

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

STAFF SUMMARY REPORT
STAFF: Jolanta Uchman
MEETING DATE: March 16, 2005

ITEM: 7

SUBJECT: Kinder Morgan Energy Partners, L.P., Fairfield, Solano County - Authorizing Attorney General Referral to Seek Judicial Civil Penalties and Other Relief for Diesel Fuel Spill in April 2004

CHRONOLOGY: August 2004 - Cleanup and Abatement Order issued

DISCUSSION: Kinder Morgan Energy Partners, L.P. (KM) owns and operates a fuel distribution pipeline transmitting fuel from its Concord Terminal in Martinez to its product terminal in Sacramento. On April 27, 2004, KM detected a diesel fuel leak in this pipeline. The leak was located where the pipeline runs underground adjacent to the Union Pacific Railroad tracks close to Suisun Slough near Fairfield. The leak spilled a reported 104,874 gallons of diesel fuel into the Suisun Marsh and adversely impacted waters of the State and their beneficial uses. The spill was confined to 242 acres of wetlands in the Marsh as a result of emergency response actions overseen by the State Department of Fish and Game's Office of Spill Prevention and Response, U.S. EPA, the Water Board, and other agencies.

On August 4, 2004, the Executive Officer issued a Cleanup and Abatement Order to KM to govern the spill's cleanup activities. This Order required KM to complete initial emergency response actions, submit and implement interim and final remedial action plans, and mitigate all wetland impacts. KM has completed initial response actions and interim remedial actions. KM has submitted a final remedial action plan and a wetland mitigation plan, which are currently under review by Board staff.

Board staff now want to move on to the punitive phase of this spill and refer this case to the California Attorney General's office for judicially imposed civil penalties. The Board has the discretion to administratively impose civil penalties; however, the Board's referral of the case to the Attorney General's office is desirable as it would allow different State agencies to act in a coordinated manner in any action seeking judicial penalties. The Department of Fish and Game has already referred the matter to the Attorney General's office. In addition, referral would allow for higher fines than those that could be imposed by the Board administratively.

The Tentative Resolution (Appendix A) authorizes the Executive Officer to request that the Attorney General seek judicially imposed civil penalties and to seek other remedies as may be permissible and appropriate. The Resolution also authorizes the Executive Officer to seek judicial civil liability in an amount that he deems appropriate and report that amount to the Board Chair. It should be noted that the Resolution does not make any determination about the extent of the spill or the damages resulting from the spill.

KM has submitted comments (Appendix B) on the Tentative Resolution. Staff has prepared responses to KM's comments (Appendix C).

**RECOMMEN-
DATION:**

Adoption of the Tentative Resolution

File No.:

2129.2090 (JGU)

Appendices:

A. Tentative Resolution

B. Correspondence

C. Responses to Comments