



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 27 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jessica Toll
Assistant General Counsel
Kinder Morgan Southeast Terminals LLC
370 Van Gordon Street
Lakewood, Colorado 80228-8304

RE: Kinder Morgan Southeast Terminals LLC
Consent Agreement and Final Order (CAFO)
Docket No. CWA-04-2010-5133(b)

Dear Ms. Toll:

Enclosed please find a copy of the executed CAFO as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Kinder Morgan Southeast Terminals LLC on notice of its potential duty to disclose to the Securities Exchange Commission (SEC) any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions, please feel free to contact me at (404) 562-9705.

Sincerely,

A handwritten signature in black ink, appearing to read "Alfred R. Politzer".

Alfred R. Politzer
Assistant Regional Counsel
Office of Environmental Accountability

Enclosures (2)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)
)
Kinder Morgan Southeast Terminals LLC)
500 Dallas Street, Suite 1000)
Houston, Texas 77002)
)
)
Respondent)
_____)
)

CWA SECTION 311 CLASS II
CONSENT AGREEMENT AND
FINAL ORDER
UNDER 40 C.F.R. § 22.13(b)
Docket No.: CWA-04-2010-5133(b)

2010 JUL 27 PM 3:16
HEARING ROOM
EPA REGION 4

LEGAL AUTHORITY

This Consent Agreement and Final Order (CAFO) is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) & 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities pursuant to CWA delegation 2-52-A to the Director, RCRA Division, of EPA Region 4 (Complainant).

CONSENT AGREEMENT

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges"

2. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA the Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation related onshore facilities.

3. EPA subsequently promulgated the Spill Prevention Control and Countermeasures (SPCC) regulations pursuant to these delegated statutory authorities and its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements for each owner and operator of a non-transportation related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in quantities that EPA has determined may be harmful to the public health or welfare or the environment of the United States.

4. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either: (1) a violation of applicable water quality standards; or (2) a film,

sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

5. Respondent, Kinder Morgan Southeast Terminals LLC (KMST), is a corporation organized under the laws of the State of Delaware. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

6. Respondent is the “owner/operator” of an “onshore facility” within the meaning of Sections 311(a)(6) & (10) of the CWA, 33 U.S.C. §§ 1321(a)(6) & (10), and 40 C.F.R. § 112.2, which is an oil storage facility located at 31 Kola Road, Collins, Covington County, Mississippi (the Facility). The Facility is a bulk oil products storage tank facility that includes storage for two grades of motor gasoline and diesel.

7. Stormwater from the Facility drains, by gravitational flow, to the Okatoma Creek. The Okatoma Creek is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 and therefore is subject to the jurisdiction of Section 311 of the CWA.

8. The facility receives oil products from the Baton Rouge refinery via the Plantation Pipeline and redistributes to customers via tank truck utilizing a 3-lane bottom loading rack. There are a total of eleven (11) aboveground storage tanks. The facility’s total aboveground oil storage capacity is 253,572 barrels (10.6 million gallons). The capacity of the largest tank is 85,314 barrels (3.5 million gallons) from gasoline Tank #11.

9. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.1, as described in 40 C.F.R. Part 112, Appendix A.

10. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an "SPCC-regulated facility").

11. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility must prepare in writing and implement an SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

12. Solely for the purposes of this CAFO, Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

13. On February 2, 2006, a drain valve at the truck loading rack was inadvertently hit during equipment maintenance. The open valve discharged into a drain system which flows into the facility's oil/water separator. The gasoline flow exceeded the capability of the oil/water separator, was pumped through the activated carbon canister, and ultimately discharged out of Outfall 001. Approximately, 5,387 gallons of premium gasoline were discharged from the facility.

14. In response to this discharge, EPA conducted an SPCC inspection at the Facility on February 4, 2006. In addition, EPA sent Respondent information requests pursuant to Sections 308 and 311 of the CWA, 33 U.S.C. §§ 1318 and 1321, on March 3, 2006, January 22, 2008, January 27, 2008, and January 21, 2009. Respondent replied to each information request. Based on Respondent's answers and the inspection, EPA determined that Respondent failed to implement its SPCC Plan as required by 40 C.F.R. § 112.3 in accordance

with the guidelines for Plan implementation at 40 C.F.R. §§ 112.7 and 112.8. Specifically, EPA alleged the following deficiencies:

a. Respondent failed to keep the master flow and drain valve that permitted direct outward flow of a tank's contents to the surface adequately secured in a closed position when in a non-operating or standby status as required by 40 C.F.R. § 112.7(g)(2);

b. Respondent failed to keep sufficient containment capacity at the truck rack loading area as required by 40 C.F.R. § 112.7(h)(1) (the containment system must hold at least the maximum capacity of the largest single compartment of any tank car or tank truck); and

c. Respondent's secondary containment structures for the tanks were inadequate (as required by 40 C.F.R. § 112.8(c)(2), a facility must provide a secondary means of containment for the entire capacity of the largest single container including sufficient freeboard to contain precipitation, and be sufficiently impervious to contain discharged oil).

15. EPA therefore, alleges that Respondent violated 40 C.F.R. § 112.3 by failing to implement an SPCC plan in accordance with the 40 C.F.R. §§ 112.7 and 112.8 guidelines for plan implementation.

Waiver of Rights

16. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Terms of Agreement

17. The Complainant proposes, and Respondent consents to, the assessment of a civil

penalty of \$22,000. By signing this Consent Agreement, Respondent certifies that all violations alleged in this Consent Agreement have been corrected.

Payment Terms

18. Respondent consents and agrees to the payment of the civil penalty no later than thirty (30) calendar days after the effective date of the Final Order.

19. Respondent shall make payment of the penalty by a corporate/cashier's check or certified check, by a wire transfer, or online. If paying by check, Respondent shall submit a corporate/cashier's check or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." Respondent shall reference the facility name and the docket number for this matter on the face of the check, and the check shall be tendered, if by U.S. Postal Service, to:

EPA Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197

Or, if by commercial express delivery service to:

U.S. Bank
Government Lockbox 979077
EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If Respondent sends payment by wire transfer, the payment shall be addressed to the Federal Reserve Bank of New York.

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street

New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

If Respondent chooses the online payment option, available through the Department of Treasury, this payment option can be accessed from the information below.

www.pay.gov
Enter sfo 1.1 in the search field

Open form and complete required fields.

Respondent shall submit a copy of the payment to the following addressees:

Patricia Bullock
Regional Hearing Clerk
EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

And to:

Larry Lamberth, Chief
South Enforcement & Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

20. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

21. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered pursuant to 40 C.F.R. § 22.45(c)(4)(ii).

22. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

23. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

24. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into and execute this Consent Agreement, and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

25. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Alfred Politzer
Assistant Regional Counsel
EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9705

26. The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

Jessica Toll
Assistant General Counsel
Kinder Morgan Southeast Terminals LLC
370 Van Gordon Street
Lakewood, Colorado 80228-8304
(303) 763-3313

Effective Date

27. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

Kinder Morgan Southeast Terminals LLC

Date: May 6, 2010

Thomas A. Barrigan

Print Name: Thomas A. Barrigan

Print Title: Partner

U.S. Environmental Protection Agency

Date: July 2, 2010

G. Alan Farmer

G. Alan Farmer
Director
RCRA Division


Kinder Morgan Southeast Terminals, LLC)	CONSENT AGREEMENT AND
500 Dallas Street, Suite 1000)	FINAL ORDER
Houston, Texas 77002)	UNDER 40 C.F.R. § 22.13(b)
)	
)	
Respondent)	Docket No.: CWA-04-2010-5133(b)
_____)		

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with 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*, codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

Respondent, Kinder Morgan Southeast Terminals, LLC, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2010-5133(b).

Date: JUL 20 2010



 A. Stanley Meiburg
 Acting Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of Kinder Morgan Southeast Terminals, LLC, Docket No. CWA-04-2010-5133(b), on the parties listed below in the manner indicated:

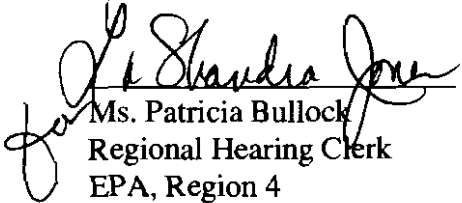
Alfred Politzer (Via EPA's internal mail)
Office of Environmental Accountability
EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Parvez Mallick (Via EPA's internal mail)
RCRA and OPA Enforcement and Compliance Branch
EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Quantindra Smith (Via EPA's internal mail)
RCRA and OPA Enforcement and Compliance Branch
EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Kinder Morgan Southeast Terminals LLC (Via Certified Mail)

Dated this 27th day of July, 2010.


Ms. Patricia Bullock
Regional Hearing Clerk
EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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EPA REGION 4
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