were filed that were adverse to granting the waiver.
23. On April 14, 2003, Kinder Morgan petitioned the COE to amend its permit application No. 22871 for Project Area No. 2 (Smith Point) to allow for a reduction in the amount of fill to be placed into Galveston Bay at Smith Point.
24. Kinder Morgan will replant salt marsh cord grass and seed a grass mix over fill area, in accordance with COE Permit No. 22871.
25. The COE approved Permit No. 22871 for Project Area No. 2 (Smith Point) on February 3, 2003, and approved the amendment to Permit No. 22871 on May 19, 2003.

Mattresses Specifications for Project Areal (Dollar Point) and Project Area 2 (Smith Pointy

26. Each of the articulating concrete mattresses used to cover the exposed pipeline will be manufactured as 160 single elements cast into a 5/8-inch diameter, three-strand, fiber rope with nominal mattress dimensions of eight feet by twenty feet.
27. Each of the 160 elements shall be a minimum thickness of 4.5 inches.
28. The open areas of the mattresses shall not exceed ten percent.
29. The individual elements will be twelve inches square when measured through the center of the horizontal plane of the mattress.
30. The elements will have tapered edges on top and bottom to allow articulation of the mattress in every direction.
31. The taper will allow mattress articulation of a minimum of a sixty-five degree angle between any mattress element and an adjacent mattress element.
32. The concrete shall be cast onto the three-strand rope in such a way that removal of any individual mattress element will not cause sliding of other mattress elements on the cable or rope.
33. No metal connectors shall be used in the construction of the mattresses.
34. The mattresses will be manufactured such that individual elements can be removed from the mattresses so that the mattress may be placed over stumps, piles, or other structures, without destabilizing the remainder of the mattresses.
35. The mattresses shall have compressive strength of 4,000 pounds per square inch, 145 to 148 pounds per cubic foot, 4.5-inch minimal thickness, 0.95 square foot gross area element, 37 to 38 pounds element weight, and less than ten percent open area.
36. The 5/8-inch diameter, three-strand, fiber rope shall connect each element of the concrete mattress to

all adjacent elements.

37. The rope on the mattress perimeter elements shall form lifting loops on all four sides of the mattress.
38. The rope shall be an ultra-violet stabilized copolymer extruded three-strand fiber rope.
39. Minimal tensile strength of the rope shall be 9,500 pounds.
40. The rope shall have a good to excellent resistance to concentrated acids, alkalis, and solvents.
41. The rope shall be impervious to rot, mildew, and degradation due to marine organisms. The rope material shall not be affected by continuous immersion in salt water.

Conclusion

42. The placement of concrete mattresses over the exposed pipeline will add an equivalent or greater amount of protection than re-burring the top of the pipeline thirty-six inches below the seabed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this application under the Gas Utility Regulatory Act, TEX. UTIL. CODE ANN. §121.201 (Vernon Supp. 2003) (GURA) and under 49 U.S.C.A. §60105 (West 1997 and Supp. 2002).
2. The Commission has received certification from the U.S. Secretary of Transportation to regulate pipeline facility safety standards and practices; therefore, the Commission is the "State Authority" under 49 U.S.C.A. §60105 (West 1997 and Supp. 2002).
3. Kinder Morgan owns or operates pipeline facilities as that term is defined in 16 TEX. ADMIN. CODE §7.70(b)(4) (2002).
4. Kinder Morgan is required to comply with the minimum safety rules and standards in accordance with 16 TEX. ADMIN. CODE §7.70 (2002) and 49 CFR §192.301, et seq. and § 192.601 et seq. (West 2002).
5. The provisions of 16 TEX. ADMIN. CODE §7.70 (2002) require that pipeline facilities be designed, constructed, maintained, and operated in accordance with the Minimum Safety Standards for Natural Gas, 49 CFR, Part 192 (2002).
6. The regulations of 49 CFR §192.612 (2002) require that pipeline operators place and maintain pipelines that are located underwater in the Gulf of Mexico and its inlets at a depth of 36 inches below the seabed.
7. The Commission has discretion to grant waivers of its safety standards under 49 U.S.C.A. §60118(d) (West 1997 and Supp. 2002).
8. Appropriate notice of Permit Application No. 22871 and Permit Application No. 22876 was provided through substantial compliance with 16 TEX. ADMIN. CODE §3.93(d) (1995). The U.S. Corps of Engineers' notices were issued on November 13, 2002, and December 10, 2002.
9. This application for waiver was processed in accordance with the requirements of GURA and the Texas Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.001 through 2001.902 (Vernon 2000 and Supp. 2003).

10. A waiver by the Commission that would allow the placement of concrete mattresses over existing pipeline as described herein is consistent with the requirements of pipeline safety standards.

In accordance with these findings of fact and conclusions of law, IT IS ORDERED BY THE RAILROAD COMMISSION OF TEXAS that:

1. The waiver requested by Kinder Morgan from the requirements under 49 CFR §192.612(b)(3) (2002), as amended, is hereby GRANTED.
2. Before placing the concrete mattresses over the pipeline, Kinder Morgan shall acquire all required authorizations including, but not limited to, Water Quality Certification as required by 16 TEX. ADMIN. CODE §3.93 (1995) and Water Protection Consistency Certification with the Texas Coastal Management Program under 16 TEX. ADMIN. CODE §3.8 (2000).
3. Kinder Morgan shall locate the project sites as described above in the findings of fact.
4. Kinder Morgan shall use, install, and maintain concrete mattresses as described above in the findings of fact.
5. Upon the passage of sixty days from the date this order is signed and no objection from the Secretary of Transportation to this waiver having been received as provided for under 49 U.S.C.A. §60118 (West 1997 and Supp. 2002), this Order shall become final and effective.
6. All other relief not expressly granted herein is denied.

SIGNED this 9th day of December, 2003.

RAILROAD COMMISSION OF TEXAS
Victor S. Carrillo, Chairman
Charles R. Matthews, Commissioner
Michael L. Williams, Commissioner