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October 14, 2010

Via Overnight (Federal Express)

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 OCT 15 A 11: 53
REGIONAL HEARING
CLERK

Re: Complaint and Notice of Opportunity to Request a Hearing
In the matter of: Kinder Morgan Liquid Terminals, LLC
CAA-02-2010-1226

Dear Ms. Maples:

This firm represents Respondent Kinder Morgan Liquid Terminals, LLC in the above matter. Enclosed is an original and two (2) copies of Respondent’s Answer, Affirmative Defenses And Request for Hearing (“Answer”) along with a Certificate of Service. Kindly return one copy of the Answer marked “filed” in the enclosed return Federal Express envelope.

Should you have any comments or questions, please contact me at 609-452-5032.

Very truly yours,

Andrea A. Lipuma
Saul Ewing LLP
Attorneys for Respondent

AAL/dl
Enclosures
cc: Marie T. Quintin, Esq. (With Enclosures/Via Overnight Mail (Federal Express))

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2010 OCT 15 A 11:53
RECEIVED HEARINGS
OCT 15 2010

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Attorneys for Kinder Morgan Liquids Terminals LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re:

**Kinder Morgan Liquids Terminals, LLC
Respondent**

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

**KINDER MORGAN LIQUIDS
TERMINALS LLC'S ANSWER,
DEFENSES AND REQUEST FOR
HEARING**

Respondent Kinder Morgan Liquids Terminals LLC ("KMLT"), by and through its counsel, hereby answers the Complaint filed by the United States Environmental Protection Agency Region 2 ("EPA"), as follows:

ANSWER

KMLT denies that it is liable for the damages alleged in the Complaint. At all relevant times, KMLT acted in good faith to comply with the Clean Air Act, its permits, applicable regulations and New Jersey state law. At no time during the relevant period were there emissions from the equipment at issue in violation of the Clean Air Act ("Act"), KMLT's permits or the federal or state regulations.

Statutory, Regulatory, and Permitting Background

1. KMLT states that the allegations contained in paragraph one of the Complaint are legal conclusions to which no response is required. To the extent a response is required,

KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph one of the Complaint, leaving EPA to its proofs.

2. KMLT states that the allegations contained in paragraph two of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph two of the Complaint, leaving EPA to its proofs.

3. KMLT states that the allegations contained in paragraph three of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph three of the Complaint, leaving EPA to its proofs.

4. KMLT states that the allegations contained in paragraph four of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies these allegations, leaving EPA to its proofs.

5. KMLT states that the allegations contained in paragraph five of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph five of the Complaint, leaving EPA to its proofs.

6. KMLT states that the allegations contained in paragraph six of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph six of the Complaint, leaving EPA to its proofs.

7. KMLT states that the allegations contained in paragraph seven of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph seven of the Complaint, leaving EPA to its proofs.

8. KMLT states that the allegations contained in paragraph eight of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph eight of the Complaint, leaving EPA to its proofs.

9. KMLT states that the allegations contained in paragraph nine of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph nine of the Complaint, leaving EPA to its proofs.

10. KMLT states that the allegations contained in paragraph ten of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph ten of the Complaint; leaving EPA to its proofs.

11. KMLT states that the allegations contained in paragraph eleven of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph eleven of the Complaint, leaving EPA to its proofs.

12. KMLT states that the allegations contained in paragraph twelve of the Complaint are legal conclusions to which no response is required. To the extent a response is required,

KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph twelve of the Complaint, leaving EPA to its proofs.

13. KMLT states that the allegations contained in paragraph thirteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and KMLT neither admits nor denies the allegations of paragraph thirteen of the Complaint, leaving EPA to its proofs.

Organic Leaks Distribution MACT

14. KMLT states that the allegations contained in paragraph fourteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, and KMLT neither admits nor denies these allegations, leaving EPA to its proofs.

15. KMLT states that the allegations contained in paragraph fifteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifteen of the Complaint, leaving EPA to its proofs.

16. KMLT states that the allegations contained in paragraph sixteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the regulations speak for themselves and KMLT neither admits nor denies the allegations of paragraph sixteen of the Complaint, leaving EPA to its proofs.

17. KMLT states that the allegations contained in paragraph seventeen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph seventeen of the Complaint, leaving EPA to its proofs.

18. KMLT states that the allegations contained in paragraph eighteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT is without knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph eighteen of the Complaint.

19. KMLT states that the allegations contained in paragraph nineteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph nineteen of the Complaint and leaves EPA to its proofs.

20. KMLT states that the allegations contained in paragraph twenty of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty of the Complaint and leaves EPA to its proofs.

21. KMLT states that the allegations contained in paragraph twenty-one of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the regulations speak for themselves. In addition, KMLT is without knowledge or information sufficient to form a belief about the truth of the allegations concerning exceptions contained in paragraph twenty-one of the Complaint.

22. KMLT states that the allegations contained in paragraph twenty-two of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty-two of the Complaint and leaves EPA to its proofs.

23. KMLT states that the allegations contained in paragraph twenty-three of the Complaint are legal conclusions to which no response is required. To the extent a response is

required, KMLT neither admits nor denies the allegations of paragraph twenty-three of the Complaint and leaves EPA to its proofs.

24. KMLT states that the allegations contained in paragraph twenty-four of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty-four of the Complaint and leaves EPA to its proofs.

25. KMLT states that the allegations contained in paragraph twenty-five of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty-five of the Complaint and leaves EPA to its proofs.

26. KMLT states that the allegations contained in paragraph twenty-six of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty-six of the Complaint and leaves EPA to its proofs.

27. KMLT states that the allegations contained in paragraph twenty-seven of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty-seven of the Complaint and leaves EPA to its proofs.

28. KMLT states that the allegations contained in paragraph twenty-eight of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty-eight of the Complaint and leaves EPA to its proofs.

29. KMLT states that the allegations contained in paragraph twenty-nine of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph twenty-nine of the Complaint and leaves EPA to its proofs.

30. KMLT states that the allegations contained in paragraph thirty of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty of the Complaint and leaves EPA to its proofs.

31. KMLT states that the allegations contained in paragraph thirty-one of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-one of the Complaint and leaves EPA to its proofs.

32. KMLT states that the allegations contained in paragraph thirty-two of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-two of the Complaint and leaves EPA to its proofs.

33. KMLT states that the allegations contained in paragraph thirty-three of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-three of the Complaint and leaves EPA to its proofs.

34. KMLT states that the allegations contained in paragraph thirty-four of the Complaint are legal conclusions to which no response is required. To the extent a response is

required, KMLT neither admits nor denies the allegations of paragraph thirty-four of the Complaint and leaves EPA to its proofs.

Control Level 1 MACT

35. KMLT states that the allegations contained in paragraph thirty-five of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-five of the Complaint and leaves EPA to its proofs.

36. KMLT states that the allegations contained in paragraph thirty-six of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-six of the Complaint and leaves EPA to its proofs.

37. KMLT states that the allegations contained in paragraph thirty-seven of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-seven of the Complaint and leaves EPA to its proofs.

38. KMLT states that the allegations contained in paragraph thirty-eight of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-eight of the Complaint and leaves EPA to its proofs.

39. KMLT states that the allegations contained in paragraph thirty-nine of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph thirty-nine of the Complaint and leaves EPA to its proofs.

40. KMLT states that the allegations contained in paragraph forty of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty of the Complaint and leaves EPA to its proofs.

41. KMLT states that the allegations contained in paragraph forty-one of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-one of the Complaint and leaves EPA to its proofs.

42. KMLT states that the allegations contained in paragraph forty-two of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-two of the Complaint and leaves EPA to its proofs.

43. KMLT states that the allegations contained in paragraph forty-three of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-three of the Complaint and leaves EPA to its proofs.

44. KMLT states that the allegations contained in paragraph forty-four of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-four of the Complaint and leaves EPA to its proofs.

45. KMLT states that the allegations contained in paragraph forty-five of the Complaint are legal conclusions to which no response is required. To the extent a response is

required, KMLT neither admits nor denies the allegations of paragraph forty of the Complaint and leaves EPA to its proofs.

46. KMLT states that the allegations contained in paragraph forty-six of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-six of the Complaint and leaves EPA to its proofs.

Method 21

47. KMLT states that the allegations contained in paragraph forty-seven of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-seven of the Complaint. and leaves EPA to its proofs

48. KMLT states that the allegations contained in paragraph forty-eight of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-eight of the Complaint and leaves EPA to its proofs.

49. KMLT states that the allegations contained in paragraph forty-nine of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph forty-nine of the Complaint and leaves EPA to its proofs.

50. KMLT states that the allegations contained in paragraph fifty of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty of the Complaint and leaves EPA to its proofs.

51. KMLT states that the allegations contained in paragraph fifty-one of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-one of the Complaint and leaves EPA to its proofs.

52. KMLT states that the allegations contained in paragraph fifty-two of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-two of the Complaint and leaves EPA to its proofs.

53. KMLT states that the allegations contained in paragraph fifty-three of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-three of the Complaint and leaves EPA to its proofs.

Title V

54. KMLT states that the allegations contained in paragraph fifty-four of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-four of the Complaint and leaves EPA to its proofs.

55. KMLT states that the allegations contained in paragraph fifty-five of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-five of the Complaint and leaves EPA to its proofs.

