U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY

UPS NEXT DAY AIR

June 15, 2012

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, Texas 77002

CPF 3-2012-1004

Dear Mr. Burton:

The eastern portion of Rockies Express Pipeline, LLC's pipeline system (REX East) is a 638-mile, 42-inch diameter pipeline that transports natural gas from Audrain County, Missouri, to Monroe County, Ohio. From July 2008 through November 2009, Kinder Morgan Energy Partners, L.P. (KM) built and began its operation. Representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code were onsite on numerous occasions during the project and inspected the construction and initial operations of the REX East pipeline.

As a result of these inspections, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. **§192.225 Welding Procedures**

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under section 5 of API 1104 (incorporated by reference, *see* §192.7) or section IX of the ASME Boiler and Pressure Vessel Code " Welding and Brazing Qualifications" (incorporated by reference, *see* §192.7) to produce welds meeting the requirements of this subpart. The quality of the test welds used to qualify welding procedures shall be determined by destructive testing in accordance with the applicable welding standard(s).

KM performed welding that was not in accordance with welding procedures it had qualified under API 1104. PHMSA personnel observed workmen on 18 documented occurrences that were not welding in accordance with a qualified welding procedure during the construction of REX East. The eighteen occurrences (listed by the date they were observed) are summarized in the following table:

Date	Spread	Description
8-12-2008	A1	Mechanized welding was observed at a gas flow rate of 70 CFH; the welding procedure specified a range of gas flow rates from 45 to 66 CFH. Additionally, current values as low as 121 amps were observed during the production of two consecutive girth welds; the welding procedure specified a current range from 137 to 171 amps.
8-26-2008	A2	Mechanized welding was observed on the ditch side of Welding Shack WS-95 during the cap pass at currents as low as 120 amps. This value was lower than the current requirement of the welding procedure. The observation was discussed with the welding technician who then determined that the welding equipment was not properly programmed.
8-26-2008	A2	After production welding began, two girth welds (A2-A-MG-0586 and A2-A-MG-0587) were produced utilizing inadequate preheat. The worker applying preheat did not properly use a Tempilstik.
9-24-2008	D	During the production of Mechanized Weld #6, the joint alignment was found to be inadequate on the top and bottom causing the welder to enter the pipe and complete a manual root bead. Low amperage and high voltages, outside of the ranges specified on the welding procedure, were observed.
10-14-2008	A1	Inadequate preheat was observed when welding of joint number A1-B-PG-0373 was commencing.
11-18-2008	E	Main line mechanized welding was observed with a speed of travel as low as 59 cm/min. The welding procedure specified a range of 64 to 88 cm/min. The welding equipment technician investigated and reported that the equipment was improperly programmed.
11-21-2008	E	The startup of mechanized production welding was observed during a very cold morning. Due to the cold temperature, workers were unable to obtain and maintain the 300 °F preheat required before fill and cap pass welding. A supervisor later obtained additional workers and propane torches to correct the problem.
1-5-2009	F2	Low preheat was observed as fill pass mechanized welding was starting at the girth weld near engineering station 21440+00. Welders were not checking preheat temperature.

3-10-2009	E	Low preheat was observed when mechanized welding on joint no. P# 59170/H# M10103 was starting. The worker applying preheat did not have a Tempilstik to measure the temperature.
4-9-2009	F1	During the manual welding of the tie-in weld between the HDD string and main line pipe, the PHMSA inspector measured a preheat temperature of 163 °F on the bottom of the pipe just before welding was to resume. The welding procedure required a 250 °F preheat.
6-9-2009	I	The temperature of the external surface of the girth weld at approximately engineering station 28884+74 was measured during back welding: 156 °F was measured at the top of the weld, 120 °F was measured on the south side of the weld, and 207 °F was measured at the bottom of the weld. The welding procedure required a 250 °F preheat.
6-9-2009	I	After the welder completed the back weld at approximately engineering station 28884+74, the welder was interviewed and related that he used a 1/8" E 9018 welding rod to complete the back weld. The welding procedure required the use of a 3/32" E 9018 welding rod.
6-9-2009	I	Near the right-of-way crossing with SR22, welders were observed welding between joints P#02396/H#22981 and P#02421/H#74792. It was observed that the welders released the clamp early. Welders had only welded 33.5" of the root bead when the external clamp was released. The procedure required 50% (approximately 66") of the root bead be welded before the clamp could be released.
6-30-2009	H	The production of a replacement girth weld at 27698+10 was observed. The welders took 14 minutes from the completion of the root bead to the start of the hot pass. The welding procedure requires a maximum of 9 minutes from the completion of the root bead to the start of the hot pass.
7-22-2009	K	The production of the tie-in weld at 32585+71 was observed. During the course of events, the workmen had released the clamp, cleaned the weld and applied preheat. Just before the welders were to resume welding, an inadequate preheat temperature was measured on the bottom of the pipe. The workmen did not apply preheat uniformly around the pipe and adequately check the temperature.
8-17-2009	K	The welding between joints PK08011766/HTB170765 and P-K08014272/HT-B27016875 was observed. It was observed that the welders released the clamp early. Welders had only welded 47" of the root bead when the external clamp was released. The procedure required 50% (approximately 66") of the root bead be welded before the clamp could be released.

