California Regional Water Quality Control Board

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June 6, 2008

CERTIFIED RETURN RECEIPT REQUESTED
7007 3020 0001 0040 7201

Mr. Scott Martin, P.G, Manager, EHS-Remediation
Kinder Morgan, MVT, SFPP, L.P.
SFPP, L.P.
1100 Town and Country Road
Orange, CA 92868

In reply refer to:
CAU:14-0056:jhaas
Place ID: 240988

Dear Mr. Martin:

Complaint No. R9-2008-0046 for Civil Liability Including Mandatory Minimum Penalties Under California Water Code Section 13385;
Violation of Order No. R9-2001-0096, NPDES No. CAG919002
Mission Valley Terminal, San Diego, California

Enclosed is Complaint No. R9-2008-0046, Administrative Civil Liability with Mandatory Minimum Penalties (MMPs) to Kinder Morgan, MVT, SFPP, L.P. for discharges of extracted groundwater from the Mission Valley Terminal at 9950 San Diego Mission Road, San Diego, California.

The Complaint recommends that the California Regional Water Quality Control Board, San Diego Region (Regional Board), impose a civil liability of $229,000 for violations that occurred between January 1, 2005 and January 31, 2008 of effluent limitations established by Order No. 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.*

If you intend to waive your right to a hearing before the Regional Board, you must sign and return the enclosed waiver form with a $229,000 cashier's check made out to the "State Water Resources Control Board," by 5:00 p.m. **Monday July 7, 2008.** Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of $229,000. In addition, you must publish the enclosed public notice in the San Diego Union-Tribune newspaper no later than **July 11, 2008.** Verification that the notice has been published must be submitted to the Regional Board no later than **July 14, 2008.**

Public Hearing
If you do not elect to waive your right to a public hearing, or verification that the newspaper notification has not been received by **July 14, 2008**, a hearing is tentatively scheduled to be held at the Regional Board meeting on **August 13, 2008.** In order for the Regional Board to fully consider any argument on you behalf, you should submit 20 copies of all documents, including exhibits, you intend to provide the Regional Board by 5:00 p.m. **Friday July 25, 2008.** Copies of materials submitted will be forwarded to the Regional Board members. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions or need further clarification, please contact Jeremy Haas directly at 858-467-2735 or jhaas@waterboards.ca.gov.

Respectfully,

MICHAEL P. McCANN
Assistant Executive Officer

MPM:ma:jh

Enclosures 1. Complaint No. R9-2008-0046
2. Waiver of Public Hearing Form
3. Public Hearing Notice

cc w/ enclosures **[via email only]**:
Ms. Jennifer S. Rothman, P.E., Principal Civil Engineer, LFR Environmental Management & Consulting Jennifer.rothman@lfr.com
Ken Greenberg, USEPA, Region 9, greenberg.ken@epa.gov
Grace Lowenberg, Deputy City Attorney, City of San Diego, GLowenberg@sandiego.gov

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:

Kinder Morgan, MVT, SFPP, L.P. **<u>Facility:</u> Mission Valley Terminal** **9950 San Diego Mission Road** **San Diego, CA 92108** **VIOLATIONS OF EFFLUENT LIMITATIONS IN ORDER NO. 2001-96, 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*** Mailing Address: 1100 Town and Country Road Orange, CA 92868 **Place ID 240988** **WDID No. 9 000000506**	)	**COMPLAINT NO. R9-2008-0046** **FOR** **ADMINISTRATIVE CIVIL LIABILITY** **WITH** **MANDATORY MINIMUM PENALTIES** **June 6, 2008**

KINDER MORGAN, MVT, SFPP, L.P. IS HEREBY GIVEN NOTICE THAT:

1. Kinder Morgan, MVT, SFPP, L.P.[1] (hereinafter Dischargers) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to California Water Code (CWC) Section 13385. The violations alleged herein include violations of effluent limitations prescribed by waste discharge requirements for discharges of pollutants from point sources to waters of the United States. The Regional Board must impose mandatory minimum penalties (MMPs) for the certain violations alleged in this complaint.

[1] 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.

2. The Water Quality Control Plan for the San Diego Basin (Basin Plan) designates beneficial uses of inland surface waters in the discharge area (hydrologic sub area 907.11) as including Agricultural Supply, Industrial Service Supply, Contact Water Recreation, Non-contact Water Recreation, Warm Freshwater Habitat, Cold Freshwater Habitat, Wildlife Habitat, and Rare, Threatened, or Endangered Species.

