

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

Tentative ORDER NO. R9-2008-0134

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
SFPP, L.P., AN OPERATING PARTNERSHIP OF KINDER MORGAN ENERGY
PARTNERS, L.P.
MISSION VALLEY TERMINAL REMEDIATION DEWATERING PROJECT
FOR
VIOLATIONS OF ORDER NO. R9-2001-0096**

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having considered in a public meeting on December 10, 2008 comments on the issuance of liability against SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P., regarding violations alleged in Complaint R9-2008-0046, dated June 6, 2008, (Complaint),¹ having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of Civil Liability in the amount of \$222,000 finds as follows:

1. SFPP, L.P, an operating partnership of Kinder Morgan Energy Partners, L.P. (hereinafter Discharger) discharges treated wastewater from its Mission Valley Terminal groundwater remediation system, at 9950 San Diego Mission Road San Diego, CA 92108, into Murphy Canyon Creek. The discharges are subject to numerical effluent limitations contained in Order R9-2001-0096, NPDES No. CAG919002, *General Waste Discharge Requirements for Groundwater Extraction Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay*.
2. From January 2006 through October 2008 the Discharger reported, pursuant to Monitoring and Reporting Program of Order R9-2001-0096, thirty one violations of effluent limitations subject to mandatory minimum penalties (MMPs) pursuant to California Water Code (CWC) Section 13385(h) and (i). The MMP violations are summarized in Attachment 1 to this Order.

¹ Complaint R9-2008-0046 was originally issued to "Kinder Morgan, MVT, SFPP, L.P." In response, the discharger clarified that the actual entity responsible for discharges from the Mission Valley Terminal dewatering facility is "SFPP, L.P, an Operating Partnership of Kinder Morgan Energy Partners, L.P." SFPP, L.P., is an operating limiting partnership of Kinder Morgan Energy Partners, L.P. and is the subsidiary limited partnership that owns the Pacific operations of Kinder Morgan Energy Partners, L.P.

- a. Nineteen violations are serious violations subject MMPs pursuant to CWC Section 13385(h).²
 - b. Twelve violations are chronic violations subject to MMPs pursuant to CWC Section 13385(i).³
3. Violations subject to MMPs reported since the Complaint was issued are addressed in this Order and reflected in Attachment 1 to this Order. Two MMP violations of total nitrogen effluent limitations resulted from samples collected on April 8, 2008, which was prior to issuance of the Complaint. Review of the facility's subsequent outstanding violations subject to MMPs will occur after review of the first quarterly report for 2009.
4. Since January 2006, the Discharger has reported, pursuant to Monitoring and Reporting Program of Order R9-2001-0096, violations of average monthly and instantaneous maximum effluent limitations for total nitrogen. Reported concentrations compared to effluent limitations are summarized in Attachment 2 to this Order.
 - a. The total nitrogen average monthly effluent limitation has been violated in every reporting period since January 2006.
 - b. The total nitrogen instantaneous maximum effluent limitation has been violated in eight of twelve sampling events reported between January 2006 and December 10, 2008.
5. Discretionary liability for violations of the total nitrogen instantaneous maximum effluent limitation is based on the days reported to be in violation and each day in between those days. Effluent monitoring data from February 2008 through October 2008 was received after issuance of Complaint R9-2008-0046. Complaint R9-2008-0046 recognized, in Finding 15, that the alleged violation of total nitrogen effluent limitations continues and liability continues to accrue. The periods of violation of the total nitrogen instantaneous maximum effluent limitation subject to discretionary liability include the following:

² CWC Section 13385(h)(1) requires that a MMP of \$3,000 be imposed for each serious violation. CWC Section 13385(h)(2) defines a 'serious' violation, as any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more.

³ In addition to MMPs for serious violations under CWC Section 13385(h), CWC Section 13385(i)(1) requires that an MMP of \$3,000 be imposed for each effluent limitation violation beginning with the fourth violation in any six-month period.

Table 1. Periods of Violation for The Total Nitrogen Instantaneous Maximum Effluent Limitation

	Violation Period	Violation Days
Violations Alleged within Complaint R9-2008-0046	January 3, 2006 through April 10, 2007	463 days
	October 9, 2007 through January 15, 2008	99 days
Violations Reported Subsequent to Complaint R9-2008-0046	January 16, 2008 through April 8, 2008	83 days
Total Days of Violation		645 days

6. Three violations (IDs 742363, 443348, and 742358) alleged in the Complaint occurring in 2005 are not subject to MMPs pursuant to direction from the Office of Chief Counsel contained in a Memorandum dated October 21, 2008 because they pre-date January 1, 2006, the effective date of a material amendment to CWC Section 13385(c)(1). Accordingly, the three violations are not included in this Order.
7. Alleged violations of the Fluoride instantaneous maximum on April 12, 2005 (Violation ID 443858) and the Manganese instantaneous maximum on October 9, 2007 (Violation ID 741648) have been dismissed as a result of further review of the data. No liability had been recommended for violation 443858, but its dismissal removes MMPs assessments for two subsequent violations (Violation IDs 742368 and 742362).
8. Discretionary penalties for toxicity violations recommended in Complaint R9-2008-0046 are not included in this Order. Further discussions of toxicity data collection, analysis, and interpretation are expected to occur when the Discharger applies for coverage under Order R9-2008-0002, which conditionally reissues NPDES requirements for dewatering discharges that had been subject to Order R9-2001-0096. Current NPDES coverage for the Mission Valley Terminal Remediation Dewatering Project will expire on March 12, 2009.
9. The original Complaint amount of \$229,000 is increased as described in Findings 3 and 5 and reduced as described in Findings 6 and 7 and the removal of a recommended discretionary penalty for a total nitrogen violation on July 3, 2007 (Violation ID 741644). As described in Finding 5, discretionary penalties for nitrogen are only recommended for periods between sampling events where the instantaneous maximum effluent limitation was violated, therefore, Violation ID 741644 was erroneously included in the Complaint.

10. The amount of discretionary assessment is based on consideration of factors prescribed in CWC Section 13385(e) as applied to the allegations contained in Complaint R9-2008-0046:
- a. Nature, circumstances, extent, and gravity of the violations: The violations occurred over an extended period of time from the discharges of treated wastewater from the Discharger's groundwater remediation facility;
 - b. Susceptibility to cleanup or abatement: The discharge is not susceptible to cleanup or abatement. The discharges resulted from past discharges of wastewater from the treatment system associated with a remediation project;
 - c. The degree of toxicity of the discharge: The discharge of total nitrogen from the facility at concentrations exceeding the effluent limitations does not likely directly result in conditions of toxicity. Total nitrogen includes dissolved nitrogen (organic and inorganic) and particulate nitrogen. High levels of dissolved nitrogen can result in toxic conditions associated with algal blooms. Inorganic nitrogen in the reduced form of ammonia can be toxic to aquatic organisms. Laboratory monitoring reports indicate that total nitrogen in the effluent is usually in the oxidized form of nitrate.
 - d. The discharger's ability to pay: The Discharger has the present ability to pay the assessment;
 - e. The discharger's ability to stay in business: Payment of the assessment will not affect the Discharger's ability to remain in business;
 - f. Voluntary cleanup efforts undertaken: No cleanup efforts were undertaken;
 - g. Any prior history of violations: The Regional Board previously assessed mandatory minimum liabilities for eight violations of effluent limitations in discharges from the Mission Valley Terminal groundwater remediation project;
 - h. The degree of culpability: The Discharger is solely responsible for the operation of its treatment system;

- i. Economic benefit or savings resulting from the violations: The Discharger enjoyed an economic benefit by avoiding costs associated with additional effluent treatment or alternative methods of disposal for the effluent. The Discharger has designed and plans to install a nitrogen treatment system that is intended to prevent future violations of the total nitrogen effluent limitations. The system is expected to be operational by December 31, 2008. Economic savings have resulted from deferred operational costs associated with the treatment system. Based on information provided by the Discharger, there is marginal increase in operational costs, expected to be approximately \$56 per day, for operating the nitrogen treatment system as a component of the existing remediation system; and
 - j. Other matters that justice may require: The Discharger has been forthcoming in providing timely reports, and has been cooperative in response to the Complaint. The violations resulted from discharges from a groundwater treatment system, not from a profitable industrial operation. The Discharger is installing additional treatment devices to the system, which is designed to reduce the concentrations of nitrogen in the effluent. The Discharger has stated that is expected to be operational by December 31, 2008.
11. The Discharger has reviewed the allegations within Complaint R9-2008-0046 and has discussed the terms of this Order with prosecution staff of the Regional Board. The Discharger agrees, without admission of liability and under the terms of this Order, to resolution of the allegations within Complaint R9-2008-0046 that are addressed in this Order.
12. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
13. The Regional Board incurred costs totaling \$15,770, which includes investigation, preparation of enforcement documents, review of comments, and communication with Dischargers and interested parties regarding the enforcement action.

IT IS HEREBY ORDERED, that pursuant to Section 13385 of the Water Code:

1. Civil liability is imposed on SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P. in the amount of **\$222,000** to be paid as follows:
 - a. Mandatory minimum penalty of **\$93,000** for 31 effluent limitation violations required by CWC Section 13385, subsections (h) and (i) that occurred between January 1, 2006 and April 30, 2008. Payment shall be made payable to the "State Water Resources Control Board" for deposit into the Cleanup and Abatement Account within 30 days of adoption of this Order;
 - b. Discretionary liability in the amount of **\$112,400** for persistent violations of total nitrogen effluent limitations from January 1, 2006 to December 10, 2008. Payment shall be made payable to the "State Water Resources Control Board" for deposit into the Cleanup and Abatement Account within 30 days of adoption of this Order;
 - c. The sum of **\$16,600** in discretionary liability for violations of total nitrogen effluent limitations between February 1, 2008 through December 10, 2008 is suspended. SFPP, L.P. is directed to provide documentation prior to March 30, 2009 demonstrating that discharges monitored no less than weekly in February 2009 (i.e., one sample in each of the four weeks) are in compliance with effluent limitations for total nitrogen.
 - i. If SFPP, L.P. provides timely documentation of compliance then the suspended penalty is revoked permanently.
 - ii. If SFPP, L.P. either (a) fails to submit a timely report, or (b) is unable to document compliance with effluent limitations for total nitrogen, the amount suspended shall become due and payable. SFPP, L.P. shall submit to the Regional Board payment in the amount of \$16,600 payable to the "State Water Resources Control Board for Deposit into the Cleanup and Abatement Account by April 30, 2009.
 - d. Suspension of liability does not apply to any mandatory minimum penalties required by the California Water Code.
2. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement if SFPP, L.P. fails to comply with this Order.
3. Fulfillment of the SFPP, L.P.'s obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation of effluent limitation violations in Complaint No. R9-2008-0046 that is included in this Order, subject to modifications described in Findings 3 through 9 of this Order, and subject to paragraph 1a, 1b, and 1c.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on December 10, 2008.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer

Attachments 1. Summary of violations subject to mandatory minimum penalties
2. Summary of reported total nitrogen effluent concentrations

CIWQS Entries

Regulatory Measure ID: 355710

Related Regulatory Measure ID: 343514

Place ID: 240988

Party IDs: 24872 (SFPP, L.P.)

Violation IDs: 742378, 742363, 742368, 443348, 742362, 742358, 742348, 742347, 742344, 742343, 742342, 742339, 742338, 742357, 443815, 742337, 742355, 742356, 742351, 507674, 741641, 742333, 742336, 571541, 741640, 608800, 741642, 708512, 708513, 741647, 708514, 741646, 738903, 738906, 741581, 778408, 778412

Attachment 1. Summary of Violations Subject to Mandatory Minimum Penalties

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation ^{4, 5}
01/03/2006	742348	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.1	Yes
01/03/2006	742347	Total Nitrogen	AMEL ⁶	mg/L	1.0	3.1	Yes
01/20/2006	742344	Fluoride	Instantaneous Maximum	mg/L	1.0	2.2	Yes
01/20/2006	742343	Lead	CTR Chronic	µg/L	2.5	10.8	Yes
01/20/2006	742342	Phosphorus	AMEL	mg/L	0.1	0.167	Yes
04/25/2006	742339	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	4.7	Yes
04/25/2006	742338	Total Nitrogen	AMEL	mg/L	1.0	3.85	Yes
06/20/2006	742357	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.42	No
07/06/2006	443815	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.5	No
07/06/2006	742337	Total Nitrogen	AMEL	mg/L	1.0	2.5	Yes
08/01/2006	742355	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.45	No
08/15/2006	742356	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No
09/26/2006	742351	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.3	No
10/10/2006	741641	Total Nitrogen	AMEL	mg/L	1.0	3.0	Yes
10/10/2006	742333	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.3	Yes
10/10/2006	507674	Manganese	Instantaneous Maximum	mg/L	1.0	2.7	Yes
12/05/2006	742336	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.4	No
01/02/2007	571541	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.9	Yes

