UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP - 3 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Jeffrey I. Butvinik, Esq.
Counsel
Environmental Law
ExxonMobil Corporation
3225 Gallows Road
Fairfax, Virginia 22037

Nancy E. Van Burgel, Esq.
Assistant General Counsel
Kinder Morgan
370 Van Gordon Street
P.O. Box 281304
Lakewood, CO, 80228-8304

Re: Kinder Morgan Liquids Terminals, LLC
Staten Island, New York 10307

Dear Mr. Butvinik and Ms. Van Burgel:

I hereby enclose for each of you an original copy of the Administrative Order on Consent signed by both of your companies and the Acting Director of the Division of Environmental Planning & Protection and issued pursuant to Section 3008(h), 42 U.S.C. 6928(h) of the Resource Conservation and Recovery Act (RCRA).

Please note that, as stated in Section XXVIII of the Order, the effective date of the Order is ten days after the signature referred to in the above paragraph.

In addition, if you have not already designated an Project Coordinator pursuant to Section IX, please note that the Order requires that your company do so on or before the effective date of this Order.

Sincerely,

Stuart N. Keith
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

Bcc(w/ encl.):
James Reidy, 2DEPP-RPB
Wilfredo Palomino, 2DEPP-RPB
William Sawyer, 2ORC-WTSB
Stuart Keith, ORC-WTSB

Bcc(w/o encl.):
Adolph Everett, 2DEPP-RPB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

EXXONMOBIL OIL CORPORATION,
3225 Gallows Road
Fairfax, Virginia 22037
&
KINDER MORGAN LIQUIDS TERMINALS, LLC,
One Terminal Road
Carteret, New Jersey 07008

RESPONDENTS

4101 Arthur Kill Road
Staten Island, New York 10307
EPA I.D. NO. NYD000824516

ADMINISTRATIVE ORDER
ON CONSENT

DOCKET No. RCRA-02-2009-7306

Proceeding under Section 3008(h) of the Resource Conservation and Recovery Act, as amended.

TABLE OF CONTENTS

I. Preliminary Statement

1. This Administrative Order on Consent ("Order") is being issued to ExxonMobil Oil Corporation (ExxonMobil) and Kinder Morgan Liquids Terminals, LLC (Kinder Morgan), the former and current owner/ operator respectively (collectively referred to hereinafter as "Respondents") of a petroleum storage/transfer facility located at 4101 Arthur Kill Road, Staten Island, New York (the "Facility"). The Order is being issued by the United States Environmental Protection Agency - Region 2, 290 Broadway, New York, New York ("EPA"), pursuant to Section 3008(h), 42 U.S.C. 6928(h), of the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), codified at 42 U.S.C. 6901 et seq. ("hereafter referred to as the Act").

2. Section 3008(h) of the Act, 42 U.S.C. 6928(h), authorizes the Administrator of the United States Environmental Protection Agency to issue an order requiring corrective action, or such other response which he deems necessary to protect human health or the environment, if, on the basis of any information, he determines that there is or has been a release of hazardous waste or hazardous constituents into the environment from a facility that is or was authorized to operate under Section 3005(e) of the Act, 42 U.S.C. 6925(e). The authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation Number 8-31, dated April 16, 1985. This authority was delegated by the Regional Administrator of EPA, Region 2, to the Director of the Division of Environmental Planning & Protection of EPA, Region 2, on April 11, 2003.

3. Prior to the issuance of this order, Exxon Mobil Corporation, Respondent

ExxonMobil Oil Corporation and EPA signed a Consent Decree resolving a judicial action in which ExxonMobil agreed to perform such corrective action that EPA requires (CV-96-1432, the United States District Court for the Eastern District of New York, date of entry March 14, 2002).

4. The Respondents agree to undertake all actions required by the terms and conditions of this Consent Order, and will not contest the EPA's jurisdiction to issue, and, if necessary, enforce this Consent Order and will not contest the terms of this Order.

II. Parties Bound

1. For the purposes of this Order, the term "Parties" shall be defined as the United States Environmental Protection Agency, Region 2; ExxonMobil Oil Corporation, 3225 Gallows Road, Fairfax, Virginia; and Kinder Morgan Liquids Terminals, LLC, One Allen Center, 500 Dallas Street, Suite 1000, Houston, Texas 77002.

2. This Order, and the responsibilities and obligations it imposes applicable to them, shall apply to and bind the Respondents, their present and future officers, directors, officials, employees, agents, servants, trustees, receivers, successors, or assigns, and all other persons including, but not limited to, firms, corporations, subsidiaries, contractors, independent contractors, subcontractors, or consultants who act for or on behalf of, are owned by, or are in an agency relationship with the Respondents in connection with the implementation of, and who conduct, monitor or perform, any work pursuant to or required by this Order.

3. Regardless of Respondents' employ of, or contractual agreement with, any entity named in paragraph 2 of this section, the Respondents remain ultimately liable for failure to carry out, or comply with, any term or condition imposed by this Order applicable to that Respondent.

4. All contractual agreements entered into by Respondents aimed at satisfying their responsibilities or obligations under this Order shall strictly comply with the terms and conditions of this Order. In addition, Respondents shall, within one week of the effective date of this Order and/or immediately upon hiring, provide a copy of this Order, and any information, to all contractors, subcontractors, laboratories, consultants, or any entity retained to conduct, monitor or perform any work pursuant to this Order.

5. No change in the Respondents' corporate structures or in the ownership or operation of the Facility shall in any way alter or alleviate Respondents' responsibility and obligation to carry out all the terms and conditions of this Order applicable to that Respondent.

III. Statement of Purpose

In issuing this Order, the objective of EPA is to protect human health and the environment from releases of "hazardous waste" and/or "hazardous constituents", as defined by Section 1004(5) of the Act, 42 U.S.C. 6903(5), 40 C.F.R. 260.10, 261.3, and 40 C.F.R. Par 261 Appendix VIII, at or from the Facility. To achieve this objective, this Order requires, at a minimum, the implementation of an approved Corrective Measures Study (CMS) to develop and evaluate corrective measure alternatives and to recommend a final corrective

measure or measures. In addition, the CMS will evaluate enhancements of the current Interim Corrective Measures (ICM) and the Monitored Natural Attenuation (MNA) Program. At the completion of the EPA-approved CMS, the Respondents will perform Corrective Measures Implementation (CMI) to design, construct, operate, maintain, and monitor the performance of the corrective measures selected. While the CMS is being evaluated, all current ICMs and MNA in place must be continued in operation.

IV. Findings of Fact

1. Respondents are corporations doing business in the State of New York, as described in Section IV.2 below.

2. Respondent ExxonMobil was the former owner and operator and Kinder Morgan is the current owner and operator of the Facility described in Section IV.3 below. Respondent Kinder Morgan has informed EPA that it did not acquire the Facility from ExxonMobil until on or about June 7, 2005, and that, even after the sale transaction, ExxonMobil has retained the responsibility for remediation of certain site conditions caused by or which occurred during the operation of the Facility by ExxonMobil Oil Corporation or its predecessors.

3. Facility Description:

The facility at issue (the "Facility") was formerly known as Port Mobil Terminal and is a petroleum bulk storage and distribution facility operating since 1934. The Facility is located on the eastern shoreline of the Arthur Kill, Staten Island, City of New York, and is bounded to the north and the west by the Arthur Kill, to the south by Charleston (a residential area), and

to the east by the Clay Pit Pond State Park Preserve. The residential area includes an elementary school located within a half mile of the Facility to the southeast. The Facility and the surrounding area to the north and northeast are zoned industrial by the City of New York. The Facility encompasses approximately 203 acres, of which 120 acres are used for petroleum storage and transfer operations. The current storage capacity at the Facility is approximately 125 million gallons (2.98 million barrels) with an annual throughput of approximately 1.4 billion gallons (33.3 million barrels).

Currently, operations at the Facility include 38 above-ground tanks for the storage of petroleum products on site. Each of the 38 tanks is approximately 30 to 60 feet in height and most are placed in three rows approximately 200 feet apart and extend along the southern boundary of the facility in an area known as the "Tank Farm".

Directly northwest of the Tank Farm and adjacent to the Arthur Kill are two RCRA regulated surface impoundments, referred to by Respondents as the Upper and Lower Holding Ponds. On September 30, 2005, EPA approved the closure of these surface impoundments upon the condition that soil and/or groundwater underneath the two impoundments be investigated and remediated (if warranted) at a later date as part of the corrective action process. At the present time, the surface impoundments are being used for managing precipitation induced runoff only. Adjacent to the surface impoundments is the North Beach Recovery Area, which was remediated in the 1980s under the authority of the New York State Department of Environmental Conservation (NYSDEC) Spill Response Program with residual contamination left in place at that time.

At the western end of the Facility, adjacent to the Arthur Kill, are numerous berths for the unloading and loading of maritime vessels which travel through the Arthur Kill. This area

is referred to as the "Bulkhead Area" and runs from north to south along the western edge of the Facility.

The Facility also receives petroleum products from the Colonial Pipeline which runs from Texas to New Jersey. A secondary pipeline runs under the Arthur Kill to the Facility and is generally above ground inside the Facility.

