



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703) 583-3800 Fax (703) 583-3801  
www.deq.virginia.gov

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

~~Jeffery A. Steen~~  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**Kinder Morgan**  
**DEQ Registration No. 70087**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1316.C, 10.1-1307.D and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and Kinder Morgan, for the purpose of resolving certain alleged violations of the SAPCB regulations as specified in SECTION C of this Order.

### **SECTION B: Definitions**

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Kinder Morgan" means Kinder Morgan Southeast Terminals, LLC, who is certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
6. "Order" means this document, also known as a Consent Order.
7. "Facility," means the Kinder Morgan facility located at 8200 Terminal Rd, Newington, Virginia 22122.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
10. "VAC" means Virginia Administrative Code.

### **SECTION C: Findings of Fact**

1. Kinder Morgan operates a bulk petroleum liquid storage and distribution facility, including the storage and transfer of gasoline. The facility operates under a Title V permit, issued July 20, 2001, and a New Source Review permit, issued November 15, 2002.
2. On August 10, 2007, DEQ conducted a file review as part of a compliance evaluation. During the file review, a Title V Semi-annual Monitoring Report for the reporting period from July 1, 2006, through December 31, 2006, could not be located and did not appear to have ever been received by DEQ. DEQ sent an email dated August 10, 2007, to the facility advising them to send in the report as soon as possible.
3. Condition X.C.3 of the facility's July 20, 2001, Title V permit states that, "The permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1 or September 1 of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-80 G. The dates above will also be the MACT reporting dates, and shall include:
  - a. The time period included in the report. The time periods to be addressed are January 1 to June 30 and July 1 to December 31.
  - b. All deviations from permit requirements. For the purposes of

this permit, a "deviation" means any condition determined by observation, data from any monitoring protocol or any other monitoring which is required by the permit that can be used to determine compliance. Deviations include leaks detected that are not repaired within fifteen days, a malfunction of a floating roof, or exceedance of the operation parameters measured by the CEM. (9 VAC 5-80-100 F, and 40 CFR 63.10(a)(5))"

4. On August 20, 2007, DEQ received the facility's complete Title V Semi-annual Monitoring Report for the reporting period from July 1, 2006, through December 31, 2006.
5. A Notice of Violation (NOV) was sent to the facility on August 24, 2007, addressing the above noted apparent violation. DEQ received a letter from Kinder Morgan on September 11, 2007, which acknowledged receipt of the NOV. In the letter, the facility indicated that immediate action was taken when the missing report was brought to their attention and the oversight was a result of staff changes in Environmental, Health, and Safety department and facility superintendent positions in 2006 and 2007 in order to ensure future compliance.
6. DEQ personnel met with the facility on September 17, 2007, in order to discuss the schedule of submittals that are required by DEQ.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1316(C), the Board orders Kinder Morgan, and Kinder Morgan voluntarily agrees, to pay a civil charge in the amount of Five thousand, one hundred dollars and zero cents (\$5,100.00). The civil charge is due within 30 days of the effective date of the Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
P.O. Box 1104  
Richmond, Virginia 23218

The payment shall include Kinder Morgan's Federal Tax ID Number and shall identify that payment is being made as a result of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Kinder Morgan, for good cause shown by Kinder Morgan, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the Kinder Morgan facility by DEQ on August 24, 2007. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Kinder Morgan admits the jurisdictional allegations, factual findings, 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, Va. Code §§ 2.2-4000 *et seq.*, and the State 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 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 occurrence. Kinder Morgan shall show 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 in writing 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 within 24 hours of learning of any condition above, which the parties intend to assert will result or has resulted in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their 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. Notwithstanding the foregoing, 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 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. By its signature below, Kinder Morgan voluntarily agrees to the issuance 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.

And it is so ORDERED this day of 12-21-07, 2007.

  
Thomas A. Faha, NRO Regional Director  
Department of Environmental Quality

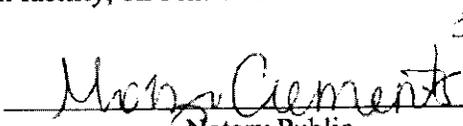
Kinder Morgan voluntarily agrees to the issuance of this Order.

By: Donna L Wirick  
Date: 12/14/07

Commonwealth of Virginia  
City/County of Hennico

The foregoing document was signed and acknowledged before me this 14<sup>th</sup> day of  
December, 2007, by Donna L Wirick, who is  
(Month) (Name)

EHS Manager for the Kinder Morgan facility, on behalf of the  
(Title)  
Facility.

 7045426  
Notary Public

My commission expires: 12/31/2010