



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KINDER MORGAN SOUTHEAST TERMINALS, LLC
FOR
KINDER MORGAN NEWINGTON TERMINAL
Registration No. 70087**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Kinder Morgan Southeast Terminals, LLC, regarding Kinder Morgan Newington Terminal, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable Permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CEMS" means continuous emission monitoring system.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" means the Kinder Morgan Southeast Terminal, LLC facility, located at 8200 Terminal Road in Fairfax County, Virginia.
7. "FCE" means a full compliance evaluation by DEQ staff.
8. "Kinder Morgan" means Kinder Morgan Southeast Terminals, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Kinder Morgan is a "person" within the meaning of Va. Code § 10.1-1300.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "NSR Permit" means a New Source Review Permit to modify and operate a bulk gasoline distribution terminal, which was issued under the Virginia Air Pollution Control Law and the Regulations to Kinder Morgan on September 30, 2011.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
13. "PCE" means a partial compliance evaluation by DEQ staff.
14. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
15. "Title V Permit" means the Title V Permit to operate a bulk gasoline distribution terminal, which was issued under the Virginia Air Pollution Control Law and the Regulations to Kinder Morgan on July 20, 2001.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Kinder Morgan owns and operates the Facility in the Fairfax County, Virginia. The Facility is a bulk gasoline distribution facility which receives fuel products via pipeline and tanker trucks, and provides storage and transfer of such products via tanker trucks for delivery to gasoline stations. The Facility is the subject of the NSR and Title V Permits.
2. As required by the NSR and Title V Permits, Kinder Morgan had a CEMS installed on the Vapor Recovery Unit (VRU). On October 1, 2012, Kinder Morgan requested

changing out its CEMS for one that included a methane excluder. Kinder Morgan advised that performance evaluation testing would be conducted within 60 days of installation. DEQ responded on October 17, 2012, requiring Kinder Morgan to submit a written performance test protocol for approval at least 30 days prior to testing date and to submit the testing results within 60 days of testing.

3. On November 20, 2012, Kinder Morgan submitted a performance evaluation test protocol for DEQ approval. On January 9, 2013, Kinder Morgan conducted performance evaluation testing of the new CEMS yielding a report due date of March 10, 2013. Kinder Morgan asserts that it was unable to complete this test properly due to difficulty in obtaining real-time methane data.
4. Kinder Morgan failed to submit testing results to DEQ within 60 days of testing or by March 10, 2013.
5. On March 26 and 27, 2013, Kinder Morgan conducted an engineering study of the VRU to determine how methane was affecting the control efficiency of the unit. Kinder Morgan submitted the results from this study to DEQ on May 20, 2013.
6. On July 24, 2013, Department staff conducted an FCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
 - a. Significant rust was visible on tanks 1, 3, and 4.
 - b. Kinder Morgan failed to provide a copy of the CEMS performance evaluation testing results.
7. Condition 2C of the NSR Permit requires that the paint coating on the tanks must be maintained in good condition.
8. Condition X.L.1 of the Title V Permit requires Kinder Morgan to submit any information requested by the Board to determine compliance with the permit.
9. On August 15, 2013, based on the October 17, 2012, letter, and the July 24, 2013, FCE, the Department issued a Notice of Violation to Kinder Morgan for the violations described in paragraphs C(2) through C(8), above.
10. On August 29, 2013, Kinder Morgan submitted a written response to the NOV. On September 24, 2013, Department staff met with representatives of Kinder Morgan to discuss the violations, including Kinder Morgan's written response.
11. On September 30, 2013, Kinder Morgan began repainting the tanks and completed this work on October 24, 2013.

12. Kinder Morgan submitted a modified performance evaluation testing protocol to DEQ on May 31, 2013 with revisions on June 27, July 30, and August 12, 2013. DEQ approved the protocol on August 26, 2013.
13. On September 10, 2013, Kinder Morgan conducted performance evaluation testing on the CEMS. On October 8, 2013, DEQ received the CEMS performance evaluation test results from the September 10, 2013, testing and the data collected for the January 9, 2013, testing.
14. DEQ conducted a PCE of the submitted test data and made the following observations:
 - a. The data from the January 9, 2013, test failed to certify the CEMS.
 - b. The data from the September 10, 2013, test demonstrated that the CEMS was certified.
15. 40 CFR 63.427(a) and Condition IV.B.1 of the Title V Permit requires Kinder Morgan to operate and maintain a certified CEMS.
16. On October 25, 2013, based on the PCE and the documentation submitted by Kinder Morgan, the Department issued a Notice of Violation to Kinder Morgan for the violations described in paragraphs C(13) through C(14) above.
17. On November 27, 2013, Kinder Morgan submitted a written response to the NOV. On December 12, 2013, Department staff met with representatives of Kinder Morgan to discuss the violations, including Kinder Morgan's written response.
18. Based on the results of the foregoing, the Board concludes that Kinder Morgan has violated NSR Permit Condition 2.C, Title V Permit Conditions X.L.1 and IV.B.1, and 40 CFR 63.427(a), as described in paragraphs C(2) through C(15), above.
19. Kinder Morgan has submitted documentation that verifies that the violations described in paragraphs C(6) and C(14), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Kinder Morgan, and Kinder Morgan agrees to:

Pay a civil charge of \$10,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 1104
Richmond, Virginia 23218

Kinder Morgan shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Kinder Morgan shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Kinder Morgan for good cause shown by Kinder Morgan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Kinder Morgan admits the jurisdictional allegations and agrees not to contest, but does not admit the findings of fact and conclusions of law contained herein.
4. Kinder Morgan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kinder Morgan declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kinder Morgan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kinder Morgan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Kinder Morgan shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kinder Morgan shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kinder Morgan. Nevertheless, Kinder Morgan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Kinder Morgan has completed all of the requirements of the Order;
 - b. Kinder Morgan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Kinder Morgan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kinder Morgan from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Kinder Morgan and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Kinder Morgan certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kinder Morgan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kinder Morgan.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Kinder Morgan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of February, 2014.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Kinder Morgan Southeast Terminals, LLC voluntarily agrees to the issuance of this Order.

Date: 2/5/14 By: W. L. Simmons, VP OPERATIONS
(Person) (Title)
Kinder Morgan Southeast Terminals, LLC

State of Texas
Commonwealth of Virginia
City/County of Harris

The foregoing document was signed and acknowledged before me this 5th day of February, 2014, by Wayne Simmons who is VP operations of Kinder Morgan Southeast Terminals, LLC, on behalf of the company.

DeAnne H. Hite
Notary Public

Registration No. _____

My commission expires: 9/23/2014

Notary seal:

