

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2007-0142-MLM-E **TCEQ ID:** RN102206349 **CASE NO.:** 32451**RESPONDENT NAME:** Kinder Morgan Petcoke GP LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Port Arthur Bulk Handling Facility, 3605 Coke Dock Road, Port Arthur, Jefferson County</p> <p>TYPE OF OPERATION: Marine cargo handling operation</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Complaints were received on November 11, November 21, and December 4, 2006 regarding soda ash being discharged. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 4, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC 149, (817) 588-5890; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: Mr. Jeff Armstrong, President, Kinder Morgan Petcoke GP LLC, 405 Clinton Drive, Galena Park, Texas 77547 Mr. Charles A. Knutson, Director, Kinder Morgan Petcoke GP LLC, 405 Clinton Drive, Galena Park, Texas 77547 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: November 11, November 21, and December 4, 2006</p> <p>Dates of Investigations Relating to this Case: November 11 and December 7, 2006</p> <p>Date of NOE Relating to this Case: January 18, 2007 (NOE)</p> <p>Background Facts: These were complaint investigations. Three violations were documented.</p> <p>AIR/WASTE</p> <p>1) Failed to prevent a nuisance condition. Specifically, on November 11, 2006 TCEQ investigators experienced stinging/burning taste in the mouth for approximately 10 seconds accompanied by highly offensive and very strong kitchen match-like odors for approximately 2 minutes [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].</p> <p>2) Failed to prevent emissions from impacting off-site receptors. Specifically, on November 11, 2006 TCEQ investigators observed a white cloud dust or haze emanating from the highest part of the Port Arthur Bulk Handling Facility's cargo loading arm and from the Barbet Arrow ship cargo hold, moving toward the complaint area [30 TEX. ADMIN. CODE § 116.115(c), Permit No. 9273, Special Condition No. 3, and TEX. HEALTH & SAFETY CODE § 382.085(a)].</p> <p>3) Failed to prevent an unauthorized discharge of soda ash into or adjacent to the water of the state. Specifically, on December 7, 2006 TCEQ investigators observed white residue on the dock equipment, along the ground surface, adjacent to the East Basin waterway and in the area of the ship loading conveyor system [TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$3,675</p> <p>Total Deferred: \$735 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,940</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that Kinder Morgan has implemented the following corrective measures at the Plant:</p> <p>a. Refurbished the dust collector loading spout (DC-4); performed improvements to the choke feeder so that better control of the choke feeder veins could be maintained; cleaned and inspected all dust control piping in the rail dump station; cleaned and inspected all dust control units and all filter bags were replaced at the rail dump station (DCU-1 a and b); and repaired, replaced, and tested all boom function limits on December 31, 2006; and</p> <p>b. Repaired and adjusted the boom Gimble and new seals were installed; re-worked conveyors CV-5 and CV-6 with new troffing rollers and were shimmed for better seal, all skirting rubber was replaced; added a new full bin indicator to the head conveyor CV-8; replaced the control wires for the dust collector at the rail dump station (DCU-1); installed a loading boom angle indicator for better control of product throughput; and completed new dock construction to facilitate maintenance to loading equipment on January 15, 2007.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, remove all excessive accumulations of soda ash deposited on the ground and on equipment surfaces at the Plant and dispose of it in accordance with all applicable rules and regulations; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	29-Jan-2007	Screening	29-Jan-2007	EPA Due	
	PCW	1-Feb-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Kinder Morgan Petcoke GP LLC		
Reg. Ent. Ref. No.	RN102206349		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	32451	No. of Violations	2	
Docket No.	2007-0142-MLM-E	Order Type	1660	
Media Program(s)	Air Quality	Enf. Coordinator	Jorge Ibarra, P.E.	
Multi-Media	Industrial and Hazardous Waste	EC's Team	Enforcement Team 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Subtotals 2, 3, & 7

Notes

Culpability Subtotal 4

Notes

Good Faith Effort to Comply Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

Total EB Amounts Subtotal 6
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 29-Jan-2007

Docket No. 2007-0142-MLM-E

PCW

Respondent Kinder Morgan Petooke GP LLC

Policy Revision 2 (September 2002)

Case ID No. 32451

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102206349

Media [Statute] Air Quality

Enf. Coordinator Jorge Ibarra, P.E.

