



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

NOV 02 2012

**VIA CERTIFIED MAIL**

Mr. M. Dwayne Burton  
Vice President, Operations and Engineering  
Rockies Express Pipeline, LLC  
Kinder Morgan Energy Partners, L.P.  
500 Dallas Street, Suite 1000  
Houston, TX 77002

**Re: CPF Nos. 3-2012-1003; 1004; 1005  
Consent Agreement and Order**

Dear Mr. Burton:

Enclosed is a Consent Agreement and Order that you signed on October 17, 2012 in the above-referenced cases. Your receipt of this Consent Agreement and Order constitutes service of that document under 49 C.F.R. § 190.5.

Please direct any questions on this matter to David Barrett, Director, Central Region, Office of Pipeline Safety, PHMSA, at (816) 329-3800.

Sincerely,

Jeffrey Wiese  
Associate Administrator  
For Pipeline Safety

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS  
Mr. David Barrett, Director, Central Region, OPS  
Mr. Robert E. Hogfoss, Esq., Hunton & Williams LLP  
Ms. Catherine Little, Esq., Hunton & Williams LLP

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

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<b>In the Matter of</b>	)	
	)	
<b>Rockies Express Pipeline, LLC,</b>	)	<b>CPF Nos. 3-2012-1003;</b>
	)	<b>1004; 1005</b>
<b>Respondent</b>	)	
	)	

**CONSENT AGREEMENT AND ORDER**

From July 2007 through November 2009, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of title 49 United States Code, conducted on-site inspections of the construction of approximately 1,351 miles of the Rockies Express pipeline system, a 42-inch diameter natural gas pipeline running from Colorado to Ohio (REX Pipeline) constructed in two separate phases designated as the REX West pipeline and the REX East pipeline.<sup>1</sup> As a result of these inspections, on June 15, 2012, PHMSA issued three Notices of Probable Violation (Notices) to Rockies Express Pipeline, LLC and Kinder Morgan Energy Partners, L.P.

The first Notice, CPF 3-2012-1003, alleged 13 violations of the federal pipeline safety regulations in 49 C.F.R. Part 192 in connection with the construction of the REX West pipeline and proposed assessing a total civil penalty of \$347,800 for 11 of the alleged violations. The Notice also proposed ordering certain measures to correct four of the alleged violations to ensure the possibility of any remaining construction defects is addressed.

The second Notice, CPF 3-2012-1004, alleged 14 violations of the federal pipeline safety regulations in 49 C.F.R. Part 192 in connection with the construction of the REX East pipeline and proposed assessing a total civil penalty of \$641,900 for the alleged violations.

The third Notice, CPF 3-2012-1005, alleged a violation of a Special Permit Order issued by PHMSA on July 5, 2006 and proposed assessing a civil penalty of \$61,800 for this alleged violation.

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<sup>1</sup> The REX West pipeline runs from Weld County, Colorado to Audrain County, Missouri. The REX East pipeline runs from Audrain County, Missouri to Monroe County, Ohio.

The alleged violations cited in these Notices involve, inter alia, welding procedures and practices; weld inspections, testing and quality control; ditching, padding, lowering-in, and backfilling; coating application and repairs; maximum allowable operating pressure design factor in some Class 2 locations; depth of cover in certain areas; and other construction specifications and standards.

On July 16, 2012, Rockies Express Pipeline, LLC (Respondent) submitted a combined response to the Notices providing information concerning the extent to which it had cooperated with PHMSA's investigation and self-identified some of the alleged violations cited in the Notices. Respondent also provided information concerning the corrective actions it has taken, reserved its right to a hearing, and requested consultations with PHMSA on the disposition of all three Notices. Respondent and PHMSA engaged in good faith settlement discussions resulting in this Consent Agreement and Order.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement and Order is the most appropriate means of resolving the Notices, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA ("the Parties"), the following is agreed upon and Ordered:

## **I. General Provisions**

1. Respondent acknowledges that Respondent and its pipeline system are 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 Consent Agreement and Order, 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. Respondent, for purposes of this Consent Agreement and Order, does not contest the allegations made in the Notices and agrees to abide by the terms of this Consent Agreement and Order. Respondent agrees to pay the civil penalty as set forth in Section VI of this Consent Agreement and Order, and agrees to achieve compliance by completing the actions specified in Section II ("Work to be Performed"). These actions, including any work plans and schedules, shall be automatically incorporated into this Consent Agreement and Order. This Consent Agreement and Order does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil 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 Consent Agreement and Order.

3. Respondent consents to the issuance of this Consent Agreement and Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the Notices, or the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.

4. This Consent Agreement and Order 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 Consent Agreement and Order, and any incorporated work plans and schedules, to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Consent Agreement and Order.

5. For all transfers of ownership or operating responsibility of Respondent's REX pipeline, Respondent shall provide a copy of this Consent Agreement and Order to the prospective transferee at least 10 business days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Regional Director who issued the Notices.

6. This Consent Agreement and Order constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Agreement and Order, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Agreement and Order, except that the terms of this Consent Agreement and Order may be construed by reference to the Notices.

7. Nothing in this Consent Agreement and Order 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 Consent Agreement and Order 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.

8. This Consent Agreement and Order does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Consent Agreement and Order 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.

9. This Consent Agreement and Order 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 Consent Agreement and Order. 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 the work required by this Consent Agreement and Order.

