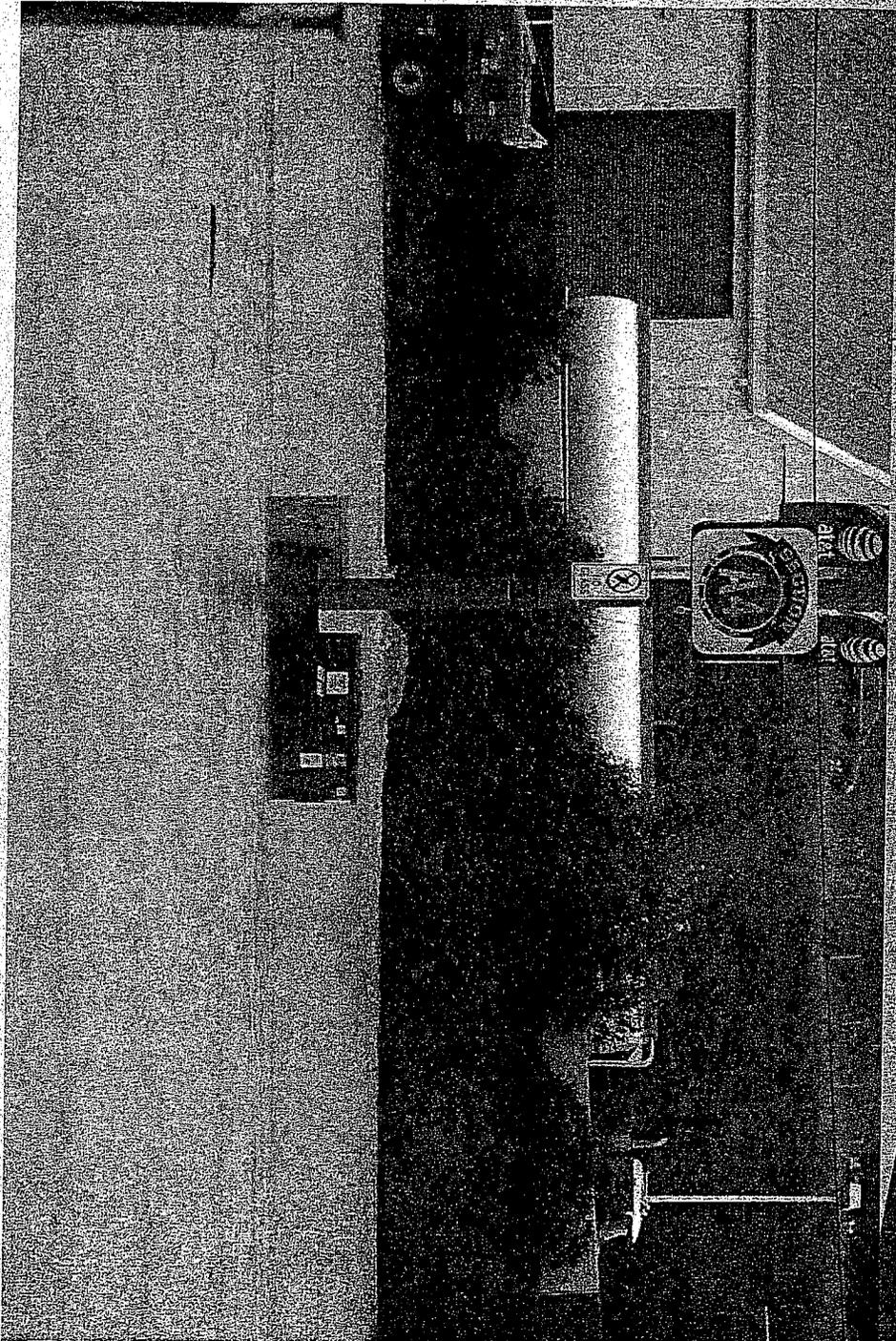


**THINK BLUE**

SAN DIEGO





think BLUE  
SAN DIEGO



# Observations

- **TSO avoids Water Quality Objectives altogether – contrary to Board's mission**
- **TSO would let Kinder Morgan materially contribute to exceeding Basin Plan objectives**
- **TSO fails to address anti-degradation requirements**
- **TSO misses impact of discharges given lacking of mixing zone (Inland Surface Waters Plan)**



SAN DIEGO



# Process Concerns

- **These issues deserve and warrant greater involvement by the Board itself.**
- **Board should decide whether to allow increased discharges**

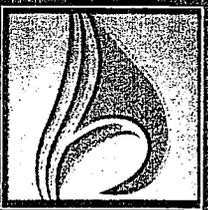


think BLUE  
SAN DIEGO



# Recommendations

- *Require treatment system for TDS immediately*
- *Explicitly acknowledge requirement for City authorization to discharge*
- *Consider City's experience and understanding of impacts from erosion and sedimentation*



THINK BLUE

SAN DIEGO



# Recommendations

- *Direct Kinder Morgan to participate in maintenance efforts*
- *Record specific statement of interest from Board regarding increased maintenance efforts in this channel.*
- *Tie TDS concentrations to Basin Plan limits OR list Kinder Morgan as a point source of TDS in the San Diego River*



SAN DIEGO

think BLUE



**EXHIBIT 16A**



Cal/EPA

San Diego  
Regional Water  
Quality Control  
Board

9771 Clairemont Mesa  
Blvd., Suite A  
San Diego, CA 92124  
(619) 467-2952  
FAX (619) 571-6972

Copies Filed 25. 01

T.P.D.

MAR 24 1997

R. Grand

Steve Sellinger (Envent Corp)



Pete Wilson  
Governor

February 26, 1997

REFERENCE: WQID 9 00000506

Mr. P.L. Avery  
Vice President, Environmental & Safety  
Santa Fe Pacific Pipeline Partners, L.P.  
1100 Town & Country Road  
Orange, Ca 92868

Dear Mr. Avery:

**ADDENDUM NO. 1 TO AUTHORIZATION TO DISCHARGE GROUNDWATER AND  
SIMILAR WASTES FROM THE SANTA FE PACIFIC PIPELINE PARTNERS,  
L.P. (SFPP) MISSION VALLEY TERMINAL (MVT) REMEDIATION SYSTEM  
AT 9950 SAN DIEGO MISSION ROAD, SAN DIEGO, CA**

By letter dated September 24, 1996 I issued authorization to Santa Fe Pacific Pipeline Partners, L.P. (SFPP) to discharge groundwater and similar wastes from the SFPP Mission Valley Terminal remediation system to the San Diego River, subject to this Regional Board's Order No. 96-41 (CAG919002).

The September 24, 1996 authorization identifies waste streams and annual average daily flowrates as follows:

Groundwater from extraction wells	300,000 gallons per day
at Jack Murphy Stadium and Texaco Terminal	continuous discharge
Process water from tank draws	125 gallons per day
	intermittent discharge
Process water from loading rack	500 gallons per day
	intermittent discharge

By letter dated January 22, 1997, on behalf of SFPP, Mr. Tom L. Kerscher, Senior Engineer, Envent Corporation, notified Regional Board staff that effluent sample analysis results reveal concentrations of arsenic that exceed the effluent limitations contained in Order No. 96-41.

By letter dated January 28, 1997, on behalf of SFPP, Mr. Steve M. Sellinger, Senior Engineer, Envent Corporation, requested a waiver of the effluent limitation for arsenic. Staff cannot waive effluent limitations.

February 26, 1997

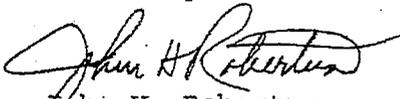
It is hereby ordered that SFPP comply with the following conditions and discharge monitoring in addition to the requirements of Order No. 96-41 and additional conditions and discharge monitoring contained in the September 24, 1996 authorization:

- 1) Conduct monthly sampling of the final effluent for total recoverable and dissolved arsenic. These sample results shall be reported within 30 days after sampling. This monthly sampling shall be conducted for at least six months, at which time staff will reevaluate the presence of arsenic in the effluent.
- 2) Conduct monthly sampling of the primary receiving water (Murphy Canyon Creek-tributary to the San Diego River) for dissolved arsenic. Murphy Canyon Creek shall be sampled immediately upstream of the San Diego River, on the North side/upstream of the access bridge to Jack Murphy Stadium. These sample results shall be reported within 30 days after sampling. This monthly sampling shall be conducted for at least six months, at which time staff will reevaluate the presence of arsenic in the effluent.

I request under the authority of Water Code Section 13267 that you submit the required monitoring reports in accordance with the reporting schedule specified herein and in Order No. 96-41.

If you have any questions, please contact Ms. Whitney Ghoram at (619) 467-2967.

Sincerely,

  
John H. Robertus  
Executive Officer

cc: Chris White, Texaco Refining and Marketing, Inc., Environmental Services, 10 Universal City Plaza, Universal City CA 91608

Tom Danaher, Santa Fe Pacific Pipeline Partners, L.P., 1100 Town & Country Road, Orange, CA 92868

as:sfppdwt./file:14-0506.01



*Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.*

KM0000142959

WJG

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION9771 CLAIREMONT MESA BOULEVARD, SUITE A  
SAN DIEGO, CA 92124-1331  
TELEPHONE: (619) 467-2952  
FAX: (619) 571-6972

Post-it® Fax Note	7671	Date	9/24/96	# of pages	02
To	Steve Selinger	From	William Horton		
Co./Dept.	ENVENT CORP	Co.	CRWD CB		
Phone #	310-436-5150	Phone #	619-467-2967		
Fax #	310-436-5110	Fax #	619-571-6972		

September 24, 1996

Mr. P.L. Avery  
Vice President, Environment  
Santa Fe Pacific Pipeline Partners, L.P.  
1100 Town & Country Road  
Orange, Ca 92868

Dear Mr. Avery:

AUTHORIZATION TO DISCHARGE GROUNDWATER AND SIMILAR WASTES FROM THE SANTA FE PACIFIC PIPELINE PARTNERS, L.P. (SFPP) MISSION VALLEY TERMINAL (MVT) REMEDIATION SYSTEM AT 9950 SAN DIEGO MISSION ROAD, SAN DIEGO, CA

This letter acknowledges receipt of your June 28, 1996 letter and attachments (individual NPDES application and General NPDES Permit application) submitted by Envent Corporation on behalf of SFPP in support of your request to discharge groundwater and similar wastes from the SFPP Mission Valley Terminal remediation system to the San Diego River, subject to this Regional Board's Order No. 96-41 (CAG919002).

Your application identifies waste streams and annual average daily flowrates as follows:

Groundwater from extraction wells at Jack Murphy Stadium and Texaco Terminal	300,000 gallons per day continuous discharge
Process water from tank draws	125 gallons per day intermittent discharge
Process water from loading rack	500 gallons per day intermittent discharge

Based on your signed certification, I am authorizing the initiation of the subject combined discharge under the terms and conditions of Regional Board Order No. 96-41.

It is hereby ordered that the combined discharge flowrate from the Mission Valley Terminal remediation system shall not exceed the following limitations:

Groundwater from extraction wells at Jack Murphy Stadium & Texaco Terminal and Process Water from tank draws & loading rack	300,000 gallons per day
---	-------------------------

Upon completion of all groundwater extraction at Jack Murphy Stadium and Texaco Terminal, authorization to discharge process water from tank draws and loading racks to the San Diego River may be terminated.

September 24, 1996

It is hereby ordered that SFPP comply with the following conditions and monitoring in addition to the requirements of Order No. 96-41:

- 1) Conduct sampling of three sets of distinct grab samples from three different discharge events from gasoline, jet and diesel tank water draws and three grab samples from the loding rack, for benzene, lead, zinc, MTBE (Methyl Tert Butyl Ether) prior to commingling with extracted groundwater. These sample results shall be reported within 30 days after sampling.
- 2) Conduct sampling of the commingled waste streams (final effluent) once every other week, for MTBE (Methyl Tertiary Butyl Ether). These sample results shall be reported monthly.
- 3) Upon treatment system start up, conduct monthly sampling between the two carbon canisters ~~for metals~~ <sup>arsenic</sup> as specified in Order No. 96-41, MTBE, BTEX, TPH, for a total of 6 months. These sample results shall be reported monthly.
- 4) Conduct visual inspections of final effluent (stored in Baker tanks) prior to all discharges to the San Diego River. Upon detection of any free product in the final effluent, immediately cease all discharges to the San Diego River and report recovery of free product and location of free product disposal to the Regional Board within 24 hours of discovery.

I request under the authority of Water Code Section 13267 that you submit the required monitoring reports in accordance with the reporting schedule specified herein and in Order No. 96-41.

Enclosed is a copy of Order No. 96-41. Compliance with the requirements of this order will involve considerable effort on your part. Staff of this Regional Board will be making inspections to ensure that compliance is achieved, and will be pleased to work with you and assist you.

If you have any questions, please contact Ms. Whitney Ghoram at (619) 467-2967.

Sincerely,



John H. Robertus  
Executive Officer

attachment

cc: Chris White, Texaco Refining and Marketing, Inc., Environmental Services, 10 Universal City Plaza, Universal City CA 91608  
Tom Danaher, Santa Fe Pacific Pipeline Partners, L.P., 1100 Town & Country Road, Orange, CA 92868

msfppdwr./file:14-0506.01

**EXHIBIT 16B**



**California Regional Water Quality Control Board**  
**San Diego Region**



Linda S. Adams  
 Secretary for  
 Environmental  
 Protection

Over 50 Years Serving San Diego, Orange, and Imperial Counties  
 Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger  
 Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340  
 (858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

June 23, 2009

**CERTIFIED RETURN RECEIPT MAIL**  
 7009 0080 0000 7433 5424

Mr. Scott Martin  
 Kinder Morgan Energy Partners  
 1100 Town & Country Road  
 Orange, CA 92608

RECEIVED

In reply refer to  
 CRU: 9 000000506:wghoram

JUN 30 2009

Dear Mr. Martin:

**SUBJECT: RE-ENROLLMENT UNDER GENERAL WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM GROUNDWATER EXTRACTION AND SIMILAR WASTE DISCHARGES TO SURFACE WATERS WITHIN THE SAN DIEGO REGION EXCEPT FOR SAN DIEGO BAY; ORDER NO. R9-2008-0002; NPDES NO. CAG919002**

**FACILITY: MISSION VALLEY TERMINAL REMEDIATION DEWATERING, 9950 SAN DIEGO MISSION ROAD, SAN DIEGO, CALIFORNIA**

This letter acknowledges receipt of your permit application (Notice of Intent and Form 200) to re-enroll under Order No. R9-2008-0002, NPDES Permit No. CAG919002 for the existing discharge of groundwater at the subject facility. Your application package was dated March 11, 2009 and received March 12, 2009. Your additional submittals, dated April 10, 2009 were received on April 13, 2009. The Regional Board has reviewed your application and determined that the discharge meets the conditions for coverage under Order No. R9-2008-0002.

The discharge is part of the Mission Valley Terminal Remediation Dewatering Project. This letter specifies the discharge requirements for the discharge of extracted and treated groundwater to the San Diego River via Murphy Canyon Creek from the groundwater extraction and remediation project currently enrolled under Order No. 2001-96, NPDES No. CAG919002 and located at 9950 San Diego Mission Road, San Diego. It is our understanding that the discharge from this facility is expected to continue for approximately 15 years.

The groundwater quality monitoring results indicated that total nitrogen, total dissolved manganese, and petroleum hydrocarbons have exceeded effluent limitations contained in Order No. R9-2008-0002 (*Discharge Specification B.4*) for discharges to inland surface waters. It is our understanding that a treatment system is installed to adjust the concentrations of the above-mentioned constituents in order to meet the permit requirements. The treatment system consists of an oil/ water separator, cartridge particulate filters, manganese oxidation/filtration removal system, granular activated carbon adsorption system (GAC), and biological denitrification system.

Mr. Scott Martin  
Kinder Morgan Energy Partners  
Mission Valley Terminal Remediation

- 2 -

June 23, 2009  
WDID 9 000000506

In addition, oxygen generators will be put online to increase dissolved oxygen concentrations in the event that dissolved oxygen concentrations are suppressed as a result of the addition of sodium bisulfite (dechlorination agent) to remove the residual chlorine that results from the addition of sodium hypochlorite to precipitate manganese.

You have certified that the treated effluent will comply with the effluent limitations specified in Order No. R9-2008-0002.

Based on the above, the proposed discharge meets the conditions for enrollment under Order No. R9-2008-0002. Your enrollment is based on your signed certification and the application for waste discharge requirements.

