

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the State of California Air Resources Board (CARB) with the principal location at 1001 I Street, Sacramento, California 95814; and Kinder Morgan Products Pipelines (Kinder Morgan), with its principal office located at 1100 West Town & Country Road, Orange, California, 92868 (collectively, the Parties).

This agreement settles Notice of Violation **F050917-KMIT-OXY**. This NOV was issued on **January 8, 2019**, alleging that Kinder Morgan supplied over-oxygenated California gasoline in violation of state law.

I. RECITALS

- (1) California Health and Safety Code section 39003 assigns CARB with attaining and maintaining ambient air quality standards.
- (2) Title 13, California Code of Regulations, Sections 2250- 2273.5 establish standards and compliance requirements for motor vehicle fuels applicable to producers and importers of motor vehicle fuel in California. (Cal. Code Regs., tit.13, §§ 2250-2273.5; hereinafter California Reformulated Gasoline (CaRFG) regulation).
- (3) The standards and compliance requirements in the CaRFG regulation applies to all persons who sell, supply, offer for sale or offer for supply, gasoline for motor vehicles in the State of California. (Cal. Code Regs., tit. 13, § 2261).
- (4) The California gasoline must conform to any Predictive Model flat limit identified in the Predictive Model alternative specification. (Cal. Code Regs., tit. 13, § 2265).
- (5) The standards and compliance requirements for California gasoline or transactions involving California gasoline also apply to California reformulated gasoline blendstock for oxygenate blending (CARBOB) or transactions involving CARBOB, including but not limited to CaRFG regulation sections 2261, 2262, 2262.3, 2262.4, 2262.5(a), (b), (c), and (e), 2262.6, 2264, 2264.2, 2265, 2266, 2267, 2268, 2270, 2271, and 2272. (Cal. Code Regs., tit.13, §§ 2260; 2272). Whenever the term "California gasoline" is used in this Agreement, the term means California gasoline or CARBOB. (Cal. Code Regs., tit. 13, § 2266.5).
- (6) CARB regulations state, "[E]ach sale of California gasoline at retail, and each dispensing of California gasoline into motor vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such gasoline in violation of any applicable sections of this subarticle (Cal. Code Regs., tit. § 2268).

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- (7) Failure to comply with the requirements of the CaRFG regulation is a violation of state law resulting in penalties. Health and Safety Code section 43027, subdivision (c) states, "[a]ny person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, exclusive of the documentation requirements specified in subdivision (d), is strictly liable for a civil penalty of not more than thirty-five thousand dollars (\$35,000)."
- (8) Health and Safety Code section 43030, subdivision (a), states "[f]or the penalties prescribed in sections 43027 and 43028, each day during any portion of which a violation occurs is a separate offense."
- (9) Health and Safety Code section 4301, subdivision (b), states "[I]n determining the penalty amount, the state board shall take into consideration all relevant circumstances, including, but not limited to the: (1) Extent of harm to public health, safety, and welfare caused by the violation; (2) Nature and persistence of the violation, including the magnitude of the excess emissions; (3) Compliance history of the defendant, including the frequency of past violations; (4) Preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance; (5) Innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; (6) Efforts to attain, or provide for, compliance; (7) Cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation; and (8) For a person who owns a single retail service station, the size of the business."
- (10) CARB alleges in NOV F050917-KMIT-OXY that starting May 4, 2017, Kinder Morgan sold, offered for sale, supplied, offered for supply, or transported fuel that exceeded the ethanol limit of 10.0% by volume for a total of 5 days.
- (11) CARB alleges that Kinder Morgan's sale, offer for sale, supply, offer for supply, or transportation of non-complying CARBOB was unlawful and in violation of California Code of Regulations, title 13, sections 2262.5 and 2268.
- (12) In consideration of the foregoing, and of the promises and facts set forth below, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Agreement. In order to resolve the violations described herein, Kinder Morgan has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Agreement in termination and settlement of this matter.

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II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against Kinder Morgan for the alleged violations referred to above, and in consideration of the terms set out below (and Kinder Morgan's payment of the penalties), CARB and Kinder Morgan agree as follows:

- (1) The Parties shall exchange signed copies of this Agreement by no later than 15 business days after receipt of this Agreement. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. Kinder Morgan shall send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

Anna Malubay
Air Resources Engineer
Enforcement Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

- (2) Kinder Morgan has agreed to pay the sum of **thirty thousand dollars (\$30,000.00)** as a civil penalty for the alleged violations in NOV F050917-KMIT-OXY.

