

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 JUN 10 PM 3:15  
REGIONAL HEARING  
OFFICE

In re:

**Kinder Morgan Liquid Terminals, LLC  
Respondent**

In a proceeding under  
Section 113(d) of the Clean Air Act

**COMPLAINT  
and  
NOTICE OF OPPORTUNITY  
TO REQUEST A HEARING**

CAA-02-2010-1226

**COMPLAINT**

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) to Kinder Morgan Liquid Terminals, LLC (Respondent) for violations of the Clean Air Act, 42 U.S.C § 7401 *et seq.* (CAA or the Act), at 42 U.S.C. § 7413(d), Section 113(d), and proposes the assessment of penalties in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in the matter, the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2, is duly delegated the authority to issue administrative Complaints on behalf of EPA Region 2, for CAA violations that occurred in the States of New York and New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

In this Complaint, EPA alleges that Respondent's Kinder Morgan Liquid Terminals facility (Facility) located in Carteret, New Jersey, violated 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 as applicable requirements.

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 and penalty amount limitation on EPA's authority to initiate an action in this matter.

#### **Statutory, Regulatory, and Permitting Background**

1. Section 113(a)(3) of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with § 113(d) of the Act, against any person that has violated or is in violation of the Act.

2. Section 113(d)(1)(B) of the Act, authorizes EPA to issue an administrative order against any person whenever, on the basis of any available information, the Administrator finds that such person has or is violating any requirements or prohibitions of titles III, IV-A, V, or VI of the Act including but not limited to a requirement or prohibition of any rule, order, waiver, permit or plan promulgated, issued or approved under the Act.

3. Section 114(a)(1) of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, to establish and maintain records, to make reports, to sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

4. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

5. Section 111(a)(3) of the Act defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant.

6. Section 112(a)(1) of the Act defines a "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant (HAP) or twenty-five (25) tpy or more of any combination of HAPs.

7. Section 112(b)(1) of the Act lists 188 HAPs determined to cause adverse health or environmental effects.

8. Section 112(c) of the Act directs EPA to publish a list of all categories and subcategories of, *inter alia*, major sources of HAPs.

9. Section 112(d)(1) of the Act directs EPA to promulgate regulations establishing emission standards for each category or subcategory of, *inter alia*,

major sources of HAPs listed under § 112(c). These emission standards must require the maximum degree of reduction in emissions of hazardous air pollutants that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for the new or existing sources in the category or subcategory to which the emission standard applies.

10. Section 112(h) of the Act authorizes EPA to promulgate "design, equipment, work practice, or operational" standards, or combinations thereof, which are consistent with § 112(d) or (f) of the Act, to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP.

11. Pursuant to §§ 112(d)(2)(D) and (E) of the Act, design, equipment, work practice, or operational standards, or combinations thereof, promulgated under § 112(h) of the CAA, are treated as emission standards.

12. A standard EPA promulgated pursuant to §§ 112(d) and (h) of the Act is known as a National Emission Standards for Hazardous Air Pollutants (NESHAP). The NESHAPs EPA promulgated pursuant to the Act as amended in 1990 are known as the maximum achievable control technology (MACT) standards and are set forth at 40 C.F.R. Part 63.

13. Pursuant to § 114 of the Act, EPA is authorized to require any person who owns or operates any emission source to establish and maintain records, make reports, install, use, and maintain monitoring equipment, sample emissions, submit compliance certifications, and provide other information.

## **Organic Leaks Distribution MACT**

14. Pursuant to § 112(c) of the Act, EPA identified organic liquids distribution as a category of sources of HAPs.

15. Pursuant to § 112(d) of the Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)", at 40 C.F.R. Part 63, Subpart EEEE, 40 C.F.R. §§ 63.2330 - 63.2406, known as the "OLD MACT."

16. Pursuant to 40 C.F.R. §§ 63.2330 and 63.2334, the Organic Liquids Distribution MACT applies to organic liquids distribution operations, that, among other things, store organic liquids, are located at, or part of, a major source of HAP emissions. The organic liquids distribution operation may occupy an entire plant site or be collocated with other industrial operations at the same plant site.

17. Pursuant to 40 C.F.R. § 63.2338, the Organic Liquids Distribution MACT applies to each new, reconstructed, or existing organic liquids distribution affected source as defined in 40 C.F.R. § 63.2.

18. Pursuant to 40 C.F.R. § 63.2338(b), the "affected source" is, with certain exceptions not relevant here, the collection of activities and equipment used to distribute organic liquids into, out of, or within a facility that is a major source of HAP.

19. Pursuant to 40 C.F.R. § 63.2338(b)(1), the affected source is composed of all storage tanks storing organic liquids.

20. Pursuant to 40 C.F.R. § 63.2338(b)(3)(i), the affected source is composed of all equipment leak components in organic liquids service that are associated with storage tanks storing organic liquids.

21. Pursuant to 40 C.F.R. § 63.2342(b)(1), an owner or operator of an affected existing organic liquids distribution source must comply with the emission limitations, operating limits and work practice standards by no later than February 5, 2007, with certain exceptions not relevant here, and remain in compliance thereafter.

22. Pursuant to 40 C.F.R. § 63.2346(c), for each pump, valve, and sampling connection that operates in organic liquids service for at least 300 hours per year, an owner or operator of an affected organic liquids distribution source must comply with the applicable Leak Detection and Repair (LDAR) provisions in accordance with the requirements of 40 C.F.R. Part 63, Subpart TT (Control Level 1 MACT) if the affected source has at least one storage tank that meets the applicability criteria for control in Table 2 of the Organic Liquids Distribution MACT.

23. Table 2 of the Organic Liquids Distribution MACT provides that an owner or operator must comply with the emission limits for the organic liquids distribution emission source if they own or operate: (i) a storage tank at the affected source with a capacity of greater than or equal to 50,000 gallons; (ii) the stored organic liquid is not crude oil; and (iii) the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is less than 11.1 pounds per square inch absolute (psia).

24. Pursuant to 40 C.F.R. § 63.2350, an owner or operator of an affected source must comply with emission limitations, operating limits, and work practice standards of the Organic Liquids Distribution MACT at all times when the equipment identified in 40 C.F.R. § 63.2338(b)(1) – (4) is in organic liquids distribution operation.

25. Pursuant to 40 C.F.R. § 63.2386(b), an owner or operator of an affected source must submit reports in accordance with Table 11 of the Organic Liquids Distribution MACT by the dates provided in 40 C.F.R. § 63.2386(b)(1) – (3) or the dates provided in Table 12, whichever are applicable.

26. Pursuant to 40 C.F.R. § 63.2386(b)(1), the first Compliance report must cover the period beginning on the compliance date that is specified for the particular affected source in 40 C.F.R. § 63.2342 and ending on June 30 or December 31, whichever is the first date following the end of the first calendar half after the compliance date that is specified for the particular affected source in 40 C.F.R. § 63.2342.

27. Pursuant to 40 C.F.R. § 63.2386(b)(2), each subsequent Compliance report must cover the semi-annual reporting period from January 1 through June 30 or the semi-annual reporting period from July 1 through December 31.

28. Pursuant to 40 C.F.R. § 63.2386(c), the first Compliance report must contain the information specified in 40 C.F.R. § 63.2386(c)(1) - (10).

29. Pursuant to 40 C.F.R. § 63.2386(c)(6), if there are no deviations from any emission limitation or operating limit that applies to the affected source

and there are no deviations from the requirements for work practice standards, the first Compliance report must contain a statement that there were no deviations from the emission limitations, operating limits, or work practice standards during the reporting period.

30. Pursuant to 40 C.F.R. § 63.2386(d), subsequent Compliance report must contain the information specified in 40 C.F.R. § 63.2386(c)(1) – (10), and where applicable, the information in 40 C.F.R. § 63.2386(d)(1) – (4).

31. Pursuant to 40 C.F.R. § 63.2406, “organic liquid” is defined as any non-crude oil or liquid mixture that contains 5 percent by weight or greater of the organic HAP listed in Table 1 of the Organic Liquids Distribution MACT, as determined by using the procedures specified in 40 C.F.R. § 63.2354(c).

32. Pursuant to 40 C.F.R. § 63.2406, “organic liquids distribution operation” means the combination of activities and equipment used to store or transfer organic liquids into, out of, or within a plant site regardless of the specific activity being performed. Activities include, but are not limited to, storage, transfer, blending, compounding, and packaging.

33. Pursuant to 40 C.F.R. § 63.2406, “plant site” means all contiguous or adjoining surface property that is under common control, including surface properties that are separated only by a road or other public right-of-way.

34. Pursuant to 40 C.F.R. § 63.2406, “storage tank” means a stationary unit that is constructed primarily of non-earthen materials that provide structural support and is designed to hold a bulk quantity of liquid.

### **Control Level 1 MACT**

35. Pursuant to § 112(d) of the Act, EPA promulgated the “National Emissions Standards for Equipment Leaks – Control Level 1” (Control Level 1 MACT), at 40 C.F.R. Part 63, Subpart TT, 40 C.F.R. §§ 63.1000 - 63.1018.

36. Pursuant to 40 C.F.R. § 63.1000, the Control Level 1 MACT applies to the control of air emissions from equipment leaks for which another subpart references the use of 40 C.F.R. § 63.1000 for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing subpart. The provisions of 40 C.F.R. Part 63, Subpart A (General Provisions) do not apply to this subpart except as noted in the referencing subpart.

37. Pursuant to 40 C.F.R. § 63.1001, “equipment” means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector and instrumentation system in regulated material service; and any control device or systems used to comply with the Control Level 1 MACT.

38. Pursuant to 40 C.F.R. § 63.1004(a), an owner or operator of a regulated source subject to the Control Level 1 MACT must monitor all regulated equipment as specified in 40 C.F.R. § 63.1004(a)(1) for instrument monitoring.

39. Pursuant to 40 C.F.R. § 63.1004(b), instrument monitoring, as required under the Control Level 1 MACT, must comply with the requirements specified in 40 C.F.R. § 63.1004(b)(1) – (6).

40. Pursuant to 40 C.F.R. § 63.1004(b)(1), monitoring must comply with 40 C.F.R. Part 60, Appendix A, Method 21 (Method 21).

41. Pursuant to 40 C.F.R. § 63.1004(b)(2), with one exception not relevant here, the detection instrument must meet the performance criteria of Method 21.

42. Pursuant to 40 C.F.R. § 63.1004(b)(3), the detection instrument must be calibrated before use on each day of its use by the procedures specified in Method 21.

43. Pursuant to 40 C.F.R. § 63.1004(b)(4), the calibration gases must be zero air (less than 10 parts per million (ppm) of hydrocarbon in air); and a mixture of methane in air at a concentration of approximately, but less than, 10,000 ppm; or a mixture of n-hexane in air at a concentration of approximately, but less than, 10,000 ppm. A calibration gas other than methane in air or n-hexane in air may be used if the instrument does not respond to methane or n-hexane or if the instrument does not meet the performance criteria specified in 40 C.F.R. § 63.1004(b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more compounds to be measured in air.

44. Pursuant to 40 C.F.R. § 63.1004(b)(5), monitoring must be performed when the equipment is in regulated material or is in use with any other detectable material.

45. Pursuant to 40 C.F.R. § 63.1006(b)(2), for valves in gas and vapor service and in light liquid service, the detection instrument reading that defines a leak is 10,000 parts per million or greater.

46. Pursuant to 40 C.F.R. § 63.1007(b)(2), for pumps in light liquid service, the detection instrument reading that defines a leak is 10,000 parts per million or greater.

### **Method 21**

47. Method 21, § 3.1 defines “calibration gas” to mean the volatile organic compound (VOC) used to adjust the instrument meter reading to a known value. The calibration gas is usually the reference compound at a known concentration approximately equal to the leak definition concentration.

48. Method 21, § 6.0 provides that a VOC monitoring instrument must meet the specifications in §§ 6.1 – 6.6.

49. Method 21, § 6.2 provides that the monitoring instrument must be capable of measuring the leak definition concentration specified in the regulation.

50. Method 21, § 7.1.1 defines “Zero Gas” as air, less than 10 parts per million by volume (ppmv) VOC.

51. Method 21, § 8.1.2 provides that the calibration precision test must be completed prior to placing the analyzer into service and at subsequent 3-month intervals or at the next use, whichever is later.

52. Method 21, § 8.1.3 provides that the response time test is required before placing the instrument into service. If a modification to the sample pumping system or flow configuration is made that would change the response time, a new test is required before further use.

53. Method 21, § 8.3.1 provides the following: “Type 1 - Leak Definition Based on Concentration. Place the probe inlet at the surface of the component

interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly sample the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe inlet at this maximum reading location for approximately two times the instrument response time. If the maximum observed meter reading is greater than the leak definition in the applicable regulation, record and report the results as specified in the regulation reporting requirements.”

#### **Title V**

54. Section 502(a) of the Act provides, among other things, that after the effective date of any permit program approved or promulgated pursuant to title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under title V of the Act or to operate a title V affected source, except in compliance with a permit issued by a permitting authority under title V of the Act.

55. Section 502(b) of the Act requires EPA to promulgate regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency and set forth the procedures by which EPA will approve, oversee, and withdraw approval of State operating permit programs.

56. 40 C.F.R. Part 70, promulgated pursuant to title V of the Act, among other things, sets forth corresponding minimum requirements for State operating permit programs.

57. 40 C.F.R. Part 71 sets forth the comprehensive federal air quality operating permit program consistent with the requirements of title V of the Act, and defines the requirements and the corresponding procedures by which EPA will issue title V operating permits.

58. Section 502(d)(1) of the Act requires each State to develop and submit to the Administrator a permit program meeting the requirements of title V of the Act.

59. Pursuant to § 502(d)(1) of the Act and to meet the requirements of § 502(b) of the Act, and 40 C.F.R. Part 70, New Jersey developed and submitted N.J.A.C. 7:27-22 (the New Jersey Title V Operating Permit Program).

60. EPA granted interim approval to the New Jersey Title V Operating Permit Program, with an effective date of June 17, 1996. 61 Fed. Reg. 24,715 (May 16, 1996).

61. EPA granted final approval of the New Jersey Title V Operating Permit Program, with an effective date of November 30, 2001. 66 Fed. Reg. 63,168 (Dec. 5, 2001).

62. Section 504(a) of the Act and the New Jersey Title V Operating Permit Program regulations have at all times required that each permit issued pursuant to title V shall include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable implementation plan.

63. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to § 502(b) of the Act shall include requirements that the permittee periodically (but no less frequently than annually) certify that its facility is in compliance with any applicable requirements of the title V Operating Permit and that the permittee promptly report any deviations from the operating permit requirements to the permitting authority.

64. N.J.A.C. 7:27-22.19(f), a provision in the New Jersey Title V Operating Permit Program, requires that sources certify compliance annually and submit annual certifications to both the permitting agency, New Jersey Department of Environmental Protection (NJDEP), and EPA.

65. On June 2, 2004, NJDEP issued the Facility a title V operating permit. Permit Activity Number: BOP990001.

66. On November 28, 2007, NJDEP issued the Facility a minor modification and preconstruction approval to the Facility's title V operating permit. This approval merged the provisions of the previously approved operating permit with the permit activity number BOP990001 and the changes from the minor modification into a single comprehensive permit that replaced the one previously issued, and provided a new permit activity number of BOP070003 (hereinafter the title V Operating Permit).

67. Reference #1 in the "Group 9 Organic Liquids Distribution MACT Equipment Leak Components" section of Respondent's title V Operating Permit includes the Organic Liquids Distribution MACT as an applicable requirement. See page 46 of the Facility's title V Operating Permit

68. Reference #26 in the "Facility Specific Requirements" section of the Facility's title V Operating Permit includes 40 C.F.R. § 63.2386 as an applicable requirement. See page 35 of the Facility's title V Operating Permit.

69. Reference #7 in the "Facility Specific Requirements" section of the Facility's title V Operating Permit includes N.J.A.C. 7:27 – 22.19(f) as an applicable requirement. See page 2 of the Facility's title V Operating Permit.

### **Finding of Facts**

70. Paragraphs 1 – 69 are realleged and incorporated herein by reference.

71. Respondent is a limited liability corporation and its parent corporation – Kinder Morgan, Inc. is incorporated in the State of Kansas.

72. Respondent is owner and/or operator of the Kinder Morgan Liquids Terminal Facility located in Carteret, New Jersey.

73. On June 18 -19, 2008, pursuant to § 114(a)(1) of the Act, EPA conducted an inspection (Inspection) of the Kinder Morgan Liquids Terminal Facility (Facility) located in Carteret, New Jersey.

74. EPA conducted the Inspection to determine the Facility's compliance status with respect to the Organic Liquids Distribution MACT, the Control Level 1 MACT and Method 21, required by 40 C.F.R. § 63.1004(b).

75. During the Inspection, EPA inspectors observed at least four (4) storage tanks containing Vinyl Acetate, two (2) storage tanks containing Methyl

Isobutyl Ketone, two (2) storage tanks containing Xylene, two (2) storage tanks containing Toluene and one (1) empty storage tank.

76. Vinyl Acetate, Methyl Isobutyl Ketone, Xylene, and Toluene are organic hazardous air pollutants listed on Table 1 to 40 C.F.R. Part 63, Subpart EEEE – “Organic Hazardous Air Pollutants.”

77. During the Inspection, EPA inspectors observed that the Facility has at least one storage tank that meets the applicability criteria for control in Table 2 of the organic liquids distribution MACT.

78. During the Inspection, EPA inspectors observed that the Facility was using a BW Gas Alert Micro 5 PID detection instrument to perform its LDAR monitoring.

79. During the Inspection, EPA inspectors observed that the BW Gas Alert Micro 5 PID detection instrument’s range for VOC monitoring is 0 – 1,000 ppm.

80. During the Inspection, EPA inspectors met and were accompanied on their inspection with Kinder Morgan Facility representatives (Facility Representatives).

81. During the Inspection, a Facility Representative stated that a bump check is performed daily on the BW Gas Alert Micro 5 PID detection instrument.

82. During the Inspection, a Facility Representative stated that calibration on the BW Gas Alert Micro 5 PID detection instrument is performed every thirty (30) days and when the detection instrument fails a bump check.

83. During the Inspection, EPA monitored 176 components at the Facility.

84. During the Inspection, EPA inspectors held EPA's monitoring instrument, a Toxic Vapor Analyzer 1000B (TVA 1000B), to the component interface at Pump 70-16 and found a reading of 600 ppm.

85. During the Inspection, EPA inspectors asked a Facility Representative to confirm the reading of 600 ppm at Pump 70-16 with the Facility's BW Gas Alert Micro 5 PID detection instrument and the Facility Representative was unwilling to hold the probe at the component interface for the amount of time required by Method 21 to perform a reading.

86. During the Inspection, EPA inspectors observed that the calibration gases used by the Facility to calibrate the BW Gas Alert Micro 5 PID detection instrument were 100 ppm Isobutylene, 2.5% Methane (CH<sub>4</sub>), 100 ppm Carbon Monoxide (CO), 25 ppm Hydrogen Sulfide (H<sub>2</sub>S) and 18% Oxygen (O<sub>2</sub>).

87. During the Inspection, EPA inspectors observed that there were no "Zero Gas" cylinders at the Facility.

88. During the closing conference of the Inspection, EPA requested documents from Kinder Morgan, including but not limited to, the Facility's LDAR Standard Operating Procedure, Compliance Reports for 2007, and a list of tanks and tank contents subject to the Organic Liquids Distribution MACT.

89. On June 26, 2008, Kinder Morgan provided EPA the documents requested, including the Facility's LDAR Standard Operating Procedure,

Compliance Reports for 2007, and a list of tanks and tank contents subject to the Organic Liquids Distribution MACT (entitled "OLD MACT Monitoring Points").<sup>1</sup>

90. After the Inspection, EPA reviewed the Facility's Notice of Compliance Status (NCS) Report required by 40 C.F.R. § 63.2382(d)(1) to satisfy the reporting requirements of the Organic Liquids Distribution MACT, dated September 29, 2007.

91. In the NCS Report, Kinder Morgan identifies that the Facility is subject to the Organic Liquids Distribution MACT.

92. In the NCS Report, Kinder Morgan identifies eleven (11) tanks subject to the Organic Liquids Distribution MACT requirements due to tank contents and tank capacity.

93. After the Inspection, EPA reviewed the Facility's Organic Liquids Distribution MACT Compliance Reports and the Facility's title V Annual Compliance Certifications.

94. The Facility's Organic Liquids Distribution MACT Compliance Reports for 2007 and the first half of 2008 indicate compliance with the Organic Liquids Distribution MACT LDAR requirements.

95. In the Facility's title V Operating Permit 2007 and 2008 Annual Compliance Certifications, Respondent certifies that the Facility is in compliance

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<sup>1</sup> The "OLD MACT Monitoring Points" document provided by Kinder Morgan incorrectly identified the following tanks as being subject to the Organic Liquids Distribution MACT: Tank ID Numbers 50, 302 and 303. Kinder Morgan's NCS Report, dated September 29, 2007, states that Tank ID Numbers 50, 302 and 303 are part of the affected source, but not subject to emission limitations, operating limits or work practice standards of this subpart because the tanks are < 50,000 gallons with a true vapor pressure of organic liquid < 4 psia.

with the Organic Liquids Distribution MACT LDAR requirements included as applicable requirements in the Facility's title V Operating Permit.

### **General Allegations**

96. Paragraphs 1 through 95 are repeated and re-alleged as if set forth fully herein.

97. Respondent is a 'person' within the meaning of § 302(e) of the Act, and is therefore subject to the assessment of administrative penalties pursuant to § 113(d) of the Act.

98. Respondent owns and/or operates a stationary source within the meaning of § 111(a)(3) of the Act.

99. Respondent owns and/or operates a major source within the meaning of § 112(a)(1) of the Act.

100. Respondent owns and/or operates an existing organic liquids distribution operation within the meaning of 40 C.F.R. §§ 63.2330 and 63.2334, which is an affected source within the meaning of 40 C.F.R. § 63.2338(b).

101. Respondent, as owner and/or operator of an organic liquids distribution operation is subject to the Organic Liquids Distribution MACT.

102. At all times relevant in this Complaint, Respondent has been the owner and/or operator of at least 11 tanks, which have a capacity of greater than or equal to 50,000 gallons; store organic liquid that is not crude oil; and the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is less than 11.1 psia. See 40 C.F.R. § 63.2330, Subpart EEEE, Table 2.

103. Respondent, as owner and/or operator of an existing organic liquids distribution operation affected source, must comply with the emission limitations, operating limits and work practice standards for existing sources of the Organic Liquids Distribution MACT by no later than February 5, 2007 and remain in compliance thereafter, as required by 40 C.F.R. § 63.2342(b)(1).

### **Count 1**

104. Paragraphs 1 through 103 are repeated and re-alleged as if set forth fully herein.

105. Pursuant to 40 C.F.R. § 63.2346(c) of the Organic Liquids Distribution MACT, an owner or operator of an affected source with at least one storage tank that meets the applicability criteria for control in Table 2 of the Organic Liquids Distribution MACT is required to comply with the referenced LDAR provisions of the Control Level 1 MACT, including 40 C.F.R. § 63.1004(b) and (c).

106. 40 C.F.R. § 63.1004(b) and (c) require an owner or operator to monitor all regulated equipment using Method 21.

107. From at least February 5, 2007 through August 20, 2008, Kinder Morgan failed to perform Method 21 correctly for the following specifications: monitoring; response time testing; quarterly calibration; calibration of the instrument before use each day of its use; use of proper gases during calibration; and use of proper sampling techniques during monitoring. See Method 21, §§ 3.1, 6.0, 7.1.1, 8.1.2, 8.1.3 and 8.3.1.

108. Kinder Morgan's failures to perform Method 21 correctly at the Facility are violations of 40 C.F.R. § 63.1004(b)(1) – (6), and violations of §§ 112 and 114 of the Act. Each such failure is also a violation of Reference #1 in the "Group 9 Organic Liquids Distribution MACT Equipment Leak Components" section of the Facility's title V Operating Permit, which includes 40 C.F.R. § 63.1004(b)(1) – (6) as applicable requirements, and is also a violation of title V of the Act.

### **Count 2**

109. Paragraphs 1 through 108 are repeated and re-alleged as if set forth fully herein.

110. Pursuant to 40 C.F.R. § 63.2386(b) of the Organic Liquids Distribution MACT, an owner or operator of an affected source is required to submit Compliance Reports regarding the Facility's compliance with the Organic Liquids Distribution MACT.

111. Kinder Morgan's Compliance Reports for the two (2) semi-annual periods in 2007 and the first semi-annual period in 2008 did not identify Kinder Morgan's failures to perform Method 21 properly.

112. Each of Kinder Morgan's failure to submit Compliance Reports identifying noncompliance with the Organic Liquids Distribution MACT is a violation of 40 C.F.R. § 63.2386(b) and §§ 112 and 114 of the Act. Each such failure is also a violation of the periodic reporting requirements set forth in Reference #26 of the "Facility Specific Requirements" section of the Facility's

title V Operating Permit, which includes 40 C.F.R. § 63.2386 as an applicable requirement and is also a violation of title V of the Act.

**Count 3**

113. Paragraphs 1 through 112 are repeated and re-alleged as if set forth fully herein.

114. Section 503(b)(2) of the Act provides that regulations promulgated pursuant to § 502(b) of the Act must include requirements that the permittee periodically (but no less frequently than annually) certify that the Facility is in compliance with any applicable requirements in the title V Operating Permit, and to promptly report any deviations from permit requirements to the permitting authority.

115. N.J.A.C. 7:27 – 22.19(f) provides that all New Jersey title V Operating Permits shall include a provision that requires Annual Compliance Certifications be submitted to NJDEP and EPA.

116. Reference #7 in the "Facility Specific Requirements" section of the Facility's title V Operating Permit requires the Facility to submit to NJDEP and EPA Annual Compliance Certifications for each applicable requirement, pursuant to N.J.A.C. 7:27 – 22.19(f), within 60 days after the end of each calendar year during which the Facility's title V Operating Permit was in effect.

117. In the Facility's title V Annual Compliance Certifications for 2007 and 2008, Kinder Morgan certified compliance with the Organic Liquids Distribution MACT in the Facility's title V Annual Compliance Certifications even

though the Facility failed to comply with certain requirements of the Organic Liquids Distribution MACT, the Control Level 1 MACT and Method 21.

118. Each of Kinder Morgan's failure to identify noncompliance with Organic Liquids Distribution MACT, the Control Level 1 MACT and Method 21 in the Facility's title V Annual Compliance Certifications, is a violation of N.J.A.C. 7:27 – 22.19(f) and a violation of the reporting requirements set forth in Reference #7 of the "Facility Specific Requirements" section of the Facility's title V Operating Permit, which includes N.J.A.C. 7:27 – 22.19(f) as an applicable requirement and is also a violation of title V of the Act.

#### **Proposed Civil Penalty**

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and January 7, 2009, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009 and up to \$37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997, further adjusted 17.23% for violations that occurred March

15, 2004 through January 12, 2009, for a total of 28.95% and further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%.

In determining the amount of penalty to be assessed, § 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint, of **\$284,660**.

Respondents' violations alleged in Counts 1 through 3 result in Respondent being subject to the assessment of administrative penalties pursuant to § 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in § 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy). The CAA Penalty Policy sets forth EPA's guidelines concerning the application of the factors to be considered, under § 113(e) of the CAA, in proposing the penalty.

Below are short narratives explaining the reasoning behind the penalties proposed in this Complaint, along with the reasoning behind various general

penalty factors and adjustments that were used in the calculation of the total penalty amount.

### **Gravity Based Penalties**

Count 1: Violation of 40 C.F.R. § 63.1004(b)(1) – (6) and Reference #1 of the Facility's title V Permit.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for each testing/monitoring violation. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The violation alleged in this Count occurred over a period of a little over eighteen (18) months. The CAA Penalty Policy directs that a penalty of \$20,000 be proposed for a violation that persisted for 18 months. The proposed penalty was then adjusted 30% for the violation of the title V condition, which included the 40 C.F.R. § 63.1004(b)(1)-(6) as applicable requirements, resulting in a proposed penalty of \$45,500.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposes a \$13,172 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time. The total proposed penalty for this violation is \$58,672 for Count 1.

Count 2: Violation of 40 C.F.R. § 63.2386(c) and Reference #26 of the Facility's title V Permit.

The CAA Penalty Policy provides a \$5,000 to \$15,000 penalty for incomplete reporting. EPA reviewed Kinder Morgan's Compliance Reports for

2007 to 2008, the years that Kinder Morgan was in violation of Organic Liquids Distribution MACT and the Control Level 1 MACT and discovered that Kinder Morgan did not submit complete reports for two semi-annual periods in 2007 and one semi-annual period in 2008. EPA proposes a penalty of \$10,000 for each of the incomplete reports because although only a relatively small portion of the report is missing, the information is relevant to the compliance status of the Facility. Affected parties obtaining and reacting to compliance information and reporting it to the regulator is important to the regulatory scheme. The proposed penalty was then adjusted 30% for the violation of the title V condition, which included the 40 C.F.R. § 63.2386(c) as applicable requirements, resulting in a proposed penalty of \$39,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposed a \$11,291 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time. The total proposed penalty for this violation is \$50,291 for Count 2.

Count 3: Violation of § 503 of the Act and Facility Specific Requirements, Reference #7 of the Facility's title V Permit.

The CAA Penalty Policy provides a \$5,000 to \$15,000 penalty for incomplete reporting. EPA reviewed Kinder Morgan's title V Annual Compliance Certifications for 2007 and 2008, the years that Kinder Morgan was in violation of the Organic Liquids Distribution MACT, the Control Level 1 MACT, and Method 21 and discovered that Kinder Morgan did not submit accurate Annual

Compliance Certifications for 2007 and 2008. EPA proposes a penalty of \$10,000 for each of the incomplete reports because although only a relatively small portion of the report is missing, the information is relevant to the compliance status of the Facility. Affected parties obtaining and reacting to compliance information and reporting it to the regulator is important to the regulatory scheme. EPA proposes an unaggravated and unadjusted gravity component penalty for these violations of \$20,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring on March 15, 2004 through January 12, 2009. Therefore, EPA proposed a \$5,790 inflationary adjustment which reflects the 28.95% inflation adjustment for violations that occurred during this period of time. The total proposed penalty for this violation is \$25,790 for Count 3.

#### Inflation Adjustment

Pursuant to the Debt Collection Improvement Act (DCIA), 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, the regulation promulgated pursuant to the DCIA, the CAA Penalty Policy "preliminary deterrence" amount should be adjusted 10% for inflation for all violations occurring January 30, 1997 through March 15, 2004, further adjusted an additional 17.23% for all violations occurring on March 15, 2004 until January 12, 2009, and further adjusted an additional 9.83% for all violations occurring after January 12, 2009. The violations alleged in this Complaint began as early as February 2007 and continued until

August 2008 therefore, the adjustment made for inflation is 28.95%, which resulted in a total inflation adjustment of \$30,253.

#### Title V Adjustment

The CAA Penalty Policy indicates that the gravity component of a penalty can be aggravated up to 100% in consideration of, among other things, the extent to which the violator knew of the legal requirement. In this instance, Respondent included its obligation to comply with the Organic Liquids Distribution MACT regulations in its title V application and was further put on notice of the requirements in its title V Operating Permit. The title V Operating Permit was in effect throughout the entire period of time in which violations of the Organic Liquids Distribution MACT and Control Level 1 MACT, alleged herein, occurred. Therefore, in accordance with the CAA Penalty Policy and EPA Region 2's practice with regard to title V violations, as stated in the narratives above, EPA proposed the penalties for the violations alleged in Counts 1 and 2 of this Complaint be adjusted upwards by 30%.

#### Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator determined by the violator's net worth for corporations or net current assets for partnerships. In this matter, the only available data EPA could locate on net worth of Kinder Morgan Liquids Terminals, LLC is of the parent corporation – Kinder Morgan, Inc., which has a net worth of \$30 billion, as stated on Kinder Morgan Inc.'s website located at: [www.kindermorgan.com](http://www.kindermorgan.com).<sup>2</sup> The CAA Penalty Policy directs that where the size of the violator figure represents

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<sup>2</sup> The website was last visited on July 27, 2010.

more than 50% of the preliminary deterrence amount EPA may reduce the size of violator figure to 50% of the preliminary deterrence amount. The preliminary deterrence amount includes both the gravity component and the economic benefit component. Therefore, EPA proposes a total size of violator component of \$142,330. The size of violator component of the penalty may be adjusted should information be discovered that indicates the Respondents' net worth is less or more than estimated.

#### Economic Benefit

In addition to the Gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from non-compliance. The policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. EPA calculated the economic benefit component of the violations using the BEN model, for the avoided cost of using a contractor to conduct the Organic Liquids Distribution MACT and Control Level 1 MACT LDAR program and determined that \$6,500 was the annual cost for using a contractor to conduct the annual LDAR Method 21 monitoring. For the noncompliance period of 13 months, EPA proposes an economic benefit of \$7,577.

In summary, EPA proposes a total penalty of **\$284,660** for the violations alleged in this Complaint.

### **Notice of Opportunity to Request a Hearing**

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days after service of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

Marie T. Quintin  
Assistant Regional Counsel  
Office of Regional Counsel, Air Branch  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days after service of this Complaint, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

#### **Settlement Conference**

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer

informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Marie T. Quintin at (212) 637-3243 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

**Payment of Penalty in lieu of Answer, Hearing and/or Settlement**

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the

Dated: AUGUST 5, 2016



Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

TO: Jim Fleming, Manager EHS  
Kinder Morgan Liquids Terminal, LLC  
78 Lafayette Street  
Carteret, NJ 07008

cc: Edward Choromanski, Director  
Enforcement and Compliance  
NJ Department of Environmental Protection  
401 East State Street  
Trenton, NJ 08625

Trish Conti, Director Central Regional Office  
Enforcement and Compliance  
NJ Department of Environmental Protection  
Mail Code 22-03A  
P O Box 420  
Trenton, NJ 08625

CERTIFICATE OF SERVICE

I certify that the attached Compliant and Notice of Opportunity (and its enclosures), dated 8/06/2010 were sent in the following manner to the addressees listed below.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Copy by Hand to:

Marie Quintin  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Air Branch, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Copy by Pouch to:

Maria Whiting-Beale  
Administrative Assistant to Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, DC 20460

Copy by (*Certified*) Mail to:

Jim Fleming, Manager EHS  
Kinder Morgan Liquids Terminal, LLC  
78 Lafayette Street  
Carteret, NJ 07008

Dated: August 6, 2010

  
Katherine Zuckerman  
Air Branch Secretary  
U.S. Environmental Protection Agency  
Office of Regional Counsel, Region 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

AUG - 5 2010

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jim Fleming, Manager EHS  
Kinder Morgan Liquids Terminal, LLC  
78 Lafayette Street  
Carteret, NJ 07008

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
2010 AUG 10 PM 3:45  
REGIONAL HEARINGS  
CLERK

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**  
In the matter of: Kinder Morgan Liquids Terminal, LLC  
CAA-02-2010-1226

Dear Mr. Fleming:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Kinder Morgan Liquids Terminal, LLC, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (the Act), § 7413(d). The Complaint alleges violations of 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 as applicable requirements. The total amount of the penalty proposed by the Complaint is \$284,660.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If the motion is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.

Counsel designated to appear on behalf of the Complainant in this matter is Marie Quintin, who can be reached at (212) 637-3243 or by mail at the address listed below.

As stated in the section of the Complaint entitled "Settlement Conference," EPA is prepared to pursue settlement of this matter immediately.

I encourage you or your attorney, if you are represented, to contact EPA counsel.

Sincerely,

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A  
HEARING

40 C.F.R. Part 22, Consolidated Rules of Practice Governing the  
Administrative Assessment of Civil Penalties and the Revocation or  
Suspension of Permits

Clean Air Act Stationary Source Civil Penalty Policy

cc: Regional Hearing Clerk (With: Original Complaint and Certificate of Service; and  
one copy of both the Complaint and Certificate of Service):

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

Counsel on behalf of EPA:

Marie Quintin  
Office of Regional Counsel, Air Branch  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway - 16th Floor  
New York, New York 10007-1866

Edward Choromanski, Director  
Enforcement and Compliance  
NJ Department of Environmental Protection  
401 East State Street  
Trenton, NJ 08625

Trish Conti, Director Central Regional Office  
Enforcement and Compliance  
NJ Department of Environmental Protection  
Mail Code 22-03A  
P O Box 420  
Trenton, NJ 08625