⁴ CWC Section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

- a. Fluoride, manganese, phosphorus, and total nitrogen are Group I pollutants. A serious violation occurs when the discharge exceeds Group I effluent limitations by 40 percent or more; and
- b. Lead is a Group II pollutant. A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

⁵ In addition to MMPs for serious violations, the occurrence of four or more effluent limitation violations in any six-month period requires the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation during any six-month period (CWC §13385(i)(1)).

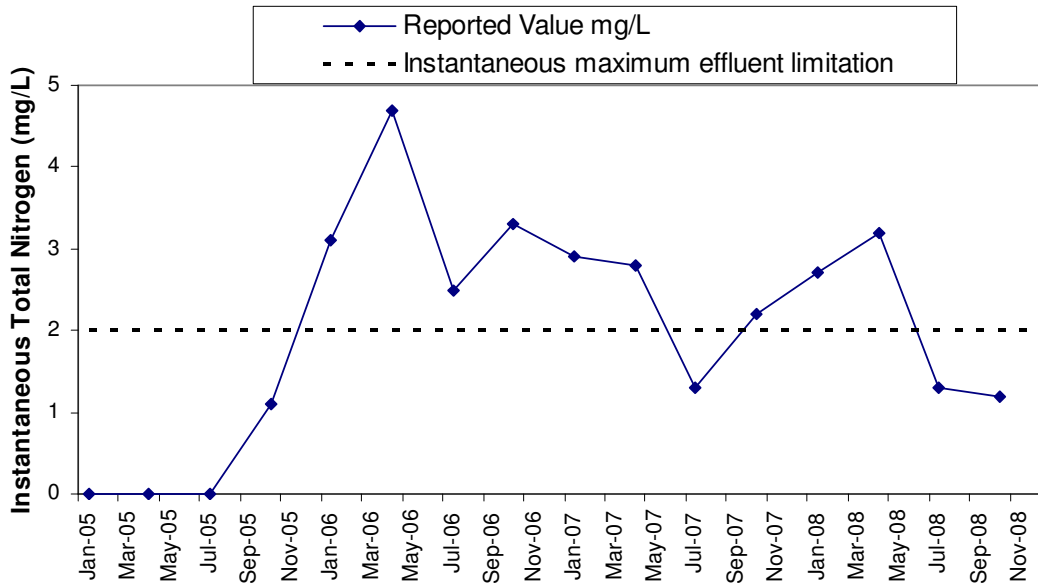
⁶ AMEL = Average Monthly Effluent Limitation

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation ^{4, 5}
01/02/2007	741640	Total Nitrogen	AMEL	mg/L	1.0	2.9	Yes
04/10/2007	608800	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.8	Yes
04/10/2007	741642	Total Nitrogen	AMEL	mg/L	1.0	2.8	Yes
07/31/2007	708512	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	4.9	No
09/11/2007	708513	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	0.64	No
10/09/2007	741647	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No
10/09/2007	708514	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.2	No
10/09/2007	741646	Total Nitrogen	AMEL	mg/L	1.0	2.2	Yes
12/04/2007	738903	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	3.09	No
01/15/2008	741581	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.7	No
01/15/2008	738906	Total Nitrogen	AMEL	mg/L	1.0	2.7	Yes
04/08/2008	TBD	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.2	Yes
04/08/2008	TBD	Total Nitrogen	AMEL	mg/L	1.0	3.2	Yes
TOTAL MANDATORY MINIMUM PENALTY						\$93,000	

Attachment 2: Reported total nitrogen concentrations compared to the (A) instantaneous maximum and (B) average monthly effluent limitations. January 2005 through October 2008.

**Mission Valley Terminal:
Total Nitrogen Concentrations from Quarterly Monitoring 2005-2008**

A. Instantaneous Maximum Concentration



B. Average Monthly Concentration