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent was issued an NOV with the same or similar type of violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 29-Jan-2007

Docket No. 2007-0142-MLM-E

PCW

Respondent Kinder Morgan Petcoke GP LLC

Policy Revision 2 (September 2002)

Case ID No. 32451

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102206349

Media [Statute] Air Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.4 and 116.115(c), Permit No. 9273, Special Condition No. 3, and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description Failed to prevent a nuisance condition and to prevent emissions from impacting off-site receptors. Specifically, on November 11, 2006 TCEQ investigators experienced stinging/burning taste in the mouth for approximately 10 seconds accompanied by highly offensive and very strong kitchen match-like odors for approximately 2 minutes. Additionally, TCEQ investigators observed a white cloud of dust or haze emanating from the highest part of the Port Arthur Bulk Handling Facility's cargo loading arm and from the Barbet Arrow ship cargo hold, moving toward the complaint area.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Failure to prevent a nuisance condition resulted in the exposure of significant amounts of pollutants as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$89

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Kinder Morgan Petcoke GP LLC
Case ID No. 32451
Reg. Ent. Reference No. RN102206349
Media Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	11-Nov-2006	15-Jan-2007	0.2	\$89	n/a	\$89

Notes for DELAYED costs

Estimated cost to implement additional control measures to prevent the creation of nuisance conditions from soda ash. Date Required is the investigation date, Final Date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering Item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$89

Screening Date 29-Jan-2007

Docket No. 2007-0142-MLM-E

PCW

Respondent Kinder Morgan Petcoke GP LLC

Policy Revision 2 (September 2002)

Case ID No. 32451

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102206349

Media [Statute] Air Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent an unauthorized discharge of soda ash into or adjacent to the water of the state. Specifically, on December 7, 2006 TCEQ investigators observed white residue on the dock equipment, along the ground surface, adjacent to the East Basin waterway and in the area of the ship loading conveyor system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to prevent an unauthorized discharge resulted in the exposure of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

53 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

The penalty was calculated from the investigation date, December 7, 2006, to the screening date, January 29, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$214

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Kinder Morgan Petcoke GP LLC
Case ID No. 32451
Reg. Ent. Reference No. RN102206349
Media Air Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$5,000	7-Dec-2006	15-Oct-2007	0.9	\$214	n/a	\$214
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the excess soda ash and implement additional control measures to prevent unauthorized discharges. Date Required is the investigation date, Final Date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$5,000	TOTAL	\$214
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Compliance History

Customer/Respondent/Owner-Operator:	CN603080698 Kinder Morgan Petcoke GP LLC	Classification: AVERAGE	Rating: 2.39
Regulated Entity:	RN102206349 PT ARTHUR BULK HANDLING FACILITY	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED	ID NUMBER	TXR000076851
Location:	AIR NEW SOURCE PERMITS	PERMIT	9273
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0188S
	AIR NEW SOURCE PERMITS	REGISTRATION	79724
TCEQ Region:	3605 COKE DOCK RD, PORT ARTHUR, TX, 77641		
Date Compliance History Prepared:	February 06, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 06, 2002 to February 06, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Jorge Ibarra, P.E.	Phone:	(817) 588-5890

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 10/13/2004 (292926)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 04/28/2004 (265297)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Failure to prevent a nuisance condition within the Texaco Island area of Port Arthur.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT R-9273, SC 5
Description: Failure to prevent facility emissions from impacting the off-site properties of others.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KINDER MORGAN PETCOKE GP
LLC
RN102206349

§
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§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0142-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kinder Morgan Petcoke GP LLC ("Kinder Morgan") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Kinder Morgan appear before the Commission and together stipulate that:

1. Kinder Morgan owns and operates a marine cargo handling operation at 3605 Coke Dock Road in Port Arthur, Jefferson County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Plant involves the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and Kinder Morgan agree that the Commission has jurisdiction to enter this Agreed Order, and that Kinder Morgan is subject to the Commission's jurisdiction.
4. Kinder Morgan received notice of the violations alleged in Section II ("Allegations") on or about January 23, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Kinder Morgan of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Six Hundred Seventy-Five Dollars (\$3,675) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Kinder Morgan has paid Two Thousand Nine Hundred Forty Dollars (\$2,940) of the administrative penalty and Seven Hundred Thirty-Five Dollars (\$735) is deferred contingent upon Kinder Morgan's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Kinder Morgan fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Kinder Morgan to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Kinder Morgan have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Kinder Morgan has implemented the following corrective measures at the Plant:
 - a. Refurbished the dust collector loading spout (DC-4); performed improvements to the choke feeder so that better control of the choke feeder veins could be maintained; cleaned and inspected all dust control piping in the rail dump station; cleaned and inspected all dust control units and all filter bags were replaced at the rail dump station (DCU-1 a and b); and repaired, replaced, and tested all boom function limits on December 31, 2006; and
 - b. Repaired and adjusted the boom Gimble and new seals were installed; re-worked conveyors CV-5 and CV-6 with new troffing rollers and were shimmed for better seal, all skirting rubber was replaced; added a new full bin indicator to the head conveyor CV-8; replaced the control wires for the dust collector at the rail dump station (DCU-1); installed a loading boom angle indicator for better control of product throughput; and completed new dock construction to facilitate maintenance to loading equipment on January 15, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Kinder Morgan has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Kinder Morgan is alleged to have:

1. Failed to prevent a nuisance condition, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), as documented during an investigation conducted on November 11, 2006. Specifically, on November 11, 2006 TCEQ investigators experienced stinging/burning taste in the mouth for approximately 10 seconds accompanied by highly offensive and very strong kitchen match-like odors for approximately 2 minutes.
2. Failed to prevent emissions from impacting off-site receptors, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 9273, Special Condition No. 3, and TEX. HEALTH & SAFETY CODE § 382.085(a). Specifically, on November 11, 2006 TCEQ investigators observed a white cloud dust or haze emanating from the highest part of the Port Arthur Bulk Handling Facility's cargo loading arm and from the Barbet Arrow ship cargo hold, moving toward the complaint area.
3. Failed to prevent an unauthorized discharge of soda ash into or adjacent to the water of the state, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on December 7, 2006. Specifically, on December 7, 2006 TCEQ investigators observed white residue on the dock equipment, along the ground surface, adjacent to the East Basin waterway and in the area of the ship loading conveyor system.

III. DENIALS

Kinder Morgan generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Kinder Morgan pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Kinder Morgan's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kinder Morgan Petcoke GP LLC, Docket No. 2007-0142-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Kinder Morgan shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, remove all excessive accumulations of soda ash deposited on the ground and on equipment surfaces at the Plant and dispose of it in accordance with all applicable rules and regulations; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including

photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Air Quality Section, Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon Kinder Morgan. Kinder Morgan is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Kinder Morgan fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Kinder Morgan's failure to comply is not a violation of this Agreed Order. Kinder Morgan shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Kinder Morgan shall notify the Executive Director within seven days after Kinder Morgan becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Kinder Morgan shall be made in writing to the Executive Director. Extensions are not effective until Kinder Morgan receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Kinder Morgan in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this

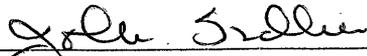
Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Kinder Morgan, or three days after the date on which the Commission mails notice of the Order to Kinder Morgan, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

7/25/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

3/15/07
Date

CHARLES A KAUTSON
Name (Printed or typed)
Authorized Representative of
Kinder Morgan Petcoke GP LLC

Director
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

