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***VIA CERTIFIED MAIL --
RETURN RECEIPT REQUESTED***

March 14, 2011

Chief Executive Officer
Kinder Morgan, Inc.
500 Dallas Street, Suite 1000
Houston TX 77002

Managing Partner
Kinder Morgan Energy Partners, L.P.
1100 Town & Country Road
Orange, CA 92868

Managing Partner
SFPP, L.P.
1100 Town & Country Road
Orange, CA 92868

Re: Notice of Violations and Intent to File Suit under the Clean Water Act

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

NOTICE

On behalf of Northern California River Watch, I am providing statutory notification to Kinder Morgan, Inc., Kinder Morgan Energy Partners, L.P. and SFPP, L.P., hereafter referred to as "Responsible Parties", of continuing and ongoing violations of the federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, also known as the Clean Water Act, hereafter referred to as the "CWA", in conjunction with continuing operations at several current and/or former underground storage sites and current pipeline sites in Northern California. The CWA requires that sixty (60) days prior to the initiation of an action for a violation of its provisions, 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.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

This Notice addresses the failure of Responsible Parties to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), their illegal discharges of contaminated storm water from their sites, their discharges of non-storm water pollutants from their sites in violation of effluent limitations, and their apparent violations of the procedural requirements of National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p), hereafter referred to as the "General Permit".

In keeping with notice requirements, River Watch alleges that Responsible Parties have violated "effluent standards or limitations" by allowing petroleum hydrocarbons above State of California's Maximum Contaminant Levels to be released and discharged into waters of the United States – specifically into Herman Slough in Richmond, California, Walnut Creek in Concord, California, Selby Pond in Rodeo, California, and into the surface waters of the San Francisco Bay as further investigation may disclose, without the benefit of any NPDES or other permit authorizing such discharges.

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below identifying discharges to hydrologically-connected groundwater and surface waters leading to violations of the CWA, and describing with particularity specific incidents which may or may have not been reported in public reports and other public documents in the possession of Responsible Parties or otherwise available to them. River Watch incorporates by reference the records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are Kinder Morgan, Inc., Kinder Morgan Energy Partners, L.P. and SFPP, L.P., as the owners and/or operators or partial operators of the sites identified herein. The parties are identified individually herein and collectively as "Responsible Parties". This Notice includes the named entities as well as all of their employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits as relate to the sites identified in this Notice.

4. *The location of the alleged violations.*

The location or locations of the various violations are identified in records either created or maintained by or for Responsible Parties, including the records cited further in this Notice and the description of specific incidents referenced below. Specific sites are identified as:

Richmond Station, 520 Castro Street, Richmond, CA
Concord Station, 1550 Solano Way, Concord, CA
Selby Pond Release Site, San Pablo Avenue, Rodeo, CA.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined State Water Resource Control Board and Regional Water Quality Control Board records for the period from March 8, 2006 to March 8, 2011, which is the range of dates covered by this Notice. River Watch contends hydrocarbon releases at the sites identified herein have occurred as far back as 1985. River Watch will from time to time update this Notice to include all violations of the CWA by Responsible Parties which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

River Watch hereby places Responsible Parties on notice that following the expiration of sixty (60) days from the service of this Notice, River Watch intends to bring suit in Federal District Court against Responsible Parties for their continuing violations of “an effluent standard or limitation”, “permit, condition or requirement”, and/or “an order issued by the Administrator or a State with respect to such standard or limitation” under CWA §505(a)(1), 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and/or the Regional Water Quality Control Board’s Basin Plan, as exemplified by the incidents of non-compliance specified below.

The activities leading to these CWA violations are more fully described below in each of the sections highlighting unauthorized discharges. River Watch contends Responsible Parties to be liable for these violations based upon their conduct at each of the sites, and/or because Responsible Parties have assumed legal responsibility to remediate one or more of the listed sites where previous site owners or operators may have contributed to unauthorized discharges. The dates of these violations correspond with the dates of each initial unauthorized release, although following each release the downgradient surface waters would not have been immediately impacted, but would have been contaminated at later dates consistent with the rate of off-site plume migration through conduits or other preferential pathways, or via groundwaters, or via surface migration of petroleum contamination during heavy rain events.

