



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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FILED  
EPA REGION 8  
DENVER COLORADO

IN THE MATTER OF: )

Kinder Morgan Upstream, LLC )  
Douglas Gas Plant Facility )  
252 Highway 59 North )  
Douglas, Wyoming 82633 )

Respondent )

**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

**DOCKET NO.: CAA-08-2012-0014**

1. This civil administrative enforcement action is issued to Kinder Morgan Upstream, LLC (Kinder Morgan or Respondent) pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), for alleged violations of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r). This proceeding is subject to EPA's *Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. Respondent is a domestic corporation organized under the laws of Delaware.
4. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a Combined Complaint and Consent Agreement (CCCA).

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**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

1. This civil administrative enforcement action is issued to Kinder Morgan Upstream, LLC (Kinder Morgan or Respondent) pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), for alleged violations of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r). This proceeding is subject to the Environmental Protection Agency’s (EPA) *Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22. Pursuant to Section 113(d)(1)(C) of the CAA, 42 U.S.C. § 7413(d)(1)(C), the Department of Justice and the EPA have jointly determined that this matter is appropriate for handling as an administrative penalty action.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. Respondent is a domestic corporation organized under the laws of Delaware.
4. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and

concluded simultaneously by the issuance of a Combined Complaint and Consent Agreement (CCCA).

5. The parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.

6. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

#### JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies all remaining allegations herein.

8. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

#### STATUTORY AND REGULATORY FRAMEWORK

9. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances. The regulations promulgated by EPA pursuant to CAA § 112(r)(7), are set forth in 40 C.F.R. part 68.

10. Under 40 C.F.R. § 68.3, the following definitions apply:
  - a. “Stationary source” means “any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.”
  - b. “Regulated substance” means “any substance listed (pursuant to section 112(r)(3) of the Clean Air Act) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.
11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” to include in relevant part, an individual, corporation, or partnership.
12. Respondent is a person and subject to regulation under section 112(r) of the CAA, 42 U.S.C. §7412(r)(7).
13. Pursuant to section 112(r) of the CAA, 42 U.S.C. § 7412(r)(7), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity is required to prepare and implement a risk management plan (RMP) to detect and prevent or minimize accidental releases of such substances.

#### SPECIFIC ALLEGATIONS

14. On March 3, 2011, an authorized representative of the EPA conducted an inspection of the Respondent’s facility (Douglas Gas Plant or the Facility), located at 252 Highway 59 North, Douglas, Wyoming, with the consent of the Respondent, to determine compliance with CAA § 112(r)(7) and 40 C.F.R. part 68 (EPA inspection). During the EPA inspection, the EPA representative observed multiple alleged violations of 40 C.F.R. part 68.
15. The alleged violations are described in paragraphs 16-20.

16. 40 C.F.R. § 68.15 provides that the owner or operator shall develop a management system to oversee the risk management program elements.

An up-to-date management system with the names or positions of individuals responsible for risk management program elements was not available during the EPA inspection. This is a violation of 40 C.F.R. § 68.15.

17. 40 C.F.R. § 68.73(b) provides that the owner or operator shall establish written procedures to maintain the on-going integrity of process equipment. Furthermore, the owner or operator shall comply with the requirements of 40 C.F.R. part 68 no later than the dates listed in 40 C.F.R. § 68.10.

Written procedures to maintain the on-going integrity of process equipment were not established on or before the date which a regulated substance was first present above a threshold quantity in a process. This is a violation of 40 C.F.R. § 68.73(b).

18. 40 C.F.R. § 68.73(d)(2) provides that inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

Inspections and testing procedures performed on multiple process vessels including, but not limited to, process vessel 16.17 (demethanizer), process vessel 16.26 (demethanizer surge tank), process vessel 721-95-37 (propane accumulator), process vessel 721-95-41 (propane storage tank), process vessel 95-45 (low temp separator), process vessel 95-38 (deethanizer feed tank) and process vessel 95-6 (high pressure NGL storage vessel) did not follow recognized and generally accepted good engineering practices. Condition Monitoring Locations were not in accordance with the American Petroleum Institute's (API) Pressure Vessel Inspection Code (510). Construction and design information was not available for review in accordance with API 510. The name of the person performing the inspection and/or examination was not



documented in the inspection reports, in accordance with API 510. This is a violation of 40 C.F.R. § 68.73(d)(2).

19. 40 C.F.R. § 68.73(d)(3) provides that the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices.

- a. The frequency of inspections and tests performed on multiple process vessels including, but not limited to, process vessel 16.17 (demethanizer), process vessel 16.26 (demethanizer surge tank), process vessel 721-95-37 (propane accumulator), process vessel 721-95-41 (propane storage tank), process vessel 95-45 (low temp separator), process vessel 95-38 (deethanizer feed tank) and process vessel 95-6 (high pressure NGL storage vessel) were not consistent with good engineering practices. Inspection frequencies for external inspection, internal inspection, and/or non-destructive examination were not in accordance with API 510. This is a violation of 40 C.F.R. § 68.73(d)(3).

20. 40 C.F.R. § 68.73(e) provides that the owner or operator shall correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

Process vessel 721-95-37 (propane accumulator) had deficient shell thickness readings that were below minimum wall thickness requirements, as calculated by the Respondent. At the time of the EPA inspection this deficiency was not addressed. This is a violation of 40 C.F.R. § 68.73(e).

## PENALTY

21. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of 42 U.S.C. § 7412r. For purposes of determining the amount of any civil penalty to be assessed, section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, 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 (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

22. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This CCCA contains all terms of the settlement agreed to by the parties. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments. Respondent consents and agrees to pay a civil penalty in the amount of **one hundred fifty-eight thousand dollars (\$158,000)**.

## CERTIFICATION OF COMPLIANCE

23. On or before ninety days after the date of the Final Order approving this CCCA, Kinder Morgan shall submit to EPA a Certification of Compliance, establishing Respondent’s completion of the items described in subparagraphs a-d below. In the Certification of



Compliance Respondent shall demonstrate:

- a. that a management system has been developed to oversee the implementation of the risk management program elements in accordance with 40 C.F.R. § 68.48;
- b. that written procedures for the inspection and testing of all process equipment have been established and follow recognized and generally accepted good engineering practices in accordance with 40 C.F.R. § 68.73(b);
- c. that inspection and tests have been performed on all covered process equipment at the Douglas Gas Plant in accordance with 40 C.F.R. § 68.73(d); and,
- d. that all deficiencies in equipment that are outside acceptable limits have been corrected.

24. After learning of the issues alleged by EPA, Kinder Morgan voluntarily extended the 2011 shutdown time for the Douglas Gas Plant to conduct additional mechanical integrity testing to bring mechanical integrity testing into full compliance. Testing was completed for the Douglas Gas Plant in September and October 2011, and the final report demonstrating full mechanical integrity compliance was submitted to EPA on January 27, 2012.

25. The Certification of Compliance shall contain the date, printed name, and signature of a Kinder Morgan officer, as well as the following statement:

*I certify that I am authorized to verify the completion of work on behalf of Kinder Morgan, LLC. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*

26. The Certification of Compliance shall be mailed or emailed to Greg Bazley at the following address:

U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
ATTN: Greg Bazley, 8ENF-AT  
E-mail: [bazley.greg@epa.gov](mailto:bazley.greg@epa.gov)

### OTHER TERMS

27. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
28. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
29. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
30. The undersigned representative of Kinder Morgan certifies that he or she is fully authorized to enter into and legally bind Kinder Morgan to the terms and conditions of the CCCA.
31. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
32. Each party shall bear its own costs and attorney fees in connection with this administrative matter.
33. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

34. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

Complainant

Date: 07/24/12

By: Eddie A. Seina  
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Kinder Morgan Upstream, LLC

Representative of Respondent

Date: 6/28/12

By: [Signature]  
Title: HOLD SEPARATE MANAGER

Trustee

Date: 6/28/12

By: [Signature]  
Robert Ogle

Title: HOLD SEPARATE TRUSTEE  
Hold Separate Trustee

## **COLLECTION INFORMATION**

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

### **CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

### **WIRE TRANSFERS:**

Wire transfers should be directed 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 NY 10045  
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

**ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. 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.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER** in the matter of **KINDER MORGAN UPSTREAM, LLC., DOUGLAS GAS PLANT FACILITY; DOCKET NO.: CAA-08-2012-0014**, was filed with the Regional Hearing Clerk on September 18, 2012.

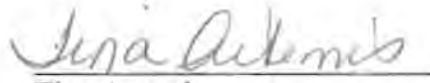
Further, the undersigned certifies that a true and correct copy of the document was delivered to David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on September 18, 2012, to:

Jessica Toll, Assistant General Counsel  
370 Van Gordon Street  
PO Box 281304  
Lakewood, CO 80228-8304

And emailed to:

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

September 18, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk