

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**  
**OFFICE OF THE STATE FIRE MARSHAL**  
**RUBEN GRIJALVA, STATE FIRE MARSHAL**

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July 6, 2005

Ron McClain, Vice President  
Operations and Engineering/Products Pipelines  
Kinder Morgan Energy Partners, LP  
500 Dallas Street, Suite 1000  
Houston, TX 77002

**SUBJECT: NOTICE OF VIOLATION AND CIVIL PENALTY**  
Walnut Creek Pipeline Explosion and Fire (11-09-04)  
SFM #277 – LS-16 (Concord to San Jose Pipeline)

On November 9, 2004, Pipeline Safety Engineer Linda Zigler of our staff conducted an investigation of the gasoline spill and subsequent explosion and fire that occurred on your company's LS-16 Concord to San Jose products pipeline in Walnut Creek, California. This incident resulted in five fatalities and severe injury to four other workers. One residence was burned and other property was damaged. This investigation was conducted pursuant to the provisions of Chapter 5.5 of the California Government Code.

### Findings

1. Kinder Morgan did not properly mark the location of the LS-16 petroleum pipeline as required by the company's damage prevention program and as required by Section 4216 of the California Government Code. Specifically, Kinder Morgan did not mark the approximate location of their pipeline to within 24 inches of either side of the exterior surface of the subsurface location at KM Station 447+90 to Station 448+18 (EBMUD Station  $\pm 100+15$ ). This is a violation of CFR 49, Part 195.442(a) which states: "each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities.

Period of violation: September 28, 2004 - November 9, 2004 (42 days)  
[CV 05-002]

2. Kinder Morgan staff/agents did not follow the company's line locating procedures. Specifically, Section 4.2 of Chapter 4 in Kinder Morgan's Maintenance Manual (Line Locating) states: "Prior to beginning any maintenance work or excavation work, the location of the pipeline shall be reviewed by the local Line Rider or other Company

representative and verified by drawings and a pipeline locating device.” A Kinder Morgan representative was present on November 2, 2004, and thereafter, to observe benching operations. However, he did not review and verify by the use of drawings and pipeline locating devices that the location of the pipeline was correctly marked.

Period of violation: November 2, 2004 - November 9, 2004 (8 days)  
[CV 05-003]

## **Compliance Order**

I hereby order Kinder Morgan to

1. Require that each inspector observing an excavation in the vicinity of the company’s pipelines takes all available measures to properly locate the pipeline and/or verify previous locating activities.
2. Ensure that all employees involved with line riding, excavation, and inspection activities related to one-call notifications follow all of the damage prevention program procedures (including Kinder Morgan policies/procedures, Operator Qualification protocols and One-Call Damage Prevention requirements).
3. Provide adequate supervision/oversight to ensure that each response made by an employee or contract representative to an excavation notification is handled correctly and that line locating procedures are properly followed.
4. Consider modifications to the company’s Operator Qualification Program (OQ). In particular, it is recommended that the company review the adequacy of covered tasks involving line locating, one-call notifications, and inspection of excavation activities. Additionally, it is necessary that the company review the adequacy of required training, evaluation and qualification methods for each of these covered tasks to ensure that each employee and/or contractor representative is OQ qualified to perform that task.

## **Assessment of Civil Penalty**

Under Section 51018.6 of the California Government Code, your company is subject to a civil penalty not to exceed \$10,000 for each violation for each day the violation exists up to a maximum of \$500,000 for any related series of violations.

After reviewing the circumstances and supporting documentation involved in this case, it has been determined that a civil penalty in the amount of \$500,000 is necessary and appropriate for the violations stated above.

Finding 1	42 days x \$10,000/day	=	\$420,000
Finding 2	8 days x \$10,000/day	=	<u>\$ 80,000</u>
	Total Penalty		\$500,000

Within 30 days of receiving this letter, you must notify me in writing that you have selected one of the following options (refer to Section 2071, Title 19, California Code of Regulations).

1. Pay the civil penalty and agree to the Compliance Order as provided in Section 51018.6, California Government Code. If you select this option, the case will be closed.
2. Submit an offer in compromise of the civil penalty.
3. Submit written explanations, information, or other materials in answer to the allegations or in mitigation of the proposed civil penalty.
4. Request a hearing as provided under Section 2072, Title 19, California Code of Regulations.

Following receipt of your response to me, I will either issue a final order, review any compromise proposal you submit and respond to it, or set a date and time for a hearing.

Because of the good faith and cooperation you and your staff have shown to this time, I expect that you will act promptly in responding to this letter and will quickly bring your pipeline operation into compliance with pipeline safety regulations.

If you have any question regarding these items, please do not hesitate to contact me by telephone at (916) 445-8348.

RUBEN GRIJALVA  
California State Fire Marshal



NANCY WOLFE  
Chief, Pipeline Safety Division  
Office of the California State Fire Marshal