

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

In the Matter of:	)	
	)	ADMINISTRATIVE
Kinder Morgan Energy Partners, L.P	)	SETTLEMENT AGREEMENT
	)	
Respondent	)	AED-MSEB - 7601
	)	

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Kinder Morgan Energy Partners, L.P., 500 Dallas, Suite 1000, Houston, Texas 77002 (Kinder Morgan).

**Purpose:**

1. The purposes of this Administrative Settlement Agreement is to resolve alleged noncompliance by Kinder Morgan with the requirements of Clean Air Act (CAA) section 211(k), 42 U.S.C. § 7547(k), and the regulations promulgated thereunder at 40 C.F.R. Part 80, subparts D, E and F.

**Statutory and Regulatory Authority:**

2. CAA section 211(k) requires EPA to promulgate regulations regarding the manufacture and use of reformulated gasoline (RFG) for use in certain RFG covered areas. RFG regulations appear at 40 C.F.R. Part 80, subparts D, E and F, and require use of RFG in certain ozone nonattainment areas (covered areas). CAA section 211(k)(5)(A) prohibits the use of conventional gasoline in any RFG covered area.

3. 40 C.F.R. § 80.41 specifies the standards for RFG, including average standards that apply to refiners and importers, and per-gallon minimum standards that apply throughout the distribution system.

4. 40 C.F.R. § 80.2(kk) defines reformulated gasoline blendstock for oxygenate blending (RBOB) as a petroleum product that, when blended with oxygenate, meets the definition of RFG. Generally, RBOB is transported by pipeline to truck loading terminals, and then is blended with ethanol (an oxygenate) when the RBOB is loaded into trucks for transport to retail facilities.

5. 40 C.F.R. § 80.78 prohibits any person, including any refiner, pipeline or terminal, from combining RFG or RBOB with any conventional gasoline and selling the resulting mixture as RFG or RBOB. This prohibition applies regardless of whether the resulting RFG meets the per-gallon minimum standards.

6. Pursuant to 40 C.F.R. §§ 80.70 and 80.71, the Richmond, Virginia metropolitan area is an RFG covered area.

**Background:**

7. On or about August 21, 2007, the Kinder Morgan terminals located in Richmond, Virginia received approximately 1,442,700 gallons of RBOB via the Plantation pipeline. Kinder Morgan intended to blend this RBOB with ethanol and distribute the resulting RFG in the Richmond, Virginia RFG covered area. Due to a switching problem in the Plantation pipeline, approximately 19,950 gallons of conventional gasoline was mixed with the RBOB during its delivery to the Kinder Morgan terminals. Kinder Morgan immediately locked down the affected storage tanks when they learned of the contamination. Approximately 22,000 gallons of the product was blended with ethanol and transported to retail outlets in Richmond, Virginia before

Kinder Morgan learned of the contamination. Kinder Morgan notified EPA of the situation on August 22, 2007 and instructed the retail outlets that received the contaminated RFG to stop selling the product. The product that had not already been sold was subsequently pumped out of retail tanks.

8. Kinder Morgan hired an independent laboratory to sample and test the RBOB mixed with conventional gasoline for all RFG parameters. Testing conducted on August 23, 2007 by an independent laboratory showed that the RBOB contaminated by conventional gasoline, when blended with 10% by volume ethanol, meets all RFG standards that apply at downstream locations.

9. Kinder Morgan has represented that it has taken all reasonable steps to ensure that, in the future, conventional gasoline will not be mixed with RFG or RBOB that is intended for use in a RFG covered area.

**Injunctive Relief/Corrective Action:**

9. Within thirty (30) days of the effective date of this Agreement, or such longer period of time if requested by Kinder Morgan and approved by EPA for good cause shown, Kinder Morgan shall provide EPA with a written report that fully describes the testing, results and corrective action taken by Kinder Morgan, as follows:

- a. A root cause analysis of the pipeline “switching problem” that lead to the contamination of the approximately 1,442,700 gallons of RBOB on August 21, 2007;

- b. The corrective action implemented by Kinder Morgan to prevent a recurrence of the distribution to retail outlets of contaminated RBOB due to a pipeline “switching problem;” and
- c. The results of the testing conducted on August 23, 2007 demonstrating that the RBOB, when blended with 10% by volume ethanol, meets all RFG standards that apply at downstream locations.

