COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
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 Permit 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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, as described in Va. Code § 10.1-1185.

5. "Facility" means the Kinder Morgan Southeast Terminals LLC - Newington Terminal, located at 8200 Terminal Road in Newington, Virginia, which is located in Fairfax County, Virginia.

6. "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds per square inch or greater. 9 VAC 5-40-5210.

7. "Kinder Morgan" means Kinder Morgan Southeast Terminals, LLC, a limited liability company authorized to do business in Virginia and its parents. Kinder Morgan is a "person" within the meaning of Va. Code § 62.1-44.3

8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

10. "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.

11. "Permit" or "2002 Permit" means a minor New Source Review permit to modify and operate a bulk gasoline distribution facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Exxon Mobile Corporation, the previous owner of the facility, on November 15, 2002.

12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

13. "Va. Code" means the Code of Virginia (1950), as amended.

14. "VAC" means the Virginia Administrative Code.

15. "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 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 fuel transfer from storage tanks to tanker trucks is done via loading rack.

2. The operations of the Facility are governed by the Permit. Equipment that is operated at the Facility includes a Vapor Recovery Unit, and an eight bay fuel loading rack. Both pieces of equipment are subject to National Emission Standards for Hazardous Air Pollutants for Source Categories under 40 CFR 63.420 *et seq.*.

3. On March 31, 2010, DEQ received a completed Calendar Year 2009 Annual Update, and Calendar Year 2009 Emission Statement for the Facility.

4. On April 14, 2010, DEQ staff conducted a Partial Compliance Evaluation of the Facility (Annual Update and Emissions Report) for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. As part of the review, DEQ requested and obtained additional data from Kinder Morgan on product throughput through the loading rack via email on April 15, 2010.

5. Based on the Partial Compliance Evaluation of the aforementioned reports and additional information received from Kinder Morgan on April 15, 2010, Department staff made the following observations:

   a. The Calendar Year 2009 Emissions Statement includes data of the amount of fuel passing through the Facility's loading rack. The Statement reported a throughput of 614,700,071 gallons of reformulated gasoline, a blend of gasoline and ethanol, through the Facility's loading rack. Internal Kinder Morgan records reflected a throughput of 550,458,660 gallons of gasoline and 61,421,178 gallons of ethanol. The emissions statement requested a gasoline tank truck value which was reported as 614,700,00. This value was rounded by the engineer who prepared the report. The April 15, 2010 data indicates 12-month rolling totals for combined gasoline/ethanol throughput of 596,670,714 gallons and greater for the nine consecutive periods ending July 2009 through March 2010.

6. Condition 3 of the Permit limits the annual throughput of gasoline through the tank truck loading rack of no more than 590,000,000 gallons of gasoline, calculated monthly as the sum of each consecutive twelve month period.

7. Although Kinder Morgan has traditionally tracked gasoline and ethanol throughput separately, DEQ staff concluded that the throughput should be combined for purposes of determining compliance with Condition 3.

8. On May 10, 2010, based on the Partial Compliance Evaluation of the aforementioned reports and additional information received from Kinder Morgan, the Department issued a Notice of Violation to the Kinder Morgan for the violations described in paragraphs C4 through C7 above.

9. On June 8, 2010, Department staff met with representatives of Kinder Morgan to discuss the violation.

10. Kinder Morgan provided a written response to DEQ on June 21, 2010, explaining how Kinder Morgan has historically tracked throughput at the Facility and demonstrating that even under DEQ's interpretation of Condition 3, none of the air emission limitations for the Facility have been exceeded.

11. Based on the results of the Partial Compliance Evaluation of the Calendar Year 2009 Annual Report and Calendar Year 2009 Emissions Statement, documentation submitted on April 15, 2010, and information received at the June 8, 2010, meeting, as well as Kinder Morgan's June 21, 2010 written submission, the Board concludes that Kinder Morgan has violated Condition 3 of the Permit as described in paragraphs C4 through C7, above.

12. In order for Kinder Morgan to return to compliance, DEQ staff and representatives of Kinder Morgan have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

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:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $49,254.40 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).

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 allegation and findings of fact, but does not admit nor deny the 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 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 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 Kinder Morgan intends 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, 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. 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. 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

    b. 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 28th day of February, 2011.

Thomas A. Faha

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

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

Date: 2-21-2011 By: Thomas A. Bannigan, President
(Person) (Title)

~~Commonwealth of Virginia~~ State of Texas
City/County of Houston / Harris

The foregoing document was signed and acknowledged before me this 21st day of February, 2011, by Thomas A. Bannigan who is President of Kinder Morgan Southeast Terminals LLC, on behalf of the Limited Liability Company.

Vanessa M. Bob
Notary Public

12416183-3
Registration No.

My commission expires: 03/22/2014

Notary seal: VANESSA M. BOB
MY COMMISSION EXPIRES
March 22, 2014

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Within 60 days of the execution of this Order, Kinder Morgan shall submit to DEQ, an Air Permit Application (Form 7), to reflect the increase in gasoline (gasoline and ethanol) that is currently being loaded through the loading rack at the Facility.

2. **Certification of Documents and Reports**

   In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Kinder Morgan shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

   > "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. **DEQ Contact**

   Unless otherwise specified in this Order, Kinder Morgan shall submit all requirements of Appendix A of this Order to:

   VA DEQ Northern Regional Office
   Attention Enforcement
   13901 Crown Court
   Woodbridge, VA 22193