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***VIA REGISTERED MAIL --
RETURN RECEIPT REQUESTED***

March 12, 2012

Managing Partners -
Kinder Morgan Energy Partners, L.P.
SFPP, L.P.
1100 Town & Country Rd.
Orange, CA 92868

Owner /Operator
Brisbane Terminal
SFPP, L.P.
950 Tunnel Avenue
Brisbane, CA 94005

**Re: Notice of Violations and Intent to File Suit under the Resource
Conservation and Recovery Act**

Dear Owners, Partners, Site Managers and other Responsible Parties:

On behalf of Northern California River Watch ("River Watch") I am providing statutory notification to Kinder Morgan Energy Partners, L.P. and SFPP, L.P. (collectively, "Responsible Parties") as the current owners and operators of the bulk storage and distribution terminal site located at 950 Tunnel Avenue in Brisbane, San Mateo County, California, of continuing and ongoing violations of the federal Resource Conservation and Recovery Act ("RCRA,") 42 U.S.C. § 6901 *et seq.*, in conjunction with the former and/or continuing operations at said location.

River Watch hereby notifies Responsible Parties that at the expiration of the appropriate notice periods provided under the RCRA, River Watch intends to commence a civil action against Responsible Parties on the following grounds:

1. Responsible Parties' handling, transportation and unauthorized releases of various petroleum products at the Brisbane facility as identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding the past and/or present handling, storage, treatment, transportation and/or disposal of these hazardous products [42 U.S.C. § 6972 (a)(1)(A)];
2. Responsible Parties' past and current operations at the Brisbane facility as identified in this Notice have caused petroleum contamination in soils, in groundwater and in surface waters which contamination presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972 (a)(1)(B)].
3. Responsible Parties' past and current operations at the Brisbane facility as identified in this Notice violates the provisions of RCRA sub-chapter III (Subtitle C) which governs the handling of hazardous wastes. River Watch contends that Responsible Parties have inadequately maintained records of the manner in which hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning hazardous wastes; inadequately provided storage or transportation facilities for said wastes; and in the past, have not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which presented and continues to present a substantial endangerment to human health and to the environment.

BACKGROUND AND SITE HISTORY

The Brisbane terminal ("Site") is located at 950 Tunnel Avenue in an industrial area of Brisbane. The Site is bordered by Tunnel Avenue to the east and south, Union Pacific Railroad Company tracks to the west, and a timber-lined channel to the north, also known the Interior Drainage Channel ("IDC"). The IDC, considered an estuarine habitat, is directly connected to San Francisco Bay by tidal activity. The Bay is approximately 2,100 ft. directly east of the Site. The Brisbane Landfill property intervenes between the Site and the Bay.

SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P., owns and operates a bulk petroleum storage and distribution terminal at the Site which was originally constructed in the 1960s. Part of the petroleum storage terminal was built over a portion of the Brisbane Landfill, which was decommissioned as a solid waste disposal site for the City of San Francisco in 1967. Aboveground storage tanks currently in place at the Site were built on bedrock in the western portion of the Site. Currently, the Site contains 21 such tanks utilized for the storage of gasoline, diesel and aviation fuels, as well as loading rack facilities for truck loading operations.

The Site is underlain by groundwater in two main zones: Zone A is a shallow water bearing zone that lies above bay mud and landfill refuse. Zone B is located at a deeper level beneath the bay mud which acts as a kind of aquitard between the two zones. The IDC channel fluctuates with the tide up to 3 feet. Water within the channel generally flows to the east towards San Francisco Bay, but has been observed flowing west during high tides. The tidal influence to adjacent groundwater in the vicinity of the IDC is claimed by consultants for Responsible Parties as not “significant,” but some tidal influence of groundwater certainly remains a salient feature of the Site. Depth to groundwater here varies from a minimum of 0.52 ft. to 16.4 ft. bgs. Groundwater elevations typically exhibit seasonal fluctuations of 1 to 4 feet.

Groundwater on the eastern boundary appears to actually flow west from the Brisbane Landfill toward the loading rack area, forming a trough in the groundwater beneath the Site. Given the hydrological connections between the Site and the Landfill, it is apparent the plumes from each are now commingled.

Unauthorized releases have occurred at the Site on a number of occasions since the early 1990s. Jet fuel of an unknown volume was released in the Manifold Area in 1999. In February of 2001 an unknown volume of ethanol was released from Tank BT-11. In October of 2003 approximately 48 barrels of fuel were released from a sump in the Tank Farm area. A mixture of diesel and turbine NAPH was released in 2005.

Remedial activity has been conducted at least since monitoring wells were installed in July of 1991. Subsequent remediation work consists of minimal dual phase extraction (11 days in total) to recover NAPL or NAPH, and over-excavation of contaminated soils on several occasions

At the present time, remedial activity is limited to NAPL monthly or bi-monthly recovery efforts using hydrophobic absorbent socks or hand bailing at 6 recovery points (MP-1 through MP-6), and at monitoring wells MW-2, MW-12, MW-17, and MW-28. Other remediation is limited to approximately 18 monitoring wells focused on the presence of BTEX compounds and 7 oxygenates, and natural attenuation.

Analytical findings in mid-2011 reflect high levels of petroleum constituent contamination in addition to NAPL in several monitoring points. Methane at MW-1, MW-24 and MW-25 was found as high as 15,000 µg/l; TPHp (GRO) was found as high as 890 µg/l. Most recently, other contaminant levels have been fairly minimal, but at the present rate of bioremediation, consultants for Responsible Parties estimate the cleanup goals for the Site to be reached in the year 2040.

The effect of the commingling of the Site and Brisbane Landfill plumes is leading to increasing contaminant numbers, at least in monitoring well (MW-30). A review of both Site and Landfill monitoring reports indicates neither site is conducting anything more than monitoring of that well.

The IDC channel's surface waters are apparently tested in only one location (the "Creek Gauging Station" aka "CGS-1") and only twice each year at low tide. In 2006 consultant LFR noted a "potential for discharge of groundwater to surface water within the timber-lined channel." Groundwater measurements at monitoring wells adjacent to the IDC taken in 4th Quarter 2010 determined that groundwater contaminant levels in at least 1 instance exceeded the "ESL for Potential Discharge of Groundwater to Aquatic Habitat." On this point River Watch takes the position that there are no ESLs which allow contamination to the surface waters of the State of California without a specific allowance from a NPDES permit.

The Final Brisbane RAP Report in 2007 indicates, "... based on the surface-water sample analytical results, wildlife could be exposed to MTBE through the timber-lined channel. Wildlife that may be exposed to MTBE in the vicinity of the site may include invertebrates, vertebrates (including fish) and birds."

A Commingled Plume Evaluation Report reflects that in recent sampling conducted on behalf of Responsible Parties and the Brisbane Landfill, chlorobenzene was detected in seep samples collected directly from the IDC. Chlorobenzene is being found at the Site in increasing contaminant concentrations that are not bio-remediating, as well as in many wells located on either side of Tunnel Avenue.

Documents available to River Watch at this time do not reflect that a full scale evaluation of the Site has been conducted. It appears that some necessary investigatory data has not been gathered, or at least is not readily available. River Watch believes that in order to adequately remediate a given hydrocarbon contamination site, a number of preliminary investigatory steps must be taken before effective clean up can be accomplished. Some of these steps are listed below. On the basis of the current condition of the Site, River Watch believes the following investigatory and remediation work must be implemented immediately:

1. Consideration of further over-excavation to eliminate lingering sources of NAPL, MTBE, and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface waters. MTBE levels throughout the Site remain fairly high and may be reaching the surface waters of the IDC. Contaminants from the southern portion of Site may also be migrating to Guadalupe Lagoon approximately 1,250 ft. to the south.

2. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite. River Watch has seen no comprehensive pathway reports determining the existence of such covert plume migration routes.
3. Construction of a French drain/trench along the length of the IDC where it borders the Site to eliminate the prospect of further seepage of contaminants into the IDC and further imminent and substantial endangerment to this sensitive habitat.
4. Initiation of proactive remediation work, beyond natural attenuation, as soon as the necessary investigations and assessments are concluded. Such remediation should include the use of dual phase extraction to more rapidly remove lingering repositories of NAPL and reduce the time frame for expected Cleanup Goals.

REGULATORY STANDARDS

The Resource Conservation and Recovery Act of 1976 is a federal environmental law of the United States, the goals of which are the protection of the public and the environment from harm caused by waste storage and disposal, and to mandate the proper remediation of soil and groundwater which has been contaminated by hazardous waste and hazardous products, including petroleum hydrocarbons and gasoline formula constituents. The RCRA establishes a national policy that, wherever feasible, the generation of hazardous waste must be reduced or eliminated as expeditiously as possible. It is a strict liability statute with a 5-year statute of limitations. California has enacted laws and regulations that must be observed in conjunction with RCRA regulations.

California's "Water Quality Objectives" exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of groundwater in the area of the Site include domestic, agricultural, industrial and municipal water supply.

The Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB") has adopted a Water Quality Control Plan ("Basin Plan") which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The RWQCB has adopted Maximum Contaminant Levels and/or Water Quality Objectives for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene, 150 ppb for toluene and 5 ppb for MTBE.

VIOLATIONS

1. Permits, Standards and Regulations RCRA § 7002(a)(1)(A); 42 U.S.C. § 6972(a)(1)(A)

Responsible Parties' use, storage, handling and transportation of petroleum products at the Site has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding storage of petroleum in above ground and/or underground storage tanks.

Between March 1, 2007 and March 1, 2012, Responsible Parties have caused or permitted, cause or permit, or threaten to cause or permit, petroleum contaminants, petroleum constituents and other hazardous waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and now creates, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of such petroleum waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

2. Mishandling of Hazardous Waste RCRA § 3004; 42 U.S.C. § 6924 et seq.

Between March 1, 2007 and March 1, 2012, Responsible Parties used, handled, stored and transported petroleum products at the Site in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the Site and beneath adjacent properties. Contaminant levels of TPHg, TPHd, benzene, toluene, and MTBE in groundwater at and surrounding the Site are significantly greater than the allowable Maximum Contaminant Levels and/or Water Quality Objectives for said constituents.

River Watch alleges that between March 1, 2007 and March 1, 2012 Responsible Parties have engaged in the following activities and/or omissions to act in violation of waste handling provisions set forth in the RCRA:

- a. Failure to adequately maintain records of hazardous wastes which were used, handled, treated, stored or otherwise disposed of on the Site or offsite – 42 U.S.C. §6924(a)(1);
- b. Failure to satisfactorily monitor, inspect, and report hazardous waste – 42 U.S.C. §6924(a)(2);

- c. Failure to adequately use, handle, treat, store or properly dispose of hazardous waste found at the Site – 42 U.S.C. §6924(a)(3);
- d. Failure to adequately locate, design and construct hazardous waste treatment, storage or disposal facilities – 42 U.S.C. §6924(a)(4); and,
- e. Failure to properly implement contingency plans for effective action to minimize unanticipated damage from the handling, transportation, treatment, storage or disposal of hazardous waste found at the Site– 42 U.S.C. §6924(a)(5).

3. Unpermitted Handling, Treatment, Storage, Transportation and/or Disposal of Hazardous Waste
RCRA § 3005; 42 U.S.C. § 6925 et. seq.

River Watch alleges that between March 1, 2007 and March 1, 2012, Responsible Parties have engaged in the following activities or omissions to act in violation of waste handling provisions set forth in the RCRA:

- a. Deposition and maintenance of hazardous wastes which has caused and continues to cause the generation and discharge of hazardous waste from the Site to the environment;
- b. Installation and maintenance of a system of conveyances to dispose of hazardous wastes generated and released from Site; and
- c. Handling, storage, treatment, transportation, and/or disposal of hazardous or solid waste at the Site without the appropriate regulatory permit.

4. Prohibition Against Open Dumping
RCRA § 4005; 42 U.S.C. § 6945 et. seq.

River Watch alleges that between March 1, 2007 and March 1, 2012 Responsible Parties have engaged in the following activities or omissions to act in violation of waste handling provisions set forth in the RCRA:

- a. Open dumping by way of the discharge of hazardous waste to open ground where it will and has contaminated the soils, groundwater and surface waters as described in this Notice;

- b. The Site does not qualify as a landfill under 42 U.S.C. § 6944, nor does the Site qualify as a facility for the disposal of hazardous waste; and,
- c. Responsible Parties have no RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Site.

**5. Violation of UST Regulations
RCRA § 9001; 42 U.S.C. § 6991; 42 U.S.C. §6972 (a)(1)(A)]**

Provisions of the RCRA govern the use and operation of underground storage tanks used for storage of petroleum products (sub-chapter IX, 42 U.S.C. § 6991 *et seq.*), as well as above ground tanks used for the same purposes. The RCRA UST regulatory program is adopted and implemented in California under the State Underground Storage of Hazardous Substance Account Act (California Health & Safety Code § 25280 *et seq.*).

