

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0554

MANDATORY PENALTY
IN THE MATTER OF

KINDER MORGAN ENERGY PARTNERS, L.P.
FOX ROAD PETROLEUM RELEASE SITE
GROUNDWATER REMEDIATION SYSTEM
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 (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0008 (NPDES No. CA0084760).

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

1. The Discharger owns and operates 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 On 25 January 2008, the Central Valley Water Board issued WDRs Order R5-2008-0008 and rescinded Order No. 5-01-078 except for enforcement purposes. On 25 January 2008, the Board also issued Time Schedule Order (TSO) R5-2008-0009. The TSO exempts the Discharger from mandatory penalties for the violation of final effluent limitations for manganese, nitrate, and tertiary butyl alcohol until 31 December 2012. On 2 May 2011, the Board issued amended TSO R5-2008-0009-01 to extend the compliance date for iron, manganese, nitrate, and tertiary butyl alcohol to 1 January 2013. This Complaint considers the protection from mandatory minimum penalties provided by the TSOs.
3. On 27 May 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2009-0543 for mandatory minimum penalties for effluent violations that occurred from 1 January 2008 through 31 December 2008. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2009-0543 to be resolved.
4. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 January 2009 through 30 June 2013. These violations are specifically identified as subject to mandatory minimum penalties in Attachment A to this Complaint, which is attached hereto and incorporated by this reference.

5. On 9 July 2013, Central Valley Water Board staff sent the Discharger a draft Record of Violations. The Discharger responded on 26 July 2013 and requested dismissal of one violation because the treatment system was turned off after collection of the 25 April 2012 sample. However, this is an effluent limitation violation subject to MMPs because it was a sample of the discharge to Gibson Canyon Creek. The Discharger also requested that MMPs not be assessed for this sample because it was collected to confirm the results of a previous sample. However, the WDRs require that all sample results be submitted, regardless of their purpose, and the Water Code requires that MMPs be assessed for all effluent limit violations.
6. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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 I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385 subdivision (i)(1) states, in part

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.

7. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.

8. Water Code 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.

9. WDRs Order R5-2008-0008 Effluent Limitations IV.A.1.a., states, in part, the following:

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Dissolved Oxygen	mg/L	--	--	7.0	--
Methyl Tert-Butyl Ether	µg/L	--	1.0	--	--

- 10. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitation contained in Order R5-2007-0069 during the period 1 January 2009 through 30 June 2013. The violations are defined as serious because measured concentration of a Group II constituent exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
- 11. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) non-serious violation of the effluent limitations contained in Order R5-2007-0069 during the period beginning 1 January 2009 and ending 30 June 2013. This non-serious violation is not subject to mandatory penalties under Water Code section 13385 (i)(1) because this violation was not preceded by three or more similar violations within a six-month period.
- 12. The total amount of the mandatory penalties assessed for the cited effluent violations is **six thousand dollars (\$6,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint. This Complaint addresses administrative civil liability for violations that are specifically identified as subject to mandatory minimum penalties in Attachment A.

13. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. 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 Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **5/6 December 2013**, unless one of the following occurs by **8 October 2013**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **six thousand dollars (\$6,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the 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.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

/S/

PAMELA C. CREEDON, Executive Officer

10 September 2013

DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Kinder Morgan Energy Partners, L.P. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0554 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2013-0554" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **8 October 2013**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0554**

**Kinder Morgan Energy Partners, L.P.
Fox Road Petroleum Release Site
Groundwater Remediation System**

DRAFT RECORD OF VIOLATIONS (1 January 2009 – 30 June 2013) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0008)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	9-Apr-12	Methyl Tert-butyl Ether	µg/L	1	6.8	Daily	2	941380
2	25-Apr-12	Methyl Tert-butyl Ether	µg/L	1	2.3	Daily	2	941379
3	15-Aug-12	Dissolved Oxygen	mg/L	7	5.4	Instant Min	3	939259

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 violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>06/30/2013</u>
Group I Serious Violations:	0
Group II Serious Violations:	2
Non-Serious Violations Exempt from MMPs:	1
Non-serious Violations Subject to MMPs:	0
<u>Total Violations Subject to MMPs:</u>	<u>2</u>

Mandatory Minimum Penalty = (2 serious Violations + 0 Non-Serious Violations) x \$3,000 = \$6,000