The violations set forth herein are alleged to be continuing in nature in that the sources of pollution impacting surface waters have not been eliminated to date. Pursuant to CWA §309(d), 33 U.S.C. §1319(d), each of the violations described herein subjects the violator to a penalty of up to \$25,000.00 per day/per violation for each violation occurring within the five year period prior to the initiation of a citizen enforcement action. In addition to civil penalties paid to the U.S. Treasury, River Watch will seek injunctive relief in the interest of preventing further violations of the CWA pursuant to CWA §§505(a) and 505(d), 33 U.S.C. §§1365(a) and 1365(d), and such other relief as is permitted by law. Finally, CWA §505(d), 33 U.S.C. §1365(d) permits prevailing parties to recover costs and reasonable attorney fees.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, email: US@ncriverwatch.org which is referred to throughout this Notice as “River Watch”. River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

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

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SITES AND BACKGROUND HISTORY

Kinder Morgan Energy Partners, Richmond Station 520 Castro Street, Richmond, CA

This site is located in a heavy industrial area bordered by a Union Pacific rail yard to the east and south, by Castro Street and the General Chemical Plant and Chevron Products Company to the west, and by the SFPP, LP underground pipeline corridor and Union Pacific rail lines to the north.

The initial unauthorized petroleum releases at this site occurred in 2002. In March of 2002, an above-ground gasket failure caused an extensive hydrocarbon release. In September of that year a flange failure in a buried pipeline resulted in another. Petroleum

hydrocarbon contamination was recovered from the ground surfaces in the manifold area of the site, a southeastern drainage ditch area, a storm drain on the property, and from Herman Slough to the south, adjacent to the Chevron Refinery site. Following cleanup efforts, soil borings were installed in the manifold area to assess the extent of contamination resulting from these releases. Thereafter, over-excavation of the area was conducted, and the affected soil was removed. Engineering consultants for Kinder Morgan Energy Partners, L.P. estimate that between 19,100 and 35,220 pounds of petroleum hydrocarbons were recovered due to the initial product recovery efforts and excavation work done at that time.

Groundwater monitoring of the extent of residual contamination has occurred since 2003. In addition, the company built a concrete slurry wall along the eastern and southern portions of the site in November of 2002 extending to six ft. bgs, and thought to be sufficient to prevent shallow, downgradient migration of the hydrocarbon contamination. Groundwater flow is generally to the southwest, has typically been found within 5 ft. bgs., and is considered to be tidally influenced by the proximity of the Bay.

Other than the initial over-excavation, construction of the slurry wall and a very limited period of groundwater extraction in July of 2005, documents available to River Watch at this time indicate no remediation work has been conducted for the purpose of reducing or eliminating the hydrocarbon contamination that lies in a large plume beneath the property.

At the present time, the engineering consultant is relying upon nothing more than natural attenuation in the hope of eventually achieving complete remediation. However, on the basis of the last available site monitoring records (GeoTracker: 12/15/2009), considerable contamination remains in groundwater despite the current strategies being used.

Third quarter analytical findings of monitoring wells indicate pure hydrocarbon product (SPH) sheen has been observed in three wells (PRW-4A, PRW-28 and PRW-36), and in seven wells at the time of the fourth quarter monitoring (PRW-4A, PRW-12, PRW-17, PRW-21, PRW-28, PRW-31, and PRW-32). The presence of hydrocarbon sheen in this number of wells tends to belie the estimates that natural attenuation is successfully achieving remediation. Findings in consultant reports in 2005 (2d qtr.) and in 2007 (3d and 4th qtrs.) indicate almost no evidence of hydrocarbon sheens in the wells.