The discharge of groundwater to the San Diego River shall not exceed 505,000 gallons per day.

Although this enrollment authorizes a discharge of up to 505,000 gallons per day of groundwater to the San Diego River, it is recommended that you utilize alternative methods of disposal of the groundwater that optimize reuse and beneficial use such as conveying the treated water to the City of San Diego's North City Reclamation plant for reclamation and/or re-injection of the groundwater on the west side of Qualcomm Stadium. It is our understanding that, based on hydrogeologic and engineering studies, re-injection of all of the treated groundwater is not feasible, but we urge you to attempt re-injection of some of the treated groundwater.

The use of *Ceriodaphnia dubia* and *Hyalella azteca* during quarterly WET testing remains unchanged. Use of "dual control" technique for WET tests involving green algae as the test species remains unchanged.

Approval of the relocation of the discharge point into Murphy Canyon Creek remains in effect. The discharge point into Murphy Canyon Creek has been moved from immediately north of San Diego Mission Road to immediately north of Friars Road overpass at I-15. Relocation of the discharge point results in the discharge being approximately 770 feet upstream of the current discharge point.

The Regional Board is satisfied with your proposed continuous\* monitoring of the dechlorination agent with an A15/66 Residual Sulfite Monitor, in conjunction with the required grab sample monitoring of total residual chlorine as required by the general NPDES Permit CAG919002 in order to demonstrate compliance. It is our understanding that a Hach Auto Cat 9000 Auto Chlorine Amperometric Titrator will be used for onsite total residual chlorine monitoring.

Mr. Scott Martin  
Kinder Morgan Energy Partners  
Mission Valley Terminal Remediation

- 3 -

June 23, 2009  
WDID 9 000000506

You may continue with the proposed monitoring and reporting for chlorine residual, and sodium bisulfite (dechlorination agent) in accordance with the June 2006 version of the SWRCB Draft Total Residual Chlorine & Chlorine-Produced Oxidants Policy of California, Compliance Determination, which states (in part):

"Continuous monitoring analyzers for chlorine residual or for dechlorination agent residual in the effluent are appropriate methods for compliance determination. A positive residual dechlorination agent in the effluent indicates that chlorine is not present in the discharge, which demonstrates compliance with effluent limits. This type of monitoring can also prove that some chlorine residual exceedances are false-positives. Continuous monitoring data showing either a positive dechlorination agent residual or chlorine residual at or below the prescribed limit are sufficient to show compliance with the chlorine residual effluent limit, as long as the instruments are maintained and calibrated in accordance with the manufacturers recommendations."

You are required to monitor the discharge and submit monitoring reports as specified in Monitoring and Reporting Program R9-2008-0002, Section E.1., *Groundwater Discharge Monitoring for Discharges Associated With Gasoline or Diesel Underground or Above Ground Storage Tanks*. The reporting frequency includes monthly, quarterly, and semi-annual monitoring reports. In addition, increase the frequency of monitoring and reporting of total nitrogen and manganese to monthly, and add monthly monitoring and reporting of dissolved oxygen and pH.

These reports must be signed and certified pursuant to Attachment D - V. *Standard Provisions – Reporting, B. Signatory and Certification Requirements* of Order No. R9-2008-0002.

All extracted groundwater that does not meet any one or more of the numerical limitations contained in *Discharge Specifications* of the Order will require additional treatment to remove contaminants prior to discharge to the San Diego River. Alternatively, effluent containing constituents in excess of the effluent limitations established in Order No. R9-2008-0002 may be discharged to the sanitary sewer system (with the local municipality's permission) or hauled away for proper disposal by a certified waste-hauler.

The California Water Code includes provisions for a variety of enforcement actions for violations of the terms and conditions of Order No. R9-2008-0002, the California Water Code, and the Clean Water Act. Violations of Order No. R9-2008-0002 may subject you to further enforcement including Cleanup and Abatement Orders, Cease and Desist Orders, Administrative Assessment of Liability, and/or termination of your enrollment under Order No. R9-2008-0002. Liability could be administratively imposed to a maximum of \$10,000 per violation plus \$10 per gallon of waste discharged. After an initial violation of the terms and conditions of the Order is discovered, prevention of further violations is necessary to prevent further enforcement actions.

Mr. Scott Martin  
Kinder Morgan Energy Partners  
Mission Valley Terminal Remediation

- 4 -

June 23, 2009  
WDID 9 000000506

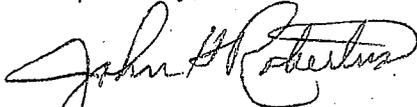
Pursuant to the California Water Code (CWC) Sections 13385 (h) and (i), violations of effluent limitations, contained in NPDES permits are subject to Mandatory Minimum Penalties (MMP) of three thousand dollars (\$3,000) for each serious violation or for non-serious violations, the 4<sup>th</sup> and each subsequent violation in a six month period. Also, monitoring reports that are more than 30 days late are considered serious violations subject to MMPs of three thousand dollars (\$3,000) for each 30 day period in which the report is late, pursuant to CWC Section 13385.1(a)(1).

When the groundwater extraction discharge is terminated, you are required to submit a letter notifying this office of the completion of the project, the termination date of the discharge, and request termination of enrollment under Order No. R9-2008-0002.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions regarding this letter or the discharge requirements, please contact Ms. Whitney Ghoram by e-mail at [WGhoram@waterboards.ca.gov](mailto:WGhoram@waterboards.ca.gov) or by phone at (858) 467-2967.

Respectfully,



JOHN H. ROBERTUS  
Executive Officer

Cc: Ms. Jennifer Rothman, LFR Environmental Management & Consulting Engineering, 3150 Bristol Street, Ste. 250, Costa Mesa, CA 92626-7324

Mr. Chris Stransky, California Operations Mgr., Nautilus Environmental, 5500 Morehouse Drive, Suite 150, San Diego, CA 92121

Mr. Chris Zirkle, Deputy Director, City of San Diego, Storm Water Pollution Prevention Division, City of San Diego, 1970 B Street, San Diego, CA 92102

Marsi A. Steirer, Deputy Director, City of San Diego, Water Department, 600 B Street, Suite 600 (MS906), San Diego, CA 92101

Mr. Kenneth Greenburg, CWA Compliance Office, USEPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Ms. Chiara Clemente, Senior Environmental Scientist, Central Watershed Unit, San Diego RWQCB, 9174 Sky Park Court, Suite 100, San Diego, CA 92123

*California Environmental Protection Agency*

Mr. Scott Martin  
Kinder Morgan Energy Partners  
Mission Valley Terminal Remediation

- 5 -

June 23, 2009  
WDID 9 000000506

Mr. David Gibson, Senior Environmental Scientist, Central Watershed Unit, San Diego RWQCB,  
9174 Sky Park Court, Suite 100, San Diego, CA 92123

Mr. Jeremy Haas, Senior Environmental Scientist, Compliance Assurance Unit, San Diego RWQCB, 9174  
Sky Park Court, Suite 100, San Diego, CA 92123

Mr. Sean McClain, Engineering Geologist, Tank Site Mitigation & Cleanup Unit, San Diego RWQCB, 9174  
Sky Park Court, Suite 100, San Diego, CA 92123

CIWQS: Place ID - 240988, Regulatory Measure ID - 213854  
JHR:dtb:bdk:wjg  
File: 14-0506.02

S:\SurfaceWaterBasinsBranch\CoreRegulatoryUnit\Ghoram\Re-EnrollmentLetter-KinderMorganEnergyPartners-  
MissionValleyTerminalRemedDewatering-June 23-2009

**EXHIBIT 16C**



# California Regional Water Quality Control Board

## San Diego Region



Linda S. Adams  
Secretary for  
Environmental  
Protection

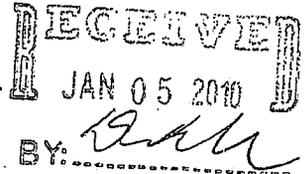
Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

December 31, 2009

CERTIFIED RETURN RECEIPT MAIL  
7009 0080 0000 7308 0080



Mr. Scott Martin  
Kinder Morgan Energy Partners  
1100 Town & Country Road  
Orange, CA 92608

In reply refer to  
CIWQS Place 240988:wghoram  
WDID No: 9 000000506

Dear Mr. Martin:

**SUBJECT: AMENDMENT OF ENROLLMENT UNDER GENERAL WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM GROUNDWATER EXTRACTION AND SIMILAR WASTE DISCHARGES TO SURFACE WATERS WITHIN THE SAN DIEGO REGION EXCEPT FOR SAN DIEGO BAY; ORDER NO. R9-2008-0002; NPDES NO. CAG919002**

**FACILITY: MISSION VALLEY TERMINAL REMEDIATION DEWATERING, 9950 SAN DIEGO MISSION ROAD, SAN DIEGO, CALIFORNIA**

On June 23, 2009 the Regional Water Board re-enrolled Kinder Morgan Energy Partners Mission Valley Terminal Remediation project under Order No. R9-2008-0002, NPDES Permit No. CAG919002 for the existing discharge of 505,000 gallons per day of groundwater to the San Diego River via Murphy Canyon Creek. It is our understanding that the discharge from this facility is expected to continue for approximately 15 years.

The existing treatment system consists of an oil/ water separator, cartridge particulate filters, manganese oxidation/filtration removal system, granular activated carbon adsorption system (GAC), biological denitrification system, oxygen generators, ATI Model A15/66 Residual Sulfite Monitor, and Hach Auto Cat 9000 Auto Chlorine Amperometric Titrator.

By letters dated October 27, 2009 and October 29, 2009, on behalf of Kinder Morgan Energy Partners, Ms. Jennifer Rothman, Principal Civil Engineer, LFR, requested the following modifications to the June 23, 2009 enrollment:

- 1) An increase in the daily average discharge flow rate from 505,000 gallons per day to 795,000 gallons per day; and,
- 2) Modification of the total residual chlorine monitoring and reporting under Order No. R9-2008-0002. The proposed modification is to change the sampling from a grab sample to continuous monitoring.

## BASIS FOR REQUESTS

- 1) An increase of daily average discharge rate from 505,000 gallons per day to 795,000 gallons per day is to increase groundwater extraction pumping volumes. Increased pumping volumes will accommodate full utilization of the six additional groundwater extraction wells that were installed in early 2009. The additional wells were installed to help meet the required groundwater remediation schedule deadline of December 31, 2013 that is specified in Cleanup and Abatement Order (CAO) No. 92-01, Addendum No. 5. Stream gauging and mass loading estimates for Murphy Canyon Creek, along with groundwater analytical results, suggest that the increased discharge flow rates will not have an adverse effect on water quality or beneficial uses of the creek or the San Diego River. The additional discharge volume is estimated to increase downstream flows in Murphy Canyon Creek by approximately 22 percent.
- 2) The basis for the proposed modification of the total residual chlorine Monitoring and Reporting Program is that continuous monitoring of the positive residual dechlorination agent in the effluent of the DMI-65 Filtration Unit using the ATI Residual Sulfite Monitor through chemical feed control and shutdown interlock is most effective.

## AMENDMENTS TO ENROLLMENT

After review of the October 27 and 29, 2009 requests for modification, and evaluation of six consecutive months of data demonstrating compliance with all applicable effluent limitations (as required by Regional Water Board letter dated May 15, 2008), the following amendments are hereby made to the Regional Water Board's June 23, 2009 enrollment for the Mission Valley Terminals Remediation dewatering discharge:

- 1) The discharge of groundwater to the San Diego River via Murphy Canyon Creek shall not exceed 795,000 gallons per day.
- 2) Continuous monitoring of the positive residual dechlorination agent (residual sulfite) in the effluent of the DMI-65 Filtration Unit Process using the ATI Residual Sulfite Monitor in conjunction with weekly sampling of chlorine residual using the Hach Auto Cat 9000 Auto Chlorine Amperometric Titrator to confirm the sulfite meter readings is approved.
- 3) In addition to the Monitoring and Reporting Program requirements specified in the June 23, 2009 enrollment and in Order No. R9-2008-0002, increase the frequency of monitoring and reporting of total nitrogen to weekly for the first four weeks of discharge

Mr. Scott Martin  
Kinder Morgan Energy Partners  
Mission Valley Terminal Remediation

- 3 -

December 31, 2009  
WDID 9 000000506

at the increase flow rate. Also, on a monthly basis, submit a summary of residual sulfite measurements and weekly total residual chlorine results for the previous month.

You have certified that the treated effluent will comply with the effluent limitations specified in Order No. R9-2008-0002.

All of the other terms, conditions and requirements specified in the June 23, 2009 enrollment letter and Order No. R9-2008-0002 remain in effect.

All extracted groundwater that does not meet any one or more of the numerical limitations contained in *Discharge Specifications* of the Order will require additional treatment to remove contaminants prior to discharge to the San Diego River. Alternatively, effluent containing constituents in excess of the effluent limitations established in Order No. R9-2008-0002 may be discharged to the sanitary sewer system (with the local municipality's permission) or hauled away for proper disposal by a certified waste-hauler.

The California Water Code includes provisions for a variety of enforcement actions for violations of the terms and conditions of Order No. R9-2008-0002, the California Water Code, and the Clean Water Act. Violations of Order No. R9-2008-0002 may subject you to further enforcement including Cleanup and Abatement Orders, Cease and Desist Orders, Administrative Assessment of Liability, and/or termination of your enrollment under Order No. R9-2008-0002. Liability could be administratively imposed to a maximum of \$10,000 per violation plus \$10 per gallon of waste discharged. After an initial violation of the terms and conditions of the Order is discovered, prevention of further violations is necessary to prevent further enforcement actions.

Pursuant to the California Water Code (CWC) Sections 13385 (h) and (i), violations of effluent limitations contained in NPDES permits are subject to Mandatory Minimum Penalties (MMP) of three thousand dollars (\$3,000) for each serious violation or, for non-serious violations, the 4<sup>th</sup> and each subsequent violation in a six month period. Also, monitoring reports that are more than 30 days late are considered serious violations subject to MMPs of three thousand dollars (\$3,000) for each 30 day period in which the report is late, pursuant to CWC Section 13385.1(a)(1).

When the groundwater extraction discharge is terminated, you are required to submit a letter notifying this office of the completion of the project, the termination date of the discharge, and request termination of enrollment under Order No. R9-2008-0002.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please

Mr. Scott Martin  
Kinder Morgan Energy Partners  
Mission Valley Terminal Remediation

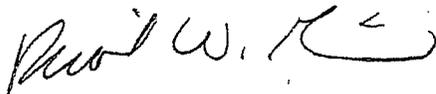
- 4 -

December 31, 2009  
WDID 9 000000506

include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions regarding this letter or the discharge requirements, please contact Ms. Whitney Ghoram by e-mail at [WGhoram@waterboards.ca.gov](mailto:WGhoram@waterboards.ca.gov) or by phone at (858) 467-2967.

Respectfully,



DAVID W. GIBSON  
Executive Officer

Cc: Ms. Jennifer Rothman, LFR Environmental Management & Consulting Engineering, 3150 Bristol Street, Ste. 250, Costa Mesa, CA 92626-7324

Mr. Chris Stransky, California Operations Mgr., Nautilus Environmental, 5500 Morehouse Drive, Suite 150, San Diego, CA 92121

Mr. Kris McFadden, Deputy Director, City of San Diego Storm Water Pollution Prevention Division, 9370 Chesapeake Drive, Ste. 100, MS 1900, San Diego, CA 92123

Marsi A. Steirer, Deputy Director, City of San Diego, Water Department, 600 B Street, Suite 600 (MS906), San Diego, CA 92101

Mr. Kenneth Greenburg, CWA Compliance Office, USEPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Ms. Chiara Clemente, Senior Environmental Scientist, Central Watershed Unit, San Diego RWQCB, 9174 Sky Park Court, Suite 100, San Diego, CA 92123

Mr. Jeremy Haas, Senior Environmental Scientist, Compliance Assurance Unit, San Diego RWQCB, 9174 Sky Park Court, Suite 100, San Diego, CA 92123

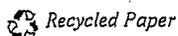
Mr. Sean McClain, Engineering Geologist, Tank Site Mitigation & Cleanup Unit, San Diego RWQCB, 9174 Sky Park Court, Suite 100, San Diego, CA 92123

Order No: R9-2008-0002  
NPDES No: CAG919002  
File No: 14-0506.01  
WDID No: 9 000000506  
CIWQS: Place ID: 240988  
Regulatory Measure ID: 213854  
Party ID: 24972

DWG:dtb:bdk:wjg

S:\SurfaceWaterBasinsBranch\CoreRegulatoryUnit\Ghoram\Amendment of Enrollment\Letter-KinderMorganEnergyPartners-MissionValleyTerminalRemedDewatering-December 31-2009

*California Environmental Protection Agency*



**EXHIBIT 17**



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Office of Chief Counsel

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Arnold Schwarzenegger  
Governor

October 14, 2009

**[via Certified Mail and email]**

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**[via Certified Mail only]**

Jan Goldsmith, Esq., City Attorney  
Grace Lowenberg, Esq., Deputy City Attorney  
Office of the City Attorney  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101

Dear Mr. Opper and Mses. Beresford, Goldsmith and Lowenberg:

PETITION OF CITY OF SAN DIEGO (REVIEW OF CLEANUP AND ABATEMENT ORDER NO. 92-01 (AS AMENDED) FOR KINDER-MORGAN ENERGY PARTNERS, L.P., ET AL.), SAN DIEGO WATER BOARD: NO REVIEW OF PETITION

The State Water Resources Control Board cannot accept the petition that you have filed on October 9, 2009, with regard to Cleanup and Abatement Order No. 92-01 (as amended) issued by the San Diego Regional Water Quality Control Board (San Diego Water Board). The September 10, 2009, letter from San Diego Water Board Executive Officer John Robertus to the City of San Diego does not constitute an action or inaction by the San Diego Water Board that qualifies under Water Code Section 13320.