56. KMLT states that the allegations contained in paragraph fifty-six of the Complaint are legal conclusions to which no response is required. To the extent a response is

required, KMLT neither admits nor denies the allegations of paragraph fifty-six of the Complaint and leaves EPA to its proofs.

57. KMLT states that the allegations contained in paragraph fifty-seven of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-seven of the Complaint and leaves EPA to its proofs.

58. KMLT states that the allegations contained in paragraph fifty-eight of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-eight of the Complaint and leaves EPA to its proofs.

59. KMLT states that the allegations contained in paragraph fifty-nine of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph fifty-nine of the Complaint and leaves EPA to its proofs.

60. KMLT admits the allegations contained in paragraph sixty of the Complaint.

61. KMLT admits the allegations contained in paragraph sixty-one of the Complaint.

62. KMLT states that the allegations contained in paragraph sixty-two of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph sixty-two of the Complaint and leaves EPA to its proofs

63. KMLT states that the allegations contained in paragraph sixty-three of the Complaint are legal conclusions to which no response is required. To the extent a response is

required, KMLT neither admits nor denies the allegations of paragraph sixty-three of the Complaint and leaves EPA to its proofs.

64. KMLT states that the allegations contained in paragraph sixty-four of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph sixty-four of the Complaint and leaves EPA to its proofs.

65. KMLT admits the allegations contained in paragraph sixty-five of the Complaint.

66. KMLT admits that in November 2007 NJDEP issued the Carteret Facility a modification and preconstruction approval to the Facility's title V operating permit. KMLT further states that the terms of the permit and the permit modifications speak for themselves.

67. KMLT states that the terms of the permit and the permit modifications speak for themselves.

68. KMLT states that the terms of the permit and the permit modifications speak for themselves.

69. KMLT states that the terms of the permit and the permit modifications speak for themselves.

EPA's Finding of Facts Alleged in the Complaint

70. KMLT incorporates by reference its responses to paragraphs one through sixty-nine of the Complaint as if fully set forth herein.

71. KMLT admits that it is a Delaware limited liability corporation and admits that Kinder Morgan, Inc. is incorporated in the State of Kansas. KMLT denies that Kinder Morgan Inc. is the parent corporation of KMLT. KMLT states that the sole member of KMLT is

Kinder Morgan Operating L.P. “D”, an operating partnership of Kinder Morgan Energy Partners, L.P., a publicly traded Delaware limited partnership.

72. KMLT admits the allegations contained in paragraph seventy-two of the Complaint.

73. KMLT admits that representatives from the EPA conducted an inspection at the KMLT Carteret, New Jersey Facility (“Facility”) on or about June 18-19, 2008, and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph seventy-three of the Complaint.

74. KMLT admits that EPA conducted an inspection at the Facility during which EPA representatives evaluated compliance with the Organic Liquids Distribution MACT, the Control level 1 MACT and Method 21.

75. KMLT admits the allegations contained in paragraph seventy-five of the Complaint.

76. KMLT states that the allegations contained in paragraph seventy-six of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph seventy-six of the Complaint and leaves the EPA to its proofs.

77. KMLT admits the allegations in paragraph seventy-seven of the Complaint.

78. KMLT admits that at the time of the inspection the Facility was using a BW Gas Alert Micro 5 PID detection instrument.

79. KMLT admits that the BW Gas Alert Micro 5 PID detection instrument had a range for VOC monitoring of 0-1,000 ppm. To the extent the allegations in paragraph

seventy-nine address what an EPA inspector observed, KMLT is without knowledge or information sufficient to form a belief about the truth of those allegations.

80. KMLT admits the allegations contained in paragraph eighty of the Complaint.

81. KMLT admits that at the time of the inspection the Facility conducted a bump test daily using the BW Gas Alert Micro 5 PID detection instrument.

82. KMLT admits that at the time of the inspection of the Facility, calibration on the BW Gas Alert Micro 5 PID detection instrument was conducted every thirty days and if it failed a daily bump check. To the extent the allegations in paragraph eighty-two address what was stated to, or reported by an EPA inspector, KMLT is without knowledge or information sufficient to form a belief about the truth of those allegations.

83. KMLT admits that during the inspection in 2008, EPA conducted monitoring of Facility components and admits that 172 components were monitored.

84. KMLT admits the allegations contained in paragraph eighty-four of the Complaint.

85. KMLT admits that a KMLT representative documented the reading of 600 ppm at Pump 70-16. The remaining allegations contained in paragraph eighty-five of the Complaint are denied.

86. KMLT admits that at the time of the inspection of the Facility, calibration on the BW Gas Alert Micro 5 PID detection instrument was conducted every thirty days and if it failed a daily bump check. KMLT admits that the BW Gas Alert Micro 5 PID was calibrated using 100 ppm isobutylene, 50% methane, 100 ppm carbon dioxide, 25 ppm hydrogen sulfide, and 18% oxygen. To the extent the allegations in paragraph eighty-six of the Complaint

address what was stated to, or reported by an EPA inspector, KMLT is without knowledge or information sufficient to form a belief about the truth of those allegations.

87. KMLT admits the allegations contained in paragraph eighty-seven.

88. KMLT admits the allegations contained in paragraph eighty-eight.

89. KMLT admits the allegations contained in paragraph eight-nine of the Complaint except to state that the allegations made in footnote one refer to documents, the terms of which speak for themselves. In addition, KMLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in footnote one of paragraph eight-nine of the Complaint.

90. KMLT is without knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph ninety of the Complaint.

91. KMLT states that the terms of the NCS Report referenced in paragraph ninety-one of the Complaint speak for themselves.

92. KMLT states that the terms of the NCS Report referenced in paragraph ninety-two of the Complaint speak for themselves.

93. KMLT admits it provided to EPA documents reference in paragraph ninety-three of the Complaint. To the extent the allegations contained in paragraph ninety-three of the Complaint speak to what EPA reviewed, KMLT is without knowledge or information sufficient to form a belief about the truth of those allegations.

94. KMLT states that the terms of the Compliance Reports referenced in paragraph ninety-four of the Complaint speak for themselves.

95. KMLT states that the terms of the Facility's title V Operating Permit 2007 and 2008 Annual Compliance Certifications referenced in paragraph ninety-five of the Complaint speak for themselves.

Response to EPA's General Allegations

96. KMLT incorporates by reference its responses to paragraphs one through ninety-five of the Complaint as if fully set forth herein.

97. KMLT states that the allegations contained in paragraph ninety-seven of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph ninety-seven of the Complaint and leaves EPA to its proofs.

98. KMLT states that the allegations contained in paragraph ninety-eight of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph ninety-eight of the Complaint and leaves EPA to its proofs.

99. KMLT states that the allegations contained in paragraph ninety-nine of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph ninety-nine of the Complaint and leaves EPA to its proofs.

100. KMLT states that the allegations contained in paragraph one hundred of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph one hundred of the Complaint and leaves EPA to its proofs.

101. KMLT states that the allegations contained in paragraph one hundred and one of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph one hundred and one of the Complaint and leaves EPA to its proofs.

102. KMLT admits that it is the owner and operator of the Carteret Facility which contains tanks that have a capacity of greater than or equal to 50,000 gallons and which are subject to Subpart EEEE, 40 C.F.R. § 63.2300. To the extent the allegations in paragraph one hundred and two characterize the regulation of Subpart EEEE, such regulations speak for themselves and are the best evidence of their content.

103. KMLT states that the allegations contained in paragraph one hundred and three of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph one hundred and three of the Complaint and leaves EPA to its proofs.

Count 1

104. KMLT incorporates by reference its responses to paragraphs one through one hundred and three of the Complaint as if fully set forth herein.

105. KMLT states that the allegations contained in paragraph one hundred and five of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT neither admits nor denies the allegations of paragraph one hundred and five of the Complaint and leaves EPA to its proofs.

106. KMLT states that the allegations contained in paragraph one hundred and six of the Complaint are legal conclusions to which no response is required. To the extent a response

is required, KMLT neither admits nor denies the allegations of paragraph one hundred and six of the Complaint and leaves EPA to its proofs.

107. KMLT denies the allegations contained in paragraph one hundred and seven of the Complaint.

108. KMLT states that the allegations contained in paragraph one hundred and eight of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT denies the allegations of paragraph one hundred and eight of the Complaint.

Count 2

109. KMLT incorporates by reference its responses to paragraphs one through one hundred and eight of the Complaint as if fully set forth herein.

110. KMLT states that the allegations contained in paragraph one hundred and ten of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of regulations speak for themselves and further states that it complied with the compliance reporting requirements.

111. KMLT states that the allegations in paragraph one hundred and eleven constitute characterization of the Compliance Reports, which speak for themselves and are the best evidence of their content. and denies that it failed to report properly.

112. KMLT states that the allegations contained in paragraph one hundred and twelve of the Complaint are legal conclusions to which no response is required and characterizations of the Compliance Reports, which speak for themselves and are the best evidence of their content. To the extent a response is required, KMLT denies the allegations contained in paragraph one hundred and twelve of the Complaint.

Count 3

113. KMLT incorporates by reference its responses to paragraphs one through one hundred and twelve of the Complaint as if fully set forth herein.

114. KMLT states that the allegations contained in paragraph one hundred and fourteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the Act speak for themselves and denies that it failed to report properly.

115. KMLT states that the allegations contained in paragraph one hundred and fifteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the regulation speak for themselves and denies that it failed to report properly.

116. KMLT states that the allegations contained in paragraph one hundred and sixteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT states that the terms of the permit and regulation speak for themselves and denies that it failed to report properly.

117. KMLT states that the terms of the Facility's title V Compliance Certifications referenced in paragraph one hundred and seventeen of the Complaint speak for themselves. In addition, KMLT denies that it failed to report properly and denies the remaining allegations contained in paragraph one hundred and seventeen of the Complaint.

118. KMLT states that the allegations contained in paragraph one hundred and eighteen of the Complaint are legal conclusions to which no response is required. To the extent a response is required, KMLT denies the allegations of paragraph one hundred and eighteen of the Complaint.

Proposed Civil Penalty

The allegations on proposed civil penalties contained in the Complaint are legal conclusions and reference statutes, regulations and documents which speak for themselves. Under the facts at issue in this case, the proposed penalties are excessive, unwarranted, arbitrary and capricious. KMLT acted in good faith at all relevant times, cooperated with EPA and made good faith efforts to comply with all federal and state statutory and regulatory requirements, including the use of monitoring Method 21 and Title V reporting requirements. In accordance with 40 C.F.R. 63.1004, KMLT monitored the regulated equipment for leaks during the period of February 2007 through June 2008 and thereafter. This monitoring demonstrated that there were no leaks of the regulated equipment during the relevant time period. Indeed, EPA has not alleged any occurrence of excess emissions or any failure to monitor for leaks.

EPA's entire Complaint is based upon allegations of paperwork errors and calibration technicalities, none of which caused any adverse impact to the environment or human health. EPA does not allege any occurrences of elevated air emissions at the KMLT Facility for equipment subject to Method 21 testing during the time period at issue. This is because the undisputed evidence establishes that there were no emissions in excess of the regulatory or permitted limits and that there was no actual or potential harm to human health or the environment.

KMLT took active steps to comply with its monitoring requirements under Subparts EEEE and TT, and it believed that it was complying with the applicable regulations. The Company assessed which tanks were subject to Subpart EEEE and TT and advised its Environmental, Health and Safety ("EHS") personnel of the need to test for leaks and to file timely reports. Monitoring for leaks was performed. KMLT EHS personnel utilized a portable

testing device that was a PID to conduct monthly and/or quarterly inspections of regulated valves and pumps. This PID device is an approved piece of equipment for use under Method 21 at 6.1. and was regularly calibrated by KMLT's outside consultant. A zero gas cylinder was not kept on site at the KMLT Facility because the outside consultant performed the monthly calibrations for the PID. Contrary to EPA's allegations, Method 21 does not require that the zero gas calibration cylinder be kept on site. See Complaint at paragraph 87, 107. Consequently, any penalty assessment for that alleged conduct is inappropriate.

Even though EPA alleges that KMLT did not use a portable device calibrated to conduct Method 21 monitoring, it is not disputed that the device KMLT used was a Method 21 approved-device and monitoring for leaks was conducted. KMLT recorded and maintained leak testing data for use in its semi-annual or annual compliance statements and reports during the period of February 2007 through June 2008 and thereafter. The monthly and quarterly inspection records demonstrate there were no emission exceedances from the monitored valves and pumps. Due to the lack of emission exceedances, the valves and pumps did not have a negative impact on human health or the environment, and did not exacerbate ozone levels.

KMLT representatives were fully cooperative with EPA during the June 2008 inspection of the Carteret Facility, and in all communications and interactions with EPA representatives both before and after that inspection. Indeed, EPA admits that KMLT promptly provided all documentation to EPA as requested. See Complaint at paragraph 89.

EPA alleges that during the June 2008 inspection, KMLT did not hold a probe at the LDAR component for the amount of time required by Method 21. However, this is incorrect as Method 21 8.3.1 requires holding the probe for two times the length of the response time for the instrument. The required response time was met based upon the specifications for the PID

instrument used by KMLT. Therefore, any penalty assessment or penalty increase is improper to the extent that it is based on the allegation that KMLT did not following the Method 21 requirements for the time to hold the detection instrument near the component interface.

Shortly after the inspection, KMLT hired a new consultant to ensure that all regulatory requirements, calibrations and issues discussed during the inspection were fully complied with and addressed. KMLT took immediate action to correct any alleged technical Method 21 monitoring mistakes as pointed out by the EPA inspectors following the June 2008 EPA inspection.

Penalty Issues

In asserting its penalty demands EPA has failed to follow its own “Clean Air Act Stationary Source Civil Penalty Policy,” dated October 25, 1991, revised July 23, 1995, and is seeking an inappropriate penalty. EPA has failed to include applicable mitigation factors such as a ten percent (10%) to thirty percent (30%) reduction on the gravity component for KMLT’s fully cooperating with EPA, and additional percentage reductions up to thirty percent (30%) for good faith efforts to comply. See EPA Policy at p. 1-2; 16-17.

On its face, the penalty amount appears excessive and in violation of the Eighth Amendment of the United States Constitution. Based on EPA’s own policies, the base penalty alleged by EPA should be no more than twenty-thousand dollars (\$20,000) (five thousand dollars (\$5000) for Count 1; ten thousand dollars (\$10,000) for Count 2 and five thousand dollars (\$5000) for Count 3) and the hundreds of thousands of dollars which EPA seeks to add on to inflate the base penalty should be rejected. Instead, EPA is seeking a total base penalty of sixty-five thousand dollars (\$65,000) and a total penalty of two hundred and eighty-four thousand, six hundred and sixty dollars (\$284,660).

The difference in the amount of base penalties sought by EPA (sixty-five thousand dollars) and the total penalty amount sought from KMLT is two hundred and nineteen thousand, six hundred and sixty dollars (\$219,660). The percentage of the base amount of the penalty sought to the total amount sought by EPA is twenty-two point eight percent (22.8%). This means that EPA has improperly increased the base amount penalty they are seeking by nearly 77%. When the calculation is done based on an alleged twenty-thousand dollars (\$20,000) penalty amount the overly inflated, excessive amount of the penalties sought in the Complaint become even more evident.

There are numerous other penalty related issues which KMLT intends to assert in this matter, including the following:

Gravity Based Penalties

Count 1 of the Complaint

EPA's discussion in the Complaint of "Gravity Based Penalties" indicates that it is imposing an additional twenty thousand dollar (\$20,000) penalty for violation of 40 C. F. R. section 63.1004(b)(1)-(6) (Count 1 of the Complaint). The justification for imposing this additional \$20,000 is the allegation that the Clean Air Act Penalty Policy "directs that a penalty of \$20,000 be proposed for a violation that persisted for 18 months." See Complaint at p. 25. However, based on the contentions asserted by EPA in the complaint, the alleged violations did not persist for 18 months. Therefore, this additional \$20,000 penalty is improper, arbitrary and capricious. Moreover, in accordance with EPA's Clean Air Act Penalty Policy each and every gravity based penalty assessed should be reduced by at least ten percent (10%) for KMLT's cooperation.

This section of EPA's penalty discussion in the Complaint also includes a provision to increase the penalty for Count 1 by "30% for the violation of the title V condition," and "to adjust the gravity component 28.95%." *Id.* EPA seeks to have both these percentage increases applied to the assessed twenty thousand dollar (\$20,000) improper penalty which results in an almost sixty percent (60%) or twelve thousand dollars (\$12,000), additional, improper and excessive penalty. Therefore, on its face, the amount sought for Count 1 should be reduced by at least thirty-two thousand dollars (\$32,000) based on these factors.

Counts 2 and 3 of the Complaint

Under Counts 2 and 3 of the Complaint, EPA admits that its own policy calls for a penalty that ranges from five thousand dollars (\$5,000) to fifteen thousand dollars (\$15,000) for alleged incomplete reporting. EPA alleges that KMLT's two semi-annual compliance reports for 2007 and the semi-annual compliance report for the first half of 2008 were incomplete, with "only a relatively small portion of the report[s] missing". *See* Complaint at p. 26. The alleged paperwork violation is based on the allegation that KMLT did not report it was not compliant with Method 21. However, KMLT reasonably believed, acting in good faith, that it was compliant with Method 21 and that its reports were complete. As set forth in the EPA Policy, such good faith efforts are to be considered in calculating the penalty and result in penalty reductions.

Based on EPA policies and relevant case law, EPA abused its discretion by not assessing a base penalty amount of five thousand dollars (\$5,000) for the alleged paperwork violation, and for adding eleven thousand, two hundred and ninety-one dollars (\$11,291) for inflationary adjustment. *See* Complaint p. 26. It should also be noted that for Count 2 of the Complaint EPA seeks to assess additional, individual fines in the amount of ten thousand dollars (\$10,000) for

similar paperwork violations that occurred over a period of time. Where there are multiple violations of the same reporting requirement "over a period of time", EPA's own policy is that the reporting violation should be treated as one violation, not several distinct violations.

Based on the facts of this case, the inappropriateness of the proposed penalties is evident when it is seen that what should at most be a five thousand dollars (\$5,000) penalty is increased to a fifty thousand, two hundred and ninety-one dollar (\$50,291) penalty for the allegations of unintentional paperwork violations that did not cause any harm or threat of harm to the environment or the public. This penalty is excessive, and EPA abused its discretion, acted arbitrarily and capriciously, and deviated from its own penalty policies in seeking such a penalty.

These same arguments apply to the penalties sought by EPA for Count 3 of the Complaint. Under the facts of this case, a five thousand dollars (\$5,000) penalty should be the highest penalty to be sought for Count 3. EPA abused its discretion and acted arbitrarily and capriciously by unreasonably inflating its penalty assessments for the alleged violations asserted in Counts 2 and 3 of the Complaint because the alleged paperwork violations are not important to the regulatory scheme and no harm or potential for harm was caused to the environment or to human health. In addition, the Title V adjustment and inflation adjustments were inappropriately applied by EPA.

Inflation Adjustment and Title V Adjustment

EPA abused its discretion and acted arbitrarily and capriciously by unreasonably inflating the penalty amounts sought under Counts 1 through 3 of the Complaint by relying upon the Debt Collection Improvement Act, 31 U.S.C. 3701 *et seq.* ("DCIA") and 40 C.F.R. Part 19. The DCIA and 40 C.F.R. Part 19 only pertain to statutory penalties. They do not pertain to penalty calculations made by EPA based upon a policy that is not subject to notice and public comment

under the Administrative Procedures Act. Therefore, all such increases in penalties are improper, excessive and must be rejected.

Similarly, EPA abused its discretion and acted arbitrarily and capriciously by unreasonably inflating the penalty amounts by thirty percent (30%) because the Respondent is a Title V Facility. There is no policy or legal justification for increasing the penalties alleged by EPA by thirty percent (30%) due to the Title V component.

Size of Violator

EPA contends that the penalties sought against KMLT should be increased by one hundred-forty-two thousand, three hundred and thirty dollars (\$142,330) based on the allegation that “Kinder Morgan, Inc. has a net worth of \$30 billion.” However, KMLT is a completely separate and distinct entity from Kinder Morgan, Inc. and EPA is incorrect when alleging that Kinder Morgan, Inc. is the parent corporation of KMLT. That is simply untrue. See KMLT Answer at paragraph 71. Therefore, assessment of a \$142,330 penalty on KMLT based on an allegation that Kinder Morgan has “a net worth of \$30 billion” is inappropriate, unreasonable, arbitrary and capricious.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Eighth Amendment Excessive Fines clause precludes an award of the damages sought from KMLT by EPA in this case.

SECOND AFFIRMATIVE DEFENSE

EPA’s claims are barred by the doctrines of equitable estoppel and waiver.

THIRD AFFIRMATIVE DEFENSE

EPA abused its discretion and acted arbitrarily and capriciously by deviating from its own "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991, revised July 23, 1995.

FOURTH AFFIRMATIVE DEFENSE

By not assigning the minimum base penalty amount of five thousand dollars (\$5,000) for the alleged paperwork violation asserted in Count 2 of the Complaint, EPA abused its discretion and acted arbitrarily and capriciously and deviated from its own penalty policies.

FIFTH AFFIRMATIVE DEFENSE

As a result of assessing individual fines in the amount of ten thousand dollars (\$10,000) for similar paperwork violations that occurred over a period of time, as asserted in Count 2 of the Complaint, EPA abused its discretion and acted arbitrarily and capriciously and deviated from its own penalty policies.

SIXTH AFFIRMATIVE DEFENSE

In not assigning the Minimum Base Penalty Amount of five thousand dollars (\$5,000) for allegedly not performing a required test method using an incorrect procedure, as asserted in Count 1 of the Complaint, EPA abused its discretion and acted arbitrarily and capriciously and deviated from its own penalty policies.

SEVENTH AFFIRMATIVE DEFENSE

EPA abused its discretion by not assessing a base penalty amount of five thousand dollars (\$5,000) for the alleged paperwork violation, asserted in Count 3 of Petitioner's Complaint.

EIGHTH AFFIRMATIVE DEFENSE

EPA abused its discretion and acted arbitrarily and capriciously by deviating from its own "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991, revised

July 23, 1995, when assessing individual fines of ten thousand dollars (\$10,000) for similar paperwork violations that occurred over a period of time as alleged in Count 3 of the Complaint.

NINTH AFFIRMATIVE DEFENSE

EPA abused its discretion and acted arbitrarily and capriciously by deviating from its own "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991, revised July 23, 1995, by not reducing the gravity based portion of the penalty by ten to thirty percent for the degree of cooperation demonstrated by KMLT, and by not reducing the total proposed penalty by thirty percent based on KMLT's demonstrated good faith efforts to comply.

TENTH AFFIRMATIVE DEFENSE

The claims brought by EPA reflect damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

ELEVENTH AFFIRMATIVE DEFENSE

EPA abused its discretion and acted arbitrarily and capriciously by unreasonably inflating its penalty assessments for the alleged violations asserted in Counts 2 and 3 of the Complaint because the alleged paperwork violations are not important to the regulatory scheme.

TWELTH AFFIRMATIVE DEFENSE

The alleged violations asserted by EPA in Counts 1 through 3 of its Complaint did not result in any actual or potential harm to human health or the environment.

THIRTEENTH AFFIRMATIVE DEFENSE

The alleged violations asserted by EPA in Counts 1 through 3 of its Complaint did not cause or result in any leak of an applicable regulated hazardous air pollutant in amounts of 10,000 ppm or greater.

FOURTEENTH AFFIRMATIVE DEFENSE

Any penalty assessment should not consider sensitivity of the environment because non-attainment for ozone is primarily caused by interstate transport of criteria pollutants and/or hazardous air pollutants and is not the result of activities at the KMLT Facility.

FIFTEENTH AFFIRMATIVE DEFENSE

KMLT timely filed the semi-annual reports for 2007 and the first quarter of 2008, and timely filed its Annual Compliant Statement for years 2007 and 2008.

SIXTEENTH AFFIRMATIVE DEFENSE

KMLT did not purposefully, knowingly or willfully violate the Clean Air Act, any regulations promulgated thereto, or any of its permits.

SEVENTEENTH AFFIRMATIVE DEFENSE

KMLT acted in good faith in complying with the Clean Air Act and all applicable regulations and permits.

EIGHTEENTH AFFIRMATIVE DEFENSE

KMLT cooperated in good faith with EPA at all times and promptly responded to EPA's document and information requests.

NINETEENTH AFFIRMATIVE DEFENSE

KMLT promptly addressed any alleged environmental, compliance and/or reporting items raised by EPA and promptly came into compliance.

TWENTIETH AFFIRMATIVE DEFENSE

Petitioner abused its discretion and acted arbitrarily and capriciously by unreasonably inflating the penalty amounts sought under Counts 1 through 3 of the Complaint by relying upon

the Debt Collection Improvement Act, 31 U.S.C. 3701 *et seq.* (“DCIA”) and 40 CFR 19. The DCIA and 40 CFR 19 only pertain to statutory penalties and not to penalty calculations made by EPA based upon a policy that is not subject to notice and public comment under the Administrative Procedures Act.

TWENTY-FIRST AFFIRMATIVE DEFENSE

EPA abused its discretion and acted arbitrarily and capriciously by unreasonably inflating the penalty amounts by thirty percent (30%) because the Respondent is a Title V Facility.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The penalty sought by EPA does not have a reasonable and proportionate nexus to the alleged violations.

TWENTY-THIRD AFFIRMATIVE DEFENSE

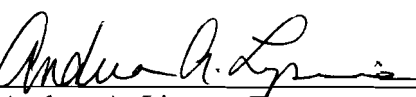
EPA’s claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release, unclean hands, and laches.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

EPA’s claims are barred by the applicable statute of limitations.

Dated: October 14, 2010

SAUL EWING LLP
A Delaware LLP

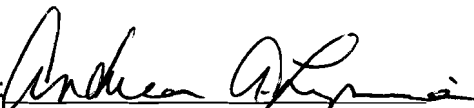
By: 
Andrea A. Lipuma Esq.
Attorneys for Respondent
Kinder Morgan Liquids Terminals LLC

REQUEST FOR HEARING

In accordance with the Administrative Procedure Act, 5. U.S.C. section 552 *et seq.*, and 40 C.F.R. section 22.15, Respondent Kinder Morgan Liquids Terminals LLC hereby requests a Hearing in the matter of In re: Kinder Morgan Liquids Terminals, LLC, Respondent, in a Proceeding under Section 113(d) of the Clean Air Act, brought by the United States Environmental Protection Agency Region 2.

Dated: October 14, 2010

SAUL EWING LLP
A Delaware LLP

By: 
Andrea A. Lipuma, Esq.
Attorneys for Respondent
Kinder Morgan Liquids Terminals LLC

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In re: :
: :
Kinder Morgan Liquid Terminals, LLC : CAA-02-2010-1226
Respondent : :
: :
In a proceeding under :
Section 113(d) of the Clean Air Act :

CERTIFICATE OF SERVICE

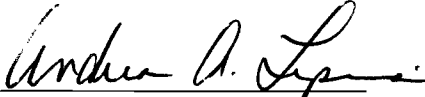
Pursuant to 40 CFR § 22.5(a)(3), I hereby certify that a true and correct original and two (2) copies of Respondent Kinder Morgan Liquid Terminals, LLC Answer, Affirmative Defenses And Request for Hearing was this day served upon the following individuals via overnight mail.

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

Pursuant to 40 CFR § 22.5(a)(3), I hereby certify that a true and correct copy of Respondent Kinder Morgan Liquid Terminals, LLC Answer, Affirmative Defenses And Request for Hearing was this day served upon the following individuals via overnight mail.

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

The Honorable Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency – Region 2
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DATE: October 14, 2010