3. Effluent discharged to Murphy Canyon Creek from the Dischargers' groundwater pollution remediation system is regulated by the Regional Board's general waste discharge requirements for groundwater extraction waste discharges, Order No. 2001-96, NPDES Permit No. CAG919002 (Groundwater Extraction Permit).[2] The Groundwater Extraction Permit prescribes effluent limitations for the discharge of treated groundwater from the groundwater extraction system to surface waters of Murphy Canyon Creek.[3]

4. The Dischargers have reported effluent sampling results to the Regional Board pursuant to the Groundwater Extraction Permit's Monitoring and Reporting schedule.

5. The discharge of extracted groundwater in excess of the effluent limitations prescribed in the Groundwater Extraction Permit contributes to violations of applicable Basin Plan surface water quality objectives in Murphy Canyon Creek and contributes to the impairment of beneficial uses.

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[2] Order No. 2001-96, 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* (Groundwater Extraction Permit). Order No. R9-2001-96 was superseded on March 12, 2008 by Order No. R9-2008-0002.

[3] Pursuant to the federal Clean Water Act and California's Porter Cologne Water Quality Control Act, in February of 1994, Sante Fe Pacific Pipeline Partners, L.P. (SFPPP) applied for and obtained coverage under San Diego Water Board's General Waste Discharge Requirements for Groundwater Extraction (Order No. 91-10) to discharge extracted treated groundwater to Murphy Canyon Creek as part of the remediation of the groundwater pollution. In September of 1996, SFPPP applied for and received coverage under Regional Board Order No. 96-41 to renew its discharge of treated groundwater to Murphy Canyon Creek. In 1998, Kinder Morgan assumed responsibility from SFPPP for the discharge of treated groundwater under Regional Board Order No. 96-41. On October 10, 2001, Order No. 96-41 was superseded by Order No. R9-2001-96.

6. CWC Section 13385(h)(1) requires that an 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.

7. As specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations and Appendices A and B to the State Water Resources Control Board's Water Quality Enforcement Policy (February 2002), fluoride, manganese, phosphorus, and total nitrogen are Group I pollutants, and lead and total residual chlorine are Group II pollutants.

8. CWC Section 13385(i)(1) requires that an MMP of $3,000 be imposed for each effluent limitation violation (i.e. any waste discharge that violates an effluent limitation contained in waste discharge requirements applying to surface water discharges) beginning with the fourth violation in any six-month period.

9. The Regional Board has discretionary authority to impose liability for every violation of an NPDES permit (CWC Section 13385(a)(2)). While CWC Sections 13385(h) and (i) require certain minimum penalties, CWC Section 13385(c)(1) gives the Regional Board authority to impose liability as high as $10,000 per day for those violations.[4] CWC Section 13385(e) provides factors to be considered by the Regional Board when determining the amount of any liability imposed under CWC Sections 13385(a) and 13385(c).[5]

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[4] CWC Section 13385(c) states: (c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars ($10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

[5] Pursuant to CWC Section 13385(e): In determining the amount of any liability imposed under CWC Sections 13385(a) and (c), the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

10. MMPs have previously been assessed to the Dischargers for violations of effluent limitations in the Groundwater Extraction Permit from the Mission Valley Terminal groundwater remediation project. On December 11, 2002, Order R9-2002-0385 assessed civil liability in the amount of $21,000 for seven violations of chronic toxicity, acute toxicity, total phosphorus, and manganese.[6] On May 12, 2004, Order R9-2004-0101 assessed civil liability in the amount of $3,000 for one violation of selenium effluent limitations.[7]

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[6] Order No. R9-2002-0385 *Administrative Assessment of Civil Liability with Mandatory Minimum Penalties Against Kinder Morgan Energy Partners, Mission Valley Terminal Wastewater Treatment System for Violations of Order No. 2001-96, NPDES Permit No. CAG919002.* December 11, 2002.

[7] Order No. R9-2004-0101 *Administrative Assessment of Civil Liability for Mandatory Minimum Penalties Against Kinder Morgan Energy Partners, LP Mission Valley Terminal, Violation of Order No. 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.* May 12, 2004.

ALLEGATIONS

11. From January 2005 through January 2008, Dischargers reported to the Regional Board violations of effluent limitations for dissolved oxygen, fluoride, lead, manganese, pH, phosphorus, total nitrogen, total residual chlorine, and chronic toxicity to fathead minnows and green algae, as described in Table 1.

Table 1: Summary of Effluent Violations: January 2005 through January 2008

Month of Violation	**Constituents Exceeding Effluent Limits**
January 2005	pH, chronic toxicity (green algae)
April 2005	fluoride, manganese, chronic toxicity (green algae)
June 2005	pH, chronic toxicity (green algae)
July 2005	chronic toxicity (green algae)
August 2005	chronic toxicity (green algae)
October 2005	manganese, total nitrogen, chronic toxicity (fathead minnow growth and green algae)
November 2005	pH, chronic toxicity (green algae), total residual chlorine
January 2006	total nitrogen, fluoride, lead, phosphorus
February 2006	chronic toxicity (fathead minnow growth and survival)
April 2006	total nitrogen
June 2006	pH, total residual chlorine
July 2006	total nitrogen
August 2006	pH and chronic toxicity (fathead minnow growth)
September 2006	pH, chronic toxicity (green algae)
October 2006	manganese, total nitrogen, total residual chlorine
November 2006	chronic toxicity (green algae)
December 2006	pH
January 2007	total nitrogen, total residual chlorine
April 2007	total nitrogen, chronic toxicity (green algae)
July 2007	total nitrogen and dissolved oxygen
September 2007	dissolved oxygen
October 2007	fluoride, manganese, total nitrogen, chronic toxicity (green algae)
December 2007	dissolved oxygen
January 2008	total nitrogen, total residual chlorine

12. Violations of toxicity discharge limitations are violations of waste discharge effluent limitations. However, they are subject to consideration of non-serious mandatory minimum penalties under CWC Section 13385(i)(4) only if the applicable permit does not have any pollutant-specific effluent limitations for toxic pollutants. Order No. R9-2001-0096 contains effluent limitations for both toxicity and specific toxic pollutants. Therefore, mandatory minimum penalties under CWC Section 13385(i)(4) are not applicable for the violations of toxicity limitations.

13. The discharger has demonstrated that monitoring results for certain violations of effluent limitations for total residual chlorine and chronic toxicity involving green algae (*Selanastrum*) cannot reliably be concluded to represent true effluent conditions because of potential false positive results caused by laboratory complications. Therefore, these violations are excluded from consideration of MMPs in this complaint. These violations may be subject to future assessment of civil liability pursuant to CWC Section 13385 if further analyses demonstrate they accurately represent effluent conditions.

14. Pursuant to CWC Sections 13385 (h) and (i), the Regional Board must impose mandatory minimum penalties on Kinder Morgan, MVT, SFPP, L.P. in the amount of one hundred five thousand dollars ($105,000) ($3,000 for each of 35 violations) as described in Table 3, attached.

15. Quarterly sampling and reporting demonstrate that total nitrogen effluent limitations (instantaneous maximum and average monthly) were consistently exceeded from October 2005 through January 2008 (Figure 1) the date of the last monitoring. These violations continue and liability continues to accrue. For instance, violations of the instantaneous maximum effluent limitation occurred during eight of nine consecutive measurements. Therefore, the discharge violated effluent limitations during each day of discharge between the discrete sampling events that exceeded effluent limitations. Effluent was discharged every day in 2005, 2006, 2007, and each day in January 2008. As a result, violations are alleged during 545 out of the 695 days from January 2006 through January 2008 (see Figure 2).

PROPOSED CIVIL LIABILITY

16. It is recommended $229,000 in civil liability be imposed based on the following:

    a. Pursuant to CWC Sections 13385(h) and (i), mandatory minimum penalty in the amount of one hundred five thousand five hundred dollars ($105,000) is recommended for 35 serious and non-serious violations of effluent limitations. ($3,000 for each of thirty five violations).

    b. Pursuant to CWC Section 13385(c), discretionary civil liability is recommended for five toxicity violations in the amount of fifteen thousand dollars ($15,000) for violations not subject to MMPs ($3,000 for each of five violations).

    c. Pursuant to CWC Section 13385(c), discretionary civil liability is recommended in the amount of one hundred nine thousand dollars ($109,000) for persistent and chronic violations of the total nitrogen instantaneous maximum effluent limitation ($200 for each of 545 days that the effluent limitation is alleged to have been exceeded).

    Table 2. Summary of Proposed Civil Liability

	MMP	**Non-MMP Discretionary**	**Persistent Nitrogen Violations**	**Total**
Liability	$3,000 for 35 violations ($105,000)	$3,000 for five non-MMP violations ($15,000)	$200 per day for 545 days ($109,000)	$229,000

17. Effluent violations cited in this complaint occurred on 548 days. Two violations subject to MMPs and one non-MMP effluent violation occurred outside of the 545-day period of persistent nitrogen violations.

18. Maximum Potential Liability. The maximum liability for violations cited in this complaint, pursuant to CWC Section 13385(c), can be calculated based on:

    a. $10,000 per day of violation (CWC Section 13385(c)(1)):
    Effluent violations occurred on 548 days (three violations occurred outside the 545-day period of persistent nitrogen violations). The maximum liability is five million four hundred eighty thousand dollars ($5,480,000), and/or

    b. Ten dollars per gallon discharged (CWC Section 13385(c)(2)):
    Liability can be assessed for additional ten dollars per gallon discharged. During the 548 day period 188,039,614 gallons of wastewater were discharged to the river, resulting in the additional maximum liability of one billion eight hundred eighty eight million three hundred ninety six thousand one hundred forty dollars ($1,880,396,140).

19. Assessment of liability pursuant to CWC Section 13385(c)(1) greater than the mandatory minimum penalty required by CWC Sections 13385(h) and (i) is warranted for the following reasons:

    a. Dischargers bear complete responsibility for the discharge of treated effluent from the remediation project;
    b. Dischargers have a prior history of violations that have been subject to assessments of MMPs;
    c. Effluent limitations have been persistently violated. For instance:
        i. Effluent violations have been reported in twelve of the thirteen quarterly periods considered in this complaint;
        ii. At least two effluent violations have been reported during each quarter since October 2005; and
        iii. The total nitrogen average monthly effluent limitation has not been met since July 2005, and the total nitrogen instantaneous maximum limitation has only been met in one of nine quarterly periods since January 2006;
    d. Dischargers realized an economic benefit by discharging polluted effluent to surface waters rather than providing additional treatment or alternative disposal; and
    e. Assessment of moderate discretionary liability will not affect the ability of Kinder Morgan, MVT, SFPP, L.P to continue business. Kinder Morgan Energy Partners, LP reported to the Securities and Exchange Commission a net income of $590 million dollars for the year ended December 2007.[8]

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[8] Form 10-K for Kinder Morgan Energy Partners, LP, February 26, 2008 Annual Report.

Dated this 6th day of June 2008.

MICHAEL P. McCANN
Assistant Executive Officer

Signed pursuant to the Authority
delegated by the Executive Officer
to the Assistant Executive Officer

Attachments:

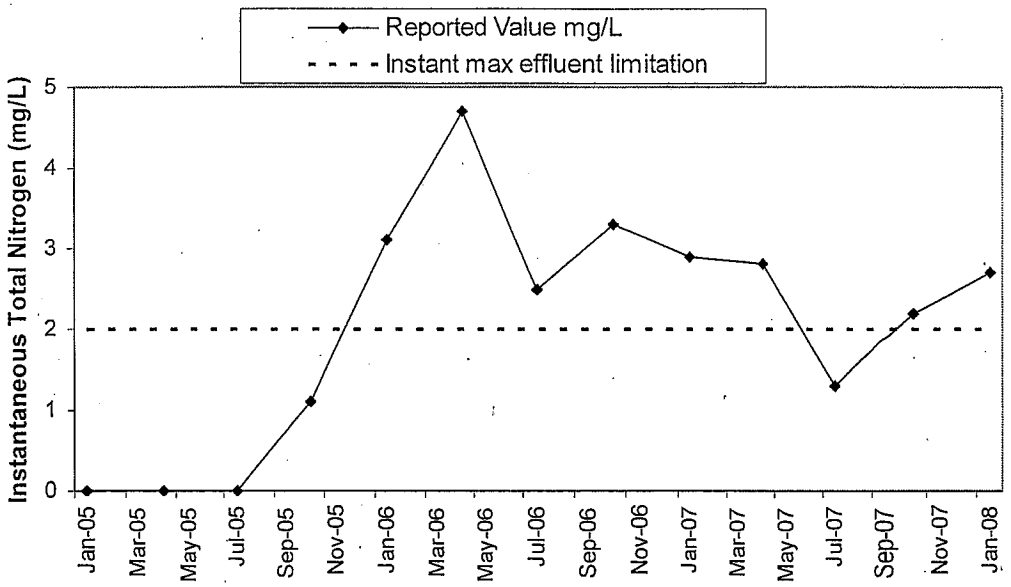
1. Figure 1: Reported total nitrogen concentrations
2. Figure 2: Calculation of violation days for total nitrogen
3. Table 3: Summary of Reported Effluent Violations and Recommended Penalties

CIWQS Entries
Regulatory Measure ID: 343514
Place ID: 240988
Party IDs: 24872 (Kinder Morgan, MVT, SFPP, L.P.)
Violation IDs: 742378, 443858, 742363, 742368, 443348, 742362, 443341, 742358, 742348, 742347, 742344, 742343, 742342, 742345, 742346, 742339, 742338, 742357, 443815, 742337, 443814, 742355, 742356, 742351, 507674, 741641, 742333, 742336, 571541, 741640, 608800, 741642, 741644, 708512, 708513, 741647, 741648, 708514, 741646, 738903, 738906, 741581

Figure 1. Reported total nitrogen concentrations compared to the (A) instantaneous maximum and (B) average monthly effluent limitations. January 2005 through January 2008

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

A. Instantaneous Maximum Concentration



B. Average Monthly Concentration

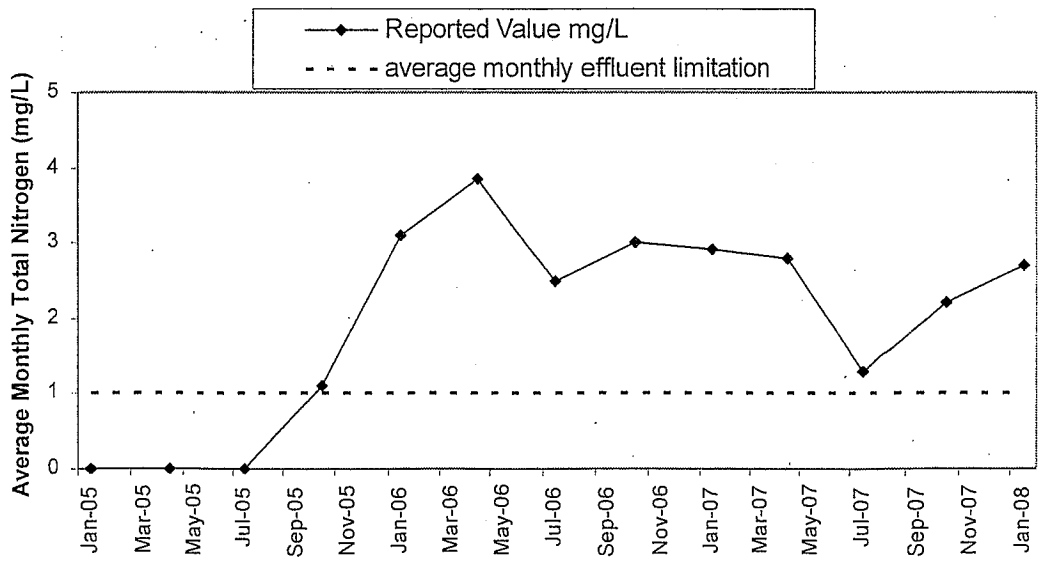


Figure 2. Calculation of violation days for total nitrogen, instantaneous maximum effluent limitation.

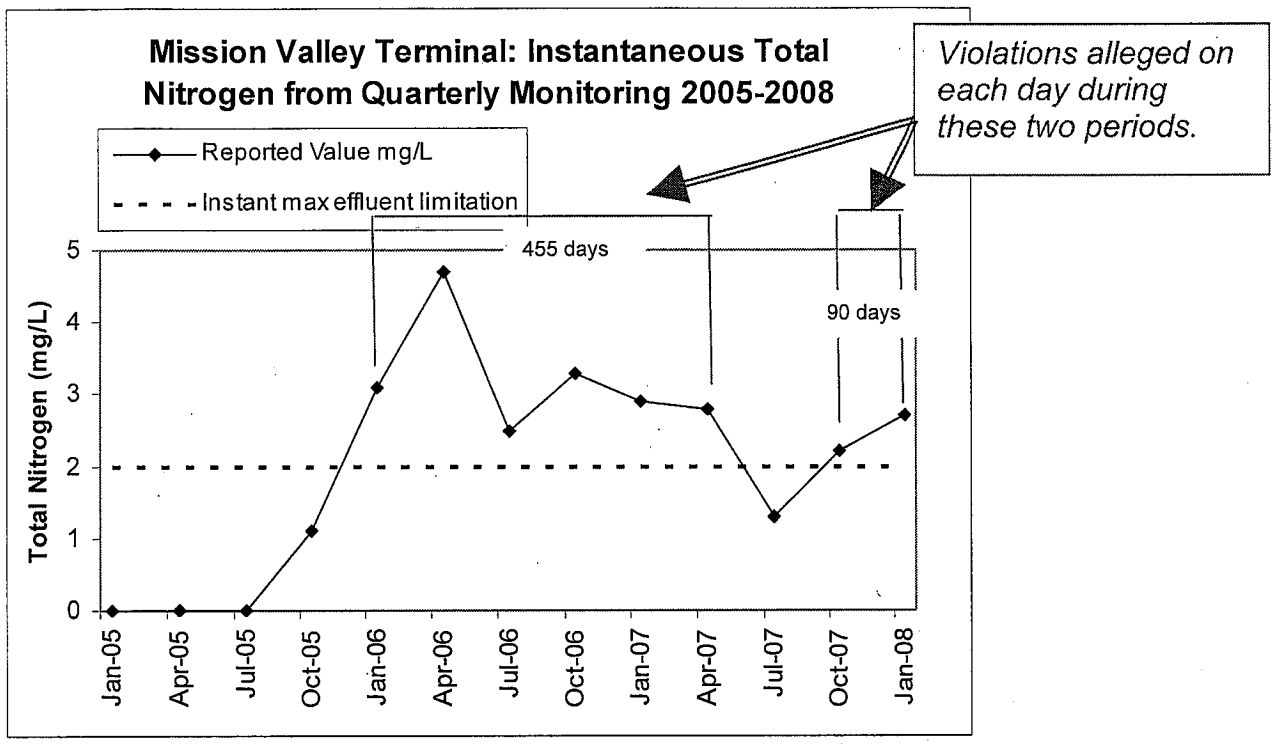


Table 3. Summary of Reported Effluent Violations and Recommended Penalties[i] June 2, 2008

Complaint No. R9-2008-0046
Mission Valley Terminal
9950 San Diego Mission Road
San Diego, CA 92108