No other action or refusal to act has been alleged within the relevant petition period nor has a failure to act been alleged. According to the petition, the City of San Diego, through its Deputy Director of the Water Department, Marsi Steirer, sent a letter to the San Diego Water Board on June 25, 2009, asking for three specific actions. Assuming the San Diego Water Board failed to act on that request, the deadline for a petition would have been at the end of September. The petition also alleges that the San Diego Water Board held a workshop on the subject on August 12, 2009. Again, assuming that the outcome of that session constituted a refusal to act, the petition deadline would have been September 14, 2009. Based on these facts, your petition is not timely.

Mr. Robertus' September 10 letter makes it clear that the San Diego Water Board is still considering the merits of the City of San Diego's requests. Because the letter was not a final action, the State Water Board will not accept the petition. Should the San Diego Water Board take subsequent action or issue another final order regarding this site, a petition would be appropriate.

If you have any questions concerning this matter, please feel free to contact me at (916) 341-5171.

Sincerely,



Theodore A. Cobb  
Assistant Chief Counsel

cc: **[via Certified Mail and email]**

Mr. James M. Barrett  
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# State Water Resources Control Board

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Arnold Schwarzenegger  
Governor



October 14, 2009

Richard G. Oppen, Esq., et al.

- 2 -

October 14, 2009

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Sincerely,

*Linda S. Adams*

Theodore A. Cobb  
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No other action or refusal to act has been alleged within the relevant petition period nor has a failure to act been alleged. According to the petition, the City of San Diego, through its Deputy Director of the Water Department, Marci Steiner, sent a letter to the San Diego Water Board on June 25, 2009, asking for three specific actions. Assuming the San Diego Water Board failed to act on that request, the deadline for a petition would have been at the end of September. The petition also alleges that the San Diego Water Board held a workshop on the subject on August 12, 2009. Again, assuming that the outcome of that session constituted a refusal to act, the petition deadline would have been September 14, 2009. Based on these facts, your petition is not timely.

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**[Via Certified Mail and email]**

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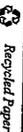
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California Environmental Protection Agency



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7 ATTORNEYS FOR PETITIONER  
CITY OF SAN DIEGO

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**STATE WATER RESOURCES CONTROL BOARD**

**IN THE MATTER OF:**

**CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD, SAN DIEGO  
REGION;**

**CLEANUP AND ABATEMENT ORDER NO.  
92-01, AS AMENDED**

**DISCHARGER: KINDER MORGAN  
ENERGY PARTNERS**

**RELEASE TO THE MISSION VALLEY  
AQUIFER**

**) PETITION AND REQUEST FOR REVIEW  
AND INTERVENTION BY THE STATE  
WATER RESOURCES CONTROL BOARD**

**) CAL. WATER CODE § 13320  
23 CAL. CODE REGS. §§ 2050, 2052**

I.

INTRODUCTION

When California suffers from drought conditions, the City of San Diego ("City"), at the farthest reach of the water delivery system, feels it keenly. As a semi-arid region with limited local water supplies, the City must conserve its precious water resources. Due to the multi-year drought in the Colorado Rockies and a succession of extremely dry years in the Sierra Nevada Mountains, the City's water supply has decreased. In June of 2009, for the first time in history, the City imposed mandatory conservation requirements on its citizens. The City is committed to the protection and sustainable development of its limited supplies, and expected that the San Diego Regional Water Quality Control Board ("SDRWQCB") would share that goal.

But the City's hopes for a partnership with the SDRWQCB have been frustrated by the SDRWQCB's indifference to the current plight of the City's historic water supply, the Mission Valley Aquifer ("Aquifer") which has been contaminated now for twenty years. The Aquifer is undergoing slow remediation, but the remediation plan discharges up to 505,000 gallons per day of water to the Ocean. The City believes this is a waste and unreasonable use of water and instead would like to see this water re-injected into the Aquifer to speed up remediation so that the City can develop this precious water resource for future use. But the SDRWQCB has steadfastly refused to seriously evaluate whether this water is wasted and discuss the possibility of re-injecting the water into the Aquifer. The City is therefore compelled to seek assistance from the State Water Resources Control Board through this Petition.

Over twenty years ago, a bulk fuel terminal now owned and operated by Kinder Morgan Energy Partners ("Kinder Morgan") released a record amount of petroleum hydrocarbons into the subsurface. The release originated from a pipeline leak beneath the Mission Valley Terminal during approximately 1987-1991. The petroleum hydrocarbons migrated off-site, contaminating the groundwater in the Aquifer, which underlies Qualcomm Stadium (collectively "the Site"). A Cleanup and Abatement Order ("CAO") was issued by the SDRWQCB in 1992,<sup>1</sup> 19 years ago.

---

<sup>1</sup> CAO 92-01 and Addenda 1 - 4. (Ex. 1.)

1 In January 2005, it was estimated that approximately 20,000 gallons of fuel remained in place in  
2 the Aquifer<sup>2</sup>; but since that time, the equivalent of 100,000 gallons has been removed or  
3 destroyed.<sup>3</sup> And future estimates of the amount remaining in the Aquifer will likely increase  
4 again due to the recent discovery of even more contamination that has gone undocumented for  
5 the past twenty years, despite the City giving free access for Site characterization to Kinder  
6 Morgan and its consultants.

7 Early remediation efforts in the 1990s were lax, and the CAO was amended more than  
8 once to extend the time to reach cleanup goals. During this time, a plume of MTBE developed  
9 from the original gasoline-contaminated zone. The MTBE has now largely degraded into TBA  
10 which contaminates the old City well-field on the south-west side of the Qualcomm Stadium.  
11 Little happened to abate the gasoline discharge on the north-east side of the Stadium until  
12 litigation in 2003 between Kinder Morgan and Shell Oil/Texaco resulted in a decision that all  
13 liability for the 1987-1991 gasoline discharge was the responsibility of Kinder Morgan alone.<sup>4</sup>

14 In the four years since the CAO was amended for the fifth time in March 2005, Kinder  
15 Morgan has been discharging treated water from the Aquifer to waste at an increasing rate into  
16 Murphy Canyon Creek which discharges to the San Diego River and thence to the Pacific Ocean.  
17 The rate of discharge has steadily increased from 230 gallons per minute (gpm) in 2006 to  
18 approximately 330 gpm today, i.e., a current daily discharge to waste of just under ½ million  
19 gallons per day. The SDRWQCB has recently approved a maximum discharge of up to 505,000  
20 gallons per day,<sup>5</sup> an amount just slightly in excess of ½ million gallons per day.

21  
22 <sup>2</sup> Comments regarding the Mission Valley Terminal Remediation Activities and Potential  
23 Cleanup Timeline, Eggers Environmental Inc., January 7, 2005, p. 5 (noting that “roughly  
24 120,000 lbs [of petroleum liquid] remains” in the soil. At 6 lbs/gallon, this is equivalent to  
20,000 gallons. (Ex. 2.)

25 <sup>3</sup> Quarterly Vadose Zone Remedial Progress Report, 2<sup>nd</sup> Quarter 2009, Mission Valley Terminal,  
26 July 29, 2009, LFR, Inc., Figure 7. (Ex. 3.)

27 <sup>4</sup> Opinion and Award, Hon. Robert T. Altman (Ret.), March 21, 2003, confirmed by a Stipulated  
28 Judgment in Los Angeles Superior Court. (Ex. 4.)

<sup>5</sup> Letter of John Robertus to Scott Martin, Kinder Morgan, June 23, 2009. (Ex. 5.)

1 Ten years ago, the SDRWQCB apparently considered the value of re-injection of treated  
2 water from the Aquifer and contemplated including such a requirement in its CAO.<sup>6</sup>  
3 Unfortunately, this program never developed and remedial progress has been slow. In 2005, the  
4 SDRWQCB proposed adoption of Amendment No. 5 to the CAO, providing yet longer periods  
5 to attain cleanup goals.<sup>7</sup> The City appeared at a hearing before the SDRWQB in 2005 and  
6 presented voluminous material in support of a more aggressive cleanup schedule than what the  
7 SDRWQCB Staff ("Staff") had proposed. The City's presentation focused on accomplishing  
8 cleanup as fast as possible so that the City could pursue development of this historic water  
9 supply into a productive well-field (as it was originally used<sup>8</sup>). The City submitted a report by  
10 Dr. Michael Welch for conceptual development of this water supply.<sup>9</sup> Unfortunately, the  
11 SDRWQCB did not consider the City's desire to redevelop the well field and adopted Staff's  
12 recommendation, which had been formed prior to the City's submittal of its conceptual plans.

13 Kinder Morgan proposed, and now implements, an expanded Soil Vapor Extraction  
14 (SVE) system at the site, which requires a significant dewatering effort. As an integral element  
15 of the SVE system, Kinder Morgan is now permitted to discharge up to 505,000 gallons per day  
16 of treated water it takes from the City's Aquifer to Murphy Canyon Creek (a concrete lined  
17 culvert), and this water eventually flows to the San Diego River and out to the Pacific Ocean.  
18 The City has repeatedly argued against the waste of this water and urges its re-injection into the  
19 Aquifer to accelerate remediation so the City can proceed with the Aquifer's development.

20 On May 1, 2009, the City, having learned that Kinder Morgan's NPDES Permit for  
21 discharge of this treated water to Murphy Canyon Creek was about to expire, wrote the Staff  
22 overseeing the NPDES permits process and requested that the Permit be conditioned on requiring  
23

24  
25 <sup>6</sup> Email to John Robertus from Don Hoirup, September 13, 1999. (Ex. 6.)

26 <sup>7</sup> CAO 92-01, Addendum 5, issued April 13, 2005. (Ex. 7.)

27 <sup>8</sup> Figures of well field, California Bureau of Water Development, 1929, rev. 1932. (Ex. 8.)

28 <sup>9</sup> Concept Study, March 2004, Dr. Michael Welch. (Ex. 9.)

1 Kinder Morgan to re-inject all treated water (that could be re-injected) to the Aquifer.<sup>10</sup> The  
2 SDRWQCB re-enrolled Kinder Morgan in the NPDES permit program and allowed it to increase  
3 its discharge of the treated water without requiring re-injection. However, the letter from the  
4 Executive Officer of the SDRWQCB, Mr. John Robertus, to Kinder Morgan urged them to  
5 consider re-injection of at least some of the treated water.<sup>11</sup> But neither Kinder Morgan nor Staff  
6 pursued this request and discussion of re-injecting the water floundered.

7 Following that unsuccessful effort to focus attention on re-injection, Marsi Steirer, the  
8 Deputy Director of the City's Water Department, wrote a letter to Dr. Richard Wright, Chairman  
9 of the SDRWQCB, on June 25, 2009, alerting him that the City's pleas not to waste this treated  
10 water had thus far been ignored, and asking the SDRWQCB to consider the matter directly.<sup>12</sup>  
11 Ms. Steirer then appeared at the July 1, 2009, meeting of the SDRWQCB and attempted to  
12 present a PowerPoint series of slides on the same issue, but a malfunction of the SDRWQCB's  
13 equipment allowed only verbal comments.<sup>13</sup> As a result of her comments, and at the suggestion  
14 of the Executive Officer, Mr. John Robertus, the City was told that an "informational item"  
15 would be scheduled for the SDRWQCB's next meeting, to be held on August 12, 2009.

16 At the August 12<sup>th</sup> hearing, the informational item was first presented by Mr. Sean  
17 McClain, the project manager for the SDRWQCB. During that presentation, the City learned for  
18 the first time that the "newly discovered" extension to the plume associated with the 1987-1991  
19 release would not meet the December 31, 2010 cleanup deadline. Mr. McClain otherwise  
20 represented that the Kinder Morgan cleanup was praiseworthy.<sup>14</sup> Kinder Morgan then made a  
21

22 <sup>10</sup> Letter from Marsi Steirer, Deputy Director, Water Dept. City of San Diego, to Ms. Whitney  
23 Ghoram, Environmental Scientists of the SDRWQCB, May 1, 2009. (Ex. 10.)

24 <sup>11</sup> Letter of John Robertus to Scott Martin, Kinder Morgan, June 23, 2009. (Ex. 5.)

25 <sup>12</sup> Letter from Marsi Steirer, Deputy Director, Water Dept. City of San Diego, to Dr. Richard  
26 Wright, Chairman SDRWQCB, June 25, 2009. (Ex. 11.)

27 <sup>13</sup> City's PowerPoint slides for July 1, 2009 Board Meeting. (Ex. 12.) Although the presentation  
28 could not occur, the slides were submitted to the SDRWQCB to become part of the record.

<sup>14</sup> SDRWQCB Staff PowerPoint presentation to SDRWQCB Board, August 12, 2009. (Ex. 13.)

1 similar presentation, and knowing that re-injection would be discussed by the City, asserted that  
2 re-injection negatively was neither technically feasible nor necessary.<sup>15</sup> The City was the last to  
3 present, and proffered testimony from a representative of the United States Geological Survey  
4 (“USGS”) explaining why remediation must be completed before the Aquifer can be developed,  
5 and testimony from its technical expert, Dr. Richard Jackson of Intera, demonstrating that re-  
6 injection is feasible and why re-injection would both accelerate the remedial progress and  
7 provide opportunities for conjunctive use of the Aquifer.<sup>16</sup>

8 At the conclusion of this meeting, and after some discussion from members of the  
9 SDRWQCB, the SDRWQCB took no action to address re-injection, but the City believed that  
10 Staff would soon schedule a meeting to specifically discuss potential benefits and methods to  
11 achieve re-injection of the treated water now wasted to the sea. Instead of an invitation to a  
12 meeting, however, on September 10, 2009, the City received a letter from John Robertus that  
13 was hostile to the City’s continued efforts to partner with the SDRWQCB to achieve re-injection  
14 and its salutary goals.<sup>17</sup> Mr. Robertus asked the City for detailed explanations and specific  
15 information that he knew was unavailable and could not be developed at this time, and  
16 essentially required the City to provide him with the level of detail that would ultimately be  
17 required in an Environmental Impact Report, all (presumably) before moving forward with the  
18 City’s request to work on a re-injection option. Mr. James Barrett, Director of the City’s Public  
19 Utilities Department, answered that letter on October \_\_, 2009.<sup>18</sup>

20 Kinder Morgan’s discharge of the treated water from the Aquifer is a waste and  
21 unreasonable use of water resources in violation of the California Constitution and the California  
22 Water Code, which mandate that water resources be put to beneficial use to the fullest extent of  
23 which they are capable. Despite clear directives from the State of California, the Legislature,  
24

25 <sup>15</sup> Kinder Morgan’s PowerPoint presentation to SDRWQCB Board, August 12, 2009. (Ex. 14.)

26 <sup>16</sup> City’s PowerPoint presentation to SDRWQCB Board, August 12, 2009. (Ex. 15.)

27 <sup>17</sup> Letter from John Robertus to James Barrett, September 10, 2009. (Ex. 16.)

28 <sup>18</sup> Letter from James Barrett to John Robertus, October \_\_, 2009. (Ex. 17.)

