

DEC 13 2010

Mr. Ronald G. McClain
Vice President, Operations and Engineering
Kinder Morgan Energy Partners, L.P.
500 Dallas Street, Suite 1000
Houston, TX 77002

Re: CPF No. 5-2009-5033

Dear Mr. McClain:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one allegation of violation, makes two findings of violation, and finds that Kinder Morgan Energy Partners, L.P., has completed the actions specified in the Notice to comply with the pipeline safety regulations. Therefore, this case is now closed. 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: Mr. Chris Hoidal, Director, Western Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0041 0695]

**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.,)	CPF No. 5-2009-5033
)	
Respondent.)	
)	

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident involving the pipeline system operated by SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P. (Kinder Morgan or Respondent), in Indio, California. The investigation arose out of a release of approximately 750 barrels of diesel on June 4, 2008. The release occurred in the course of an attempt to replace a main line block valve.

As a result of the investigation, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated September 10, 2009, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Kinder Morgan had violated 49 C.F.R. §§ 195.402(c)(13), 195.422(a), and 195.505(h), and proposed ordering Respondent to take certain measures to correct the alleged violations.

Kinder Morgan responded to the Notice by letter dated October 16, 2009 (Response). The company contested two of the allegations and objected to the corresponding terms of the proposed compliance order. The company did not contest the remaining allegation of violation and provided information on the steps it was taking to satisfy the corresponding compliance terms. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13), which states in relevant part:

§ 195.402 – Procedural manual for operations, maintenance, and emergencies.

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(13) by failing to periodically review the effectiveness of its main line block valve replacement procedures. The Notice alleged that a “Root Cause analysis” of the release substantiated this allegation. According to the Notice, “This failure by [Kinder Morgan] to periodically review their main line block valve replacement procedures to ensure they were effective contributed to the release of petroleum.”

In its Response, Kinder Morgan objected to the allegation of violation. The company argued: 1) that it has no “block valve replacement procedure;” 2) that it periodically reviews the effectiveness of its operating and maintenance (O&M) procedures, including the various procedures implicated in the 2008 valve replacement attempt, and that OPS provided no evidence to substantiate that it did not conduct such reviews; and 3) that the Root Cause analysis did not suggest that Kinder Morgan’s procedures were inadequate or ineffective, and did not find that the company’s procedures were a cause of the accident.

Section 195.402(c)(13) requires that an O&M manual contain procedures for periodically reviewing the work done by its personnel to evaluate the effectiveness of its operations and maintenance procedures. OPS has alleged that Respondent did not have or follow such a procedure for mainline block replacements, and that the company’s Root Cause analysis substantiates that allegation. However, Kinder Morgan has identified evidence in the record that contradicts those allegations, including portions of the Root Cause analysis. Respondent has also provided information about its procedures and methods for performing mainline valve block replacements and performing periodic review of their effectiveness.

Accordingly, after considering all of the evidence, I cannot conclude that Kinder Morgan committed the violations alleged in Item 1. Based upon the foregoing, I hereby order that Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a), which states:

§ 195.422 – Pipeline repairs.

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

The Notice alleged that Respondent violated 49 C.F.R. § 195.422(a) by failing to ensure that pipeline repairs were made in a safe manner and were made so as to prevent damage to persons or property. The June 4, 2008 release occurred while repairs were being conducted on Respondent's pipeline. The Notice alleged that during these repairs, Kinder Morgan personnel failed to properly support an upstream pipe vault, and that this failure caused the release. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.422(a) by failing to ensure that pipeline repairs were made in a safe manner and were made so as to prevent damage to persons or property.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(h), which states:

§ 195.505 – Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a)

(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities; and

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(h) because its written operator qualification program did not ensure that individuals performing covered tasks had the necessary knowledge and skills to perform the tasks in a manner that ensured the safe operation of pipeline facilities. Specifically, the Notice alleged that one of Kinder Morgan's covered tasks is "motor operated valve replacement," and that the operator qualification program did not provide for adequate training for this task. Specifically, the Notice alleged that the program did not ensure that individuals performing motor operated valve replacement received training on stresses on small diameter piping, proper support, recognizing potential hazards of small diameter piping, vaults, and "lock out tag out" procedures.