The written report required by this Paragraph shall be signed by the Kinder Morgan company official responsible for oversight or management of the actions described in the report, or his/her designee as provided in writing by the company official responsible for management or oversight, provided the designee is a company employee with responsibilities related to environmental management or compliance. The written report shall contain the following certification:

“I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.”

10. Provided that Kinder Morgan complies with the terms of this Administrative Settlement Agreement, it may sell, transfer and/or distribute for use in the Richmond RFG covered areas the contaminated RBOB described in Paragraph 7 above, including the 22,000 gallons of the contaminated RBOB that already have been distributed.

**Civil Penalty:**

11. Kinder Morgan shall pay to EPA a civil penalty of \$130,000.00. This penalty shall be paid no later than thirty (30) days of the effective date this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717, plus the stipulated penalties as specified in Paragraph 12 of this Agreement. The penalty shall be paid by certified check or cashier's check payable to the United States of America, with the notation "AED/MSEB - 7601: Kinder Morgan Administrative Settlement Agreement" and made payable to the "United States of America." The check shall be mailed to the following address if sent by regular mail service:

U.S. Environmental Protection Agency  
Washington Accounting Operations  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251  
Attn: AED/MSEB - 7601 Kinder Morgan Administrative Settlement Agreement

For express mail and other express services:

Mellon Client Service Center  
Attention Shift Supervisor, Rm. 0690  
Lockbox 371099M  
Account 9109125  
5000 Ross Street  
Pittsburgh, PA 15262-0001

Alternatively, Respondents may affect an electronic funds transfer in the amount of \$130,000.00 with the notation "Kinder Morgan Administrative Settlement Agreement for Case No.

AED/MSEB- 7601" by using the following instructions:

Name of Beneficiary: EPA  
Number of Account for Deposit: 68010727  
Bank Holding Account: Treas\_NYC  
Routing Number: 021030004

The costs of such electronic funds transfer shall be Respondents' responsibility.

**Stipulated Penalties:**

12. For failure to comply with the terms of this Agreement on a timely basis Respondents shall pay stipulated penalties to the United States as follows:

- a. For failure to provide the report or certification specified in Paragraph 9, \$500.00 per day; and,
- b. For failure to pay the civil penalty or provide proof thereof, pursuant to Paragraph 11, \$500.00 per day.

**Notice:**

13. All correspondence, reports, and copies of payment checks concerning this Agreement shall be sent to:

Ervin Pickell, Fuels Team Leader  
U.S. Environmental Protection Agency  
12345 W Alameda Parkway  
Suite 214  
Lakewood, CO 80228

**General Provisions:**

14. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to Kinder Morgan.

15. Kinder Morgan hereby represents that the individual executing this Agreement on behalf of Kinder Morgan is authorized to do so and that such execution is intended and is sufficient to bind Kinder Morgan and, as applicable, its officers, agents, directors, owners, heirs, assigns, and successors.

16. Notwithstanding any other provision of this Agreement, upon Kinder Morgan's default or failure to comply with any terms of this Agreement, EPA may refer this matter to the

United States Department of Justice to recover civil penalties pursuant to Section 205 of the Act, 42 U.S.C. § 7524, and pursue any other remedies available to it. Kinder Morgan specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of the Act and applicable regulations. Kinder Morgan expressly waives its right to assert that such action is barred by any applicable statutes of limitation, *see, e.g.*, 28 U.S.C. § 2462.

17. This settlement is contingent upon the truthfulness, accuracy and completeness of Kinder Morgan's disclosure and representation to EPA, and Kinder Morgan's full compliance with the terms and conditions of this Agreement.

18. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to matters agreed to herein.

19. The validity, enforceability and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

20. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved.

21. This Agreement in no way affects, or relieves Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

**Administrative Settlement Agreement - In the Matter of Kinder Morgan Energy Partners, LP,  
AED/MSEB - \_\_\_\_**

**Kinder Morgan Energy Partners L. P.:**

By:  Vice President

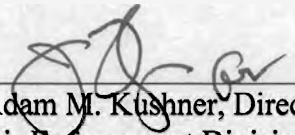
Date:

August 24 2007



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**United States Environmental Protection Agency:**

By:   
Adam M. Kushner, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance

Date: AUG 24, 2007