8-18-2009	J	Main Line Group 1 welders were observed producing a girth weld immediately downstream of the SR 313 crossing. A PHMSA inspector measured a preheat temperature of 160 °F on the top of the pipe and 190 °F on the side of the pipe. The welding procedure required a 250 °F preheat.
5-11-2009	F1	Spread F1 experienced a girth weld failure during a hydrostatic test which was cut out. The weld was a transition weld between the 0.486" pipe and the 0.888" HDD string. Physical examination of the failed girth weld by a PHMSA inspector before it was transported to Houston for further analysis showed that the back weld was deposited in the downhill direction. The direction would indicate a cellulosic electrode was used. KM's back welding procedure required the use of low hydrogen electrodes, which are used in the uphill direction. The welders were interviewed and related that a cellulosic electrode was used to produce the back weld. Therefore, welders failed to follow the welding procedure, which specified the use of low hydrogen electrodes for completing the back weld.

2. **§192.235 Preparation for welding.**

Before beginning any welding, the welding surfaces must be clean and free of any material that may be detrimental to the weld, and the pipe or component must be aligned to provide the most favorable condition for depositing the root bead. This alignment must be preserved while the root bead is being deposited.

PHMSA personnel observed three occurrences on REX East of KM not preserving the alignment of the pipe during deposition of the entire root bead. The first occurrence was observed on September 16, 2008, while auditing Spread C; the second on November 6, 2008, while auditing Spread A1; and the third on November 20, 2008, while auditing Spread E. During these occurrences, the pipe was being moved while the root bead was being deposited via the mechanized welding process. Workers were attempting to improve joint alignment by using deposited weld metal as a hinge. This practice was not consistent with Part 192 and Item 8.8 of KM's Construction Standard C1069.

3. **§192.241 Inspection and test of welds.**

(a) Visual inspection of welding must be conducted by an individual qualified by appropriate training and experience to ensure that:

(2) The weld is acceptable under paragraph (c) of this section.

KM did not identify and make needed repairs to certain welds that were unacceptable under §192.241(c) as required by §192.245(a). On Spread B, KM utilized radiography for the nondestructive testing of all manual welds. KM's radiography process failed to identify 13 welds as unacceptable. These 13 unacceptable welds were discovered during an audit of the radiographs performed at PHMSA's direction by a radiographic expert from Oak Ridge National Laboratory. The ORNL radiographic review identified 13 welds that contained defects that were not acceptable to API 1104, which is incorporated by reference in §192.241(c) and that should have been repaired or removed as required by §192.245(a).

4. **§192.303 Compliance with specifications or standards.**

Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this part.

KM did not construct certain portions of its REX East pipeline in accordance with its written specifications.

Applicable portions of KM Construction Standard C1080 are:

> *2.3 Contractor shall be responsible for application of coating according to the Manufacturer's specifications and requirements of the Company Representative.*
>
> *3.1 Contractor shall coat all pipe with specified coatings in conformance with Manufacturer's recommendations. Contractor shall review the Manufacturer's recommended cleaning and surface preparation requirements before application of coatings.*
>
> *7.1 Contractor shall inspect the entire pipe coating for pinholes using an electronic holiday detector. Contractor shall repair any detected defects or damage to the pipe coating.*
>
> *7.9 To repair pinholes in epoxy coatings, the original coated surface shall be thoroughly cleaned and lightly abraded with sandpaper (approximate area 0.5-inch radius around pinhole). All dust shall be removed before applying a patch stick. The cleaned pipe surface shall be*

heated until the patch stick begins to melt when rubbed over the heated area. Material shall be applied to obtain a minimum thickness of 15 mils over the entire abraded area.