In its Response, Kinder Morgan objected to this allegation of violation. The company stated, first of all, that it does not have a covered task entitled "motor operated valve replacement." Instead, it said, the applicable covered task for the relevant task was "damage prevention during excavation activities." Respondent stated that this covered task, and the task-specific "abnormal operating condition," were adequate, and that they addressed issues including pipeline settlement, damaged pipe, initiating remedial action to address such threats, monitoring for settlement during and after excavation activities, and improper support during excavation and backfill.

According to the company, contractors, not Kinder Morgan personnel, were conducting the repair work at the time of the accident. Kinder Morgan stated that it evaluated the contractors' operator qualification program to ensure that it was compatible with Kinder Morgan's and that the means used to qualify individuals were acceptable. According to Respondent, both contracting companies involved in the repairs used nationally recognized third-party training and operator qualification assessment programs.

Although it appears that OPS listed the applicable covered task by the wrong name, that does not affect the substance of the allegations. The facts of the accident suggest that the individuals performing the “damage prevention during excavation activities” covered task were not adequately trained, and that this lack of training contributed directly to the accident. According to the “Root Cause analysis” contained in an email dated June 5, 2008, “basic or root causes” of the accident included, for example: 1) Failure to recognize the general hazard of working around a live, small diameter pressure line; 2) Failure to recognize the potential hazard associated with the pipe vault bearing on the small diameter sensing line; 3) Failure to initiate lockout, tag-out procedures to de-energize and isolate the system; 4) Failure to isolate or remove the small pressure piping; and 5) Failure to support the valve vault properly when its supporting soil was removed. Furthermore, one of the “recommendations and action items” in the document was, “Review contractor selection processes for potential improvements related to experience, incident history and safety performance.” Finally, although the supervising inspector was qualified for the applicable covered task, his qualification was revoked after the accident. This evidence tends to demonstrate that the individuals performing the repairs were not adequately trained. The company acknowledged as much in its Response, stating, “Kinder Morgan does not disagree that this accident demonstrates the need for additional training for the individuals involved.”

Kinder Morgan argued that its “damage prevention during excavation activities” covered task addressed the areas in which the individuals were allegedly inadequately trained. This may be true, although the company did not submit documentation to demonstrate this. However, it appears from the Response that Kinder Morgan relied on the contractors’ operator qualification program to ensure that the individuals performing this covered task were adequately trained. Based on the evidence in the record, it is apparent that they were not adequately trained.

Operators cannot, through the use of contractors, evade the requirement to have and to follow an operator qualification program that has provisions for adequate training. The contractors involved in the repairs qualify as “individuals performing covered tasks” for the purposes of § 195.505(h), and the evidence suggests that they were not provided training to ensure they had “the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.” Accordingly, based upon a review of all of the evidence, I conclude that Respondent violated 49 C.F.R. § 195.505(h).

The findings of violation as to Items 2 and 3 will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 195.402(c)(13), 195.422(a), and 195.505(h), respectively. 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.

Because I ordered that Item 1 be withdrawn, the compliance terms proposed in the Notice for that Item are not included in this Order.

The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.422(a) (**Item 2**), Respondent reviewed the nine action items in the Root Cause analysis to ensure that they are adequate and are being implemented.
2. With respect to the violation of § 195.505(h) (**Item 3**), Respondent revised its operator qualification program to ensure that individuals receive additional training in regard to motor operated valve replacement, minimizing stresses on small diameter piping, providing proper pipeline support, recognizing potential hazards of small diameter piping and vaults, and implementing “lock out tag out” procedures.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice are not included in this Order.

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 sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. Unless the Associate Administrator, upon request, grants a stay, 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