



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KINDER MORGAN SOUTHEAST TERMINALS LLC
FOR
KINDER MORGAN RICHMOND TERMINAL 1
Registration Number 50258**

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 Richmond Terminal 1, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the Kinder Morgan Richmond Terminal 1, located at 2000 Trenton Avenue, Richmond, Virginia.
5. "FCE" means a full compliance evaluation by DEQ staff.
6. "Kinder Morgan" means Kinder Morgan Southeast Terminals LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Kinder Morgan is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "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.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "Permit" means a Title V permit to operate a petroleum bulk terminal, which was issued under the Virginia Air Pollution Control Law and the Regulations to Kinder Morgan on November 17, 2009.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
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 Richmond, Virginia. The Facility is a bulk fuels storage/distribution facility, which receives fuel products via pipeline, barges and tanker trucks, and provides storage until transfer of such products by tanker trucks for delivery to gasoline stations.

2. On March 2, 2011, Kinder Morgan submitted the Title V Semi-Annual Monitoring report and Annual Compliance Certification for 2010 to the Department, and reported missing emissions compliance data for the vapor recovery system from August 3, 2010 through February 18, 2011. Kinder Morgan reported that all of the data was missing for the vapor recovery system from August 3, 2010 through December 13, 2010, due to data loss, and intermittent data was missing from December 14, 2010 through February 18, 2011, due to the malfunction of the continuous monitoring system for the vapor recovery system.
3. On March 22, 2011 and April 7, 2011, DEQ staff conducted an FCE at the Facility, with a PCE conducted of the Facility record on March 25, 2011, for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluations and follow-up information, DEQ staff made the following observations:
 - a. Failure to notify DEQ as soon as practicable but no later than four business daytime hours after the malfunction of air pollution control equipment is discovered, that may cause excess emissions for more than one hour; failure to provide a follow-up written statement of the malfunction of the continuous monitoring system, within 14 days of discovery; and failure to verify compliance with emissions limits due to the missing data;
 - b. Failure to maintain continuous monitoring records for the vapor control unit temperature;
 - c. Failure to maintain continuous monitoring records of the infrared detector for the vapor recovery unit; and
 - d. Failure to comply with any condition of a permit.
4. Condition IV(A)(1) of the Permit states that the volatile organic compound (VOC) emissions from loading fuel products with a vapor pressure of 1.5 psia or higher at the truck and barge loading racks, shall be controlled by a vapor recovery system utilizing a vapor adsorption recovery unit and/or a vapor control unit, which is collectively the vapor recovery system. The emissions to the atmosphere from either the vapor control unit or vapor recovery unit stacks due to loading shall not exceed 0.0837 lbs/1000 gallons loaded. In the event of failure of the permanent vapor recovery system, a mobile combustor may be used as specified in the Permit application. The permittee shall notify the Director, Piedmont Regional Office within 4 hours of any malfunction of control equipment as specified elsewhere in the Permit.
5. Condition VIII(F) of the Permit requires that the permittee notify DEQ as soon as practicable but no later than four business daytime hours after the malfunction of air pollution control equipment is discovered, that may cause excess emissions for more than one hour; provide a follow-up written statement of the malfunction of the continuous

- monitoring system within 14 days of discovery; and verify compliance with emissions limits.
6. Conditions IV(B)(13) and (15)(f) of the Permit require that the monitoring of the vapor control unit temperature be performed manually, continuously on a chart or by a continuous monitoring system to verify that the vapor recovery system operates at equal to or greater than the stack temperature established during the most recent stack test, and to maintain records of the emission data to demonstrate compliance with the Permit.
 7. Conditions IV(B)(14) and (15)(g) of the Permit require that during operation of the vapor recovery unit, the VOC and total organic compound emissions through the vapor recovery unit must be monitored by either a flame ionization detector, a photo ionization detector or an infrared detector; monitoring must be performed either manually, continuously on a chart or by a continuous monitoring system, and such records must be maintained as necessary to demonstrate compliance with the Permit.
 8. 9 VAC 5-50-20(E) states that at all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
 9. Va. Code § 10.1-1322 states that failure to comply with any condition of a permit shall be considered a violation of the Air Pollution Control Board law.
 10. On June 10, 2011 DEQ issued Notice of Violation (“NOV”) Number 11-06-PRO-401 for the violations described in paragraphs C(3) through C(8), above.
 11. On June 30, 2011, Kinder Morgan discovered and reported to DEQ that the continuous monitoring system had “locked up” and stopped recording data from June 13, 2011 to June 30, 2011. Kinder Morgan reported that upon discovery, they immediately began to record the data manually on an hourly basis.
 12. On July 27, 2011, Department staff met with representatives of Kinder Morgan to discuss the violations. At the meeting, Kinder Morgan stated that they had reported to DEQ in March 2011, and reiterated at the meeting, that upon discovery of the data issues, Kinder Morgan did not notify DEQ because it did not believe that there was a malfunction of air pollution control equipment. After further discussions with DEQ, Kinder Morgan understands DEQ’s position that the notification requirement of the permit includes malfunctions of the continuous monitoring systems. Kinder Morgan agreed to submit a report on procedural changes that Kinder Morgan has made to easily verify that the continuous monitoring system is functioning and records data as designed.

13. Based on the results of the March 22, 2011 and April 7, 2011 DEQ evaluation, the July 27, 2011 meeting, and documentation submitted on March 2, 2011, the Board concludes that Kinder Morgan has violated Permit Conditions IV(A)(1), VIII(F), IV(B)(13) and (15)(f), IV(B)(14) and (15)(g), Va. Code 10.1-1322, and 9 VAC 5-50-20(E), as described in paragraphs C(3) and C(8), above.
14. Kinder Morgan conducted stack tests on June 1, 2011 and June 2, 2011, with DEQ staff present at the tests. The results from the stack tests demonstrated that the Facility's VOC emissions during this time period were 3.03 mg/L for the vapor adsorption recovery unit and 2.67 mg/L for the vapor combustion unit, below the Permit limit of 10 mg/L.
15. Kinder Morgan submitted via email and mail, a letter dated August 8, 2011, that provided the corrective actions that have been taken demonstrating the violations described in paragraphs C(3) and C(8) above, have been addressed, the corrective actions were completed on August 4, 2011.

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. Pay a civil charge of \$11,071 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", 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 allegations, 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 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; or
 - 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 7th day of OCTOBER, 2011.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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

Date: 10-4-11 By: [Signature], DIR OPS - SER
(Person) (Title)
Kinder Morgan Southeast Terminals, LLC

State of Georgia
City/County of Gwinnett

The foregoing document was signed and acknowledged before me this 4th day of October, 2011, by Rick Krejci, who is Director Operations (name) of Kinder Morgan Southeast Terminals LLC, on behalf of the company.

[Signature]
Notary Public
W-00115887
Registration No.

My commission expires:

DANA C CRAWFORD NOTARY PUBLIC Gwinnett County State of Georgia My Commission Expires Aug. 18, 2015
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Notary seal: