



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nancy Van Burgel
Assistant General Counsel
Kinder Morgan, Inc.
370 Van Gordon Street
Lakewood, Colorado 80228

Email: Nancy_VanBurgel@kindermorgan.com

Dear Ms. Van Burgel:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Kinder Morgan Liquids Terminals, LLC and KM Phoenix Holdings, LLC docket no. **CAA-05-2019-0032**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on *September 30, 2019*.

Pursuant to Paragraph 35 of the CAFO, Kinder Morgan Liquids Terminals, LLC and KM Phoenix Holdings, LLC must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to William Wagner, Associate Regional Counsel, 312-886-4684.

Sincerely,

Charles G. Hall for BD

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:	)	Docket No. CAA-05-2019-0032
	)	
	)	Proceeding to Assess a Civil Penalty
KM Phoenix Holdings LLC, and	)	
Kinder Morgan Liquids Terminals, LLC	)	
Cincinnati Terminal	)	
Cincinnati, Ohio	)	Under Section 113(d) of the Clean Air Act,
	)	42 U.S.C. § 7413(d)
Respondents.	)	
_____	)	

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act or the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Acting Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondents are KM Phoenix Holdings LLC (KM Holdings) and Kinder Morgan Liquids Terminals, LLC (Kinder Liquids), both of which are limited liability companies doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondents consent to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Section 113(d) of the Act limits the authority of the Administrator of the EPA (Administrator) to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

10. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this CAFO.

Statutory and Regulatory Background

11. Section 110 of the Act provides that states must submit plans for the implementation, maintenance and enforcement of the national primary and secondary ambient air quality standards, where such plans must include, among other provisions, a permit program to enforce emission limitations and other control measures. CAA § 110(a)(2)(C).

12. 40 C.F.R. Part 52 sets forth regulatory provisions pertaining to the approval and

promulgation of implementation plans. Section 52.23 of the general provisions pertains to the violation and enforcement of provisions approved into a state implementation plan, and provides, in pertinent part, as follows:

Failure to comply with any . . . permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.

13. On February 20, 2013, U.S. EPA, Region 5, approved into the Ohio State Implementation Plan (SIP) a Permit to Install and Operate (PTIO) program to make Ohio's air permit program for minor sources more efficient and the permit provisions federally enforceable. 78 Fed. Reg. 11748.

14. The Ohio Environmental Protection Agency (Ohio EPA) issued a PTIO (P0116569) to the gasoline distribution bulk terminal located at 930 Tennessee Ave., Cincinnati, Ohio (Facility) under the EPA approved SIP PTIO program on May 1, 2014. The PTIO sets forth emission limitations and work practices that apply to the Facility's tanks and tank components, and provides, in pertinent part, that "all openings, except stub drains, shall be equipped with a cover, seal, or lid which is to be in a closed position at all times except when in actual use for tank gauging or sampling." Part C.3(c)(1)(d) of PTIO P0116569.

15. The Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for violations that occurred after December 6, 2013 through November 2, 2015, and \$46,192 per day of violation with a maximum of \$369,532 for violations that occurred after November 2, 2015, through the period of violation, under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. On March 30, 2016, EPA issued a Notice of Violation (NOV) to BP Products North America Inc. (BP), which, until February 1, 2016, was the owner and operator of the Facility, for certain violations of the Facility's PTIO. On June 30, 2016, Region 5 issued an NOV to KM Holdings, the current owner of the Facility, which is a joint venture limited liability company between Kinder Morgan, Inc. and BP., and Kinder Liquids, the current operator of the Facility, which is a wholly-owned subsidiary of Kinder Morgan Inc., for continuing violations of the Facility's PTIO. KM Holdings has assumed all liability for the violations alleged in this CAFO that accrued while BP was the owner and operator of the Facility.

17. During a June 3, 2015 inspection of the Facility, EPA and OEPA inspected Tank 016, which stores transmix and is equipped with an internal floating roof, a center vent, and two perimeter vents. The internal floating roof contains a gauge hatch, deck fittings and seams, and seals, which are openings to Tank 016. From the top of the Tank 016, while the tank openings were not in actual use for gauging or sampling, EPA and OEPA inspectors measured gases emitted downwind of the center vent with a photoionization detector (PID) and recorded values as high as 8,032 ppb of volatile organic compounds (VOC). Subsequently, on May 16, 2016, EPA performed a second inspection of the Facility, including Tank 016. Using a FLIR GF-320 camera, EPA inspectors observed continuous leaking hydrocarbon emissions from the center vent and two perimeter vents from Tank 016, while the tank openings were not in actual use for tank gauging or sampling. The above-described hydrocarbon emissions from Tank 016 are evidence of violations of Part C.3(c)(1)(d) of the PTIO P0116569.

18. In a Section 113 conference with Kinder Liquids on September 12, 2016, Kinder Liquids stated its intent to inspect and, if required, repair the tank. Kinder Liquids subsequently completed its inspection of the tank on October 18, 2016, and its repair of the tank on March 6, 2017. The repairs included, among other things, the installation of new floating roof seals. Kinder Liquids returned the tank to service on April 29, 2017.

Civil Penalty

19. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Respondents' prompt return to compliance, and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$10,000.

20. Within 30 days after the effective date of this CAFO, Respondents must pay a \$10,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO. For electronic funds transfer, make payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondents' names and the docket number of this CAFO. For Automated Clearinghouse (ACH) payment, also

known as REX or remittance express, make payable to "Treasurer, United States of America," and send to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondents' names and the docket number of this CAFO.

To pay on-line, go to www.pav.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

21. Respondents must send a notice of payment that states Respondents' names and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

William Wagner (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

22. This civil penalty is not deductible for federal tax purposes.

23. If Respondents do not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection

action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

24. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondents must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondents must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

25. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: wagner.william@epa.gov (for Complainant), and Nancy_VanBurgel@kindermorgan.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

26. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in this CAFO.

27. The effect of the settlement described in paragraph 26 above, is conditioned upon the accuracy of Respondents' representations to EPA, as memorialized in paragraph 30 of this CAFO and Respondents' letters dated April 16, 2018, and July 9, 2018.

28. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

29. This CAFO does not affect Respondents' responsibility to comply with the CAA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

30. Respondents KM Holdings and Kinder Liquids certify that the Facility is in full compliance with the terms and conditions of its PTIO.

31. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

32. The terms of this CAFO bind Respondents, its successors and assigns. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

33. Each party agrees to bear its own costs and attorneys' fees in this action.

34. This CAFO constitutes the entire agreement between the parties.

KM Phoenix Holdings LLC, Respondent

9-17-19
Date


Richard Steinberg
Vice President, Chief Compliance Officer
KM Phoenix Holdings, LLC

Kinder Morgan Liquids Terminals LLC, Respondent

9-17-19
Date


Richard Steinberg
Vice President, Chief Compliance Officer
KM Phoenix Holdings, LLC

United States Environmental Protection Agency, Complainant

9-25-19
Date


for Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: BP Products North America, et al., Cincinnati Terminal

Docket No. CAA-05-2019-0032

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/26/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the matter of: Kinder Morgan Liquids Terminals, LLC and KM Phoenix Holdings, LLC

Docket Number: **CAA-05-2019-0032**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA 05 2019 0032, which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to

Attorney for Respondent:

Nancy Van Burgel

nancy_vanburgel@kindermorgan.com

Copy by E-mail to

Attorney for Complainant:

William Wagner

wagner.william@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle

coyle.ann@epa.gov

Dated: September 30, 2019

LaDawn Whitehead

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): N/A