

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Kinder Morgan Liquids Terminals, LLC
Carteret, New Jersey

Respondent

In a proceeding under Section 113(d)
of the Clean Air Act 42 U.S.C. § 7413(d)

CONSENT AGREEMENT
AND
FINAL ORDER

CAA-02-2010-1226

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and Final Order (CAFO) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq. This CAFO is issued pursuant to 42 U.S.C. § 7413(d), Section 113(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. The Complainant is delegated, on behalf of Region 2, the authority to issue CAA § 113(d) administrative Complaints and Consent Agreements for violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Administrator of EPA Region 2 is duly delegated the authority to execute CAA § 113(d) Final Orders.

REGIONAL HEARING
CLERK

2011 SEP -7 P 2:51

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2

On April 21, 2010, the United States Department of Justice (DOJ) granted the EPA Region 2 request for a waiver of the CAA § 113(d) one year time limitation on EPA's authority to initiate an administrative action in this matter against Kinder Morgan Liquids Terminals, LLC (Respondent).

On August 6, 2010, EPA issued a Complaint and Notice of Opportunity to Request a Hearing CAA-02-2010-1226 (Complaint) to Respondent for civil monetary penalties. In the Complaint, EPA alleges that Respondent violated, at its Carteret terminal located in Carteret, New Jersey (Facility), 40 C.F.R. Part 63, Subpart EEEE, the "National Emissions Standards for Hazardous Air Pollutants - Organic Liquids Distribution (Non-Gasoline)" (Organic Liquids Distribution MACT or OLD MACT); 40 C.F.R. Part 63, Subpart TT, the "National Emissions Standards for Equipment Leaks - Control Level 1" (Control Level 1 MACT); and 40 C.F.R. Part 60, Appendix A, Method 21 (Method 21), promulgated pursuant to Sections 112 and 114 of the Act, and the Facility's Title V Operating Permit, which includes the Organic Liquids Distribution MACT requirements as applicable requirements.

Pursuant to 40 C.F.R. § 22.18(b), EPA is authorized to settle administrative enforcement actions provided they are commenced in accordance with 40 C.F.R. § 22.13(a) or (b). In accordance with § 22.18(b), EPA and Respondent enter into this Consent Agreement and propose the attached Final Order to resolve the violations alleged in the Complaint, filed pursuant to 40 C.F.R. § 22.13(a).

Complainant and Respondent have agreed to resolve the Complaint by entering into this Consent Agreement and by the issuance of a Final Order.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged in this Consent Agreement; (2) neither admits nor denies specific factual allegations contained in the Complaint and in this Consent Agreement; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the attached Final Order.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Pursuant to Section 113(d) of the Act, Respondents shall pay a civil penalty of one hundred thirty-four thousand, two hundred seventy dollars (**\$134,270**). Respondent shall have the option of paying the entire **\$134,270** either by corporate, cashiers, or certified check within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2010-1226) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall send notice of payment to the following individuals:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Flaire Hope Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

2. If Respondent fails to make full and complete payment of the **\$134,270** penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to § 113(d)(5) of the CAA, 42 U.S.C.

§ 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

3. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth in the Complaint.

4. Respondent has read the Consent Agreement and consents to its terms and issuance as a Final Order.

5. Respondent's compliance with the terms of this Consent Agreement and attached Final Order shall fully resolve all civil claims, penalties and civil causes of action set forth by the finding of violations in this Consent Agreement or as alleged in the Complaint.

6. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws, nor shall this Consent Agreement and attached Final Order affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

7. Respondent explicitly waives its right to request a hearing and/or contest allegations in the Complaint and explicitly waives its right to appeal the attached Final Order.

8. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator or a delegate where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

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

10. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

11. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

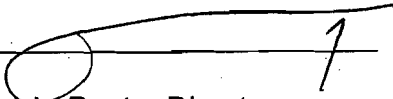
For Respondent:



Scott T. Kilkenny, Vice President
Kinder Morgan Liquids
Terminals, LLC

Date 1-20-11

For Complainant:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date 1/26/11

In the Matter of Kinder Morgan Liquid Terminals, LLC
CAA-02-2010-1226

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Kinder Morgan Liquid Terminals, LLC, CAA-02-2010-1226. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: Feb 2 2011



Judith A. Enck
Regional Administrator
U.S. Environmental Protection
Agency – Region 2

In the Matter of Kinder Morgan Liquids Terminal, LLC
Docket No. CAA-02-2010-1226

CERTIFICATE OF SERVICE

I, Marie Quintin, certify that the foregoing fully executed Consent Agreement and Final Order was sent this day in the following manner to the addressees listed below:

Original and One Copy by
Hand to:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by
Overnight Interoffice Mail to:

The Honorable Barbara A. Gunning
Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

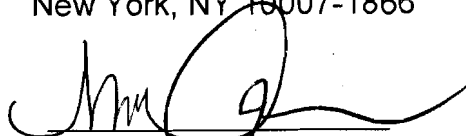
Copy by
Regular Mail to:

Andrea A. Lipuma, Esquire
Saul Ewing, LLP
750 College Road East, Suite 100
Princeton, NJ 08540-6617

Copy by
Hand to:

Marie Quintin, Esquire
Assistant Regional Counsel
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Dated: 02/07/2011
New York, New York


Marie Quintin