These analytical findings in late 2009 also reflect high levels of petroleum constituent contamination. TPHg (aka GRO) was found as high as 30,000 µg/l, TPHd was found as high as 45,000 µg/l, TPHe (oil range organics) was found as high as 18,000 µg/l, benzene was found as high as 1,300 µg/l, MTBE was found as high as 11,000 µg/l, TBA was found as high as 5,200 µg/l, and TAME was found as high as 3,900 µg/l.

Documents available to River Watch reflect that a full scale evaluation of the site has not been conducted to date. It appears that some 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 this site, River Watch believes the following investigatory and remediation work must be implemented immediately:

1. Complete delineation of the site (including vertical delineation) for the purpose of enabling a comprehensive evaluation as to the extent of underlying contamination so that further remediation work may proceed. This should include an evaluation of the potential for migration beneath the shallow slurry wall where sheen was found in four wells beyond the wall (downgradient of the site) in 2007;
2. Initiation of vapor intrusion testing in any buildings or work areas (if any) above the plume to determine whether nearby employees at the site and/or third parties are being exposed to injurious levels of hydrocarbon, benzene or other toxic vapors;
3. Consideration of further over-excavation to eliminate lingering sources of SPH, MTBE, and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface waters;
4. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells. This should include testing of Herman Slough for SPH in the same areas where SPH was initially recovered in 2002;
5. 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, and under or around the slurry wall;
6. Current residual mass calculations which will allow the measurement of remediation progress once remediation processes are initiated.
7. Initiation of proactive remediation work (beyond natural attenuation strategies) as soon as the necessary investigations and assessments are concluded.

Kinder Morgan Concord Station
1550 Solano Way, Concord, California

The Concord Station is owned and operated by SFPP, L.P., an operating partnership to Kinder Morgan Energy Partners, L.P. The Concord Station is a 38-acre petroleum fuel storage (tank farm) and distribution facility located on Solano Way. This facility stores gasoline, diesel and jet fuel which is then delivered to various outlets and industrial users.

Between 1985 and 2003, unauthorized releases of petroleum occurred in volumes reported as high as 56,000 gallons due to pipeline ruptures. A tank overflow in 1991 resulted in the release of approximately 42,000 gallons of diesel fuel. The various releases have resulted in the presence of SPH which continues to exist throughout the contaminant plume beneath the site. Extensive investigations have occurred since the late 1980s, and groundwater monitoring has been conducted since the early 1990s with the installation of some 80 monitoring and extraction wells and several French drains. In 1999 phytoremediation was conducted with the planting of over 60 Fremont Poplar trees southwest and downgradient of the groundwater plume (west in Area IV), in an attempt to interdict the migration of hydrocarbon contamination. Groundwater at the site is found between 4 and 5 ft. bgs.

In the first and second quarters of 2010, measurable SPH was detected in eight mobile product recovery monitoring points in Area 1. Thicknesses of SPH at these points has recently been as much as 4.25 feet. During the first quarter of 2010, an increase in product thickness was observed in three of these monitoring wells. Daily monitoring of EX-18 and EX-19 began in 2009 after large increases in SPH levels were observed in these two wells. The daily monitoring continues to the present date.

In wells without SPH or a hydrocarbon sheen, TPHg levels have recently been found as high as 17,000 µg/l, benzene as high as 5,100 µg/l, and MTBE as high as 790 µg/l. Over the last 12 years, MTBE has *increased* in both shallow well LF-16 and deep well LF-27, which may have resulted from a sub-surface pipeline leak occurring in 1988.¹ In these same wells, TPHg has doubled during the past year of monitoring, despite existing remediation efforts.

To address the levels of contaminants, TRC, the engineering consultant, has adopted a mobile product recovery program (conducted monthly in eight wells) to extract product from each of the wells using a pump. Once the product is removed from a given well, the next well in line is addressed. But according to TRC, the pumping is conducted a maximum of only three times at a well with SPH, even though additional pumping would recover contamination from the groundwater.²

¹ TRC, First and Second Quarter 2010 Groundwater Monitoring Report, sec. 3.2.4.