7.10 Holidays larger than 0.5 square-inch shall not be repaired using patch sticks. Contractor shall use coatings specified for large area repairs and apply coating in conformance with Manufacturer's recommendations.

PHMSA identified 109 instances of pipeline personnel failing to follow applicable written standards regarding the application of corrosion control coatings during REX East's construction. Multiple observations were made of workers not following the coating manufacturer's instructions, or repairing coating defects greater than 0.5 square-inch with patch sticks.

These 109 instances were identified during 17 days of inspection of Spreads A1, A2, B, C, D, F1, F2, H, I, J, and K between the dates September 10, 2008, and September 10, 2009. Some examples typical of the 109 instances are:

- On September 10, 2008, Spread B workers were observed not preparing the area around the coating defects and not heating the pipe before the application of the patch stick as required by 3M Patch Stick Manufacturer's recommendations. Workers were observed heating the patch stick and smearing it over the coating defect.

- On September 18, 2008, Spread C workers were observed on three occasions not preparing the pipe coating for patch stick application. Workers were not using sand paper to prepare the area for patch stick application. Additionally, on 4 occasions, workers were observed repairing coating holidays larger than 0.5 square-inch with patch sticks.

- On October 14, 2008, Denso 7200 two-part epoxy was observed on girth weld A1-B-PG-0282 in Spread A1 to contain white stripes in the green. This observation indicates that the coating product was not properly mixed. Denso 7200 coating procedures Item 5.4 states that in order to properly apply the coating you should *"Mix until a uniform color is achieved making sure to scrape the bottom and sides of the container (approximately 2 minutes). No streaks shall be visible."*

5. §192.305 Inspection: General.

Each transmission line or main must be inspected to ensure that it is constructed in accordance with this part.

KM did not adequately inspect the welds on its REX East transmission line to ensure it was constructed in accordance with Part 192. For the construction of REX East, KM developed and utilized procedures, standards, specifications and guidance for inspectors. The document entitled Construction Quality Assurance Plan for Kinder Morgan REX East Pipeline Construction 2008 requires that adequate inspection of welds be conducted. KM hired dedicated welding inspectors on each of the construction spreads. As set forth in Items 1 and 2 above, PHMSA identified 18 instances of welding that was not performed in accordance with a qualified welding procedure and 3 instances of moving the pipe while the root bead was being deposited. In many cases, welding had already been performed and the problems were discovered by PHMSA after the fact. If KM's inspectors had adequately inspected the welding processes, the workers' failure to follow the qualified procedure would have been identified and corrected. The welding inspectors did not inspect the construction activity in a manner that ensured the transmission line was constructed in accordance with applicable requirements and this part.

6. **§192.305 Inspection: General.**

Each transmission line or main must be inspected to ensure that it is constructed in accordance with this part.

KM did not adequately inspect the ditching, padding, lowering-in, and backfilling of pipe installed on Spread I at certain locations to ensure it was constructed in accordance with applicable requirements. As set forth in Item 9 below, 6 fittings had been placed on solid rock during the construction projects and 18 dents were caused by rock in contact with the pipeline. An additional 4 dents were caused by a combination of sandbags and rock in contact with the pipe. As set forth in Items 8 and 10, lowering-in practices used at certain locations resulted in excessive stresses on the pipe. As set forth in Item 11, the manner that backfilling was conducted in one location resulted in rock damage to the pipe coating.

KM Construction Inspection Manual Section CON0020 details the types of inspectors and inspection requirements for pipeline construction. KM hired a team of inspectors for the construction of Spread I to ensure that pipe was installed per KM Construction Standards. The inspectors failed to detect and rectify the impermissible construction practice of placing the pipeline on rock, creating excessive stresses on the pipe, and improper backfilling.

If KM's inspectors had adequately inspected the ditching, padding, lowering-in, and backfilling processes, the prohibited work practices would have been corrected. The lack of adequate inspection by KM was identified after the pipeline was placed in service and experienced a failure. The inspectors did not

inspect the construction activity in a manner that ensured the transmission line was constructed in accordance with applicable requirements and this part.

