

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0591

MANDATORY PENALTY
IN THE MATTER OF

KINDER MORGAN ENERGY PARTNERS, L.P.
THROUGH ITS OPERATING PARTNER SFPP, L.P.
FOX ROAD PETROLEUM RELEASE SITE
SOLANO COUNTY

This Complaint is issued to Kinder Morgan Energy Partners, L.P. through its operating partner SFPP, L.P. (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. 5-01-078 (NPDES No. CA0084760).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owned and operated a Groundwater Cleanup System (GWCS) at the location of a petroleum release on Fox Road near Elmira, Solano County. Treated groundwater is discharged to Gibson Canyon Creek, a water of the United States.
2. On 27 April 2001, the Central Valley Water Board adopted WDRs Order No. 5-01-078 (NPDES No. CA0084760) to regulate discharges of treated groundwater from the GWCS. On 25 January 2008, the Board issued Order Number R5-2008-0008 (NPDES No. CA0084760) and rescinded Order No. 5-01-078.
3. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more, or for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i) states:

(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

4. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

5. WDRs Order No. 5-01-078 Effluent Limitation B.2 included, in part, the following effluent limitations:

Parameter	Units	30-Day Median	Daily Maximum
Dissolved Oxygen	mg/L	7	
Methyl tert butyl ether	µg/L	<5	5
Total petroleum hydrocarbons as diesel	µg/L	<50	100
pH			6.5 - 8.5

6. On 26 August 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations identifying violations of WDRs Order No. 5-01-078 that are subject to MMPs. The draft Record of Violations covers the period from 1 January 2000 through 31 December 2007. On 30 September 2008, the Discharger sent a letter stating it had no comments. Attachment A to this Complaint is the final Record of Violations that identifies one serious violation and three non-serious violations that are subject to MMPs during the period from 1 January 2000 through 31 December 2007.

7. The MMP for the one serious effluent limitation violation is **three thousand dollars (\$3,000)**. The sum of the MMPs for the three non-serious violations subject to MMPs is **nine thousand dollars (\$9,000)**. The sum total MMP for these violations is **twelve thousand dollars (\$12,000)**.
8. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

KINDER MORGAN ENERGY PARTNERS, L.P. IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twelve thousand dollars (\$12,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following **by 10 December 2008**:
 - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twelve thousand dollars (\$12,000)**; or
 - b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

JACK DEL CONTE, Assistant Executive Officer

10 November 2008

(Date)

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the Kinder Morgan Energy Partners L.P through its Operating Partner SFPP, L.P. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0591 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **twelve thousand dollars (\$12,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0591" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board **by 10 December 2008** or this matter will be placed on the Regional Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name)

(Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0591

KMEP Fox Road Petroleum Release Site
Groundwater Remediation System

RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 5-01-078)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	27-Mar-01	pH		8.5	9	daily	3
2	11-May-01	Dissolved Oxygen	mg/l	7	5.15	daily	3
3	11-May-01	Dissolved Oxygen	mg/l	7	4.83	daily	3
4	10-Sep-01	MTBE	µg/L	5	5.2	daily	4
5	8-Jul-02	TPHd	µg/L	100	150	daily	2
6	1-Nov-04	pH		8.5	8.9	daily	3
7	21-Dec-04	pH		8.5	9.4	daily	3
8	1-Nov-04	Dissolved Oxygen	mg/l	7	5.4	daily	3
9	21-Dec-04	Dissolved Oxygen	mg/l	7	3.3	daily	4
10	11-Jan-05	pH		8.5	9.1	daily	4

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/07</u>
Group I Serious Violations:	0
Group II Serious Violations:	1
Non-Serious Exempt from MPs:	6
Non-serious Violations Subject to MPs:	3
<u>Total Violations Subject to MPs:</u>	<u>4</u>

Mandatory Minimum Penalty = (1 Serious Violations + 3 Non-Serious Violations) x \$3,000 = \$12,000