## **II. Work to be Performed**

10. Within 45 days of the Effective Date of this Consent Order and Agreement, Respondent agrees to submit to the Director, Central Region, PHMSA (Regional Director) a plan and schedule for completion of the actions set forth in the Proposed Compliance Order of the CPF 3-2012-1003 Notice as follows:

- (a) In regard to Items 3 and 8 of the Notice pertaining to the quality of girth weld radiographs and Items 4 and 6 pertaining to girth weld defects, Respondent agrees to submit the analysis for girth weld anomalies in the magnetic flux leakage in-line inspections it has run in accordance with conditions 37 and 38 of the Special Permit Order, to develop and implement a plan to address the potential for remaining girth weld defects resulting from inadequate radiography or delayed cracking that was not identified during girth weld remediation activities, and to submit these items to the Regional Director.
- (b) Respondent agrees to maintain documentation of the costs associated with fulfilling the requirements of paragraph (a) and to report the costs to the Regional Director in three categories: (1) costs associated with testing, evaluations, studies, and information analysis; (2) costs associated with preparation or revision of plans or procedures; and (3) costs associated with physical changes to pipeline facilities, including repairs, replacements and other modifications.

11. The Regional Director may grant an extension of time for completion of any of the work to be performed hereunder upon a timely written request that demonstrates both good cause for an extension and sufficient detail to evaluate Respondent's good cause request.

## **III. Review and Approval Process**

12. With respect to any submission under Section II of this Consent Agreement and Order that requires the approval of the Regional Director, the Regional Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. In the event of approval, approval in part, or approval upon conditions, Respondent will proceed to take all action required by the submission as approved by the Regional Director, subject to Respondent's right to invoke the dispute resolution procedures in this section with respect to any conditions identified by the Regional Director. In the event that the Regional Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent may seek review by the Associate Administrator if Respondent disagrees with Regional Director and the decision by the Associate Administrator will constitute final agency action with respect to the determination made on the submission. Unless judicial review is sought by Respondent, upon receipt of the decision, Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

#### **IV. Enforcement of Agreement and Order**

13. This Consent Agreement and Order is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101 *et seq.* and 49 C.F.R. Part 190, including administrative civil penalties under § 60122 of up to \$200,000 per violation for each day the violation continues, if PHMSA determines that Respondent is not proceeding in accordance with terms of the Consent Agreement and Order, in accordance with determinations made by the Regional Director, or if appealed, in accordance with decisions of the Associate Administrator. All work plans and associated schedules set forth or referenced in Section II shall be automatically incorporated into this Consent Agreement and Order and are enforceable in the same manner.

#### **V. Record Keeping and Information Disclosure**

14. Respondent agrees to maintain records demonstrating compliance with all requirements of this Consent Agreement and Order for a period of at least five 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 Consent Agreement and Order, Respondent 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. The claim of confidentiality shall be marked in writing on each page, and shall include a statement specifying the grounds for each claim of confidentiality. PHMSA shall determine release of any information submitted pursuant to this Consent Agreement and Order in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and/or PHMSA policies, and other applicable regulations and Executive Orders.

#### **VI. Civil Penalties**

15. Respondent agrees to pay \$945,900 in civil penalties no later than 10 business days following the Effective Date of this Consent Agreement and Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

16. Failure to pay the \$945,900 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 district court of the United States.

17. At the time of payment, Respondent agrees to simultaneously send written notice of the payment and a copy of the payment transmittal documentation to:

David Barrett  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration  
901 Locust Street, Suite 462  
Kansas City, MO 64106

Rod Dyck  
Director of Enforcement  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, SE, Room E24-302  
Washington, DC 20590

18. Respondent agrees that the civil penalty payment specified in paragraph 15 will not be deductible by Respondent or any of its affiliates for purposes of Federal taxes.

#### **VII. Effective Date**

19. The "Effective Date" as used herein is the date on which this Consent Agreement and Order has been signed by both Respondent and PHMSA. Unless specified to the contrary, all deadlines for actions required by this Consent Agreement and Order run from the Effective Date of this Consent Agreement and Order.

#### **VIII. Modification**

20. The terms of this Consent Agreement and Order may be modified by mutual agreement of the parties. Such modifications shall be in writing and shall be signed by both parties.

#### **IX. Termination**

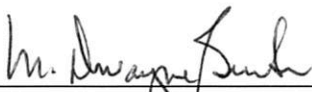
21. This Consent Agreement and Order shall terminate upon payment of the civil penalty and the completion of all terms set forth in Section II (Work to Be Performed) as determined by the Director, Central Region. Respondent may request written confirmation from PHMSA when this Consent Agreement and Order is terminated. Nothing in this Consent Agreement and Order prevents Respondent from completing any of the obligations earlier than the deadlines provided for herein.

**X. Ratification**

22. The parties undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and Order and to execute and legally bind such party to this document.

23. The Parties hereby agree to all conditions and terms of this Consent Agreement and Order:


**For Respondent:**

  
\_\_\_\_\_  
Mr. M. Dwayne Burton *but*  
Vice President, Operations and Engineering  
Rockies Express Pipeline, LLC

10/17/2012  
\_\_\_\_\_  
Date

**For PHMSA:**

Respondent is hereby ordered to comply with the terms of this Consent Agreement and Order, effective immediately.

  
\_\_\_\_\_  
Mr. Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety  
PHMSA

NOV 02 2012  
\_\_\_\_\_  
Date