

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. 99-711

FOR

SFPP, L.P. AND KINDER MORGAN ENERGY PARTNERS, L.P.
CHICO TERMINAL
BUTTE COUNTY

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Board) finds that:

1. SFPP, L.P. and Kinder Morgan Energy Partners, L.P. (hereafter Discharger) own and operate a 25 acre bulk storage terminal at 2570 Hegan Lane in Chico, California. The Chico Terminal is in Section 1, T21N, R1E, MDB&M (Assessor's Parcel No. 039-060-053). Surface drainage is to Comanche Creek, a tributary of the Sacramento River.
2. The Discharger receives gasoline and diesel through an underground distribution pipeline and store it in 33 aboveground storage tanks (ASTs) which have a total capacity of 23,390,010 gallons. In addition, the Discharger receives gasoline additives, by truck, and store it in separate 4,000 and 10,000 gallon ASTs. Tosco, Chevron, Equilon Enterprises LLC, Exxon, and ARCO also receive gasoline additives, by truck, and store it in nine ASTs which have a total capacity of 52,697 gallons. Gasoline, gasoline additives and diesel are transferred from the ASTs by underground and aboveground piping to four loading racks.
3. Petroleum contaminated wastewater from the ASTs and loading racks is treated through oil/water separators and granular activated carbon prior to discharging to an unlined ditch draining to Comanche Creek. Discharges from the treatment system are regulated under Waste Discharge Requirements Order No. 96-064 (NPDES No. CA0083810). The analyses of effluent samples from the treatment system reveals significant releases of petroleum constituents have occurred, with concentrations ranging from <1.0 mg/l to 1,900 mg/l of methyl t-butyl ether (MTBE), <1.0 mg/l to 45,000 mg/l of total petroleum hydrocarbons as gasoline (TPHg), and <50 mg/l to 1,200 mg/l of total petroleum hydrocarbons as diesel (TPHd). From April 1997 through December 1998, approximately 880,000 gallons of wastewater has been discharged to the unlined ditch. This wastewater does not reach Comanche Creek but percolates into the ground, possibly impacting groundwater quality

4. On 29 September 1987, Mobil Oil Corporation reported an underground storage tank unauthorized release (discharge of waste) following the removal of a 2,000 gallon gasoline additive tank. The Discharger has assumed responsibility for investigation and remediation associated with the discharge of waste.
5. From 1990 to 1997, approximately 4,000 gallons of gasoline, gasoline additive and diesel were released in a number of separate events from the Chico Terminal which impacted soil and groundwater. The largest release, 3,800 gallons of gasoline, resulted in 4.5 feet of free product floating on groundwater beneath the facility. The Discharger obtained the services of a consultant who has worked toward determining the extent of subsurface impacts from the petroleum discharge, extracted approximately 650 gallons of free product from the groundwater, and removed approximately 1,000 cubic yards of soil from the polluted areas. Remedial activities have not been completed.
6. The subsurface geology at the Chico Terminal consists of clayey silt/silty clay to ten feet below ground surface (bgs), silty sandy gravel and/or gravelly sand to 30 feet bgs, and silt/sand to a depth of 55 feet. Soil samples associated with petroleum discharges have revealed impacts by petroleum constituents, including but not limited to, MTBE, benzene, toluene, ethylbenzene, xylenes, TPHg and TPHd. The extent of impacts to soil throughout the site is unknown. The geological conditions beyond 55 feet below ground surface have not been explored.
7. The Discharger has installed twenty-nine monitoring wells. Petroleum constituents were not detected in the initial sampling of the deep monitoring well. Quarterly monitoring has determined that shallow groundwater fluctuates from 5 to 15 feet below ground surface and flows to the south. A range of 0.02 feet to 4.5 feet of free product has been found in nine monitoring wells. Analyses of groundwater samples obtained from the shallow monitoring wells reveals significant contamination by petroleum constituents, with concentrations ranging from <0.5 µg/l to 2,500 mg/l of MTBE, <1.0 µg/l to 4.0 µg/l of ethyl t-butyl ether, <1.0 µg/l to 1.1 mg/l of tertiary butyl alcohol, <0.5 µg/l to 4.3 mg/l of benzene, <0.5 µg/l to 22 mg/l of toluene, <0.5 µg/l to 6.1 mg/l of ethylbenzene, <0.5 µg/l to 18.9 mg/l of xylenes, <0.05 mg/l to 410 mg/l of TPHg and <0.05 mg/l to 250 mg/l of TPHd. The off-site extent of the MTBE discharge has not been defined.
8. On 14 July 1998, Regional Board staff performed a Spill Prevention Control and Countermeasure (SPCC) plan inspection of the Discharger's facility in conjunction with representatives from the U.S. Environmental Protection Agency, Butte County Environmental Health Department, and Butte County Air Quality Management District. The inspection discovered an inaccurate SPCC plan, incomplete groundwater monitoring network, and violations of Waste Discharge Requirements Order No. 96-064 (NPDES No. CA0083810). A Notice of Violation (NOV) was issued to the Discharger on 25

August 1998. Since issuance of the NOV the Discharger has started amending the SPCC plan and has conducted additional subsurface investigation. The Discharger has submitted a work plan to continue investigating the extent of the petroleum discharge. MTBE and TPHd continue to be detected in the treatment system discharges in violation of the NPDES Permit.

9. On 3 August 1998, Regional Board staff sampled one private water supply well, approximately 100 feet east of the Discharger (2518 Hegan Lane). Regional Board staff were denied access to sample another private water supply well, approximately 200 feet north of the Discharger (11181 Midway). Subsequently, staff sampled twelve downgradient private water supply wells on Skyway and Cessna Avenues. Petroleum constituents, including MTBE, were not detected in the sampled wells.
10. The California Department of Health Services' (DHS) Secondary Maximum Contaminant Level (MCL) for MTBE is 5 $\mu\text{g/l}$. The MTBE Public Health Goal for chemicals in drinking water, adopted by the California Office of Environmental Health Hazard Assessment, is 13 $\mu\text{g/l}$. The California DHS Primary MCL for benzene, as a drinking water level, is 1.0 $\mu\text{g/l}$. The California Proposition 65 Regulatory Level for benzene is 3.5 $\mu\text{g/l}$.
11. On 1 September 1998, Regional Board staff issued a Proposition 65 disclosure to Butte County pursuant to §25180.7 of the California Health and Safety Code, based on the benzene concentrations detected in the groundwater and active usage of the water supply.
12. On 14 December 1998, during the fourth quarter monitoring, 4.5 feet of free product was measured in MW-6. The Discharger obtained the services of a consultant to determine the source of the waste and remove free product from the groundwater. Approximately 40 gallons of gasoline have been extracted from the well.
13. The Discharger is near two other petroleum facilities. Jessee M. Lange Distributing, Inc. owns and operates a retail and wholesale petroleum distribution facility at 11226 Midway. Western Petroleum Marketers owns and operates a petroleum distribution facility at 11204 Midway. Petroleum discharges from all three facilities threaten groundwater, several private, public, and small community water systems. Separate cleanup and abatement orders have been issued for each facility.
14. The Regional Board does not expect SFPP, L.P., Kinder Morgan Energy Partners, L.P., Western Petroleum Marketers, or Jessee M. Lange Distributing, Inc., to duplicate each others work or the requirements of their respective Cleanup and Abatement Orders, but encourages the parties to work cooperatively in sharing information to understand the regional hydrogeology, extent of degradation and develop regional maps for the use of all parties to comply with this Order.

15. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, establishes beneficial uses of waters of the State and water quality objectives to protect those uses. The beneficial uses of the groundwater are domestic, municipal, industrial and agricultural supply.
16. Section 13304(a) of the California Water Code provides:

“Any person who has discharged or discharges waste into the waters of this State in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition or pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the Superior Court of the County for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”
17. Section 13304(c) (1) of the California Water Code provides:

“If the waste is cleaned up or the effects of the waste are abate, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervision cleanup or abatement activities, or taking other remedial actions. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”
18. Section 13267(b) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”
19. The unauthorized releases of petroleum and petroleum constituents constitute a discharge of waste under Section 13304 of the California Water Code.