1 and multiple pleas for assistance from the City of San Diego, the SDRWQCB refuses to stop this  
2 waste of precious resources that is required to accelerate the cleanup of the Site and to ensure  
3 that the discharger meets the December 31, 2013 deadline for attaining drinking water quality in  
4 the Aquifer. The City believes Mr. Robertus' action through his letter of September 10, 2009,  
5 constitutes *inaction* with regard to the City's request and is improper and inappropriate because  
6 it: 1) imposes pre-conditions on the re-injection discussions which Mr. Robertus knows the City  
7 cannot meet prior to completing remediation; and 2) unfairly attempts to impose costly burdens  
8 on the City, when it is Kinder Morgan that polluted the Aquifer. The letter constitutes a failure  
9 to act on behalf of the SDRWQCB to find there is a waste of the City's water and to act in a way  
10 to preserve that water. The City therefore submits this Petition asking the State Water Resources  
11 Control Board to find that Kinder Morgan's discharge of up to 505,000 gallons every day to the  
12 concrete-lined Murphy Canyon Creek is a waste and unreasonable use of water resources, and to  
13 order the SDRWQCB to require Kinder Morgan to re-inject the treated water into the Aquifer.

## 14 II.

### 15 INFORMATION REQUIRED BY SECTION 2050

16 In support of this Petition, the City provides the following information, as required by  
17 Title 23, California Code of Regulations, § 2050:

18 A. Name, address, telephone number and email address of Petitioner.

19 Petitioner is the City of San Diego, c/o Mr. James M. Barrett, Public Utilities Director,  
20 City of San Diego, 9192 Topaz Way, San Diego, CA 92101. Phone: (858) 292-6401; e-mail  
21 address: [JBarrett@sandiego.gov](mailto:JBarrett@sandiego.gov). All inquires and communication should be directed through  
22 Petitioner's counsel, Richard G. Opper of Opper & Varco, whose information is provided in the  
23 caption on this Petition.

24 B. SDRWQCB's specific action or inaction for which review is sought.

25 The City seeks review of the SDRWQCB's refusal to find that Kinder Morgan's  
26 discharge of up to 505,000 gallons of treated water per day is a waste, its refusal to order steps to  
27 prevent such waste, and its refusal to require re-injection of this treated water into the Aquifer to  
28 accelerate remediation and allow the City to develop the Aquifer. Mr. Robertus' letter of

1 September 10, 2009, indicates that the SDRWQCB will not take such action and is the trigger of  
2 inaction justifying the filing of this Petition.

3 C. The date on which the Regional Board acted or refused to act.

4 Mr. Robertus' letter of September 10, 2009 is the final demonstration of the  
5 SDRWQCB's refusal to find that Kinder Morgan's discharge of up to 505,000 gallons of treated  
6 water per day is a waste and to order re-injection of the water, and is evidence of its inaction in  
7 the face of City requests that the SDRWQCB take steps to protect this precious resource.

8 D. Statement of reasons why the failure to act was inappropriate or improper.

9 The SDRWQCB's failure to find that Kinder Morgan's discharge of up to 505,000  
10 gallons of water each day is a waste or unreasonable use of water resources, and its failure to  
11 remedy such a waste of water, was inappropriate and improper. Article 10, Section 2 of the  
12 California Constitution states (in relevant part):

13 **[T]he general welfare requires that the water resources of the State be put to**  
14 **beneficial use to the fullest extent of which they are capable, and that the**  
15 **waste or unreasonable use or unreasonable method of use of water be**  
16 **prevented, and that the conservation of such waters is to be exercised with a**  
17 **view to the reasonable and beneficial use thereof in the interest of the people**  
18 **and for the public welfare.**

19 This mandate is echoed in Cal. Water Code § 100, which restates this exact language.

20 The use of water for domestic purposes and irrigation are the two most important uses of water  
21 in the State of California. Cal. Water Code § 106. And more recent legislative enactments have  
22 underscored the need to use recycled water.<sup>19</sup> "[T]he people of the state have a primary interest  
23 in the development of facilities to recycle water containing waste to supplement existing surface  
24 and underground water supplies and to assist in meeting the future water requirements of the  
25 state." Cal. Water Code § 13510. The Legislature has declared that, "a substantial portion of the

24 <sup>19</sup> "“Recycled water” means water which, as a result of treatment of waste, is suitable for a direct  
25 beneficial use or a controlled use that would not otherwise occur and is therefore considered a  
26 valuable resource.” Cal. Water Code § 13050(n). ““Waste” includes sewage and any and all  
27 other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation . .  
28 . or from any producing, manufacturing, or processing operation . . . . Cal. Water Code §  
13050(d). Thus, although recycled water is often thought of as waste water from sewage  
treatment, the Mission Valley Aquifer is contaminated with petroleum hydrocarbons, which are a  
“waste”, but if properly treated and reinjected back into the Aquifer, could be used by the City.

1 future water requirements of this state may be economically met by beneficial use of recycled  
2 water” and that “the utilization of recycled water by local communities for domestic,  
3 agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace,  
4 health, safety and welfare of the people of the state.” Cal. Water Code § 13511. The state has  
5 been directed to “undertake all possible steps to encourage development of water recycling  
6 facilities so that recycled water may be made available to help meet the growing water  
7 requirements of the state.” Cal. Water Code § 13512 (underline added).

8 The mandate of the people of the State of California, the Legislature, and the City could  
9 not be more clear: the State should support efforts to use recycled water. Water resources are to  
10 be used to the fullest extent possible. But rather than supporting the City’s efforts to reuse the  
11 treated water to assist in the remediation efforts and to ultimately develop the Mission Valley  
12 Aquifer, the SDRWQCB has ignored requests from the City to find that Kinder Morgan’s  
13 discharge of up to 505,000 gallons per day is a waste and unreasonable use of water and refused  
14 to facilitate the reuse of this water. The City believes that the SDRWQCB has a constitutional  
15 mandate to engage in this effort and its failure to do so is a violation of the California State  
16 Constitution and the California Water Code and therefore was inappropriate and improper.

17 E. The manner in which Petitioner is aggrieved.

18 The City of San Diego imports more than 80% of the water it uses; approximately 54% of  
19 the City’s water comes from the Colorado River and approximately 28% comes from the Bay  
20 Delta. Unfortunately, there has been a significant strain on these two primary water resources.  
21 The Colorado Rockies have suffered a multi-year drought and California has experienced a  
22 succession of extremely dry years in the California Sierra Nevada Mountain Range. Recent  
23 judicial decisions also have further restricted the water supply flowing from the Bay Delta.

24 And despite limited water resources, San Diego, along with many other areas that utilize  
25 water from these two sources, is seeing an increase in its population. Thus, San Diego has the  
26 same story as many cities in California: there are more people, but less water. This led the City  
27 to implement mandatory conservation requirements on the City’s citizens for the first time ever  
28 this past June.

1 And last, the costs to buy water from the Colorado River and the Bay Delta are  
2 increasing. Costs for electricity, capital improvements and environmental efforts implemented  
3 by the Metropolitan Water District are increasing. Thus, even if the City could buy more water  
4 imported from other resources, the cost to do so is increasing.

5 All of these factors lead to the incontrovertible conclusion that the City must develop  
6 local water resources. The Mission Valley Aquifer is a significant source of water for the City of  
7 San Diego, and the City should be able to use it. But the Aquifer has been polluted since at least  
8 1990, cleanup efforts are approaching twenty years, and the Site still won't be cleaned up for  
9 several years. In the meantime, Kinder Morgan is now permitted by the SDRWQCB to waste up  
10 to 505,000 gallons per day of the City's water by discharging it to the Pacific Ocean.

11 The SDRWQCB is charged with assisting the State Water Resources Control Board in  
12 protecting and allocating water resources. Given the constitutional and legislative mandates, the  
13 SDRWQCB should be implementing the law: facilitating the use of water resources to the  
14 fullest extent possible. Instead, the SDRWQCB has ignored the City's requests to prevent the  
15 unnecessary discharge of up to 505,000 gallons each day, rather than helping the parties find a  
16 way to use this water to assist in the remediation efforts, and then to ultimately use the water.  
17 The failure of the SDRWQCB to implement the mandate of the California Constitution has  
18 resulted in the City losing up to 505,000 gallons of water each day and has allowed the  
19 remediation of the Aquifer to drag on for decades, preventing the City from developing the  
20 Aquifer as a local water resource. Such failure to act has harmed, and continues to harm, the  
21 City each day the discharge continues. The City requests the assistance of the State Board to  
22 order the re-injection of the water back into the Aquifer.

23 F. Specific action by the State requested by the Petitioner.

24 The City requests that the State Board find that the discharge of up to 505,000 gallons  
25 each day by Kinder Morgan, rather than re-injecting the water back into the Mission Valley  
26 Aquifer, is a waste and unreasonable use of water. The City further requests that the State Board  
27 order that Kinder Morgan, the undisputed discharger of the pollution in this matter, install re-  
28 injection wells (in accordance with all appropriate laws and regulations) and re-inject the treated

1 water back into the Aquifer to speed up the remediation effort and to store water in the Mission  
2 Valley Aquifer so that it can be extracted from elsewhere in the Aquifer without causing an  
3 increase in groundwater discharge to the San Diego River.

4 G. Statement of points and authorities in support of legal issues raised in the Petition.

5 The City's statement of points and authorities follows the nine categories of information  
6 requested by 23 Cal. Code Regs. § 2050 and is incorporated herein by reference.

7 H. Statement that Petition has been sent to the Regional Board and the discharger.

8 The City certifies that a true and correct copy of this Petition was mailed on **insert date**  
9 to the SDRWQCB and to the discharger, Kinder Morgan, at the following addresses:

10 Mr. John Robertus  
11 Executive Director  
12 Regional Water Quality Control Board, San Diego Region  
13 9174 Sky Park Court, Suite 100  
14 San Diego, CA 92123

15 Kinder Morgan Energy Partners  
16 c/o Mr. Scott Martin  
17 Manager, EHS-Remediation  
18 Kinder Morgan Energy Partners  
19 1100 Town & Country Road  
20 Orange, CA 92608

21 I. The substantive issues raised in the Petition were raised before the SDRWQCB.

22 During the August 12, 2009 hearing before the SDRWQCB, the City of San Diego  
23 clearly stated its position that Kinder Morgan's discharge of up to 505,000 gallons of the City's  
24 water each day to Murphy Canyon Creek was a waste and unreasonable use of water.<sup>20</sup> The City  
25 also requested that the SDRWQCB order the installation of re-injection wells so that the City  
26 could speed up the remediation effort and ultimately develop the Aquifer.<sup>21</sup> All of the  
27 documents cited in this Petition are part of the SDRWQCB file. The City also reserves the right  
28 to present at the hearing additional evidence in support of this Petition, in accordance with 23  
Cal. Code Regs. § 2050.6.

<sup>20</sup> City's PowerPoint presentation to SDRWQCB Board, August 12, 2009. (Ex. 15.)

<sup>21</sup> *Id.*

1 III.

2 STATEMENT OF POINTS & AUTHORITIES IN SUPPORT OF LEGAL ISSUES

3 A. The SDRWQCB has a legal mandate to stop Kinder Morgan's wasteful discharge  
4 of up to 505,000 gallons per day of the City's water.

5 "[T]he general welfare requires that the water resources of the State be put to beneficial  
6 use to the fullest extent of which they are capable, and that the waste or unreasonable use or  
7 unreasonable method of use of water be prevented . . ." Cal. Const. Art. 10, § 2; Cal. Water  
8 Code § 100 (underline added). The SDRWQCB has a constitutional and statutory mandate to  
9 make beneficial use of water resources to the fullest extent possible and to prevent waste and  
10 unreasonable use.

11 Kinder Morgan's remediation program discharges up to 505,000 gallons each day to  
12 Murphy Canyon Creek, which ultimately discharges to the Pacific Ocean. The City requests  
13 that, instead of being discharged to waste, the water be put to a beneficial use to speed up the  
14 remediation process by re-injecting the water, so the Aquifer can be developed as a local water  
15 resource more quickly. The Aquifer has been unusable for more than twenty years because of  
16 the contamination. Kinder Morgan's deadlines to complete the remediation of the Aquifer have  
17 been extended multiple times, and its most recent progress reports show it is unlikely to meet the  
18 deadlines of December 2010 and December 2013 required by CAO Addendum No. 5.<sup>22</sup>

19 Regardless of its legal mandate, SDRWQCB staff has ignored the City's requests to  
20 evaluate the proposal to stop wasting the water and instead put it to beneficial use by re-injecting  
21 it. Mr. Robertus' letter of September 10, 2009, following the August 12, 2009 presentation to  
22 the full SDRWQCB on this issue, clearly shows that the SDRWQCB has no intention of  
23 engaging in this necessary discussion and evaluation of water resources. But such action is  
24 improper and inappropriate. The California Supreme Court has stated that "All uses of water . . .  
25 must now conform to the standard of reasonable use." *National Audubon Society, et al. v.*  
26

27 <sup>22</sup> Periodic Evaluation of Remedial Progress in the Off-Terminal LNAPL Zone June 1, 2009,  
28 Figure 1 (Ex. 18) Need from Dick Jackson; CAO 92-01, Addendum No. 5 p. 2-3. (Ex. 5.)

1 *Superior Court, et al.* (1983) 33 Cal.3d 419, 443 (citations omitted). “What is a beneficial use,  
2 of course, depends upon the facts and circumstances of each case. What may be a reasonable  
3 beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial  
4 use in an area of great scarcity and great need. What is a beneficial use at one time may, because  
5 of changed conditions, become a waste of water at a later time.” *Imperial Irrigation Dist. v.*  
6 *State Water Resources Control Board* (1990) 225 Cal.App.3d 548, 570 (citation omitted); *see*  
7 *also Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 194.

8 San Diego is in a time of great scarcity and great need. The circumstances of this case  
9 demand that the State Board find that the discharge of up to 505,000 gallons of water each day to  
10 the Pacific Ocean constitutes a waste, and order re-injection of the treated water to assist with the  
11 remediation effort, allowing the water resources to be utilized to the fullest extent they are  
12 capable in accordance with the California Constitution. The State Board must follow the State,  
13 Legislature, and City’s mandate to use this water through re-injection to speed up the  
14 remediation effort so that the City can develop and utilize this Aquifer as quickly as possible.

15 B. The SDRWOCB has failed to find sufficient facts to support its current order.

16 The State Water Resources Control Board has the authority to evaluate whether the  
17 discharge of up to 505,000 gallons each day to the Pacific Ocean is a waste. *See Environmental*  
18 *Defense Fund, Inc. v. East Bay Municipal Utility Dist.* (1980) 26 Cal.3d 183, 200 (the SWRCB  
19 has concurrent jurisdiction with the courts to evaluate claims of unreasonable water use).

20 Following the decision of the State Water Resources Control Board, the parties may file a  
21 petition for writ of mandate for review with the Superior Court of the State of California. Cal.  
22 Water Code § 13330(a). Section 1094.5 of the California Code of Civil Procedure governs  
23 proceedings for such petitions. Cal. Water Code § 13330(d).

24 In evaluating a petition for writ of mandate, the Superior Court exercises independent  
25 judgment to determine whether the findings of the SWRCB are supported by the evidence. Cal.  
26 Water Code § 13304(c); Cal. Code Civ. Proc. § 1094.5(c). “Section 1094.5 clearly contemplates  
27 that at a minimum, the reviewing court must determine both whether substantial evidence  
28 supports the administrative agency’s findings and whether the findings support the agency’s

1 decisions.” *Topanga Assn. for a Scenic Community v. County of Los Angeles, et al.*, (1974) 11  
2 Cal.3d 506, 514-515. “We further conclude that implicit in Section 1094.5 is a requirement that  
3 the agency which renders the challenged decision must set forth findings to bridge the analytic  
4 gap between the raw evidence and ultimate decision or order.” *Id.* at 515.

5 The SDRWQCB has completely failed to evaluate the City’s submissions that Kinder  
6 Morgan’s discharge of up to 505,000 gallons per day to Murphy Canyon Creek (which  
7 ultimately discharges to the ocean) is a waste or unreasonable use of water. And despite clear  
8 technical information demonstrating the benefits of reinjecting the treated water, the SDRWQCB  
9 has also failed to evaluate if reinjecting the treated water would be a more beneficial use in  
10 accordance with the mandate of the California Constitution and the Water Code. And since the  
11 SDRWQCB has refused to evaluate these issues, there are no findings in the record supporting  
12 its decision to allow Kinder Morgan to keep extending the time to attain its remediation goals  
13 and allow its discharge of up to 505,000 gallons of the City’s water each day.

14 In the complete absence of “findings to bridge the analytic gap between the raw evidence  
15 and the ultimate decision”, and the lengthy history of the SDRWQCB’s failure to respond to the  
16 City’s request to evaluate these issues, the City asks that the State Board evaluate this  
17 information itself and find that: 1) Kinder Morgan’s discharge of up to 505,000 gallons of the  
18 City’s water each day is a waste and unreasonable use of resources; and 2) that the water should  
19 be re-injected to speed up the remediation process and to store as much water as possible into the  
20 Aquifer for future use.

21 C. The State Water Resources Control Board has authority to not only hear this  
22 matter, but to order the installation of injection wells.

23 The State Water Resources Control Board has jurisdiction to find that Kinder Morgan’s  
24 discharge of up to 505,000 gallons per day of the City’s water to the Pacific Ocean is a waste or  
25 unreasonable use of water, and order the re-injection of the treated water into the Aquifer as a  
26 more reasonable and beneficial use. *See Environmental Defense Fund, Inc. v. East Bay*  
27 *Municipal Utility Dist.* (1980) 26 Cal.3d 183, 200 (the SWRCB has concurrent jurisdiction with  
28 the courts to evaluate claims of unreasonable water use); *see also National Audubon Society, et*

1 *al. v. Superior Court, et al.* (1983) 33 Cal.3d 419, 450, n. 31 (discussing possible exclusive  
2 jurisdiction over reclamation of waste waters to the SWRCB).

3 Furthermore, 23 Cal. Code Regs. § 2052(a)(2) states, “The state board may . . . [a]fter  
4 review of all or part of the regional board’s records pertaining to the matter, including the  
5 transcript of any hearing held by the regional board . . . (B) [s]et aside or modify the regional  
6 board order; or (C) [d]irect the regional board to take appropriate action.” Thus, the California  
7 Code of Regulations clearly provides that the State Board may independently modify the actions  
8 of the SDRWQCB and/or direct the SDRWQCB to take specific action.

9 And finally, Cal. Water Code § 13360(a)(2) states that “No . . . order of a regional board  
10 or the state board . . . shall specify the design, location, type of construction, or particular manner  
11 in which compliance may be had with that requirement [except] (2) Discharges of waste or fluid  
12 to an injection well [except any wells regulated by the Division of Oil and Gas].” Thus, although  
13 the Water Code generally directs that the State Board may not direct the specific manner in  
14 which a problem is to be solved, this prohibition does not apply here as the City is seeking  
15 review of a program to inject fluid into a well. Under Cal. Water Code § 13360(a)(2), the State  
16 Board may order such re-injection.

17 “Section 13360 is a shield against unwarranted interference with the ingenuity of the  
18 party subject to a waste discharge requirement . . . . It preserves the freedom of persons who are  
19 subject to a discharge standard to elect between available strategies to comply with that standard.  
20 That is all that it does.” *Tahoe-Sierra Preservation Council, et al. v. State Water Resources*  
21 *Control Board, et al.* (1989) 210 Cal.App.3d 1421, 1438. But preserving the freedom to select a  
22 strategy is not at issue here since neither Kinder Morgan nor the SDRWQCB are suggesting any  
23 alternate strategies to preserve the treated water; both have consistently and repeatedly refused  
24 any serious consideration of whether reusing this water would be beneficial or feasible. Thus,  
25 the limitations of Cal. Water Code § 13660(a)(2) and the policy behind it are simply not  
26 applicable to this case.

27 ///

28 ///

1 D. Kinder Morgan's discharge of up to 505,000 gallons per day into Murphy Canyon  
2 Creek is a waste and unreasonable use of water, and the water can and should be  
3 re-injected into the Aquifer following treatment.

4 Since April 2006, the City has urged Kinder Morgan and the SDRWQCB to implement a  
5 re-injection program to use the treated waste to cleanup the plume of MTBE and TBA beneath  
6 the south-west side of the Stadium parking lot.<sup>23</sup> This concept was linked with a proposed  
7 groundwater desalination plant discussed in the Welch report submitted to the SDRWQCB.<sup>24</sup>  
8 Despite repeated requests for serious consideration of this use of the treated water, the  
9 SDRWQCB has ignored this opportunity to accelerate decontamination of the Aquifer that  
10 supplied the City with 2 million gallons per day prior to World War II.

11 In a recent letter to the City Water Department, the Assistant Executive Officer of the  
12 SDRWQCB, Mr. Michael McCann, indicated re-injection of the treated water was 'not feasible'  
13 because: (1) "*re-injection of groundwater could potentially displace the (TBA/MTBE) plume to*  
14 *currently unaffected areas*"; (2) it would interfere with the de-watering program elsewhere in the  
15 aquifer that is necessary for soil vapor extraction of the gasoline plume; and (3) it would be  
16 "*relatively expensive and would require a different infrastructure than that of the existing*  
17 *system.*"<sup>25</sup> None of these reasons have merit.

18 First, the use of injection-extraction systems is well-established utilizing modern  
19 engineering techniques including hydraulic control wells, field testing, and groundwater flow  
20 and transport modeling. The expansion of the MTBE/TBA-contaminated zone can be controlled  
21 by using these tools that are available to competent engineering firms. LFR/Arcadis, Kinder  
22 Morgan's consultant on this project, is one such firm. The possibility of displacing the MTBE  
23

24 <sup>23</sup> An Assessment of LNAPL Remediation at Mission Valley, Exhibit B (Concept for Enhanced  
25 Remediation of the MTBE Plume beneath the Qualcomm Stadium by Waterflooding), Intera,  
April 6, 2006. (Ex. 19.)

26 <sup>24</sup> Concept Study, March 2004, Dr. Michael Welch. (Ex. 9.)

27 <sup>25</sup> Letter from Michael McCann, Assistant Executive Officer, SDRWQCB, to Marsi Steirer,  
28 Deputy Director, City of San Diego Water Dept., July 16, 2009, p.4. (Ex. 20.)

1 and TBA is readily limited by use of strategically placed extraction wells that control the water  
2 table and the migration of the injected water and the MTBE and TBA contamination.

3 Second, the injection-extraction operations would take place well away from the  
4 dewatered area. If necessary, properly placed extraction wells could prevent the water table from  
5 rising into the soil vapor extraction network – a technique Kinder Morgan already practices.

6 Third, the SDRWQCB should not ignore the costs incurred by the City to buy imported  
7 water. Costs to buy imported water are increasing each year and unreliable water resources  
8 impacts the City's ability to properly plan and manage the water provided to its current citizens  
9 as well as plan for additional citizens that continue to move to the region. The costs incurred and  
10 revenue lost by the City due to its inability to develop this Aquifer are significant.

11 Re-injection of treated water from the Mission Valley treatment plant operated by Kinder  
12 Morgan was constrained in the past because of its repeated violations of the NPDES discharge  
13 permit.<sup>26</sup> The effluent was not adequately treated by Kinder Morgan. However, these failures  
14 appear to have been overcome with the upgrading the On-Terminal treatment system. In  
15 particular, the clogging of the effluent pipeline by a black precipitate (manganese dioxide)  
16 apparently was resolved in June 2009 by the new manganese treatment system.

17 The City Water Department anticipates that it may have to undertake further treatment of  
18 this treated water before re-injection, e.g., filtration and reverse osmosis. However, the technical  
19 issues involved are not significantly different from other treated water re-injection programs in  
20 Southern California, a point made by Dr. Welch in his 2004 report. The Orange County Water  
21 District operates a 70 million gallon/day system of groundwater replenishment through injection  
22 wells and ponds and has the experience to advise on re-injection should Kinder Morgan seek it.

23 Re-injection would accelerate the rate of cleanup of the MTBE/TBA plume, which has  
24 created an anaerobic zone in the Aquifer<sup>27</sup>, such that biodegradation of the TBA is less important

25 \_\_\_\_\_  
26 <sup>26</sup> ACL R9-2008-0134 issued to Kinder Morgan by SDRWQCB December 10, 2008. (Ex. 21.)

27 <sup>27</sup> Quarterly Groundwater Monitoring and Remedial Progress Report, 2<sup>nd</sup> Quarter 2009, Mission  
28 Valley Terminal, July 29, 2009, LFR, Inc., p. 26. (Ex. 22.)

1 than groundwater extraction.<sup>28</sup> In July 2009, Kinder Morgan reported that the MTBE/TBA  
2 plume is both larger and of higher contaminant concentrations than it had previously reported.<sup>29</sup>  
3 Given this disturbing news at this very late date, a re-injection program is required to help ensure  
4 that the 2013 cleanup deadline will be met. The re-injection of oxygenated treated water from  
5 the On-Terminal treatment plant (when coupled with the present groundwater extraction system  
6 in the MTBE/TBA plume) will allow advection of groundwater through the system much more  
7 rapidly than is occurring by extraction alone and will cause the re-oxidation of the Aquifer with  
8 the concomitant in-situ biodegradation of the MTBE and TBA. Given the new information of  
9 the persistence and more extensive TBA contamination in the plume, the likelihood of  
10 achievement of the 2013 deadline would be greatly increased if Kinder Morgan re-injected the  
11 treated water into the Aquifer.

12 And finally, the current discharge of treated water to the Murphy Canyon Creek and the  
13 San Diego River is a wasted resource in that it discharges to the Ocean ten miles away. Because  
14 the San Diego River in Mission Valley is a gaining stream – i.e., groundwater discharges to the  
15 River and maintains the River's baseflow – the most convenient way to preserve the treated  
16 water for future use is to develop an aquifer storage and recovery project in the Mission Valley  
17 Aquifer. Under such a storage system, re-injected water can be recovered at a later time by  
18 extraction wells before the water discharges to the San Diego River. The redevelopment of the  
19 well field would allow this water to be stored in the Aquifer, undergo natural filtration and then  
20 be recovered when needed by the City. Re-injection of the treated water into the Mission Valley  
21 Aquifer prevents its waste to the Ocean while the remediation process is underway, would  
22 accelerate the cleanup of the MTBE and TBA in the contaminated Aquifer, and would then allow  
23 the City to begin redeveloping the Aquifer.

24 ///

25 \_\_\_\_\_  
26 <sup>28</sup> Evaluation of Natural Attenuation of MTBE and TBA in Off-Terminal Groundwater, Mission  
27 Valley Terminal, LFR, Inc., p. ES-v, July 20, 2007. (Ex. 23.)

28 <sup>29</sup> Figure 12, Jul2909 MVT 2<sup>nd</sup> Quarter Groundwater Monitoring & Remediation Progress  
Report. (Ex. 24.) **Need from Dick Jackson.**

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E. Conclusion.

The City of San Diego needs to develop local water resources. Kinder Morgan is discharging up to 505,000 gallons per day of the City's water. This discharge is a waste and unreasonable use of the City's water resources. Instead, the City would like to have this water re-injected into the Aquifer to speed up a remediation effort which has already taken decades - with no true end in sight. This remediation effort needs to reach completion so that the City can develop the Aquifer.

This Petition raises substantial issues that are appropriate for review. It seems clear that the SDRWQCB has no serious interest in discussing re-injection of the treated water, but this inaction is contrary to law, policy, and common sense. The City requests that the State Board right this wrong.

Respectfully submitted,

DATE: OCTOBER 9, 2009

OPPER & VARCO, LLP

BY: \_\_\_\_\_  
RICHARD G. OPPER  
ATTORNEYS FOR PETITIONER,  
THE CITY OF SAN DIEGO

**EXHIBIT 18**



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
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Governor

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(858) 467-2952 • Fax (858) 571-6972  
<http://www.waterboards.ca.gov/sandiego>

### WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Scott Martin, P.G, Manager,  
EHS-Remediation  
Kinder Morgan, MVT, SFPP, L.P  
1100 Town and Country Road  
Orange, CA 92868

Complaint No. R9-2008-0046  
for  
Administrative Civil Liability  
With  
Mandatory Minimum Penalties

**\$229,000**

WDID No. 9 000000506  
Mission Valley Terminal, San Diego, California

By signing below, I agree to waive Kinder Morgan, MVT, SFPP, L.P's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region regarding the violations alleged in the above referenced Complaint and to remit payment for the imposed civil liability. I understand that I am authorized to give up Kinder Morgan, MVT, SFPP, L.P's right to be heard and to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the proposed civil liability. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the imposed civil liability.

Signature	Title	Date
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\_\_\_\_\_  
Print your name

Send this signed form to:  
Michael P. McCann, Assistant Executive Officer  
C/O Compliance Assurance  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
						<b>TOTAL RECOMMENDED PENALTY</b>			<b>\$229,000</b>

<sup>i</sup> Reported violations not considered for civil liability include:

1. Potential chronic toxicity violations using green algae (*Selastrium*) have been excluded pending review of ion-imbalance concerns; and
2. Potential total residual chlorine violations have been excluded based on suggested false positive results.

<sup>ii</sup> CWC Section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

1. Fluoride, manganese, phosphorus, and total nitrogen are Group I pollutants. A serious violation occurs when the discharge exceeds Group I effluent limitations by 40 percent or more; and
2. Lead is a Group II pollutant. A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

<sup>iii</sup> In addition to MMPs for serious violations, the occurrence of four or more effluent limitation violations in any six-month period requires the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation during any six-month period (CWC §13385(f)(1)).

<sup>iv</sup> Chronic toxicity violations are effluent violations, but are not assessed MMPs because the waste discharge requirements in Order R9-2001-96 contain pollutant-specific effluent limitations (CWC §13385(i)(1)(d)).

<sup>v</sup> "Average Monthly Effluent Limitation (AMEL)" is defined in Order R9-2001-96 as the highest allowable average of daily pollutant discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of measurements.

<sup>vi</sup> Discretionary civil liability for four violations of the fathead minnow chronic toxicity test and the July 2007 total nitrogen AMEL is recommended solely pursuant to CWC §13385(a)(2).



Linda S. Adams  
Secretary for  
Environmental Protection

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WDID No. 9 000000506  
Mission Valley Terminal, San Diego, California

By signing below, I agree to waive Kinder Morgan, MVT, SFPP, L.P's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region regarding the violations alleged in the above referenced Complaint and to remit payment for the imposed civil liability. I understand that I am authorized to give up Kinder Morgan, MVT, SFPP, L.P's right to be heard and to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the proposed civil liability. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the imposed civil liability.

\_\_\_\_\_  
Signature Title Date

\_\_\_\_\_  
Print your name

Send this signed form to:  
Michael P. McCann, Assistant Executive Officer  
C/O Compliance Assurance  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
						<b>TOTAL RECOMMENDED PENALTY</b>			<b>\$229,000</b>

<sup>i</sup> Reported violations not considered for civil liability include:

1. Potential chronic toxicity violations using green algae (*Selanstrum*) have been excluded pending review of ion-imbalance concerns; and
2. Potential total residual chlorine violations have been excluded based on suggested false positive results.

<sup>ii</sup> CWC Section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

1. Fluoride, manganese, phosphorus, and total nitrogen are Group I pollutants. A serious violation occurs when the discharge exceeds Group I effluent limitations by 40 percent or more; and
2. Lead is a Group II pollutant. A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

<sup>iii</sup> In addition to MMPs for serious violations, the occurrence of four or more effluent limitation violations in any six-month period requires the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation during any six-month period (CWC §13385(i)(1)).

<sup>iv</sup> Chronic toxicity violations are effluent violations, but are not assessed MMPs because the waste discharge requirements in Order R9-2001-96 contain pollutant-specific effluent limitations (CWC §13385(i)(1)(d)).

<sup>v</sup> "Average Monthly Effluent Limitation (AMEL)" is defined in Order R9-2001-96 as the highest allowable average of daily pollutant discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of measurements.

<sup>vi</sup> Discretionary civil liability for four violations of the fathead minnow chronic toxicity test and the July 2007 total nitrogen AMEL is recommended solely pursuant to CWC §13385(a)(2).



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
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Governor

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

## WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Scott Martin, P.G, Manager,  
EHS-Remediation  
Kinder Morgan, MVT, SFPP, L.P  
1100 Town and Country Road  
Orange, CA 92868

Complaint No. R9-2008-0046  
for  
Administrative Civil Liability  
With  
Mandatory Minimum Penalties

**\$229,000**

WDID No. 9 000000506  
Mission Valley Terminal, San Diego, California

By signing below, I agree to waive Kinder Morgan, MVT, SFPP, L.P's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region regarding the violations alleged in the above referenced Complaint and to remit payment for the imposed civil liability. I understand that I am authorized to give up Kinder Morgan, MVT, SFPP, L.P's right to be heard and to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the proposed civil liability. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the imposed civil liability.

\_\_\_\_\_  
Signature Title Date

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Print your name

Send this signed form to:  
Michael P. McCann, Assistant Executive Officer  
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California Regional Water Quality Control Board, San Diego Region  
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						<b>TOTAL RECOMMENDED PENALTY</b>			<b>\$229,000</b>

<sup>i</sup> Reported violations not considered for civil liability include:

1. Potential chronic toxicity violations using green algae (*Selanstrum*) have been excluded pending review of ion-imbalance concerns; and
2. Potential total residual chlorine violations have been excluded based on suggested false positive results.

<sup>ii</sup> CWC Section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

1. Fluoride, manganese, phosphorus, and total nitrogen are Group I pollutants. A serious violation occurs when the discharge exceeds Group I effluent limitations by 40 percent or more; and
2. Lead is a Group II pollutant. A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

<sup>iii</sup> In addition to MMPs for serious violations, the occurrence of four or more effluent limitation violations in any six-month period requires the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation during any six-month period (CWC §13385(l)(1)).

<sup>iv</sup> Chronic toxicity violations are effluent violations, but are not assessed MMPs because the waste discharge requirements in Order R9-2001-96 contain pollutant-specific effluent limitations (CWC §13385(i)(1)(d)).

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<sup>vi</sup> Discretionary civil liability for four violations of the fathead minnow chronic toxicity test and the July 2007 total nitrogen AMEL is recommended solely pursuant to CWC §13385(a)(2).

**PROPOSED CIVIL LIABILITY**

16. It is recommended \$229,000 in civil liability be imposed based on the following:
- a. Pursuant to CWC Sections 13385(h) and (i), mandatory minimum penalty in the amount of one hundred five thousand five hundred dollars (\$105,000) is recommended for 35 serious and non-serious violations of effluent limitations. (\$3,000 for each of thirty five violations).
  - b. Pursuant to CWC Section 13385(c), discretionary civil liability is recommended for five toxicity violations in the amount of fifteen thousand dollars (\$15,000) for violations not subject to MMPs (\$3,000 for each of five violations).
  - c. Pursuant to CWC Section 13385(c), discretionary civil liability is recommended in the amount of one hundred nine thousand dollars (\$109,000) for persistent and chronic violations of the total nitrogen instantaneous maximum effluent limitation (\$200 for each of 545 days that the effluent limitation is alleged to have been exceeded).

Table 2. Summary of Proposed Civil Liability

	<b>MMP</b>	<b>Non-MMP Discretionary</b>	<b>Persistent Nitrogen Violations</b>	<b>Total</b>
<b>Liability</b>	\$3,000 for 35 violations (\$105,000)	\$3,000 for five non-MMP violations (\$15,000)	\$200 per day for 545 days (\$109,000)	\$229,000

17. Effluent violations cited in this complaint occurred on 548 days. Two violations subject to MMPs and one non-MMP effluent violation occurred outside of the 545-day period of persistent nitrogen violations.

18. Maximum Potential Liability. The maximum liability for violations cited in this complaint, pursuant to CWC Section 13385(c), can be calculated based on:
- a. \$10,000 per day of violation (CWC Section 13385(c)(1)):  
Effluent violations occurred on 548 days (three violations occurred outside the 545-day period of persistent nitrogen violations). The maximum liability is five million four hundred eighty thousand dollars (\$5,480,000), and/or
  - b. Ten dollars per gallon discharged (CWC Section 13385(c)(2)):  
Liability can be assessed for additional ten dollars per gallon discharged. During the 548 day period 188,039,614 gallons of wastewater were discharged to the river, resulting in the additional maximum liability of one billion eight hundred eighty eight million three hundred ninety six thousand one hundred forty dollars (\$1,880,396,140).
19. Assessment of liability pursuant to CWC Section 13385(c)(1) greater than the mandatory minimum penalty required by CWC Sections 13385(h) and (i) is warranted for the following reasons:
- a. Dischargers bear complete responsibility for the discharge of treated effluent from the remediation project;
  - b. Dischargers have a prior history of violations that have been subject to assessments of MMPs;
  - c. Effluent limitations have been persistently violated. For instance:
    - i. Effluent violations have been reported in twelve of the thirteen quarterly periods considered in this complaint;
    - ii. At least two effluent violations have been reported during each quarter since October 2005; and
    - iii. The total nitrogen average monthly effluent limitation has not been met since July 2005, and the total nitrogen instantaneous maximum limitation has only been met in one of nine quarterly periods since January 2006;
  - d. Dischargers realized an economic benefit by discharging polluted effluent to surface waters rather than providing additional treatment or alternative disposal; and
  - e. Assessment of moderate discretionary liability will not affect the ability of Kinder Morgan, MVT, SFPP, L.P to continue business. Kinder Morgan Energy Partners, LP reported to the Securities and Exchange Commission a net income of \$590 million dollars for the year ended December 2007.<sup>8</sup>

<sup>8</sup> Form 10-K for Kinder Morgan Energy Partners, LP, February 26, 2008 Annual Report.

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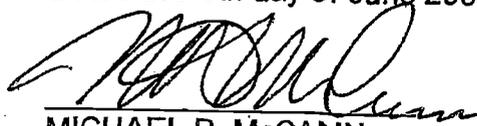
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<sup>8</sup> Form 10-K for Kinder Morgan Energy Partners, LP, February 26, 2008 Annual Report.

June 6, 2008

Dated this 6th day of June 2008.



MICHAEL P. McCANN  
Assistant Executive Officer

Signed pursuant to the Authority  
delegated by the Executive Officer  
to the Assistant Executive Officer

**Attachments:**

1. Figure 1: Reported total nitrogen concentrations
2. Figure 2: Calculation of violation days for total nitrogen
3. Table 3: Summary of Reported Effluent Violations and Recommended Penalties

**CIWQS Entries**

Regulatory Measure ID: 343514

Place ID: 240988

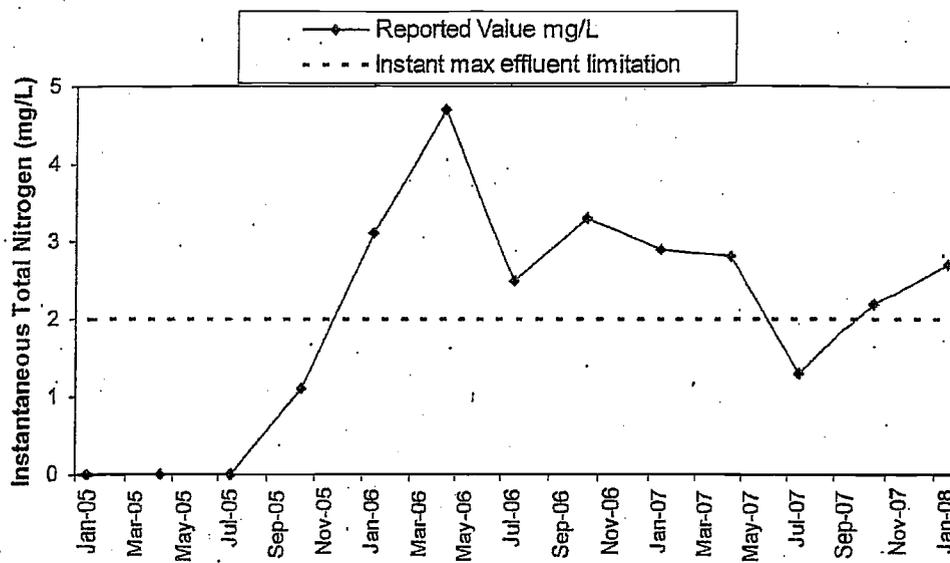
Party IDs: 24872 (Kinder Morgan, MVT, SFPP, L.P.)

Violation IDs: 742378, 443858, 742363, 742368, 443348, 742362, 443341, 742358, 742348, 742347,  
742344, 742343, 742342, 742345, 742346, 742339, 742338, 742357, 443815, 742337,  
443814, 742355, 742356, 742351, 507674, 741641, 742333, 742336, 571541, 741640,  
608800, 741642, 741644, 708512, 708513, 741647, 741648, 708514, 741646, 738903,  
738906, 741581

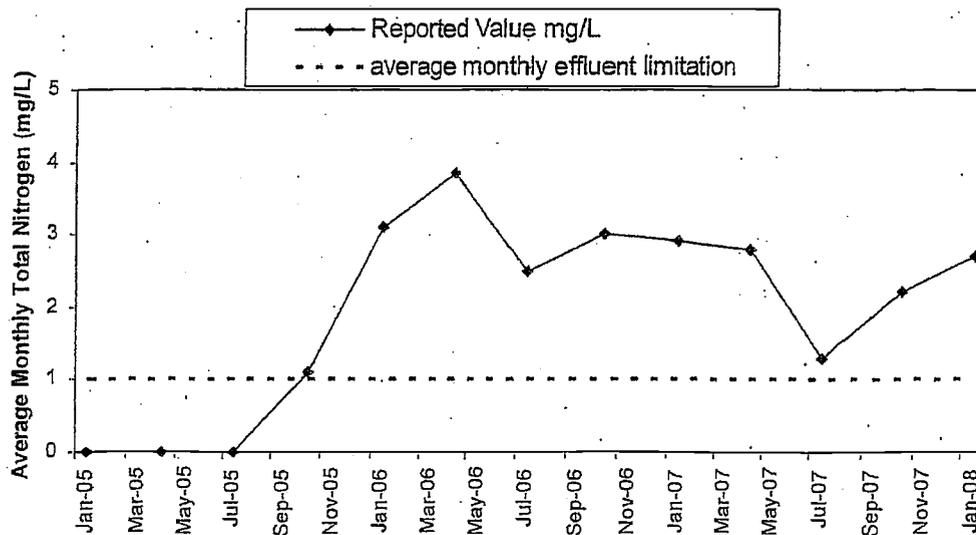
Figure 1. Reported total nitrogen concentrations compared to the (A) instantaneous maximum and (B) average monthly effluent limitations. January 2005 through January 2008

**Mission Valley Terminal:  
Total Nitrogen Concentrations from Quarterly Monitoring 2005-2008**

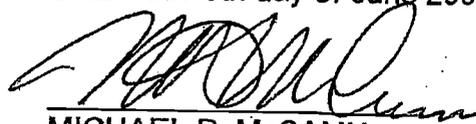
**A. Instantaneous Maximum Concentration**



**B. Average Monthly Concentration**



Dated this 6th day of June 2008.



MICHAEL P. McCANN  
Assistant Executive Officer

Signed pursuant to the Authority  
delegated by the Executive Officer  
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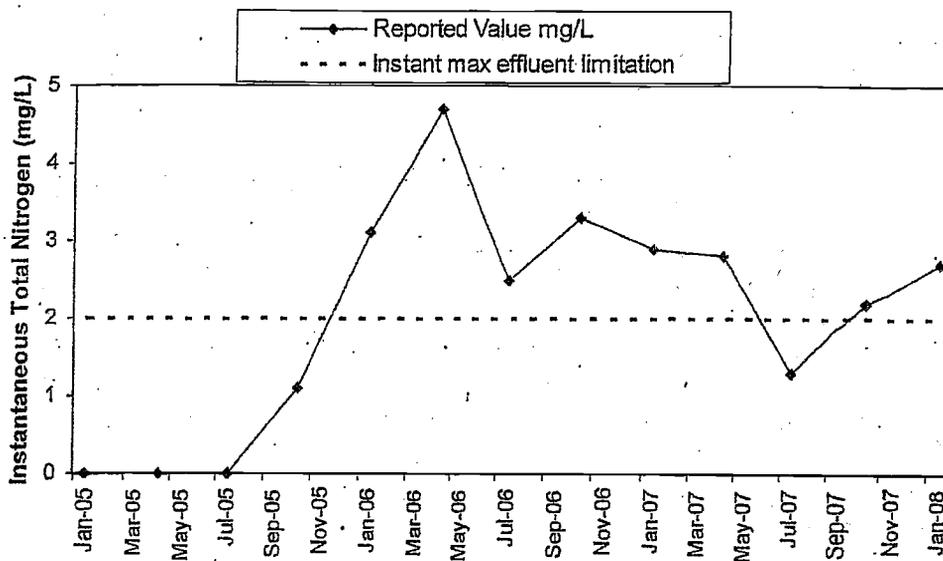
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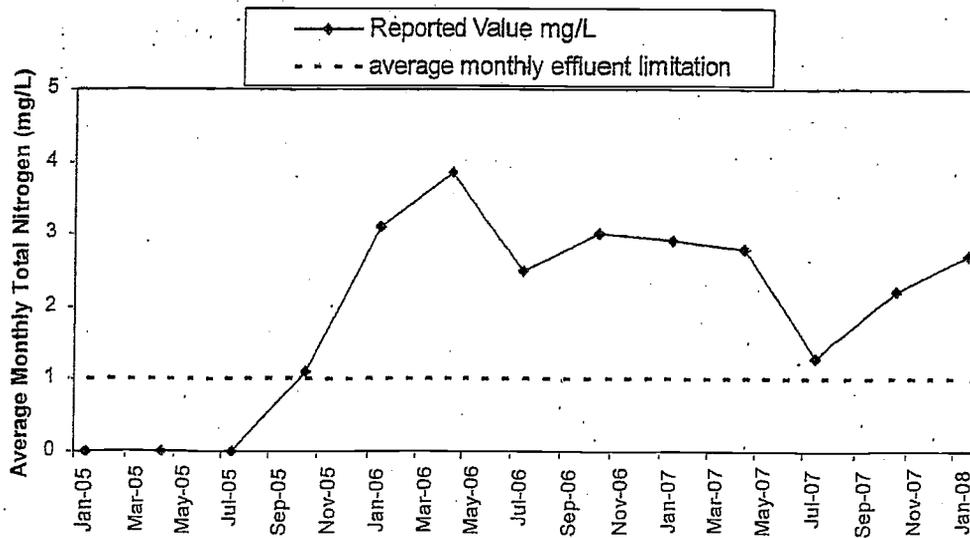
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**Mission Valley Terminal:  
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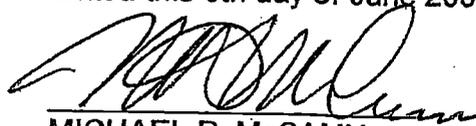
**A. Instantaneous Maximum Concentration**



**B. Average Monthly Concentration**



Dated this 6th day of June 2008.



MICHAEL P. McCANN  
Assistant Executive Officer

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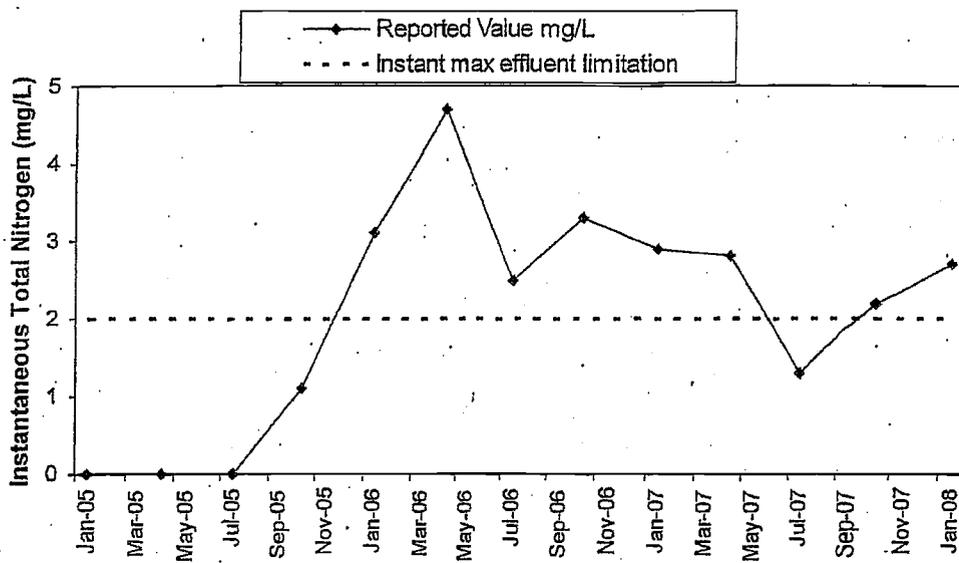
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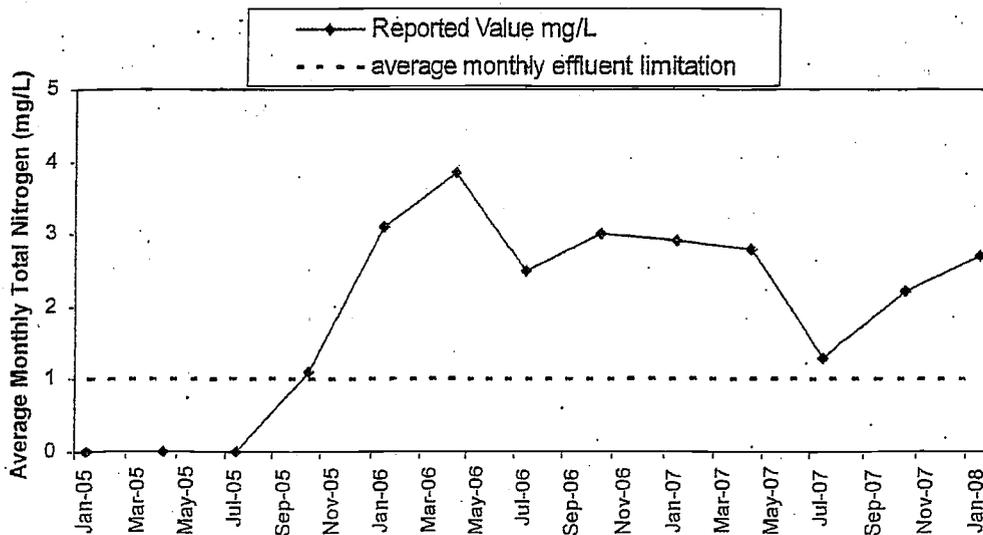
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**Mission Valley Terminal:  
Total Nitrogen Concentrations from Quarterly Monitoring 2005-2008**

**A. Instantaneous Maximum Concentration**



**B. Average Monthly Concentration**



Dated this 6th day of June 2008.