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation[ii]	Subject to MMP[iii,iv]	Recommended Penalty
01/18/2005	742378	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.33	No	No	$0
04/12/2005	443858	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	No	$0
04/12/2005	742363	Manganese	Instantaneous Maximum	mg/L	1.0	3.9	Yes	Yes	$3000
06/07/2005	742368	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.36	No	Yes	$3000
10/11/2005	742362	Total Nitrogen	AMEL[v]	mg/L	1.0	1.1	No	Yes	$3000
10/11/2005	443341	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	1.3	No	No	$3000[vi]
10/11/2005	443348	Manganese	Instantaneous Maximum	mg/L	1.0	2.9	Yes	Yes	$3000
11/21/2005	742358	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	$3000
01/03/2006	742348	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.1	Yes	Yes	$3000
01/03/2006	742347	Total Nitrogen	AMEL	mg/L	1.0	3.1	Yes	Yes	$3000
01/20/2006	742344	Fluoride	Instantaneous Maximum	mg/L	1.0	2.2	Yes	Yes	$3000
01/20/2006	742343	Lead	CTR Chronic	µg/L	2.5	10.8	Yes	Yes	$3000
01/20/2006	742342	Phosphorus	AMEL	mg/L	0.1	0.167	Yes	Yes	$3000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation[ii]	Subject to MMP[iii,iv]	Recommended Penalty
02/07/2006	742345	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	8.0	No	No	$3000[vi]
02/07/2006	742346	Chronic toxicity, fathead minnow survival	Toxicity	TUc	1.0	2.0	No	No	$3000[vi]
04/25/2006	742339	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	4.7	Yes	Yes	$3000
04/25/2006	742338	Total Nitrogen	AMEL	mg/L	1.0	3.85	Yes	Yes	$3000
06/20/2006	742357	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.42	No	Yes	$3000
07/06/2006	443815	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.5	No	Yes	$3000
07/06/2006	742337	Total Nitrogen	AMEL	mg/L	1.0	2.5	Yes	Yes	$3000
08/01/2006	443814	Chronic toxicity, fathead minnow growth	Toxicity	TUc	1.0	2.0	No	No	$3000[vi]
08/01/2006	742355	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.45	No	Yes	$3000
08/15/2006	742356	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.47	No	Yes	$3000
09/26/2006	742351	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.3	No	Yes	$3000
10/10/2006	741641	Total Nitrogen	AMEL	mg/L	1.0	3.0	Yes	Yes	$3000
10/10/2006	742333	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	3.3	Yes	Yes	$3000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation[ii]	Subject to MMP[iii,iv]	Recommended Penalty
10/10/2006	507674	Manganese	Instantaneous Maximum	mg/L	1.0	2.7	Yes	Yes	$3000
12/05/2006	742336	pH	Instantaneous Minimum	s.u.	6.5 to 8.5	6.4	No	Yes	$3000
01/02/2007	571541	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.9	Yes	Yes	$3000
01/02/2007	741640	Total Nitrogen	AMEL	mg/L	1.0	2.9	Yes	Yes	$3000
04/10/2007	608800	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.8	Yes	Yes	$3000
04/10/2007	741642	Total Nitrogen	AMEL	mg/L	1.0	2.8	Yes	Yes	$3000
07/03/2007	741644	Total Nitrogen	AMEL	mg/L	1.0	1.3	No	No	$3000[vi]
07/31/2007	708512	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	4.9	No	Yes	$3000
09/11/2007	708513	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	0.64	No	Yes	$3000
10/09/2007	741647	Fluoride	Instantaneous Maximum	mg/L	1.0	1.1	No	Yes	$3000
10/09/2007	708514	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.2	No	Yes	$3000
10/09/2007	741646	Total Nitrogen	AMEL	mg/L	1.0	2.2	Yes	Yes	$3000
10/09/2007	741648	Manganese	Instantaneous Maximum	mg/L	1.0	7.0	Yes	Yes	$3000
12/04/2007	738903	Dissolved Oxygen	Minimum Concentration	mg/L	5.0	3.09	No	Yes	$3000
01/15/2008	741581	Total Nitrogen	Instantaneous Maximum	mg/L	2.0	2.7	No	Yes	$3000
01/15/2008	738906	Total Nitrogen	AMEL	mg/L	1.0	2.7	Yes	Yes	$3000
January 2006 – January 2008		Total Nitrogen Instantaneous Maximum			$200 per day for 545 of 695 days within time period			No	$109,000

Table 3. Summary of Effluent Violations

Violation Date	Violation ID	Constituent	Effluent Violation	Unit	Permitted Limit or Range	Reported Value	Serious Violation[ii]	Subject to MMP[iii,iv]	Recommended Penalty
						TOTAL RECOMMENDED PENALTY			$229,000

[i] Reported violations not considered for civil liability include:
1. Potential chronic toxicity violations using green algae (*Selanstrum*) have been excluded pending review of ion-imbalance concerns; and
2. Potential total residual chlorine violations have been excluded based on suggested false positive results.

[ii] CWC Section 13385(h)(1) requires that an MMP of $3,000 be imposed for each serious violation. Serious violations are based on:
1. 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
2. Lead is a Group II pollutant. A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more.

[iii] 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)).

[iv] Chronic toxicity violations are effluent violations, but are not assessed MMPs because the waste discharge requirements in Order R9-2001-96 contain pollutant-specific effluent limitations (CWC §13385(i)(1)(d)).

[v] "Average Monthly Effluent Limitation (AMEL)" is defined in Order R9-2001-96 as the highest allowable average of daily pollutant discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of measurements.

[vi] Discretionary civil liability for four violations of the fathead minnow chronic toxicity test and the July 2007 total nitrogen AMEL is recommended solely pursuant to CWC §13385(a)(2).