- (3) Upon execution of this Agreement, Kinder Morgan shall make a total payment of thirty thousand dollars (\$30,000.00) to the AIR POLLUTION CONTROL FUND no later than fifteen (15) business days after CARB provides notice that it has signed this Agreement. The payment along with the "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be submitted to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

and send a copy of the same documents to:

Anna Malubay
Air Resources Engineer
Enforcement Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

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- (4) In addition, if the Attorney General files a civil action to enforce this settlement agreement against Kinder Morgan, Kinder Morgan shall pay all reasonable costs of investigating and prosecuting the action, including reasonable expert fees (if appropriate), reasonable attorney's fees, and reasonable costs, if and when the Attorney General is deemed to be a prevailing party by a court of competent jurisdiction.
- (5) Kinder Morgan has demonstrated to the satisfaction of CARB that the alleged violations have been corrected.
- (6) Kinder Morgan shall not violate any provision of the CaRFG regulation. Any future repeat violations may result in an increased penalty amount.
- (7) Now therefore, in consideration of the payment by Kinder Morgan to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases Kinder Morgan and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, and subsidiary and parent corporations from any and all claims that CARB may have based on the allegations described in recital paragraphs (1) through (12). The undersigned represent that they have the authority to enter this Agreement.

III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between CARB and Kinder Morgan concerning the subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements of any kind of nature, whether written or oral, between CARB and Kinder Morgan concerning the subject matter hereof.
- (2) The payment obligation under Section II shall apply to and be binding upon Kinder Morgan and its successors and assignees, parent corporations, and subsidiaries, if any; and the release obligation under section II shall apply to and be binding upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (3) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (4) The effective date of this Agreement shall be the date of the last signatory.
- (5) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Agreement.

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- (6) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
- (7) The headings in this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Agreement.
- (8) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (9) It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (10) The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement.
- (11) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.

IV. PENALTY DETERMINATION

- (1) Pursuant to Health and Safety Code section 39619.7, CARB must provide information on the basis for the penalty it seeks. This information is provided throughout this settlement agreement and summarized below.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43031, subdivision (b).

The per unit penalty in the case of (NOV) F050917-KMIT-OXY is a maximum of \$35,000 per day per strict liability violation. CARB alleges that the non-complying CARBOB was sold, supplied and transported over a time period of five days and at total of sixty loads. The penalty obtained in this case is \$500.00 per load. The lower penalty reflects the consideration of a number of facts, including: that this was an unintentional violation, Kinder Morgan did not have a similar oxygenate violation three years prior to the discovery of this violation, and Kinder Morgan's diligent efforts to comply and to cooperate with the investigation.

The main factor resulting in the large percent reduction of the maximum per day strict liability violation was Kinder Morgan's immediate voluntary

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disclosure of the violation to CARB and the immediate action taken to mitigate the violation. The penalties in this case were set at a level sufficient to recover any economic benefit gained from noncompliance.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

CARB alleges that the penalty provisions being applied in this case, Health and Safety Code sections 43027 and 43030 are appropriate because Kinder Morgan allegedly sold, offered for sale, supplied, or offered for supply, or transported CARBOB in California in violation of Cal. Code Regs., tit.13, §§ 2250–2273.5.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. CARB alleges that since the fuel did not meet California air pollution standards, any emissions attributable to them are illegal. However, it is not practicable to quantify these emissions because the information necessary to do so is not available.

- (2) Kinder Morgan acknowledges that CARB has complied with Health and Safety Code section 39619.7 in prosecuting or settling these cases. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code section 43031, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that does not prohibit the emission of pollutants at a specified level.
- (3) Penalties were determined based on the unique circumstances of each matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiations, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
- (4) The penalty in each case was based in part on confidential business information provided by Kinder Morgan that is not retained by CARB in the ordinary course of business. The penalty in each case was also based on confidential settlement communications between CARB and Kinder Morgan that CARB does not retain in

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the ordinary course of business. Each penalty also reflects CARB's assessment of the relative strength of the case against Kinder Morgan, the desire to avoid the uncertainty, burden and expense of litigation, to obtain swift compliance with the law and to remove any unfair advantage that Kinder Morgan may have secured from its actions.

V. STIPULATED CONSENT JUDGMENT

- (1) CARB expressly reserves the right to bring an enforcement action based on violations of law not covered in this Agreement and to seek whatever fines, penalties, or remedies provided by law, including injunctive relief.
- (2) In the event CARB seeks Consent Judgment based on Kinder Morgan's default under this Agreement, the Parties agree to the following:
 - a. Superior Court of California, County of Sacramento (Court) has jurisdiction over the Parties and to the subject matter of this action;
 - b. Venue is proper in this Court;
 - c. The Court has personal jurisdiction over Kinder Morgan for purposes of enforcing the terms of the Consent Judgment; and
 - d. The obligations under this Agreement shall be deemed the terms and conditions of the Consent Judgment


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ACKNOWLEDGED AND ACCEPTED BY:


California Air Resources Board

Dated: 4/26/19 By: 
(Signature)

Printed Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Kinder Morgan Products Pipelines

Dated: APRIL 1, 2019 By: 
(Signature)

Printed Name: Russell G. Kinzig

Title: DIRECTOR, Quality Control