² TRC, *supra*, sec. 4.1.

In addition to the phytoremediation described above, a “total fluids extraction system” has been deployed for some time. This system transfers recovered fluids to an onsite oil/water separator. The “total fluids extraction system” appears to be a minimalist remediation strategy, inasmuch as only *45 gallons* of product and water were recovered during the first two quarters of 2010, and only 7,525 gallons of product and water have been recovered since the program was initiated in October of 1998, over 12 years ago.

There is also a water treatment system designed to remove some dissolved-phase petroleum hydrocarbons from groundwater, which apparently is integrally connected to the treatment of process water generated as part of site operations. TRC indicates additional remediation is in the planning stages, to include more downgradient tree planting.

In February of 2010 hydrocarbon sheens were seen in 35 of 57 wells where product thicknesses were measured, and measurable SPH in an additional five of the extraction wells. In May of 2010, hydrocarbon sheens were found in 34 of these wells, with measurable SPH in an additional four wells.

On the basis of remediation work that has been and is being conducted, it is apparent to River Watch that efforts to clean up this site have been ineffective over the past 25 years since the first release was recorded. On the basis of the current condition of the site, River Watch believes the following investigatory and remediation work must be implemented immediately:

1. Complete delineation of the site (including vertical delineation) for the purpose of enabling further remediation work to proceed with the benefit of a comprehensive evaluation of the full extent and location of the existing contamination. This should include an evaluation of the potential for contaminant migration beneath the phytoremediation plantings to the southwest of Area IV;
2. Initiation of vapor intrusion testing in any buildings or work areas (if any) above the plume to determine whether nearby employees at the site and/or third parties are being exposed to injurious levels of hydrocarbons, benzene or other toxic vapors;
3. Consideration of further over-excavation in each of the areas where hydrocarbon sheens have been observed to eliminate lingering sources of SPH, MTBE, and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface waters;

4. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells. This should include testing of downgradient Walnut Creek for SPH, inasmuch as this Creek lies only 250 ft. beyond the boundary of Area IV;
5. 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;
6. Current residual mass calculations which will allow the measurement of remediation progress once remediation processes are initiated;
7. Initiation of proactive and aggressive remediation work as soon as the necessary investigations and assessments are concluded, and could include dual-phase extraction on a 24/7 basis to substantially reduce the extent of ongoing contamination.

**Kinder Morgan Energy Partners, L.P. – Selby Pond Release Site
San Pablo Avenue, Rodeo, CA**

Kinder Morgan Energy Partners, L.P. and SFPP, L.P. operate a large pipeline which transports gasoline and diesel extending from Richmond and Concord and as far south as San Jose. In February of 1996, the transported products included MTBE. In that month a small leak in the pipeline was discovered northeast of San Pablo Avenue in Rodeo, causing a sheen on an ephemeral surface water known as Selby Pond.

Groundwater in this area is tidally influenced by the proximity of San Pablo Bay, approximately 500 ft. to the northwest. Groundwater flows to the northwest, and ranges from between one and four feet bgs. Selby Pond is seasonal open water, but is seasonally dry. When fed by rainwater and runoff, the Pond is approximately 600 ft. x 300 ft. with its northwestern edge only several hundred feet from the Bay.

By September of 1996, the affected areas of the pipeline had been replaced, hydrocarbon contaminated soil had been over-excavated, some lost product had been recovered, and the existing water in the Pond had been air sparged. By year 2000 a regular, groundwater monitoring program was finally commenced.

In October of 2006, following 5 years of semi-annual monitoring, MTBE levels at SP-1 and SP-2 (the two monitoring wells at the site with the worst contamination) were still extremely high: 440,000 µg/l and 270,000 µg/l, respectively. In October of 2008, the date of the last monitoring on the basis of data uploaded to GeoTracker, the MTBE levels in these two wells were 170,000 µg/l and 150,000 µg/l., and TPHg levels were as high as 73,000 µg/l and 76,000 µg/l.

On the basis of records and documents reviewed to date, it is apparent that LFR, Inc., the engineering consultant, has conducted no appreciable remediation since 1996 other than the initial response to the hydrocarbon and MTBE release of unknown size. There has apparently been no attempt to determine whether preferential pathways and tidal variations in groundwater may be pulling contamination into the Bay. No efforts at bioremediation have been initiated, and the most the consultant can say about the extremely high levels of MTBE is that the observed levels of the contaminant are gradually decreasing.

This site continues to represent an immediate threat to domestic water supplies and environmental degradation by infiltration into the Bay. Given the current condition of this area, River Watch believes the following remediation work must be implemented immediately:

1. Complete delineation for the purpose of enabling further remediation work to proceed;
2. Completion of current sensitive receptor survey to outline and prevent threats to offsite surface waters including Selby Pond;
3. Completion of current preferential pathway study to determine whether there are conduits, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite and/or into the Bay;
4. Initiation of active remediation work by way of further source removal, bioremediation or other remediation strategies to eliminate any further contamination threat to groundwater and downgradient surface waters;
5. Completion of a current aquifer profile to determine whether the MTBE/TPHg plume has impacted any underlying aquifer in communication with groundwater under the site;
6. Current residual mass calculations which will allow the measurement of remediation progress once removal processes are initiated.

REGULATORY STANDARDS

The CWA regulates the discharge of pollutants into waters of the United States. This statute is structured in such a way that all discharges of pollutants are prohibited with the exception of certain enumerated discharges such as those for which an NPDES permit has issued. Citizen suits for violations of provisions of the CWA are authorized under 33 U.S.C. §1365, following a notice that conforms to the requirements of subpart (b) of that section.

The provisions of the CWA govern the discharges of hazardous substances, including petroleum hydrocarbons, into surface waters of the United States.

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 area groundwater include domestic, agricultural, industrial and municipal water supply. The Regional Water Quality Control Board has adopted a Water Quality Control Plan or "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 Board has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene, 150 ppb for toluene and 13 ppb for MTBE.

VIOLATIONS

Between March 1, 2006 and March 1, 2011, 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 threatens 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.

Between March 1, 2006 and March 1, 2011, Responsible Parties' use and storage of petroleum at the three sites identified in this Notice, has allowed significant quantities of hazardous petroleum constituents to be released or discharged into soil and groundwater in violation of provisions of the CWA and California underground storage tank regulatory programs including, but not limited to, provisions governing general operating requirements for underground storage tank release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements. Such discharges have also been allowed to impact waters of the United States in violation of the CWA.

Between March 1, 2006 and March 1, 2011, Responsible have used, stored and transported, and continue to use, store and transport, petroleum products at the three sites identified in this Notice, in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath each of the sites and beneath adjacent properties, and to surface waters lying downgradient from the sites. The contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at each of the sites are significantly greater than the allowable MCLs and/or WQOs 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 concentration at these sitse, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

The violations alleged in this Notice are knowing and intentional in that River Watch contends Responsible Parties have used, stored, transported and sold petroleum products at the sites identified in this Notice which 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 these sites since at least 1985, 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 sites, and to continually contaminate and re-contaminate actual and potential sources of drinking water as well as adjacent surface waters.

Violations of the CWA of the type alleged herein 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 CWA by Responsible Parties evidenced by information which becomes available to River Watch after the date of this Notice.


The violations of the CWA by Responsible Parties as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed 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 the violations of the CWA as alleged in this Notice.

CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of the CWA as to each of the sites referenced above. At the close of the notice period or shortly thereafter, River Watch intends to file a 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 during the 60 day notice period. 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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