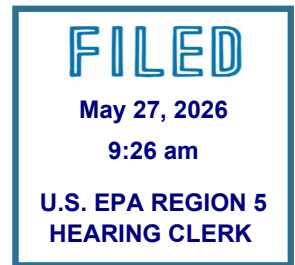


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CAA-05-2026-0015
)
Kinder Morgan Liquids Terminals LLC) Proceeding to Assess a Civil Penalty
Argo, Illinois,) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative penalty assessment proceeding commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b) and 22.18(b).

2. Complainant is the U.S. Environmental Protection Agency (EPA). The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.

3. Respondent is Kinder Morgan Liquids Terminals LLC (Kinder Morgan), a corporation doing business in Illinois. Respondent is a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. The EPA and Respondent agree that settling this action is in the public interest and consent to the entry of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b)(2) and (3) without the adjudication of any issues of law or fact.

5. Respondent agrees to comply with the terms of this CAFO.

B. Jurisdiction

6. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B) and Section 113(a)(3)(A) of the CAA, 42 U.S.C. §§ 7413(a)(1)(B) and 7413(a)(3)(A).

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. In satisfaction of the notice requirements of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), on March 27, 2023, the EPA issued to Respondent a Notice of Violation/Finding of Violation (NOV/FOV) and provided a copy of the NOV/FOV to the Illinois Environmental Protection Agency (IEPA), providing notice to Respondent and IEPA that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On April 24, 2023, representatives of Respondent and the EPA conferred regarding the March 27, 2023 NOV/FOV.

9. The Regional Judicial Officer of Region 5 is authorized to ratify the Consent Agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

C. Statutory and Regulatory Background

Illinois Construction Permit Program

10. Section 110(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7410(a)(1), requires each state to adopt and submit to the EPA for approval a State Implementation Plan (SIP) which provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards

(NAAQS). Under Section 110(a) of the CAA, 42 U.S.C. § 7410(a), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. Pursuant to Section 113(a) and (b) of the CAA, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113 of the CAA. 42 U.S.C. § 7413.

11. Under 40 C.F.R. § 52.23, any permit limitation or condition, contained within a permit issued under an EPA-approved program that is incorporated in a SIP, is a requirement of the SIP, and is federally enforceable under Section 113 of the CAA. 42 U.S.C. § 7413.

12. EPA approved Illinois Pollution Control Board (IPCB) Rule 103(a) as part of the federally enforceable SIP for the State of Illinois on May 31, 1972, 37 Fed. Reg. 10862. IPCB Rule 103(a) has been recodified at 35 Ill. Admin. Code § 201.142. The Illinois SIP at Rule 103(a)(1) (35 Ill. Admin. Code § 201.142) provides that no person shall cause or allow the construction of any new emission source or any new air pollution control equipment or cause or allow the modification of any existing emission source or air pollution equipment, without first obtaining a construction permit from the Illinois Environmental Protection Agency (Illinois EPA).

Title V Program

13. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

14. Under Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing and implementing Title V of the CAA. 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

15. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

16. 40 C.F.R. § 70.6(b)(l) provides that Title V permits are federally enforceable and that all terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA.

17. EPA approved Illinois's Title V program on December 4, 2001. 66 Fed. Reg. 62946. The Illinois Title V program is commonly referred to as the Clean Air Act Permit Program (CAAPP).

18. On March 20, 2019, Illinois EPA issued to Kinder Morgan a CAAPP Minor Modification permit No. 95120128. On March 3, 2020, Illinois EPA issued to Kinder Morgan an Administrative Amendment CAAPP permit No. 95120128. On December 28, 2020, Illinois EPA issued to Kinder Morgan a CAAPP Renewal Permit No. 95120128. On August 23, 2022, Illinois EPA issued to Kinder Morgan an Administrative Amendment CAAPP permit No. 95120128. (Kinder Morgan Title V Permits).

Bulk Gasoline Terminal NESHAP

19. On January 10, 2008, EPA approved the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, 40 C.F.R. Part 63, Subpart BBBBBB. Fed. Reg. 1933 (the Bulk Gasoline Terminal NESHAP or NESHAP). The rule was amended on March 7, 2008, 73 Fed. Reg. 12276; January 10, 2008, 76 Fed. Reg. 4176; and November 19, 2020 (40 C.F.R. § 63.11086 and Table 3 only), 85 Fed. Reg. 73919.

20. The Bulk Gasoline Terminal NESHAP applies to, among other things, an area source bulk gasoline terminal. According to 40 C.F.R. § 63.11100, "bulk gasoline terminal" means "any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and

has a gasoline throughput of 20,000 gallons per day or greater. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person.”

21. The General Provisions of the NESHAP, at 40 C.F.R. § 63.6(e)(1)(i), require that at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

Dow Chemical Dedicated Service Facility Requirements, Construction Permit No. 92020053

22. On September 12, 2013, Illinois EPA issued Kinder Morgan a Construction Permit, No. 92020053 (2013 CP No. 92020053) for the Dow Chemical Dedicated Service Facility (previously known as the Union Carbide Dedicated Service Facility), which includes, among other things, 34 new fixed roof tanks equipped with pressure/vacuum relief valves (UC-1 through UC-32, UC-101, and UC-102) and a control system consisting of a closed-vent capture system, vapor accumulator tank, and vapor combustion unit (VCU)-2. On October 8, 2014, Illinois EPA issued a revision to the 2013 CP No. 92020053 (2014 CP No. 92020053).

23. The 2014 CP No. 92020053 requirements for the Dow Chemical Dedicated Service facility are incorporated into Kinder Morgan’s 2019, 2020 and 2022 Title V Permits at Section 5.7 (Additional Title 1 Requirements-Construction Permits, Dow Chemical Dedicated Service Facility), Section 4.2 (Fixed Roof Storage Tanks in Non-Gasoline Service-NSPS), and Attachment 1 to the Title V Permit.

24. The 2014 CP No. 92020053, Condition 1.a, and the Title V Permit, at Conditions 5.7 and 4.2, state that the 34 new fixed roof tanks equipped with pressure/vacuum relief valves (UC-1 through UC-32, UC-101, and UC-102) in the Dedicated Service Facility are subject to New Source Performance Standards (NSPS), 40 C.F.R. Part 60, Subparts A and Kb.

25. Attachment 1 of the 2019, 2020 and 2022 Title V Permits states that UC tanks 1-24 are 70,000-gallon fixed roof storage tanks in non-gasoline service with a vapor pressure of less than 0.75 psia at 75 degrees Fahrenheit, constructed in 1994, modified or re-constructed on October 8, 2014, subject to the NSPS and controlled via a closed vent system to VCU-2. UC tanks 25-32 are 70,000-gallon fixed roof storage tanks in non-gasoline service with a vapor pressure of less than 0.75 psia at 75 degrees Fahrenheit, constructed in 1994, subject to the NSPS and controlled by VCU-2.

26. The 2014 CP No. 92020053, Condition 1.b, states that the new storage tanks for ethyl acetate, isopropyl alcohol, isopropyl acetate, n-propyl acetate and vinyl acetate and any other new storage tank complying with the NSPS Subparts A and Kb by means of add-on control equipment must be equipped with a closed vent system designed to collect all volatile organic compound (VOC) vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background and visual inspection, as determined by 40 C.F.R. § 60.485(b) (EPA Method 21).

27. The 2014 CP No. 92020053, at Conditions 1.c and 2.c, requires Kinder Morgan, to the extent practicable, to maintain and operate the new tanks, including associated control system(s), in a manner consistent with good air pollution control practice for minimizing emissions.

28. The 2014 CP No. 92020053, at Condition 2.a, and the Title V permit at Condition 5.7 and Attachment 1, require tanks UC-1, 4-5, 8, 11-12, 16-20, 22, 24, 27-29, 101-102 to be vented through the control system for the Dow Chemical Dedicated Service Facility.

Fuel Distribution Project Requirements, Construction Permit 013030082

29. On July 24, 2001, Illinois EPA issued a construction permit to Kinder Morgan for a fuel distribution project. The construction permit has been revised several times. On February 9, 2021, Illinois EPA issued a revision to CP No. 013030082 that includes, among other things, the operation of VCU-3.

30. CP No. 013030082's requirements are incorporated into Kinder Morgan's Title V Permit at Section 4.7 (Emission Unit Requirements-Rail Car and Gasoline Truck Loading Racks) and Section 5.1 (Additional Title 1 Requirements-Construction Permit No. 013030082 Fuel Distribution Project Requirements).

31. CP No. 013030082, at Condition 2.a. and the Title V Permit at Condition 5.1.b.i.F. require VCU-3 to be used to reduce the emissions of volatile organic material (VOM) from, among other things, the following storage, loading and unloading operations:

- a. Tanks 10-12, 5001-H, 5004-H, C-5H, C-8H, CL-1, D-8, 10-23, 10-28, 10-30, 15-5, 25-10, and 25-8; and
- b. Truck loading for Tanks 5-15, 10-12, 10-21, 10-25, 25-7, 5001-H, 5004-H, C-5H, C-8H, CL-1, D-8 and 15-2.

32. CP No. 013030082, at Condition 4.b, and the Title V Permit, at Condition 4.7.2.d.i., state that all gasoline loading racks at the source, are subject to the Bulk Gasoline Terminal NESHAP and the applicable requirements of the General Provisions of the NESHAP, 40 C.F.R. Part 63, Subpart A. These requirements apply for loading of both motor gasoline and aviation gasoline.

33. CP No. 013030082, at Condition 4.c., and the Title V Permit, at Condition 4.7.2.d.i., require that at all times, including period of startup, shutdown, and malfunction, Kinder Morgan must operate and maintain its gasoline loading racks, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

34. CP No. 013030082, at Condition 19.a., states that this permit requires Kinder Morgan to use VCU-3 for the operations identified in Condition 2.a. Kinder Morgan has indicated that the operation of VCU-3 is part of a program to control emissions of hazardous air pollutants (HAPs) so that this source would no longer be a major source for HAPs.

Gasoline Loading Requirements

35. The regulation at 40 C.F.R. § 63.11088(a) and Table 2(d), and Title V Permit condition 4.7.2.d.i.B.iv. require Kinder Morgan, a bulk gasoline terminal loading rack, to limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in 40 C.F.R. § 60.502(e) through (j).

36. The regulation at 40 C.F.R. § 60.502(i) states that no pressure-vacuum vent in the bulk gasoline terminal's vapor collection system shall begin to open at a system pressure less than 4,500 pascals (18.1 inches of water column).

D. Stipulated Facts

37. Kinder Morgan is a corporation that does business in Illinois.

38. Kinder Morgan owns and operates a bulk liquid terminal and a bulk gasoline terminal located at 8500 West 68th Street, Argo, Illinois 60501 (the Argo Facility). According to Kinder Morgan's Title V Permit, the Argo Facility is an area source of HAPs.

39. Kinder Morgan operates the following emissions units and control devices at the Argo Facility, among others: a Vapor Recovery (carbon adsorption) Unit (VRU) used to control VOM and HAP emissions from the gasoline truck loading rack; a vapor combustion unit, VCU-1, used as a back up to the VRU; VCU-2, used to control VOM emissions from the UC tanks in the Dow Chemical Dedicated Service Facility; and VCU-3, used to control VOM and HAP from various tanks and the gasoline truck and barge loading operation.

40. On July 30, 2019, EPA conducted a CAA inspection of the Argo Facility (2019 Inspection).

41. On April 4, 2020, EPA electronically issued Kinder Morgan a Request for Information (RFI) and on July 14, 2020, Kinder Morgan submitted its response to EPA's April 4, 2020 RFI.

42. Based on data submitted in its July 14, 2020 response to EPA's April 4, 2020 RFI, Kinder Morgan's maximum calculated design gasoline throughput is 2,448,000 gallons per day and its Title V permit limits total loadout of gasoline and ethanol to 500,000 barrels per month or 21,000,000 gallons per month.

43. On September 6, 2022, EPA conducted a CAA inspection of the Argo Facility (2022 Inspection).

44. On September 7, 2022, EPA requested information from Kinder Morgan via electronic mail and on September 23, 2022, Kinder Morgan electronically uploaded the requested information to an EPA-provided secure web link (Kinder Morgan 2022 electronic response).

45. On January 11, January 24, January 26, February 9, February 13, February 21, and February 22, 2023, EPA requested additional information from Kinder Morgan via electronic mail, and on January 20, January 25, February 2, February 14, February 22, and March 3, 2023, Kinder Morgan electronically provided EPA responses.

46. On March 27, 2023, EPA issued to Kinder Morgan a Notice and Finding of Violation (NOV/FOV) alleging that it violated the Illinois SIP, its Title V permit, and associated construction permits, and the NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.

47. On July 2, 2024, EPA electronically issued a RFI and on August 30, 2024, Kinder Morgan submitted its response to EPA's July 2, 2024 RFI.

48. From May 5, 2020 to June 9, 2023, Respondent completed the following actions:

- a. Replaced pressure vacuum vents at each bay of the gasoline loading rack;
- b. Repaired each piece of equipment identified as leaking during the 2022 Inspection; and
- c. Reconnected the vapor line from Tank 10-30 to VCU-3.

E. Allegations

49. During the 2022 Inspection, EPA performed EPA Method 21 using a Thermo Fischer Scientific toxic vapor analyzer (TVA) Model 2020 on the tops of several tanks in the Dow Chemical Dedicated Service Facility to measure hydrocarbon concentrations. The following table contains EPA's TVA readings and observations made during the inspection along with the material in each tank as provided in Kinder Morgan's September 23, 2022, electronic response:

Tank ID	Volatile Organic Liquid in Tank	Component	TVA Readings (ppm)
UC-5	Isobutyl alcohol	Vacuum breaker	750
		Emergency pressure relief vent	1,823
		Fire suppression system lid seam	3,709
UC-10	Diisobutyl ketone	Fire suppression system lid seam	1,855
UC-11	Butyl acetate	Vacuum breaker	2,465
		Emergency pressure relief vent	2,107
		Fire Suppression System vent	1,486
UC-12	N-propyl acetate	Vacuum breaker	623
		Emergency pressure relief vent	2,103
UC-14	Isopropyl acetate	Emergency pressure relief vent	9,997
		Fire suppression system rim	2,939
		Conservation vent pressure side	1,907
		Conservation vent vacuum side	1,525
UC-15	Primary amyl alcohol	Emergency pressure relief vent	1,856
UC-18	Isobutyl acetate	Vacuum breaker	1,473
		Emergency pressure relief vent	9,670
		Fire suppression system rim	1,467
UC-19	Primary amyl acetate	Emergency pressure relief vent	1,561
UC-20	Methyl isobutyl ketone	Vacuum breaker	1,394
		Emergency pressure relief vent	12,600
UC-22	Isopropyl acetate	Vacuum breaker	862
		Emergency pressure relief vent	1,635
		Fire suppression system rim	2,303
UC-23	Butyl propionate	Fire suppression system rim	3,611
UC-27	Cyclo-hexanone	Emergency pressure relief vent	1,178
UC-28	Butyl acetate	Vacuum breaker	712
		Emergency pressure relief vent	1,181
		Fire suppression system vent	823
UC-29	Butyl propionate	Fire suppression system rim	1,529

50. Kinder Morgan has failed to equip the tanks listed in paragraphs 49, above, with a closed vent system that's operated with no detectable emissions, in violation of Conditions 1.b. and 2.a. of CP No. 92020053 and Condition 5.7 and Attachment 1 of its Title V Permit.

51. During the 2022 Inspection, EPA observed a cable that was covering the emergency vent of Tank UC-12, potentially preventing the hatch from opening in the event of an emergency.

52. In response to the July 2, 2024 RFI, Kinder Morgan submitted pressure monitoring records of the accumulator used to accumulate emissions prior to being released to VCU-2.

53. Kinder Morgan's accumulator unit normally operates under negative pressure and releases accumulated emissions to VCU-2 when the pressure of the accumulator reaches negative 0.5 pounds per square inch (PSI).

54. On 21 different occasions from January 2020 through December 2022, the pressure in the accumulator rose greater than positive 0.5 PSI. In some instances, the pressure rose as high as 6 PSI and remained elevated for up to 48 hours. During those instances, the pressure would gradually decrease and the valve to VCU-2 remained closed, indicating the escape of emissions from the accumulator.

55. As set forth in paragraphs 51 and 54, above, Kinder Morgan has failed to maintain and operate its tanks, including associated control systems, in a manner consistent with good air pollution control practice for minimizing emissions, in violation of Conditions 1.c. and 2.c. of CP No. 92020053 and of 40 C.F.R. § 63.6(e)(1)(i).

56. In its September 23, 2022 and March 3, 2023 electronic responses, Kinder Morgan indicated that Tank 10-30 was storing propanol but that it was not connected to VCU-3.

57. As set forth in paragraph 56, above, Kinder Morgan's failure to control Tank 10-30 with VCU-3 constitutes violations of Conditions 2.a. and 19.a. of the 2021 CP No. 013030082 and Condition 5.1.b.i.F of its Title V Permit.

58. During the 2019 Inspection, EPA observed gasoline being loaded into a truck on Bay 2 of the Facility's gasoline rack. At the request of EPA, the truck driver connected an API coupler with a pressure gauge between the truck's vapor exit and the emission control systems venting ductwork in order to measure the pressure in the vent system.

59. During the 2019 Inspection, while loading of gasoline on Bay 2 of the gasoline rack occurred, EPA observed that the pressure reading at Bay 2's gauge ranged from zero to 16 inches of water column.

60. During the 2019 Inspection, using the Forward Looking Infrared (FLIR) camera, EPA observed and video imaged a hydrocarbon plume from the pressure relief vent on the vacuum side of the Bay 2 gasoline rack when the pressure on the rack was 16 inches of water column.

61. As set forth in paragraph 60, above, by allowing the pressure-vacuum vent to open at a system pressure of less than 18.1 inches of water column during loading of gasoline, Kinder Morgan has violated 40 C.F.R. § 63.11088(a) and Table 2(d) of the Bulk Gasoline Terminal NESHAP and Condition 4.7.2.d.i.B.iv. of Kinder Morgan's Title V permit.

F. Terms of Consent Agreement

62. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits to the jurisdictional allegations in this CAFO;
- b. neither admits nor denies the allegations stated in Section E of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to any conditions specified in this CAFO;

- e. waives any right to contest the allegations set forth in Section E of this CAFO; and
- f. waives its right to appeal this CAFO.

63. For the purposes of this proceeding, Respondent:

- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- d. waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c);
- e. waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement; and
- f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for noncompliance, and agrees that federal law shall govern in any such civil action.

64. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C.

§ 7413(e), the facts of this case, the EPA has determined that an appropriate civil penalty to settle this action is \$238,000.

65. Respondent agrees to pay a civil penalty in the amount of \$238,000 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk ("Filing Date").

66. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

67. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this CAFO, CAA-05-2026-0015,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Tasia Kastanek
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Kastanek.Tasia@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

68. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7413(d)(5), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is, the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handing collection.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

69. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

70. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty

charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

71. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

72. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

73. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

74. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal authority to bind the party they represent to this CAFO.

75. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that, under 18 U.S.C. § 1001, there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information.

76. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

G. Effect of Consent Agreement and Final Order

77. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: kastanek.tasia@epa.gov (for the EPA), and mary_lyons@kindermorgan.com and tim.wilkins@bracewell.com (for Respondent).

78. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged in this CAFO.

79. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to this matter with the exception of the administrative compliance order, docket number EPA-5-26-113(a)-IL-2 issued concurrently.

80. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

81. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, authorized representatives, successors, and assigns.

82. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$124,426 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

83. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

84. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

85. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.


H. Effective Date

86. This CAFO will be effective on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

Consent Agreement in the Matter of Kinder Morgan Liquids Terminal LLC, Docket No. CAA-05-2026-0015

For Kinder Morgan Liquids Terminal LLC, Respondent

Date



Vaughn B. Yarber
Vice President Operations – Northern Area

Consent Agreement in the Matter of Kinder Morgan Liquids Terminal LLC, Docket No. CAA-05-2026-0015

For United States Environmental Protection Agency, Complainant

Carolyn Persoon
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Kinder Morgan Liquids Terminals LLC
Docket No. CAA-05-2026-0015

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5