20. Section 13050 of the California Water Code provides in part:

“‘Pollution’ means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

- (A) The waters for beneficial uses.
- (B) Facilities which serve these beneficial uses.
- (2) ‘Pollution’ may include ‘contamination’.

‘Contamination’ means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. ‘Contamination’ includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

‘Nuisance’ means anything which meets all of the following requirements:

- (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, so as to interfere with the comfortable enjoyment of life or property.
- (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (3) Occurs during, or as a result of, the treatment or disposal of wastes.”

- 21. As a result of the activities described in Findings 2 through 9, and 12, SFPP, L.P. and Kinder Morgan Energy Partners, L.P., have caused or permitted waste to be discharged or deposited where it has or probably will be discharged into waters of the State and has created, and continues to threaten to create, a condition of pollution or nuisance.
- 22. The issuance of this Order is an enforcement action by a regulatory agency and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15231(a)(2), Title 14, California Code of Regulations.
- 23. Any person affected adversely by this action of the Board may petition the State Water Resources Control Board to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected adversely by this Order, may request the Regional Board to review the Order prior to State Board action on the petition. Such request should be made within 30 days of the date of this Order. Note that even if review is sought with the Regional Board, filing a petition with the State Board within the statutory time period is necessary to preserve the petitioners legal rights.

24. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, or issue a complaint for Administrative Civil Liability.
25. Failure to comply with a cleanup and abatement order or dates specifies may result in further enforcement actions under Section 13350 of the California Water Code, which may result in civil monetary penalties up to a maximum of five thousand dollars (\$5,000) to fifteen thousand dollars (\$15,000) for each day of violation.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304 of the California Water Code, SFPP, L.P. and Kinder Morgan Energy Partners, L.P. shall comply with the following:

1. Cleanup and abate the effects, forthwith, the discharge of waste to subsurface soil and groundwater.
2. Compliance with No. 1 above shall include, but not be limited to, the following measures:
 - a. Submit, **by 30 May 1999**, an amended spill prevention control and countermeasure plan.
 - b. Submit, **by 1 July 1999**, a Work Plan to determine the horizontal and vertical extent of the impacts of the discharge of waste to subsurface soil and groundwater. Implement the approved Work Plan in accordance with the time schedule.
 - c. Submit, **by 1 August 1999**, a report prepared by a Registered Engineer documenting that the aboveground storage tanks, loading rack, aboveground piping, underground piping, and fuel dispensers have an adequate secondary containment and monitoring system to prevent petroleum releases to surface and groundwater. If the Engineer indicates the secondary containment and monitoring system is inadequate, then a time schedule to bring the facility into compliance shall be included in the report.
 - d. Submit, **by 1 September 1999**, local and regional plan view maps that include potential sources of waste discharged, the extent of the discharge, direction of flow and groundwater gradient, and the location of sensitive receptors. A neighborhood canvas to identify wells within $\frac{1}{4}$, $\frac{1}{2}$, and one mile of the site shall be included.
 - e. Submit, **by 1 January 2000**, a Corrective Action Plan to clean up and abate the discharge of waste to subsurface soil and groundwater. Implement the approved Corrective Action Plan in accordance with the approved time schedule.
 - f. Implement, forthwith, a quarterly groundwater monitoring program which

- includes both monitoring wells and private water supply wells impacted or potentially threatened by the discharge of waste. Submit the results of the monitoring **within 30 days from the end of each calendar quarter** until the discharge of waste is abated.
- g. The Discharger shall submit to the Board on or before each compliance report date, a report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is being reported, the reasons for such noncompliance shall be stated, plus an estimate of the date when the Discharger will be in compliance. The Discharger shall notify the Board by letter when they are again in compliance with the time schedule.
3. The Discharger shall reimburse the Regional Board for reasonable costs associated with the oversight of investigation, cleanup, and abatement of petroleum discharged from 2570 Hegan Lane, Chico, California. **By 1 June 1999**, the Discharger shall provide the Regional Board with the name and addresses of the appropriate person to receive the billing for the oversight costs.

GARY M. CARLTON, Executive Officer

By: _____
James C. Pedri, Assistant Executive Officer

Dated

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