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Assistant Executive Officer

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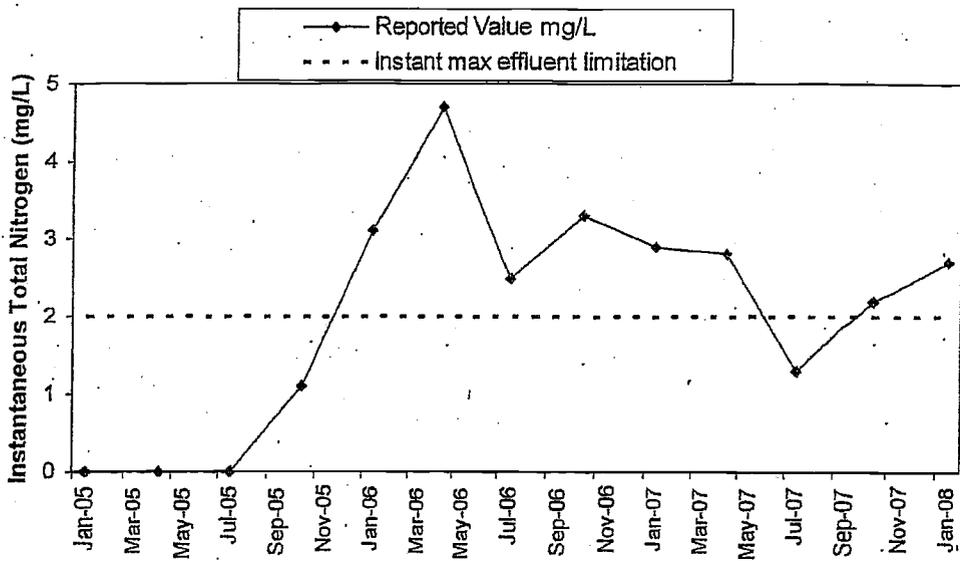
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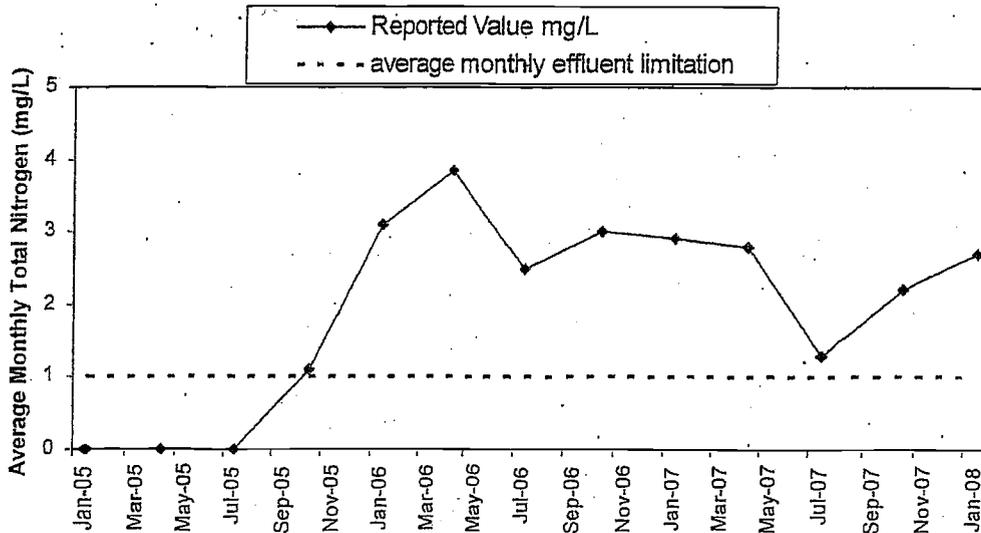


Figure 2. Calculation of violation days for total nitrogen, instantaneous maximum effluent limitation.

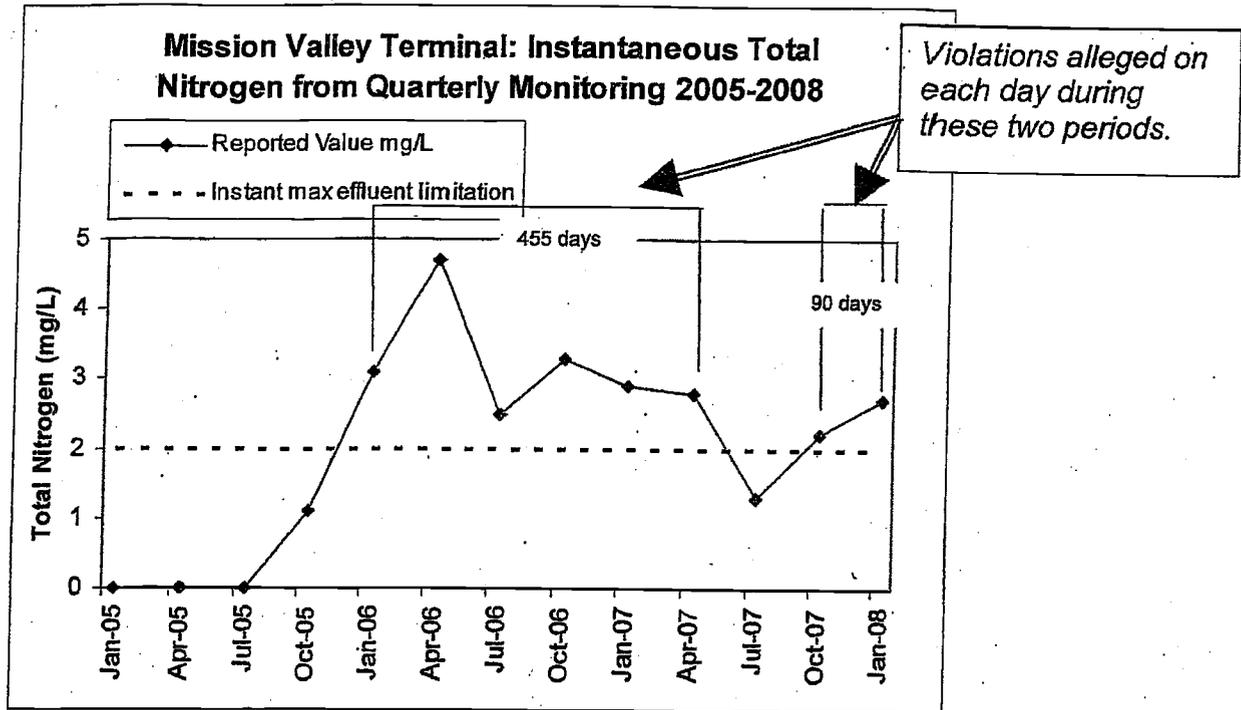


Table 3. Summary of Reported Effluent Violations and Recommended Penalties<sup>1</sup>

June 2, 2008

Complaint No. R9-2008-0046  
 Mission Valley Terminal  
 9950 San Diego Mission Road  
 San Diego, CA 92108

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
01/18/2005	742378	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.33	No	No	\$0
04/12/2005	443858	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	No	\$0
04/12/2005	742363	Manganese	Instantaneous Maximum	mg/L	1.0	3.9	Yes	Yes	\$3000
06/07/2005	742368	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.36	No	Yes	\$3000
10/11/2005	742362	Total Nitrogen	AMEL <sup>v</sup>	mg/L	1.0	1.1	No	Yes	\$3000
10/11/2005	443341	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	1.3	No	No	\$3000 <sup>vi</sup>
10/11/2005	443348	Manganese	Instantaneous Maximum	mg/L	1.0	2.9	Yes	Yes	\$3000
11/21/2005	742358	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
01/03/2006	742348	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.1	Yes	Yes	\$3000
01/03/2006	742347	Total Nitrogen	AMEL	mg/L	1.0	3.1	Yes	Yes	\$3000
01/20/2006	742344	Fluoride	Instantaneous Maximum	mg/L	1.0	2.2	Yes	Yes	\$3000
01/20/2006	742343	Lead	CTR-Chronic	µg/L	2.5	10.8	Yes	Yes	\$3000
01/20/2006	742342	Phosphorus	AMEL	mg/L	0.1	0.167	Yes	Yes	\$3000

Figure 2. Calculation of violation days for total nitrogen, instantaneous maximum effluent limitation.

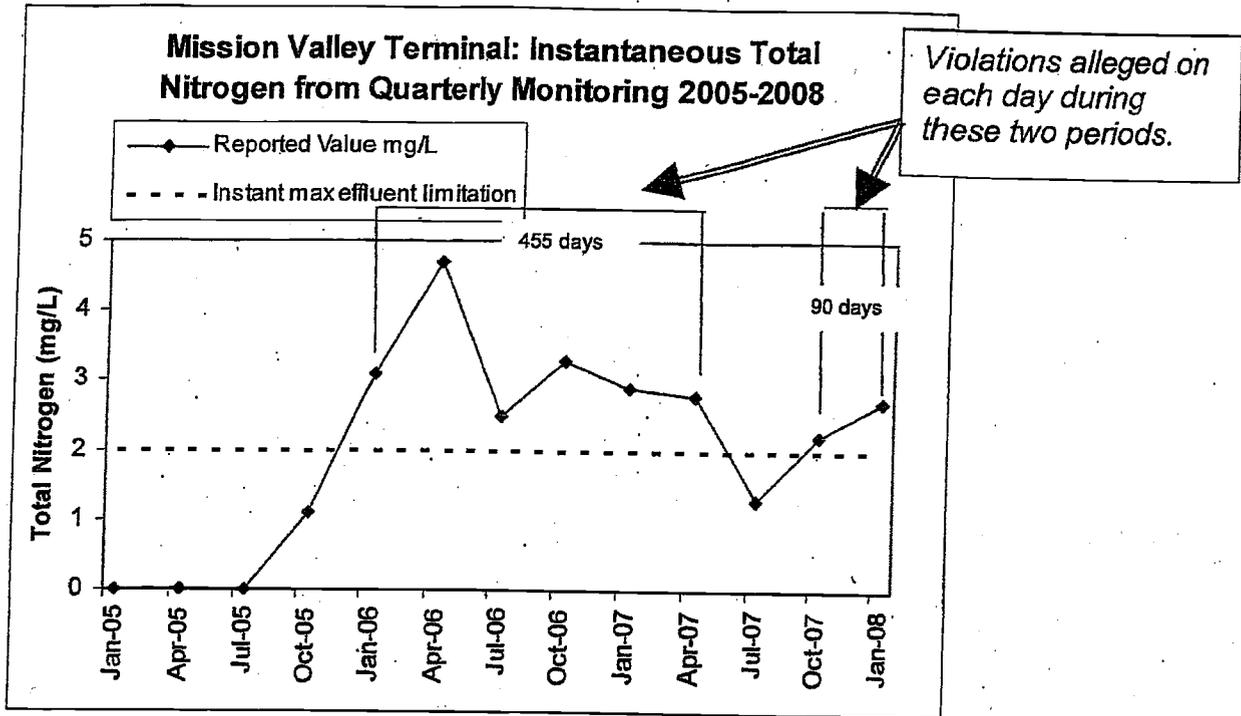


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11/21/2005	742358	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
01/03/2006	742348	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.1	Yes	Yes	\$3000
01/03/2006	742347	Total Nitrogen	AMEL	mg/L	1.0	3.1	Yes	Yes	\$3000
01/20/2006	742344	Fluoride	Instantaneous Maximum	mg/L	1.0	2.2	Yes	Yes	\$3000
01/20/2006	742343	Lead	CTR Chronic	µg/L	2.5	10.8	Yes	Yes	\$3000
01/20/2006	742342	Phosphorus	AMEL	mg/L	0.1	0.167	Yes	Yes	\$3000

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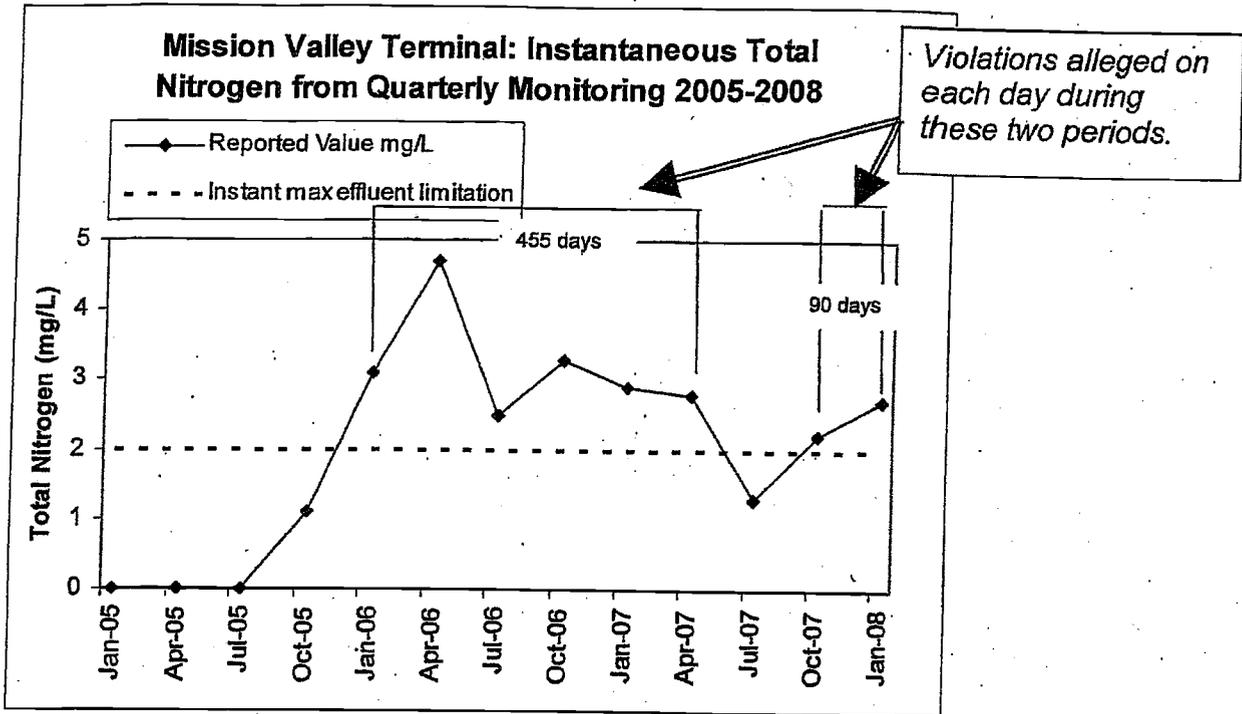


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04/12/2005	443858	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	No	\$0
04/12/2005	742363	Manganese	Instantaneous Maximum	mg/L	1.0	3.9	Yes	Yes	\$3000
06/07/2005	742368	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.36	No	Yes	\$3000
10/11/2005	742362	Total Nitrogen	AMEL <sup>V</sup>	mg/L	1.0	1.1	No	Yes	\$3000
10/11/2005	443341	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	1.3	No	No	\$3000 <sup>VI</sup>
10/11/2005	443348	Manganese	Instantaneous Maximum	mg/L	1.0	2.9	Yes	Yes	\$3000
11/21/2005	742358	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
01/03/2006	742348	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.1	Yes	Yes	\$3000
01/03/2006	742347	Total Nitrogen	AMEL	mg/L	1.0	3.1	Yes	Yes	\$3000
01/20/2006	742344	Fluoride	Instantaneous Maximum	mg/L	1.0	2.2	Yes	Yes	\$3000
01/20/2006	742343	Lead	CTR Chronic	µg/L	2.5	10.8	Yes	Yes	\$3000
01/20/2006	742342	Phosphorus	AMEL	mg/L	0.1	0.167	Yes	Yes	\$3000

Figure 2. Calculation of violation days for total nitrogen, instantaneous maximum effluent limitation.

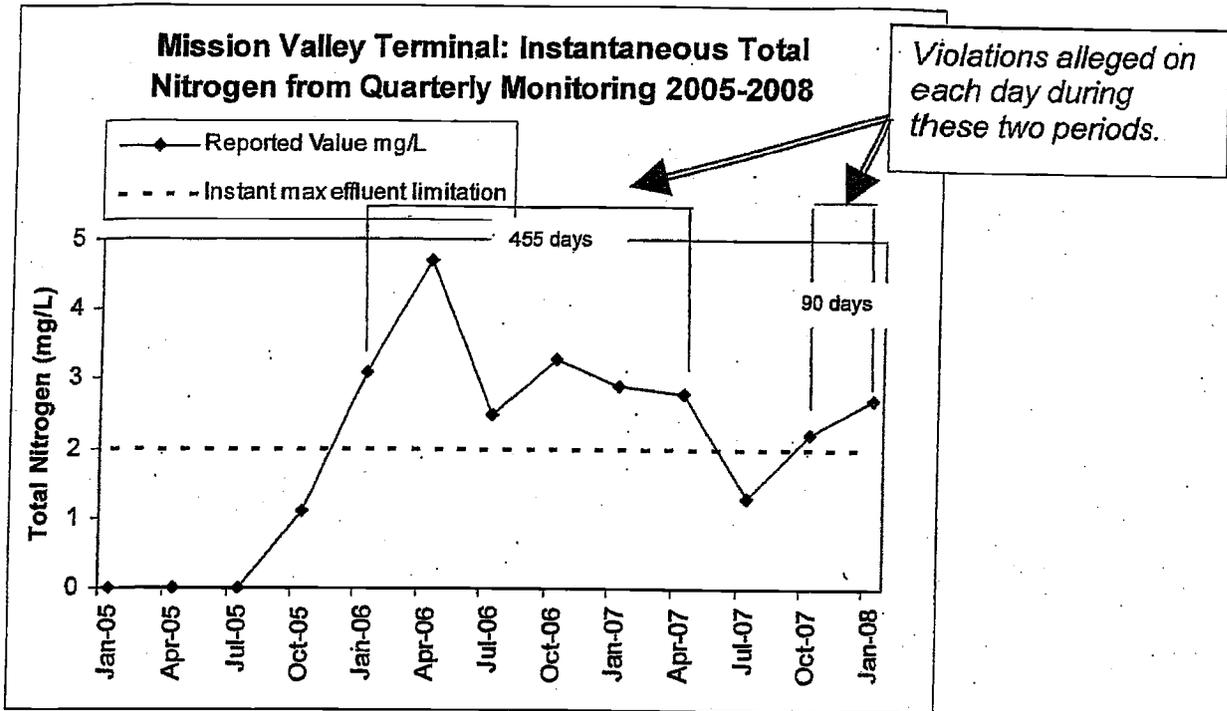


Table 3. Summary of Reported Effluent Violations and Recommended Penalties<sup>1</sup>

June 2, 2008

Complaint No. R9-2008-0046  
 Mission Valley Terminal  
 9950 San Diego Mission Road  
 San Diego, CA 92108

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>II</sup>	Subject to MMP <sup>III,IV</sup>	Recommended Penalty
01/18/2005	742378	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.33	No	No	\$0
04/12/2005	443858	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	No	\$0
04/12/2005	742363	Manganese	Instantaneous Maximum	mg/L	1.0	3.9	Yes	Yes	\$3000
06/07/2005	742368	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.36	No	Yes	\$3000
10/11/2005	742362	Total Nitrogen	AMELV	mg/L	1.0	1.1	No	Yes	\$3000
10/11/2005	443341	Chronic toxicity, fathead minnow growth	Toxicity	TUC	1.0	1.3	No	No	\$3000 <sup>M</sup>
10/11/2005	443348	Manganese	Instantaneous Maximum	mg/L	1.0	2.9	Yes	Yes	\$3000
11/21/2005	742358	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
01/03/2006	742348	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.1	Yes	Yes	\$3000
01/03/2006	742347	Total Nitrogen	AMELV	mg/L	1.0	3.1	Yes	Yes	\$3000
01/20/2006	742344	Fluoride	Instantaneous Maximum	mg/L	1.0	2.2	Yes	Yes	\$3000
01/20/2006	742343	Lead	CTR Chronic	µg/L	2.5	10.8	Yes	Yes	\$3000
01/20/2006	742342	Phosphorus	AMELV	mg/L	0.1	0.167	Yes	Yes	\$3000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
02/07/2006	742345	Chronic toxicity, fathead minnow growth	Toxicity	TUC	1.0	8.0	No	No	\$3000 <sup>vi</sup>
02/07/2006	742346	Chronic toxicity, fathead minnow survival	Toxicity	TUC	1.0	2.0	No	No	\$3000 <sup>vi</sup>
04/25/2006	742339	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	4.7	Yes	Yes	\$3000
04/25/2006	742338	Total Nitrogen	AMEL	mg/L	1.0	3.85	Yes	Yes	\$3000
06/20/2006	742357	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.42	No	Yes	\$3000
07/06/2006	443815	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.5	No	Yes	\$3000
07/06/2006	742337	Total Nitrogen	AMEL	mg/L	1.0	2.5	Yes	Yes	\$3000
08/01/2006	443814	Chronic toxicity, fathead minnow growth	Toxicity	TUC	1.0	2.0	No	No	\$3000 <sup>vi</sup>
08/01/2006	742355	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.45	No	Yes	\$3000
08/15/2006	742356	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
09/26/2006	742351	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.3	No	Yes	\$3000
10/10/2006	741641	Total Nitrogen	AMEL	mg/L	1.0	3.0	Yes	Yes	\$3000
10/10/2006	742333	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.3	Yes	Yes	\$3000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
10/10/2006	507674	Manganese	Instantaneous Maximum	mg/L	1.0	2.7	Yes	Yes	\$3000
12/05/2006	742336	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.4	No	Yes	\$3000
01/02/2007	571541	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.9	Yes	Yes	\$3000
01/02/2007	741640	Total Nitrogen	AMEL	mg/L	1.0	2.9	Yes	Yes	\$3000
04/10/2007	608800	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.8	Yes	Yes	\$3000
04/10/2007	741642	Total Nitrogen	AMEL	mg/L	1.0	2.8	Yes	Yes	\$3000
07/03/2007	741644	Total Nitrogen	AMEL	mg/L	1.0	1.3	No	No	\$3000 <sup>vi</sup>
07/31/2007	708512	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	4.9	No	Yes	\$3000
09/11/2007	708513	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	0.64	No	Yes	\$3000
10/09/2007	741647	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	Yes	\$3000
10/09/2007	708514	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.2	No	Yes	\$3000
10/09/2007	741646	Total Nitrogen	AMEL	mg/L	1.0	2.2	Yes	Yes	\$3000
10/09/2007	741648	Manganese	Instantaneous Maximum	mg/L	1.0	7.0	Yes	Yes	\$3000
12/04/2007	738903	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	3.09	No	Yes	\$3000
01/15/2008	741581	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.7	No	Yes	\$3000
01/15/2008	738906	Total Nitrogen	AMEL	mg/L	1.0	2.7	Yes	Yes	\$3000
January 2006 - January 2008		Total Nitrogen	Instantaneous Maximum		\$200 per day for 545 of 695 days within time period			No	\$109,000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
02/07/2006	742345	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	8.0	No	No	\$3000 <sup>vi</sup>
02/07/2006	742346	Chronic toxicity, fathead minnow survival	Toxicity	TUc	1.0	2.0	No	No	\$3000 <sup>vi</sup>
04/25/2006	742339	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	4.7	Yes	Yes	\$3000
04/25/2006	742338	Total Nitrogen	AMEL	mg/L	1.0	3.85	Yes	Yes	\$3000
06/20/2006	742357	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.42	No	Yes	\$3000
07/06/2006	443815	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.5	No	Yes	\$3000
07/06/2006	742337	Total Nitrogen	AMEL	mg/L	1.0	2.5	Yes	Yes	\$3000
08/01/2006	443814	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	2.0	No	No	\$3000 <sup>vi</sup>
08/01/2006	742355	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.45	No	Yes	\$3000
08/15/2006	742356	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
09/26/2006	742351	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.3	No	Yes	\$3000
10/10/2006	741641	Total Nitrogen	AMEL	mg/L	1.0	3.0	Yes	Yes	\$3000
10/10/2006	742333	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.3	Yes	Yes	\$3000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
10/10/2006	507674	Manganese	Instantaneous Maximum	mg/L	1.0	2.7	Yes	Yes	\$3000
12/05/2006	742336	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.4	No	Yes	\$3000
01/02/2007	571541	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.9	Yes	Yes	\$3000
01/02/2007	741640	Total Nitrogen	AMEL	mg/L	1.0	2.9	Yes	Yes	\$3000
04/10/2007	608800	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.8	Yes	Yes	\$3000
04/10/2007	741642	Total Nitrogen	AMEL	mg/L	1.0	2.8	Yes	Yes	\$3000
07/03/2007	741644	Total Nitrogen	AMEL	mg/L	1.0	1.3	No	No	\$3000 <sup>vi</sup>
07/31/2007	708512	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	4.9	No	Yes	\$3000
09/11/2007	708513	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	0.64	No	Yes	\$3000
10/09/2007	741647	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	Yes	\$3000
10/09/2007	708514	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.2	No	Yes	\$3000
10/09/2007	741646	Total Nitrogen	AMEL	mg/L	1.0	2.2	Yes	Yes	\$3000
10/09/2007	741648	Manganese	Instantaneous Maximum	mg/L	1.0	7.0	Yes	Yes	\$3000
12/04/2007	738903	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	3.09	No	Yes	\$3000
01/15/2008	741581	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.7	No	Yes	\$3000
01/15/2008	738906	Total Nitrogen	AMEL	mg/L	1.0	2.7	Yes	Yes	\$3000
January 2006 – January 2008		Total Nitrogen	Instantaneous Maximum		\$200 per day for 545 of 695 days within time period			No	\$109,000

Complaint No. R9-2008-0046  
 Table 3. Summary of Effluent Violations

May 16, 2008

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MIMP <sup>iii,iv</sup>	Recommended Penalty
02/07/2006	742345	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	8.0	No	No	\$3000 <sup>vi</sup>
02/07/2006	742346	Chronic toxicity, fathead minnow survival	Toxicity	TUc	1.0	2.0	No	No	\$3000 <sup>vi</sup>
04/25/2006	742339	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	4.7	Yes	Yes	\$3000
04/25/2006	742338	Total Nitrogen	AMEL	mg/L	1.0	3.85	Yes	Yes	\$3000
06/20/2006	742357	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.42	No	Yes	\$3000
07/06/2006	443815	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.5	No	Yes	\$3000
07/06/2006	742337	Total Nitrogen	AMEL	mg/L	1.0	2.5	Yes	Yes	\$3000
08/01/2006	443814	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	2.0	No	No	\$3000 <sup>vi</sup>
08/01/2006	742355	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.45	No	Yes	\$3000
08/15/2006	742356	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
09/26/2006	742351	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.3	No	Yes	\$3000
10/10/2006	741641	Total Nitrogen	AMEL	mg/L	1.0	3.0	Yes	Yes	\$3000
10/10/2006	742333	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.3	Yes	Yes	\$3000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
10/10/2006	507674	Manganese	Instantaneous Maximum	mg/L	1.0	2.7	Yes	Yes	\$3000
12/05/2006	742336	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.4	No	Yes	\$3000
01/02/2007	571541	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.9	Yes	Yes	\$3000
01/02/2007	741640	Total Nitrogen	AMEL	mg/L	1.0	2.9	Yes	Yes	\$3000
04/10/2007	608800	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.8	Yes	Yes	\$3000
04/10/2007	741642	Total Nitrogen	AMEL	mg/L	1.0	2.8	Yes	Yes	\$3000
07/03/2007	741644	Total Nitrogen	AMEL	mg/L	1.0	1.3	No	No	\$3000 <sup>vi</sup>
07/31/2007	708512	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	4.9	No	Yes	\$3000
09/11/2007	708513	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	0.64	No	Yes	\$3000
10/09/2007	741647	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	Yes	\$3000
10/09/2007	708514	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.2	No	Yes	\$3000
10/09/2007	741646	Total Nitrogen	AMEL	mg/L	1.0	2.2	Yes	Yes	\$3000
10/09/2007	741648	Manganese	Instantaneous Maximum	mg/L	1.0	7.0	Yes	Yes	\$3000
12/04/2007	738903	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	3.09	No	Yes	\$3000
01/15/2008	741581	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.7	No	Yes	\$3000
01/15/2008	738906	Total Nitrogen	AMEL	mg/L	1.0	2.7	Yes	Yes	\$3000
January 2006 – January 2008		Total Nitrogen Instantaneous Maximum			\$200 per day for 545 of 695 days within time period			No	\$109,000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>ii</sup>	Subject to MMP <sup>iii,iv</sup>	Recommended Penalty
02/07/2006	742345	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	8.0	No	No	\$3000 <sup>vi</sup>
02/07/2006	742346	Chronic toxicity, fathead minnow survival	Toxicity	TUc	1.0	2.0	No	No	\$3000 <sup>vi</sup>
04/25/2006	742339	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	4.7	Yes	Yes	\$3000
04/25/2006	742338	Total Nitrogen	AMEL	mg/L	1.0	3.85	Yes	Yes	\$3000
06/20/2006	742357	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.42	No	Yes	\$3000
07/06/2006	443815	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.5	No	Yes	\$3000
07/06/2006	742337	Total Nitrogen	AMEL	mg/L	1.0	2.5	Yes	Yes	\$3000
08/01/2006	443814	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	2.0	No	No	\$3000 <sup>vi</sup>
08/01/2006	742355	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.45	No	Yes	\$3000
08/15/2006	742356	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	\$3000
09/26/2006	742351	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.3	No	Yes	\$3000
10/10/2006	741641	Total Nitrogen	AMEL	mg/L	1.0	3.0	Yes	Yes	\$3000
10/10/2006	742333	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.3	Yes	Yes	\$3000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation <sup>II</sup>	Subject to MMP <sup>III,IV</sup>	Recommended Penalty
10/10/2006	507674	Manganese	Instantaneous Maximum	mg/L	1.0	2.7	Yes	Yes	\$3000
12/05/2006	742336	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.4	No	Yes	\$3000
01/02/2007	571541	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.9	Yes	Yes	\$3000
01/02/2007	741640	Total Nitrogen	AMEL	mg/L	1.0	2.9	Yes	Yes	\$3000
04/10/2007	608800	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.8	Yes	Yes	\$3000
04/10/2007	741642	Total Nitrogen	AMEL	mg/L	1.0	2.8	Yes	Yes	\$3000
07/03/2007	741644	Total Nitrogen	AMEL	mg/L	1.0	1.3	No	No	\$3000 <sup>VI</sup>
07/31/2007	708512	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	4.9	No	Yes	\$3000
09/11/2007	708513	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	0.64	No	Yes	\$3000
10/09/2007	741647	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	Yes	\$3000
10/09/2007	708514	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.2	No	Yes	\$3000
10/09/2007	741646	Total Nitrogen	AMEL	mg/L	1.0	2.2	Yes	Yes	\$3000
10/09/2007	741648	Manganese	Instantaneous Maximum	mg/L	1.0	7.0	Yes	Yes	\$3000
12/04/2007	738903	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	3.09	No	Yes	\$3000
01/15/2008	741581	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.7	No	Yes	\$3000
01/15/2008	738906	Total Nitrogen	AMEL	mg/L	1.0	2.7	Yes	Yes	\$3000
January 2006 - January 2008		Total Nitrogen	Instantaneous Maximum		\$200 per day for 545 of 695 days within time period			No	\$109,000