



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Kinder Morgan Virginia Liquids Terminals LLC
FOR
Kinder Morgan South Hill Terminal
VPDES Permit No. VA0053686**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Kinder Morgan Virginia Liquids Terminals LLC, regarding the Kinder Morgan South Hill Terminal, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

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

1. “305(b) report” means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
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. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
6. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. “DMR” means Discharge Monitoring Report.
8. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility” means the bulk liquid storage facility located at 502 Hill Street in Chesapeake, Virginia.
10. “Kinder Morgan” means Kinder Morgan Virginia Liquids 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 § 62.1-44.3.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
13. “Permit” means VPDES Permit No. VA0053686, which was issued under the State Water Control Law and the Regulation to Kinder Morgan on August 27, 2012 and which expires on August 26, 2017.
14. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Kinder Morgan owns and operates the Facility. At the Facility, a dedicated pipeline delivers petroleum products, which are stored in tanks and then transported out of the Facility by separate commercial trucking companies. The Facility receives by vessel chemical fertilizer solutions, such as 32% Urea Ammonium Nitrate (UAN) liquid fertilizer, which is then transported outbound from the Facility by tank truck or rail tanker car.
2. The Permit allows Kinder Morgan to discharge stormwater runoff from a bermed liquid fertilizer storage, handling, and transfer area at the Facility to Outfall 004, and then to an unnamed tributary that leads to the Southern Branch of the Elizabeth River, in strict compliance with the terms and conditions of the Permit.

3. The Southern Branch of the Elizabeth River is located in the James River Basin watershed. The Southern Branch of the Elizabeth River is listed in DEQ's 305(b) report as impaired for dioxin, dissolved oxygen, and PCB in fish tissue.
4. On May 31, 2016, Kinder Morgan self-reported to DEQ in a Pollution Response Program (PREP) report that:
 - a. It had released an unknown quantity of 32% Urea Ammonium Nitrate (UAN) liquid fertilizer to state waters;
 - b. The release was discovered during a routine Facility inspection on May 31, 2016 that observed dead vegetation and odor in Outfall 004's drainage ditch;
 - c. The release stemmed from a May 24, 2016 pump failure in the containment berm area of tanks 101 and 102;
 - d. At the time, only 1,000 gallons of UAN was believed to have been released in the berm area and no obvious connection was observed between the berm area of the UAN spill and Outfall 004;
 - e. 3,654 gallons of combined UAN and rainwater solution was cleaned up from the berm containment area using vacuum trucks;
 - f. At the same time the UAN release in the berm area was being cleaned up with vacuum trucks, 46,750 gallons of stormwater from the same berm area was being discharged from Outfall 004;
 - g. Impacted soils and standing liquids from the tank containment area had been cleaned up and recovered by May 27, 2016.
5. On June 6, 2016, Kinder Morgan submitted a five-day follow-up letter reporting that:
 - a. As of June 3, 2016, more than 33,000 gallons of UAN had spilled into the 101 and 102 tank farm containment berm area (revised from the 1,000 gallons listed in the May 31, 2016 report);
 - b. The UAN contaminated berm area had become hydraulically connected to the ditch leading to Outfall 004 and was unintentionally commingled and discharged with the accumulated stormwater (according to Kinder Morgan, Kinder Morgan retained a sample of the stormwater discharge, which tested at 5.11 mg/l Total Nitrogen);
 - c. At the time of the spill, the change in the stormwater quality resulting from the commingled UAN fertilizer discharging from Outfall 004 was not recognized;

- d. On May 31, 2016, the ditch leading to Outfall 004 was blocked to prevent additional UAN from discharging into the River and all impacted water was vacuumed out from the ditch;
 - e. No discharges had occurred since May 24, 2016 and contaminated soil from the diked area and ditch line leading from Outfall 004 had been remediated.
6. TRO issued to Kinder Morgan NOV No. W2016-12-T-0003 for the unauthorized discharge on May 24, 2016.
7. Part I.B.6 of the Permit requires that Kinder Morgan dispose of, and/or store all materials and wastes in such a manner so as not to permit a discharge to state waters, except as expressly authorized.
8. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
11. The Department has issued no permits or certificates to Kinder Morgan other than VPDES Permit No. VA0053686.
12. The Southern Branch of the Elizabeth River is a surface water body located wholly within the Commonwealth and is a “state water” under State Water Control Law.
13. Based on the results of May 31, 2016 PREP report, the June 6, 2016 five-day follow-up letter, and subsequent documentation, the Board concludes that Kinder Morgan has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging UAN commingled with stormwater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) and C(5), above.
14. On January 19, 2017, Department staff had a telephone conference with representatives of Kinder Morgan to discuss the violations.
15. Kinder Morgan has submitted documentation that verifies that the violations as described in paragraphs C(4) and C(5), above, have been corrected and remediated.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Kinder Morgan, and Kinder Morgan agrees to pay a civil charge of \$10,000 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) 76-0561780 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 and in NOV No. W2016-12-T-0003, dated May 24, 2016. 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 the State Water 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 9 day of May, 2017.



Craig Nicol, Regional Director
Department of Environmental Quality

Kinder Morgan Virginia Liquids Terminals LLC voluntarily agrees to the issuance of this Order.

Date: 3/9/17 By: Alta Redick, VP of Operations
(Person) (Title)
Kinder Morgan Virginia Liquids Terminals LLC

~~Commonwealth of Virginia~~ South Carolina
City/County of Charleston

The foregoing document was signed and acknowledged before me this 9th day of March, 2017, by Arthur Rudolph who is VP of Kinder Morgan Virginia Liquids Terminals LLC, on behalf of the limited liability company.



Notary Public

Registration No. _____

My commission expires: August 3rd, 2025

Notary seal: