UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	Docket No. EPA-HQ-OECA-2007-0084
	)	
Kinder Morgan Transmix Co., LLC;	)	
Kinder Morgan Operating L.P. "A";	)	
and	)	
Colton Processing Facility, Inc.	)	
	)	
Respondents.	)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA), and Respondents, Kinder Morgan Transmix Co., LLC (hereafter "KMT"), Kinder Morgan Operating L.P. "A" (hereafter "KMLPA"), and Colton Processing Facility, Inc. (hereafter "Colton") having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order before taking testimony and without any adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

I. PRELIMINARY STATEMENT

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (HSWA) (collectively RCRA), 42 U.S.C. § 6928(a), and under Sections 205 and 211 of the Clean Air Act (CAA), 42 U.S.C. §§ 7524 and 7545.

2. Walker Smith, Director, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized, by lawful delegation, to institute and settle civil

administrative actions brought pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and brought pursuant Sections 205 and 211 of the CAA, 42 U.S.C. §§ 7524 and 7545.

3. The terms of this Consent Agreement and attached Final Order constitute a full and final settlement between the parties for all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and pursuant to Sections 205 and 211 of the CAA, 42 U.S.C. §§ 7524 and 7545 for the alleged violations of RCRA and CAA as specified in Section VII (Conclusions of Law) of this Consent Agreement. Compliance with this Consent Agreement and attached Final Order shall not be a defense to any other actions commenced pursuant to federal, state, and local environmental laws and it is the responsibility of the Respondents to comply with all applicable provisions of RCRA, the CAA, and any other federal, state or local laws and regulations.

4. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and attached Final Order.

II. JURISDICTION/WAIVER OF RIGHT TO HEARING

5. This Consent Agreement is entered into pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 205(c) of the CAA, 42 U.S.C. § 7524(c), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (Consolidated Rules). Specifically, the Complainant and the Respondents (collectively known as the Parties), have determined that settlement of this matter is in the Parties' interest and the public interest and that this Consent Agreement is the most appropriate means of resolving this matter.

6. EPA has provided notice of commencement of this action to the State of Pennsylvania pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

7. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the EPA Administrator may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939(e), or of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.

8. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by HSWA are immediately effective in a state upon their federal effective date regardless of such state's authorization status. EPA has jurisdiction to implement and enforce those portions of the HSWA requirements for which any such state has not received final authorization, including the regulations at 40 C.F.R. Parts 261, 264, and 270.

9. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the State of Pennsylvania has been authorized to administer a state hazardous waste program in accordance with the notice provided in the Federal Register as follows:

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA granted the State of Pennsylvania final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 30, 1986 (51 Fed. Reg. 1791 (January 15, 1986)), and re-authorized the program effective November 27, 2000 (65 Fed. Reg. 57,734 (September 26, 2000)). The EPA-authorized Pennsylvania regulations are codified at 25 Pa. Code, Chapters 260a - 299.

10. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, the Administrator may issue an order assessing a civil penalty for any past or current violation and/or require compliance immediately or within a specified time period.

11. Pursuant to Section 205(c) of the CAA, 42 U.S.C. § 7524(c), the Administrator may issue an order assessing a civil penalty for any violation of Section 211 of the CAA, 42 U.S.C. § 7545, and the implementing regulations found at 40 C.F.R. Part 80, if the penalty does not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Pursuant to the Debt Collection Improvement Act of 1996, and the EPA's implementing regulations at 40 C.F.R. Part 19, the maximum administrative penalty has been increased to $270,000. On September 1, 2006, the Administrator and the Attorney General, through their duly authorized representatives, jointly determined that a larger penalty amount is appropriate for administrative penalty assessment in this case

12. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. The parties agree to the commencement and conclusion of this cause of action. 40 C.F.R. § 22.13(b) & 22.18(b)(2).

13. For purposes of this proceeding, Respondents will stipulate that the Environmental Appeals Board has jurisdiction over the subject matter which is the basis of this Consent Agreement and personal jurisdiction over the Respondents. 40 C.F.R. § 22.18. Respondents enter this Consent Agreement without admitting liability or admitting to the facts alleged by EPA in Section VI of this Consent Agreement and enter into this Consent Agreement as a compromise

and to settle this matter without further proceedings. 40 C.F.R. § 22.18(b). KMT and KMLPA agree to pay the civil penalties specified in Section IX as full and final settlement for all claims specified in this Consent Agreement. 40 C.F.R. § 22.18(b).

14. For purposes of this Consent Agreement and the enforcement thereof, Respondents hereby waive their right to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement. Respondents waive their right to appeal the proposed Final Order accompanying this Consent Agreement. 40 C.F.R. § 22.18.

III. PARTIES BOUND

15. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondents. Successors and assigns of the Respondents are also bound if they are owned, in whole or part, by Respondents. Nothing in the previous sentence shall adversely affect any right of EPA under applicable law to assert successor or assignee liability against Respondents' successor or assignee, even if not owned in whole or in part, directly or indirectly, by Respondents.

16. Each Party certifies that at least one of its undersigned representatives is fully authorized by the Party whom he or she represents to enter into the terms and conditions of the Consent Agreement, to execute it on behalf of that Party, and to legally bind the Party on whose behalf he or she signs this Consent Agreement.

17. Unless otherwise expressly provided herein, terms used in the Consent Agreement that are defined in RCRA, 42 U.S.C. §§ 6902-6991i, or in regulations promulgated under RCRA, 40 C.F.R. Parts 260-270, or in Pennsylvania's authorized hazardous waste program, shall have the same meaning assigned to them in RCRA or in such regulations or the Pennsylvania authorized state hazardous waste program.

18. Unless otherwise expressly provided herein, terms used in the Consent Agreement that are defined in Section 211 of the CAA, 42 U.S.C. § 7545, or in regulations promulgated under this section of the CAA at 40 C.F.R. Part 80 shall have the same meaning assigned to them in the CAA or in the regulations promulgated thereunder.

IV. RCRA LEGAL BACKGROUND

19. Pursuant to Section 1004(5) of RCRA, 42 U.S.C. § 6903, hazardous waste is defined as "a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed." Regulations governing the identification of hazardous wastes are found in 40 C.F.R. Part 261, and Part 261 are incorporated by reference, in relevant part, into the Pennsylvania regulations at 24 Pa. Code § 261a.1 (1999). These regulations contain two categories of hazardous wastes, "listed" and "characteristic." Those wastes which have been determined to be hazardous by definition have been assigned certain identification numbers and are referred to as "listed wastes." "Characteristic hazardous wastes" are defined by certain criteria which identify components of wastes which render those substances as hazardous wastes.

20. Section 3010 of RCRA, 42 U.S.C. § 6930, requires that any person owning or operating a facility for treatment, storage, or disposal of hazardous waste must give notice to the Administrator of EPA or to a State, in the case of States with authorized RCRA programs, of such activity.

21. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, EPA promulgated regulations requiring each owner or operator of a facility for the treatment, storage, or disposal of hazardous waste to have an operating permit. These regulations are codified at 40 C.F.R. Parts 264 and 270 and at 24 Pa. Code § 264a and 270a (1999).

22. Pursuant to Sections 2002 and 3004 of RCRA, 42 U.S.C. §§ 6912 & 6924, EPA promulgated rules pertaining to owners and/or operators of treatment, storage and disposal facilities as set forth at 40 C.F.R. Part 264 and at 24 Pa. Code § 264a. These standards establish minimum national standards for the management of hazardous waste and apply to owners of all facilities which treat, store, or dispose of hazardous waste.

23. Pursuant to 40 C.F.R. § 260.10 and 24 Pa. Code § 260a., "storage" means "the holding of hazardous wastes for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere."

V. CAA LEGAL BACKGROUND

24. Section 211(f) of the CAA, 42 U.S.C. § 7545(f), provides that it is unlawful for any manufacturer of any fuel to introduce any fuel into commerce for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under Section 206 of the CAA, 42 U.S.C. § 7525.

25. In 1991, EPA promulgated its most recent Interpretive Rule defining the term "substantially similar." See 56 Fed. Reg. 5352 (February 11, 1991). The Interpretive Rule provides, in part, that in order to meet the "substantially similar" requirements of the CAA, the gasoline "must contain carbon, hydrogen, and oxygen, nitrogen and/or sulfur exclusively. . . ." The Interpretive Rule also provides that "the fuel must possess, at the time of manufacture, all of

the physical and chemical characteristics of an unleaded gasoline as specified in ASTM Standard D 4814-88. . ."

26. Section 211(k)(8) of the CAA, 42 U.S.C. § 7545(k)(8), sets forth the emissions limits for conventional gasoline. This section of the CAA required EPA to promulgate regulations that prohibit refiners from selling conventional gasoline that results in average per gallon emissions of certain pollutants that are in excess of the emissions attributable to the gasoline that the refiner introduced into commerce in the 1990 calendar year.

27. The regulations that the EPA promulgated under Section 211(k)(8) of the CAA, 42 U.S.C. § 7545(k)(8), are found at 40 C.F.R. Part 80, Subpart E. These regulations, which are called the Anti-Dumping regulations, require refiners to comply with a number of sampling, testing, record keeping, reporting and quality assurance requirements, in addition to the emissions limits mandated by the CAA.

28. The Anti-Dumping regulations at 40 C.F.R. § 80.101(i)(1) require refiners to collect and analyze a representative sample of each batch of conventional gasoline that they produce for the purpose of determining compliance with the anti-dumping standards by using the test methods set forth in 40 C.F.R. § 80.46.

29. The Anti-Dumping regulations at 40 C.F.R. § 80.101(i)(2) allow refiners to determine compliance with the Anti-Dumping standards by compositing representative samples collected during each month, as long as the refiner meets certain criteria that ensure that the composite sample is representative of the total volume of gasoline produced by the refiner. 40 C.F.R. § 80.101(i)(2)(iii) specifically requires refiners to use the total volume of the batches of gasoline that comprise the composite samples for the purpose of calculating compliance with the Anti-Dumping regulations.

30. Section 211(c)(1) of the CAA, 42 U.S.C. § 7545(c), authorized EPA to promulgate regulations controlling the manufacture of fuel if (a) the emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare; or (b) the emission products of the fuel will significantly impair emissions control systems in general use or which will be in general use were the fuel control to be adopted. EPA promulgated regulations pursuant to this section of the CAA that require refiners to limit the sulfur content of gasoline, and that impose a number of sampling, testing, record keeping, reporting and quality assurance requirements relating to the sulfur content of gasoline. These regulations, which are called the Gasoline Sulfur regulations, are found at 40 C.F.R. Part 80, Subpart H.

31. The Gasoline Sulfur regulations at 40 C.F.R. § 80.330 require refiners to collect and analyze a representative sample of each batch of gasoline that they produce for the purpose of determining the sulfur content of the gasoline by using the test methods set forth in 40 C.F.R. § 80.46.

VI. FACTUAL BASIS

A. Background

32. EPA, after an investigation and review of the facts and circumstances giving rise to this Consent Agreement, sets forth the following allegations. Respondents claim that they were unaware and remain unaware of the truth of many of EPA's allegations set forth herein and, as a result, neither admit nor stipulate to any one of them. EPA alleges as follows:

33. Kinder Morgan Energy Partners, LP (KMP) is a Delaware limited partnership. KMP is one of the largest publicly traded pipeline limited partnerships in the United States. KMP

conducts its operations through five limited operating partnerships. KMLPA and Kinder Morgan Operating L.P. "D" are two of these five limited operating partnerships.

34. Respondent KMT is a subsidiary of KMLPA and is engaged in the transmix processing business. KMT is a Delaware limited liability company located at P.O. Box 840, Indianola, Pennsylvania 15051. KMT owns and operates transmix facilities in Indianola, Pennsylvania and in Hartford, Illinois.

35. Respondent KMLPA is engaged in the transmix processing business. KMLPA is a Delaware limited partnership with a principal address of 500 Dallas Street, Suite 1000, Houston, Texas 77002. KMLPA owns and operates transmix facilities in Richmond, Virginia, and in Dorsey Junction, Maryland.

36. Respondent Colton is a subsidiary of Kinder Morgan Operating L.P. "D," and is engaged in the transmix processing business. Colton is a California corporation located at 2359 S. Riverside Avenue, Bloomington, California 92251. Colton owns and operates a transmix facility in Colton, California.

37. Transmix is a by-product of refined products pipeline operations. It is created by the mixing of different specification products during pipeline transportation. Transmix processing facilities separate the transmix back into specification products, such as gasoline and diesel fuel. Transmix processors may add chemicals, known as blendstocks, to gasoline or gasoline blendstocks produced at transmix processing facilities in order to bring the generated finished products back into proper specification for re-sale.

B. Facts Relating to the Indianola Transmix Facility

38. KMT's Indianola, Pennsylvania transmix facility (Indianola Transmix Facility) is located on a 30-acre site near Pittsburgh, Pennsylvania. It has a capacity of processing 12,000

barrels of transmix per day. During the relevant time period (October 2003 through March 2004), KMT produced conventional gasoline at its Indianola Transmix Facility.

39. In 2001 KMT entered into a contractual agreement with Duke Energy Merchants, LLC (Duke), under which Duke provided KMT with all transmix and blendstocks required to produce finished gasoline and paid KMT a fee for processing the transmix and producing finished products.

40. From at least April 2001, through the present, KMT has had in place a "Quality Control Program" to assure proper selection of blendstocks. Under the program, KMT was and is required to have a "Quality Manager." The Quality Manager is responsible for determining the suitability of new materials, including blendstocks. The required overview includes determining the process by which the blendstock was developed or produced and the reliability, repeatability, and predictability of the source including the identifiable and measurable physical characteristics of the material from that source.

41. On October 15, 2003, KMT accepted its first shipment of blendstock that was described by the vendor, Supply Chain Logistics (SCL), as a "cyclohexane mixture" (cyclohexane mixture). EPA determined that SCL purchased the cyclohexane mixture from Alasco, Inc. (Alasco) and Alasco purchased the material from Kraton Polymers of Belpre, Ohio (Kraton).

42. EPA has determined that the cyclohexane mixture was produced at the Kraton facility by taking pure cyclohexane and using it as a solvent at its Belpre, Ohio facility. As a part of its manufacturing process, Kraton, according to EPA investigations, used the cyclohexane to convert polymers from a solid to a liquid, and to clean various components at its facility.

43. According to EPA, the cyclohexane mixture contained small quantities of ethylene dibromide.

44. The Shell Oil Company (Shell) owned the Belpre facility prior to Kraton. In the mid-1990s, at Shell's request, the Ohio EPA approved the cyclohexane mixture as an alternative fuel in the onsite coal fired boiler, making the facility a Boiler and Industrial Furnace pursuant to 40 C.F.R. Part 266, Subpart H. EPA and Ohio EPA have determined that the cyclohexane mixture was RCRA D001 hazardous waste for ignitability.

45. According to correspondence in EPA's possession, in 1995, Shell approached Ohio EPA and requested a non-waste status determination for the cyclohexane mixture if it was sent off-site as a byproduct to the Shell Wood River, Illinois refinery to make benzene and fuel products.

46. By correspondence dated April 24, 1995, Ohio EPA approved Shell's request that the cyclohexane mixture be granted an exemption from RCRA waste status when mixed with crude oil and processed like crude oil at Shell's Wood River refinery. The exemption was specifically limited to the Wood River refinery. KMT claims that it was not aware of the facts regarding Shell's attempts to obtain a RCRA waste exemption at the time it accepted the blendstock that is the cyclohexane mixture.

47. On August 15, 2001, Kraton entered into a sales contract with Alasco. According to EPA, the contract provided that Kraton would sell the cyclohexane mixture material to Alasco. The contract specified that the cyclohexane mixture "purchases will be used as a refinery feedstock ONLY. To assurance [*sic*] compliance with regulations, [Kraton] must approve alternate uses of this product." [emphasis in the original]. KMT claims that it was not aware of this contract or its terms during the relevant time period.

48. KMT did not communicate directly with Kraton or Alasco regarding the cyclohexane mixture because, according to KMT, SCL did not disclose to KMT the origin of the mixture. KMT accepted the cyclohexane mixture for use as a blendstock. SCL's price for the cyclohexane mixture was significantly less than what is typically paid for pure cyclohexane. KMT claims that the price of the cyclohexane mixture alone does not indicate that the material was a hazardous waste. KMT asserts that the terms and consideration of Duke Energy's purchase contract with SCL were unknown to KMT. At the time KMT agreed to use the cyclohexane mixture, KMT claims that it did not know how the material was produced, or its status under RCRA.

49. On October 15, 2003, KMT took delivery of the first shipment of the cyclohexane mixture from SCL. KMT received a total of 49 shipments of the cyclohexane mixture between October 15, 2003, and the date that it received its last shipment on March 14, 2004. The documents that KMT and Duke provided to EPA in response to EPA's information requests did not include hazardous waste manifests for these shipments of the cyclohexane mixture.

50. From October 21, 2003, through March 24, 2004, KMT produced twenty-eight batches of gasoline using the cyclohexane mixture from SCL as a gasoline blendstock.

51. On December 29, 2003, KMT's rack filters, which are designed to filter particulates from gasoline as it is dispensed from KMT's storage tanks to delivery trucks, became clogged with white solids.

52. On January 21, 2004, more white solids were found in KMT's loading equipment.

53. On February 20, 2004, KMT's rack filters again become clogged with white solids.

54. A number of automobiles that allegedly received gasoline produced by KMT from January 2004, through March 24, 2004, ceased operation due to fuel filters clogged with white/grey solids.

55. On March 25, 2004, KMT informed SCL that "[w]e have white particulates in our gasoline, these particulates have been described as show [*sic*] flakes, and the material seems to stay suspended in the gasoline for a long time. It has been found in our truck loading filters (10 micron), it has been found in gas station pump filters (10 micron) and it has been found in consumer automobile fuel filters (10 micron). We find it in the rag layer, between gasoline and water in gasoline tanks. We are not sure what it is and why it has been able to migrate through so many filters. We found white deposits in the Supply Chain delivery truck vapor hose."

C. Facts Relating to Sampling and Testing of Gasoline at the KMT's Hartford Transmix Facility

56. KMT's Hartford, Illinois transmix facility (Hartford Transmix Facility) has a capacity of processing 5,000 barrels of transmix per day. During the relevant time period (January 1, 2004 through December 31, 2004), KMT produced conventional gasoline at its Hartford Transmix Facility.

57. In February of 2005, KMT first informed EPA that it may have unknowingly violated the sampling and testing requirements of the Anti-Dumping regulations for gasoline that it produced at the Hartford Transmix Facility during the 2004 reporting year.

58. KMT's efforts to comply with the sampling and testing requirements of the Anti-Dumping regulations during the 2004 reporting year involved preparing monthly composites of gasoline samples as authorized by 40 C.F.R. § 80.101(i)(2).

59. During the 2004 reporting year, KMT produced about 20 million gallons of conventional gasoline at the Hartford Transmix Facility.

60. The source of most of the feedstock that KMT used to produce this gasoline was typical pipeline interface mixtures consisting of the interface between gasoline and distillate products. KMT also used a significant quantity of feedstock from uncertain sources to produce gasoline at the Hartford Transmix Processing facility.

61. During the 2004 reporting year, KMT failed to collect samples of each batch of gasoline that it produced at the Hartford Transmix Facility. KMT produced a total of 53 batches of gasoline at this facility during the 2004 reporting year, and failed to collect samples of 23 of these batches.

62. For the samples that KMT did collect from the Hartford Transmix Facility, it ran field tests to evaluate certain commercial parameters and then sent the samples to the lab at the Indianola Transmix Facility where the samples were tested for sulfur using the regulatory test method and composited for determining compliance with the Anti-Dumping standards. KMT sent the composited samples to an outside laboratory for analysis of the parameters required to determine compliance with the Anti-Dumping standards. The monthly composites were not representative of the total volume of gasoline that KMT produced during the 2004 reporting year because they were created only from the volumes of batches from which KMT collected samples.

63. KMT provided EPA evidence intended to establish under 40 C.F.R. § 80.390 that the gasoline that it produced during this time period met the sulfur standards, and that KMT would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed.

64. KMT provided EPA evidence intended to establish under 40 C.F.R. § 80.80 that the gasoline that it produced during this time met the Anti-Dumping standards, and that it would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed.

D. Facts Relating to Sampling and Testing of Gasoline at KMLPA's Richmond, Virginia Transmix Facility

65. KMLPA's Richmond, Virginia transmix facility (Richmond Transmix Facility) has a capacity of processing 8,000 barrels of transmix per day. During the relevant time period (January 1, 2004 through December 31, 2004), KMT produced conventional gasoline at its Richmond Transmix Facility.

66. During July of 2004, KMLPA failed to collect and analyze a representative sample of three batches of conventional gasoline that it produced at the Richmond Transmix Facility for the purpose of determining the sulfur content of these batches of gasoline.

67. KMLPA provided EPA with evidence intended to establish under 40 C.F.R. § 80.390 that these three batches of gasoline met the sulfur standards, and that KMLPA would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed.

VII. CONCLUSIONS OF LAW

A. RCRA- KMT Violations

68. KMT is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and 24 Pa. Code § 260a.1 and 260a.10 and thus is subject to regulation.

69. KMT is, and at all times relevant to this action was, the "owner" and "operator" of the Indianola Transmix Facility as defined at 40 C.F.R. § 260.10 and 24 Pa. Code § 260a.10.

70. Pursuant to Sections 2002 and 3004 of RCRA, 42 U.S.C. §§ 6912 & 6924, EPA promulgated rules pertaining to owners and/or operators of treatment, storage and disposal facilities as set forth at 40 C.F.R. Part 264. Also see 24 Pennsylvania Code § 264a.

71. EPA has determined and alleges that the cyclohexane mixture is a hazardous waste (D001) pursuant to 40 C.F.R. § 261.21, due to its ignitability. Also see 24 Pennsylvania Code § 261a.

72. EPA has determined and alleges that KMT became the owner/operator of a facility for the Treatment, Storage, and Disposal of Hazardous Waste upon receiving and storing the cyclohexane mixture, a hazardous waste starting on October 15, 2003. KMT received its last shipment of the cyclohexane mixture on March 14, 2004.

73. EPA has determined and alleges that KMT failed to give notice to EPA or the State of Pennsylvania prior to storing the cyclohexane mixture, beginning on October 15, 2003, and ending on March 14, 2004, or soon thereafter, at the Indianola Transmix Facility, in violation of Section 3010 of RCRA, 42 U.S.C. § 6930, the implementing regulations at 40 C.F.R. § 264.11, and 24 Pennsylvania Code § 264a.

74. EPA has determined and alleges that KMT failed to perform or obtain a general waste analysis upon receiving its first shipment of the cyclohexane mixture on October 15, 2003, as defined at 40 C.F.R. § 264.11 and 24 Pennsylvania Code § 264a, and therefore violated those regulations.

75. EPA has determined and alleges that KMT accepted hazardous waste at its Indianola Transmix Facility without first obtaining a RCRA Treatment, Storage, and Disposal Facility

Permit. Therefore, EPA has determined and alleges that KMT violated the following provisions of 40 C.F.R. § 264, and its state analog at 24 Pennsylvania Code § 264a: acceptance of hazardous waste without a manifest (40 C.F.R. §§ 264.70 - 264.77, and 24 Pennsylvania Code § 264a); storage of hazardous waste without a permit (Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), 40 C.F.R. Parts 264 and 270, and 24 Pennsylvania Code §§ 264a and 270a.); storage of hazardous waste without a RCRA Closure and Post-Closure Plan (40 C.F.R. §§ 264.110 through 264.120, and 24 Pennsylvania Code § 264a); and storage of hazardous waste without a RCRA Financial Assurance Plan (40 C.F.R. §§ 264.140 through 264.151, and 24 Pennsylvania Code § 264a).

76. EPA has determined and alleges that the activities described in paragraphs 72-75 above constitute violations of RCRA and therefore subject KMT to the penalties specified in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

B. CAA - KMT Violations

77. KMT is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e). During all relevant times, KMT was also a "refiner" within the meaning of 40 C.F.R. § 80.2(i) and was the registered refiner at the Indianola and Hartford Transmix Facilities.

78. EPA has determined and alleges that KMT violated Section 211(f) of the CAA, 42 U.S.C. § 7545(f) on twenty-eight occasions from October 21, 2003, through March 24, 2004, by manufacturing, and introducing into commerce for use in motor vehicles, twenty-eight batches of gasoline at the Indianola Transmix Facility that were produced with the cyclohexane mixture and that, as a consequence, were not substantially similar to any fuel utilized in the certification of any model year 1975, or subsequent model year vehicle or engine under Section 206 of the CAA, 42 U.S.C. § 7525.

79. EPA has determined and alleges that KMT violated the Anti-Dumping Regulations at 40 C.F.R. § 80.101(i)(1) on twenty-three occasions during the 2004 calendar year by failing to collect and analyze a representative sample of twenty-three batches of conventional gasoline that it produced at the Hartford Transmix Facility.

80. EPA has determined and alleges that on ten occasions during the 2004 calendar year KMT violated the Anti-Dumping Regulations at 40 C.F.R. § 80.101(i)(2)(iii), which allow refiners to determine compliance with the Anti-Dumping standards by compositing representative samples collected during each month, by failing to use the total volume of the batches of gasoline that should have comprised the composite samples for the purpose of calculating compliance with the Anti-Dumping regulations.

81. EPA has determined and alleges that KMT violated the Gasoline Sulfur regulations at 40 C.F.R. § 80.330 on twenty-three occasions during the 2004 calendar year by failing to collect and analyze a representative sample of twenty-three batches of conventional gasoline that it produced at the Hartford Transmix Facility for the purpose of determining the sulfur content of these batches of gasoline.

C. CAA - KMLPA Violations

82. KMLPA is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e). During all relevant times, KMLPA was also a "refiner" within the meaning of 40 C.F.R. § 80.2(i) and was the registered refiner at the Richmond Transmix Facility.

83. EPA has determined and alleges that KMLPA violated the Gasoline Sulfur regulations at 40 C.F.R. § 80.330 on three occasions during July of 2004 by failing to collect and analyze a representative sample of three batches of conventional gasoline that it produced at the

Richmond Transmix Facility for the purpose of determining the sulfur content of these batches of gasoline.

VIII. TERMS OF AGREEMENT

84. Based on the foregoing, the Parties agree to the entry of this Consent Agreement on the following terms:

A. Audits of KMT, KMLPA, and Colton Transmix Facilities

85. Within 60 days of the effective date of this Consent Agreement and Final Order, KMT, KMLPA, and Colton shall develop Updated Quality Control Plans (Plans) and submit the Plans to EPA for review and approval. The Plans shall set forth modifications to any existing Quality Control Plans, and shall be designed to assure that (a) RCRA hazardous wastes are not used as a blendstock at any of Respondents' transmix facilities; (b) Respondents comply with the substantially similar requirements in Section 211(f) of the CAA, 42 U.S.C. § 7545(f), at their transmix facilities; and (c) Respondents comply with the emissions standards and the sampling, testing, record keeping and reporting requirements set forth in 40 C.F.R. Part 80, Subparts D, E and H. The transmix facilities that are subject to the Plans are located at: a) Indianola, Pennsylvania; b) Hartford, Illinois; c) Richmond, Virginia; d) Dorsey Junction, Maryland; and e) Colton, California.

86. The Plans shall include specific provisions designed to assure that Respondents limit the feedstocks that they use to produce gasoline to materials that meet the definition of Transmix set forth at 40 C.F.R. § 80.84(a)(2) or mixtures of gasoline and distillate fuels described in 40 C.F.R. § 80.84(e). In the event that Respondents decide, at some future date, to use feedstocks other than those described above, Respondents shall, prior to using such other feedstocks: a) amend their Plans to assure that Respondents comply with all requirements and standards that

apply to refiners that are not transmix processors, as required by 40 C.F.R. § 80.84(f), and 40 C.F.R. § 80.213(f); and b) provide EPA with a copy of the amended Plan.

87. Within 120 days of the entry of this Consent Agreement and Final Order, Respondents shall propose a qualified independent auditing firm(s) for EPA review and approval. Respondents may choose a single auditing firm for Respondents' transmix facilities, or may select different firms for different facilities or tasks. The auditing firms may begin conducting audits of Respondents' compliance with the terms of the Plan at each of Respondents' transmix facilities 270 days after EPA approval of the Plan. The audit shall cover implementation of the Plan from EPA approval of the Plan through the last day of the on-site portion of the audit. The on-site portion of all audits shall be completed no later than 365 days after EPA approval of the Plan.

88. Each audit team must meet the following criteria: (a) the audit team must have expertise and competence in RCRA regulatory programs under Federal and State environmental laws; (b) the audit team must have expertise and competence in regulatory programs under Title II of the CAA; (c) no audit team member may directly own any stock in any Respondent or in any parent or subsidiary organization; (d) no audit team member may have any other direct financial stake in the outcome of the audit conducted pursuant to this Consent Agreement and Final Order; and (e) each audit team member must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation. The audit team shall be paid by Respondents in an amount sufficient to fully carry out the provisions of this Consent Agreement and Final Order.

89. Designated representatives from EPA and other environmental regulatory agencies shall be permitted to participate in the audit as observers; however, the audit may take place in

the absence of their presence as observers. Respondents shall make timely notification to designated regulatory contacts regarding audit scheduling in order to make arrangements for observers to be present. One or more Respondents' representatives with a comprehensive understanding of the Plan will accompany the audit team to assist the team in understanding how the Plan works and applies to specific operations and employees. Other Respondents' representatives may also participate in the on-site audits as an observer(s). Respondents' representatives shall not interfere with the independent judgment of the auditing team.

90. Respondents shall direct the auditing team to draft Audit Reports for each facility. The Audit Reports shall be submitted to EPA no later than 60 days after the completion of the on-site portion of the audit. The Audit Reports shall present the Audit Findings and shall, at a minimum, contain the following information:

a. Audit scope, including the period of time covered by the audit;

b. The date(s) the on-site portion of the audit was conducted;

c. Identification of audit team members;

d. Identification of Respondents' representatives and regulatory agency personnel observing the audit;

e. A summary of the audit process, including any obstacles encountered;

f. Detailed Audit Findings, including the basis for each finding and each Area of Concern identified;

g. Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented; and

h. Certification by the Consultant Auditor that the audit was conducted in accordance with the provisions of this Consent Agreement and Final Order.

91. Follow-Up Corrective Measures. Upon receiving each Audit Report, Respondents shall conduct a root cause analysis of the significant Audit Findings, as appropriate, and investigate all significant areas of concern. Within 60 days of receiving the Audit Report for each facility, Respondents shall develop an Action Plan for fully addressing all significant areas of concern and expeditiously bringing the facility into full conformance with the Plan. The Action Plan shall be sent to EPA within 75 days of receiving the Audit Report for each facility. The Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule. Respondents shall implement the Action Plan in accordance with the schedules set forth therein. Implementation of the audit procedures described herein does not constitute a waiver or release for the violation of any laws or regulations occurring after the entry of this Consent Agreement and Final Order.

92. Nothing in this Consent Agreement and Final Order is intended to limit or disqualify Respondents, on the grounds that information was not discovered and supplied voluntarily, from seeking to apply EPA's Audit Policy or any state audit policy to any violations or non-compliance that Respondents discover during the course of any of the audit described above.

B. KMT Gasoline Sulfur Allotments and Credits

93. Respondent KMT will not sell, use or transfer any gasoline sulfur allotments or credits that may have been generated pursuant to 40 C.F.R. Part 80, Subpart H, from any gasoline produced at the Hartford Transmix Facility during the 2004 reporting year.

C. Civil Penalties

94. KMT Civil Penalty. KMT agrees to pay a civil penalty in the sum of $600,000 for the KMT violations alleged herein within thirty (30) calendar days of issuance of the Final Order (i.e., effective date of this Consent Agreement and attached Final Order). 40 C.F.R. § 22.31(c). The portion of this penalty attributed to RCRA violations is $340,000 and the portion of this penalty attributed to the CAA violations is $260,000.

95. KMLPA Civil Penalty. KMLPA agrees to pay a civil penalty in the sum of $13,000 for the KMLPA CAA violations alleged herein within thirty (30) calendar days of issuance of the Final Order (i.e., effective date of this Consent Agreement and attached Final Order). 40 C.F.R. § 22.31(c).

96. KMT and KMLPA shall pay the civil penalties set forth in the preceding paragraphs by wire transfer, with a notation of "Kinder Morgan Transmix Co, LLC, *et. Al.*, Docket No. EPA-HQ-OECA-2007-0084," by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for deposit:	68010099
The Bank Holding Account:	Treas NYC
The ABA Routing Number:	021030004

97. KMT and KMLPA shall forward evidence of wire transfer to EPA, within five (5) days of payment, to:

Jeff Kodish, Esq.
U.S. Environmental Protection Agency
12345 West Alameda Parkway, Suite 214
Denver, CO 80228

and

Robert D. Parrish, Esq.
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2248-A)
Washington, DC 20460

and

U.S. Environmental Protection Agency
Environmental Appeals Board, Clerk of the Board
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

98. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject KMT and KMLPA to a civil action to collect any unpaid portion of the proposed civil penalty and interest.

99. EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim and KMT and KMLPA agree to pay these amounts under this Consent Agreement and attached Final Order. 40 C.F.R. § 13.11. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty agreed to herein on the date a copy of this Consent Agreement and attached Final Order is mailed to KMT and KMLPA. However, EPA will not seek to recover interest on any portion of the civil penalty that is paid within thirty (30) calendar days after the issuance of the Final Order. Pursuant to 31 U.S.C. § 3717, KMT and KMLPA must pay the following amounts on any amount overdue:

(a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 (a)(1). Interest will be

assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).

(b) Late Payment Penalty. On any portion of a civil penalty that is paid more than thirty (30) calendar days after the issuance of the Final Order, KMT and KMLPA must pay a late payment penalty of six percent per annum, which will accrue from the date the penalty payment became due. This late payment penalty is in addition to charges which accrue or may accrue under subparagraph (a). 40 C.F.R. § 13.11(c).

100. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes.

D. Certification

101. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with all applicable provisions of RCRA, the CAA, and other federal, state or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

102. By signing this Consent Agreement, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondents realize that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

103. EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent that any information or certification provided by Respondents was materially false or inaccurate at the time such information or certification was

provided to EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein.

E. Submittal to Environmental Appeals Board

104. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that they be incorporated into a Final Order.

F. Effective Date

105. Respondents and EPA agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement to Respondents. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

G. Stipulated Penalties

106. Respondents shall be liable for stipulated penalties to the EPA, as specified below, for failure to comply with the requirements of this Consent Agreement, unless excused by EPA, in its sole discretion. Compliance by Respondents shall include the timely completion of the activities required and/or specified by this Consent Agreement or any other work plan, schedule or other document approved by EPA pursuant to this Consent Agreement. For failure to comply with tasks specified in paragraphs 85-96, Respondents shall pay stipulated penalties in the following amounts for each day during which the violations continue:

Period of Failure to Comply	Penalty Per Violation Per day
1st through 7th day	$100.00
8th through 21st day	$250.00
22nd through 30th day	$500.00
Greater than 30 days	$1,000.00

These stipulated penalties apply separately and fully for each of Respondents' transmix facilities, and may become due for violations at more than one transmix facility on a day of violation. For purposes of calculating interest, administrative costs and late payment penalty, the stipulated penalties become "due" upon receipt by the Respondents of a written notice from EPA that payment of such stipulated penalties is due.

107. Respondents' failure to timely comply with any material and substantial provision of this Consent Agreement may subject Respondents to a civil action pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), to collect penalties for any noncompliance with the Order (as well as injunctive relief).

X. EFFECT OF SETTLEMENT

108. This Consent Agreement and attached Final Order, when issued by the Environmental Appeals Board, resolve only those civil claims specified in Section VII (Conclusions of Law) above. Nothing herein shall be construed to limit the authority of EPA or the United States to bring an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Indianola Transmix Facility may present an imminent and substantial endangerment to health, or the environment. Nothing herein shall be construed to limit the right of EPA or the United States to proceed against Respondents for violations of Section 211 of the CAA, 42 U.S.C. § 7545, which are not the subject matter of this Consent Agreement and Final Order; or for other violations of law; or with respect to other matters not within the scope of the Consent Agreement and Final Order. Nothing herein shall affect the right of EPA or the United States to pursue criminal sanctions for any violations of law.

IN THE MATTER OF: Kinder Morgan Transmix Company, LLC, Kinder Morgan Operating L.P. "A," and Colton Processing Facility.
Docket No. OECA-2007-0084

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry.

For Respondent Kinder Morgan Transmix Company, LLC:

Date: 12-20-2006

Name: Thomas Bannigan
Title: President

For Respondent Kinder Morgan Operating L.P. "A":
By: Kinder Morgan G.P., Inc., its general partner
By: Kinder Morgan Management, LLC, the delegate of the general partner

Date: 12-20-2006

Name: Thomas Bannigan
Title: Vice President

For Respondent Colton Processing Facility, by its general partners:
SFPP, L.P.
By: Kinder Morgan Operating L.P. "D", its general partner
By: Kinder Morgan G.P., Inc., its general partner
By: Kinder Morgan Management, LLC, the delegate of the general partner

Date: 12-20-2006

Name: Thomas Bannigan
Title: Vice President

Kinder Morgan Operating L.P. "D"
By: Kinder Morgan G.P., Inc., its general partner
By: Kinder Morgan Management, LLC, the delegate of the general partner

Date: 12-20-2006

Name: Thomas Bannigan
Title: Vice President

IN THE MATTER OF: Kinder Morgan Transmix Co., LLC, Kinder Morgan Operating L.P. "A," and Colton Processing Facility.
Docket No. EPA-HQ-OECA-2007-0084

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry.

For Complainant:

Walker Smith, Director
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2246-A)
Washington, DC 20460

2/26/07
Date

Adam M. Kushner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

2/26/07
Date

Rosemarie Kelley, Director
Waste and Chemical Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

2/21/07
Date