Responsible Parties' use and storage of petroleum and petroleum products at the Site as identified in this Notice between March 1, 2007 and March 2012 has allowed significant quantities of hazardous petroleum constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California's UST regulatory programs including, but not limited to, provisions governing general operating requirements for underground and above ground storage tanks release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements.

Specifically, River Watch alleges Responsible Parties to be responsible for the following statutory violations:

- a. Failure to prevent a release in violation of 40 CFR §§ 280.30, 280.31 and California Health & Safety Code §§ 25292.1(a) - (c), 25292.3(a) and (b);
- b. Failure to properly detect and monitor releases in violation of 40 CFR §§ 280.40 - 280.44 and California Health & Safety Code § 25292;
- c. Failure to properly report and keep records of releases in violation of 40 CFR §§ 280.34, 280.50, 280.52, 280.53, 280.63(b) and California Health & Safety Code §§ 25289, 25293 and 25295(a)(1); and,
- d. Failure to take proper corrective action regarding releases in violation of 40 CFR §§ 280.53, 280.60 - 280.66 and California Health & Safety Code § 25295(a)(1).

**6. Imminent and Substantial Endangerment
RCRA § 7002(a)(1)(B); 42 U.S.C. § 6972 (a)(1)(B)]**

Between March 1, 2007 and March 1, 2012, Responsible Parties have used, handled, transported and/or stored petroleum products at the Site in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the Site and beneath adjacent properties. Contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at and surrounding the Site are significantly greater than the allowable Maximum Contaminant Levels and/or Water Quality Objectives for said constituents. Benzene, MTBE, TAME, and TBA are known or suspected carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. In their concentrations at this location, these pollutants are now creating an imminent and substantial endangerment to public health and the environment.

The violations identified in this Notice are alleged to be knowing and intentional in that Responsible Parties have used, stored and sold petroleum products at the Site which products are known to contain hazardous substances; and, have intended that such products will be sold to and used by the public. Responsible Parties have known of the contamination at least since the early-1990's, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Site, and to continually contaminate and re-contaminate actual and potential sources of drinking water.

Information currently available to River Watch indicates that Responsible Parties' violations of the RCRA have occurred every day over the past 5 years, or on numerous separate occasions, and are continuing.

Violations of the RCRA of the type alleged in this Notice are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this Notice is intended to cover all violations of the RCRA by Responsible Parties with respect to the Brisbane Terminal Site evidenced by information which becomes available to River Watch after the date of this Notice.

IDENTITY OF ENTITY BRINGING NOTICE AND CONTACT INFORMATION

The entity bringing this Notice of Violations is Northern California River Watch, P.O. Box 817, Sebastopol, CA, 95472, telephone number is (707) 824-4372, referred to throughout this Notice as “River Watch”.

River Watch is a non-profit corporation, organized under the laws of the State of California, and dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. The violations of Responsible Parties as set forth in this Notice affect the economic stability, physical health and aesthetic enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by these violations of the RCRA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

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CONCLUSION

The RCRA requires that sixty (60) days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the U.S. Environmental Protection Agency and the State in which the violation is alleged to have occurred (42 U.S.C. § 6972(b)(1)(A)). The RCRA also requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred before initiating an action for an imminent and substantial endangerment to human health or the environment (42 U.S.C. § 6972(b)(2)(A)).

However, if Subtitle C, Sub-chapter III, violations are alleged such as in this Notice, actions can be brought without observing the 60/90 day notice waiting periods applicable to § 6972(a)(1)(A) and § 6972(a)(1)(B) claims; and, when Subtitle C, Sub-chapter III, claims are brought in conjunction with claims under § 6972(a)(1)(A) and § 6972(a)(1)(B) , none of the claims require a waiting period before a complaint under provisions of the RCRA may be filed.

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of the RCRA as to the Brisbane Terminal Site. At the close of the notice periods, or substantially earlier, River Watch intends to file suit against Responsible Parties for each of the violations as alleged herein. However, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If you wish to pursue such discussions in the absence of litigation, we would encourage you to initiate such discussions immediately so that we might be on track to resolving the issues raised in this Notice. River Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time following the service of this Notice.

Very truly yours,



Jack Silver

JS:lhmm

cc: Administrator
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