

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE RESOLUTION NO. R2-2005-_____

AUTHORIZING ATTORNEY GENERAL
REFERRAL REGARDING KINDER MORGAN
ENERGY PARTNERS, L.P., DIESEL FUEL SPILL IN
FAIRFIELD, SOLANO COUNTY

- A. WHEREAS, Kinder Morgan Energy Partners, L.P. (hereinafter, the “Discharger”), owns and operates a fuel distribution pipeline, transmitting fuel from the Concord Terminal in Martinez, California to product terminals in Sacramento, California.
- B. WHEREAS, on April 27, 2004, the Discharger discharged approximately 104,874 gallons of diesel fuel (the “Discharge”) into a wetland slough system within Suisun Marsh, a water of the State, from an underground pipeline about five miles south of Fairfield in Solano County.
- C. WHEREAS, the Discharge was confined to approximately 242 acres by the placement and operation of a system of dikes and tidal gates during emergency response measures overseen by staff of the San Francisco Bay Regional Water Quality Control Board (the “Board”), the California Department of Fish and Game, Office of Spill Prevention and Response (“DFG/OSPR”), and other agencies.
- D. WHEREAS, the Discharge has adversely impacted waters of the State and the beneficial uses thereof, including but not limited to wildlife habitat, preservation of rare and endangered species, recreation, municipal and domestic supply, agricultural supply, industrial service and process water supply.
- E. WHEREAS, on August 4, 2004, the Board’s Executive Officer issued Cleanup and Abatement Order No. R2-2004-0054 (CAO) requiring the Discharger to, among other things, complete initial emergency response actions, submit and implement interim and final remedial action plans, and mitigate wetland impacts.
- F. WHEREAS, the Discharger has cooperated with the Board and other agencies and completed the initial emergency response actions and interim remedial actions by the schedules set forth in the CAO. The Discharger has submitted a final remedial action plan and a wetland mitigation plan, which are currently under review by Board staff.
- G. WHEREAS, DFG/OSPR and the U.S. Fish and Wildlife Service, as state and federal natural resources trustees, are engaged in Natural Resources Damage Assessment (NRDA) negotiations with the Discharger to recover monies for injury to, destruction of, or loss of natural resources. As provided by the CAO, the Discharger has submitted to the Board all the damage assessment studies that were performed under the NRDA process as part of the wetland mitigation plan submitted for Executive Officer approval.

H. WHEREAS, the Discharger is required to and has been reimbursing all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effect thereof, or other remedial action, required by the CAO.

I. WHEREAS, now that remedial and restoration actions are well underway, the Board finds it is necessary and appropriate to move onto the next phase of responding to the Discharge by referring this matter to the California Attorney General's Office to seek judicially imposed civil penalties and to file such other punitive causes of action and to seek other remedies as may be permissible and appropriate. The Board further finds that referring this matter to the Attorney General is appropriate so that there can be coordinated State action in the event other State agencies seek judicial remedies.

J. WHEREAS, the Discharger has caused or permitted oil and residuary petroleum products to be deposited in or on waters of the State and is, at a minimum, civilly liable under California Water Code (CWC) Section 13350(a). Under CWC Section 13350(d), a court may impose such civil liability either on a daily basis not to exceed fifteen thousand dollars (\$15,000) for each day the violation occurs or on a per gallon basis not to exceed twenty dollars (\$20) for each gallon of waste discharged.

K. WHEREAS, CWC Section 13350(g) requires the Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Attorney General to petition a court to impose, assess and recover civil liability. On March 16, 2005, the Board held such a hearing in compliance with Section 13350(g), and considered the testimony and evidence offered at the hearing and in the record.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board hereby authorizes the Executive Officer to request that the Attorney General seek judicially imposed civil penalties pursuant to CWC Section 13350(a) and to file such other punitive causes of action and to seek other relief as may be permissible and appropriate.
2. The Board hereby authorizes the Executive Officer to seek judicial civil liability in an amount that he deems appropriate and report it to the Board Chair.
3. The Board directs the Executive Officer to work in coordination with other State agencies that may be seeking to impose penalties on the Discharger for the Discharge.

I, Bruce H. Wolfe, Executive Officer, hereby certify that the forgoing is a full, true and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, at its regular meeting on March 16, 2005.

BRUCE H. WOLFE
Executive Officer