7. **§192.305 Inspection: General.**

Each transmission line or main must be inspected to ensure that it is constructed in accordance with this part.

KM did not adequately inspect the coating on its REX East transmission line to ensure it was constructed in accordance with Part 192. KM hired dedicated pipe coating inspectors on each of the construction spreads. During audits PHMSA identified deviations from KM Construction Standard C1080, inadequate preparation of the pipe surface prior to the application of corrosion control coatings, inadequate jeeping of the pipe due to foreign matter being attached to the pipe, and unrepaired coating defects. Had KM adequately inspected the coating application, inspection, and repair, these cases would have been identified and corrected prior to the observations by PHMSA personnel. The coating inspectors did not inspect the construction activity in a manner that ensured the transmission line was constructed in accordance with applicable requirements and this part.

8. **§192.319 Installation of pipe in a ditch**

(a) When installed in a ditch, each transmission line that is to be operated at a pressure producing a hoop stress of 20 percent or more of SMYS must be installed so that the pipe fits the ditch so as to minimize stresses and protect the pipe coating from damage.

KM failed to install REX East in a manner so as to minimize stresses and protect the pipe coating from damage by installing pipe under excessive longitudinal stresses.

After being placed into natural gas service, the REX East pipeline failed near MP 745 on Spread I just downstream of the Chandlersville Compressor Station. Investigation into the failure revealed that since the pipeline did not properly fit the ditch, the tensile stress capacity of the pipeline in the vicinity of a girth weld was exceeded and the REX East pipeline suffered the catastrophic in-service failure. KM completed a metallurgical investigation of the failed girth weld and stated in their report to PHMSA:

> *"Rockies Express East girth weld IFTT292, located ½-mile downstream of the Chandlersville Compressor Station in Muskingum County, Ohio fractured on November 14, 2009. The fracture was primarily the result of severe longitudinal stresses and stress concentrations caused by poor joint*

fit up between NPS 42 x 0.555" WT API 5L Grade X70 linepipe and the segmented end of an induction bend."

Additionally, KM hired Stress Engineering Services Inc. to conduct an analysis of the failed girth weld. The Stress Engineering report states:

"The work performed by Stress Engineering Services, Inc. supports the conclusions drawn from the Kinder Morgan failure analysis report, namely that the fracture was primarily the result of severe external longitudinal stresses. The elevated stresses were caused by the pipe / soil interaction at the elbow, pipe ovality, and poor joint fit up."

9. **§192.319 Installation of pipe in a ditch**

(a) When installed in a ditch, each transmission line that is to be operated at a pressure producing a hoop stress of 20 percent or more of SMYS must be installed so that the pipe fits the ditch so as to minimize stresses and protect the pipe coating from damage.

KM failed to install REX East in a manner so as to minimize stresses and protect the pipe coating from damage by placing the pipeline directly on rock at certain locations. PHMSA identified a total of 29 instances of this violation.

As a result of the in-service failure on November 14, 2009, the ensuing investigation, and a Corrective Action Order issued by PHMSA KM initiated a project to take the pipeline out of service and cut out and replace every trimmed induction fitting that had been installed in Spread I. KM replaced 45 cut induction bends with segmentable fittings. In addition, KM conducted another caliper tool run, which resulted in the examination of 34 sites for suspected dents. During this rehabilitation project, it was discovered that the pipeline had not been installed in a manner so as to minimize stresses and protect the pipe coating at an additional 6 fittings. At these 6 locations, the fittings were found to be placed on solid rock, which incurs stresses and can damage the pipe coating. KM Construction Standard C1090 prohibits the placement of the pipe directly on rock and Item 2.4 states:

"Where trench runs through rock, trench sides and bottom shall be cleared of all loose or projecting rock. Contractor shall provide a continuous 4-inch padding of earth or sand in trench bottom. The pipe shall conform to bottom contours of the trench grade so that it is uniformly and continuously supported. The pipe shall not be closer than 6-inches to either side of the trench."

Additionally, the CAO required KM to undertake a caliper tool analysis of the pipeline section. KM completed several caliper tool runs while the pipeline was

out of service. The results of the caliper tool analysis resulted in numerous bell hole investigations of the pipeline which found an additional 18 locations where the main line pipe was placed on rock causing dents and 4 dents were caused by a combination of sandbags and rock

In each of these instances, the pipeline had not been installed in a manner so as to minimize stresses and protect the pipe coating on the pipeline. These stresses were caused by the placement of the pipeline on rocks resulting in dents in the pipeline.

During the construction of Spread F2, downstream of the pipeline crossing with Todhunter Road near Monroe, Ohio, PHMSA personnel observed that workers had placed the pipe in a ditch cut through rock damaging the coating. The pipe was left with unrepaired coating damage awaiting backfill until discovered by PHMSA.

10. **§192.319 Installation of pipe in a ditch**

(a) When installed in a ditch, each transmission line that is to be operated at a pressure producing a hoop stress of 20 percent or more of SMYS must be installed so that the pipe fits the ditch so as to minimize stresses and protect the pipe coating from damage.

KM failed to install REX East in a manner so as to minimize stresses at certain locations by forcing pipe into a ditch with mechanized equipment.

During the construction of Spread I, PHMSA personnel observed two areas where the pipeline had not been installed so that the pipe fit the ditch so as to minimize stresses. Observations were made downstream of the pipeline's crossing of SR669 at approximately 29700+00, and 29800+00. At the 29700+00 location workers were observed utilizing heavy equipment to force the pipe into the ditch in order to achieve adequate cover. At the 29800+00 location workers were observed installing a bent section of pipe backwards. Workers then utilized heavy equipment to make the final tie-in. At these locations, the bent pipe was not fitting the ditch and abnormal measures were taken to make the pipe fit the ditch further increasing stresses.

11. **§192.319 Installation of pipe in a ditch**

(b) When a ditch for a transmission line or main is backfilled, it must be backfilled in a manner that:

(2) Prevents damage to the pipe and pipe coating from equipment or from the backfill material.

KM failed to prevent damage to the coating during the backfilling process. During the construction of Spread F1, KM utilized a padding machine to backfill the pipe. Near engineering station 21017+07, rocks were observed making it through the machine and damaging the coating.

12. **§192.461 External corrosion control: Protective coating.**

(a) Each external protective coating, whether conductive or insulating, applied for the purpose of external corrosion control must–

(1) Be applied on a properly prepared surface

During the construction of REX East, PHMSA personnel observed 12 instances of inadequate surface preparation prior to application of corrosion control coatings. The table below provides the details associated with the 12 instances.

Date	Spread	Description
6-30-2009	H	A worker inadequately prepared 2 coating holidays for repair and then was observed applying two-part epoxy over the rusted areas.
7-21-2009	I	Three girth welds were observed in the vicinity of 29348+76 that were not properly sandblasted as areas of loose coating remained on the bottom of the pipe at the edge of the coating cut back prior to application of the thin film epoxy.
7-22-2009	K	Workers were observed repairing 3 coating defects without sanding the areas before the application of two-part epoxy.
8-4-2009	H	A girth weld at 28708+13 was observed to be poorly sandblasted on the bottom of the pipe. Areas of rust remained and the coating adjacent to the cut back was not blasted.
8-7-2009	K	Three girth welds in the vicinity of 32857+61 were observed to be poorly sandblasted on the bottom of the weld. Areas of rust and disbonded coating still remained.

13. **§192.461 External corrosion control: Protective coating.**

(c) Each external protective coating must be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage detrimental to effective corrosion control must be repaired.

KM failed to inspect portions of the protective coating just prior to lowering the pipe into the ditch during certain portions of the REX East construction. PHMSA personnel observed 18 instances where workers failed to properly inspect the coating due to building insulation remaining attached to the pipe. The building insulation was used to provide padding between the pipe coating and the pipe

skids during pipeline construction. The areas where the building insulation was attached could not have been visually or electronically inspected for coating defects. To correctly jeep a pipe during lowering-in the building insulation must be removed. These observations were observed on Spreads A1, D, E, F1 and F2 as described in the table below.

Date	Spread	Description
10-14-2008	A1	A ¼-mile section of lowered-in pipe near Road 31was observed to have 5 pieces of building insulation attached.
10-16-2008	A1	The lowering-in jeeping process was observed; workers failed to remove 2 pieces of building insulation attached to the pipe. During the jeeping process workers ran the jeep spring over the building insulation.
10-22-2008	D	Workers had jeeped a short section of pipe, applied rock shield to a section of the short section and were about to lower-in the pipe, when a PHMSA representative observed a piece of building insulation stuck to the pipe.
12-4-2008	F1	At approximately 21071+50 a piece of building insulation was observed attached to the pipe which was lowered into the ditch awaiting backfill.
3-3-2009	F2	Workers were observed jeeping over building insulation attached to the bottom of the pipe while lowering-in.
3-9-2009	F1	Sections of lowered-in pipe were examined and at approximately 20230+42, and 20222+77; 2 pieces of building insulation were observed stuck to the pipe.
3-10-2009	F1	A section of lowered-in pipe was examined from 20151+19 to 20156+70 and building insulation was observed stuck to the pipe at approximately 20152+53, 20151+89. Additionally, lowered-in pipe was examined from 20341+16 to 20351+04 and an additional piece of building insulation was found attached to the lowered-in pipe.
3-11-2009	F1	Lowered-in pipe was examined from 20319+94 to 20324+40 (446 feet) and there was one piece of building insulation that was not removed from this section of pipe.
3-24-2009	E	The lowering-in was observed from 18822+54 to 188827+84, workers were observed jeeping over 2 pieces of building insulation attached to the pipe.

14. §192.461 External corrosion control: Protective coating.

(c) Each external protective coating must be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage detrimental to effective corrosion control must be repaired.

KM did not repair damaged coating just prior to lowering the pipe into the ditch during portions of the REX East construction. PHMSA has identified 271 instances of unrepaired coating defects on pipe in the ditch. The coating defects had made it through the construction process and were awaiting backfill. This problem was identified on Spreads A1, C, D, E, F1, F2, H, I, J, and K.

These 271 instances occurred on Spreads A1, C, D, E, F1, F2, H, I, J, and K between the dates September 18, 2008, and September 14, 2009. As an example, on the following three dates, the findings are typical of the observed coating defects throughout the inspection:

- On September 18, 2008, one unrepaired coating defect was observed on pipe lowered into the ditch on Spread C. The observation was made on the west side of Road 31 at approximately 11705 + 88.

- On July 22, 2009, a section of lowered-in pipe was examined on Spread K from 32529+05 to 32533+81. This section of pipe contained 36 unrepaired coating defects.

- On September 14, 2009, six unrepaired coating defects were observed on lowered-in pipe awaiting backfill on Spread I. The defects were observed at 30284+68, 30287+25, 30287+00, 30287+37, 30288+11, and 30288+90.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed $100,000 for each violation for each day the violation persists up to a maximum of $1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of $ 641,900 as follows:

Item number	PENALTY
1	$ 29,300
2	$ 20,000
3	$ 46,200
4	$ 42,500
5	$ 56,200
6	$ 32,300
7	$ 47,500
8	$180,000
9	$ 36,200
10	$ 23,100
11	$ 18,700
12	$ 29,300
13	$ 33,100
14	$ 47,500

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2012-1004** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Response Options for Pipeline Operators in Compliance Proceedings*

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;

2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;

3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or

4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed **COMPLIANCE ORDER*** --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;

2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;

3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or

4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a **WARNING ITEM** --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;

b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or

d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. Procedure for Requesting a Hearing

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than $10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. Extensions of Time

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. Freedom of Information Act

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than $10,000

Payment of a civil penalty of less than $10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than $10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of $10,000 or more

Payment of a civil penalty of $10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) RECEIVER ABA NO. 021030004	(2) TYPE/SUB-TYPE (Provided by sending bank)
(3) SENDING BANK ABA NO. (Provided by sending bank)	(4) SENDING BANK REF NO. (Provided by sending bank)
(5) AMOUNT	(6) SENDING BANK NAME (Provided by sending bank)
(7) RECEIVER NAME TREAS NYC	(8) PRODUCT CODE (Normally CTR, or as provided by sending bank)
(9) BENEFICIAL (BNF) = AGENCY LOCATION CODE BNF = /ALC-69-14-0001	(10) REASONS FOR PAYMENT Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: $10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "**BNF=/ALC-69-14-0001**". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "**AC-payment for PHMSA Case # /** To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009