Portions of the facility are within the 100-Year Floodplain. The Surface Impoundments are located above the floodplain as are the tanks and associated containment areas. In addition, the area surrounding the surface impoundments has been graded such that the top surface of the impoundments is above the surrounding ground level. RCRA toxicity-characteristic hazardous waste was stored in these surface impoundments in the past.

The Final RFA Report issued in July 1993 identified 62 solid waste management units (SWMUs) and 1 area of concern (AOC) at the Facility. These units are listed below.

SOLID WASTE MANAGEMENT UNITS (SWMU) AND AREAS OF CONCERN (AOC)

SWMU No.	
1.	Road Trench
2.	Wastewater Transfer Lines
3.	Tank Farm Catch Basins
4.	Former API Separator Site
5.	Primary API Separator
6.	Utility API Separator
7.	Vacuum Tank 1 (High Flash Tank)
8.	Vacuum Tank 2 (Low Flash Tank)
9.	Hydrocarbon Monitor Catch Basins
10.	Waste Storage Tank No. 41
11.	Waste Storage Tank No. 48
12.	Waste Storage Tank No. 60
13.	Lower Holding Pond *
14.	Upper Holding Pond *

15. Dravo Water Treatment System
16. Container Storage Pad
17. Excavated Soils Area
18. North Beach Recovery Wells
19. North Beach Recovery Well Holding Tank
20. Southern Groundwater Plume Recovery Well
21. Boiler House Recovery Well
22. Tank No. 41 Dike
23-62 Tank Farm Dikes

AOC
A. PCB Transformer Sites

* RCRA-regulated unit.

4. Documentation of Releases

Respondent ExxonMobil completed and submitted to EPA the following documents relevant to this Order: (1) approved Corrective Action Scoping Plan (CASP) dated February 24, 1994; (2) approved Interim Corrective Action Measures Investigation (ICMI) Report dated April 17, 1997; (3) approved Human Health Risk Assessment (HHRA) Report dated December 1998; (4) approved Ecological Risk Assessment (ERA) Report dated September 29, 2004; (5) RCRA Facility Investigation (RFI) Report dated December 3, 2004, last revised on January 19, 2007; (6) approved Surface Impoundments Closure Certification Report dated March 16, 2001, as revised on September 28, 2005; (7) Quarterly Interim Corrective Measures (ICM) and RFI Progress Report(s) not included in the final RFI Report (December 2004 through February 2007) ; (8) Annual MNA Report initiated in 2000; and (9) Major Oil Storage Facility (MOSF) Status Reports. In addition, a final RCRA Facility Assessment (RFA) Report dated July 1993 was prepared by EPA. The above investigative and/or remediation reports may be referred to hereinafter by their respective abbreviated definitions:

RFA Report, ICMI Report, RFI Report, Closure Certification Report, ICM/RFI Progress Report, HHRA Report, ERA Report, Annual MNA Report, and MOSF Report.

The final RFI Report concluded that soils and groundwater at the facility remain impacted by petroleum hydrocarbons in several areas of greatest contamination ("hot spots"). In the past, some hot spots contained light non-aqueous phase liquid (LNAPL) posing an immediate threat to the Arthur Kill. In 1997, LNAPL was detected near two existing wells (LC-1, LC-2) in the Bulkhead Area, and was subsequently detected near three other wells (RFI-7, MW-100, L-29) in the Tank Farm Area. Since 1997 to the present, the impacted areas at the Bulkhead Area are being treated by an ICM consisting of a Thermally Enhanced Product Recovery System, and an ICM has been undertaken at the RFI-7/MW-100 section of the Tank Farm Area consisting of a combination of source removal, product recovery and active groundwater monitoring. Currently, there is periodic presence of LNAPL in 4 other wells at the Bulkhead Area (ICM-1, ICM-3, ICM-10, and MW-117) and near two wells in the Tank Farm Area (I-6, MW-102). As of 2007, LNAPL has been recovered from three recovery wells (RW-2, RW-3 and RW-5) and nine monitoring wells (TMP-1, TMP-2. TMP-3, LC-1, LC-2, RFI-7, ICM-1, MW-102, and MW-100). To date, no recoverable LNAPL has been detected in recovery wells RW-1 and RW-4 (ICM Progress Report, November 14, 2006).

Perimeter monitoring well data obtained in 2005 and 2006 showed that dissolved phase (contaminants dissolved in water) impacts to the groundwater were low and in most cases at levels below applicable regulatory standards. However, a number of monitoring wells inside the facility still have levels above NYSDEC groundwater quality standards so further remedial measures are required. These wells continue to show significant concentrations of the main constituents of gasoline: benzene, toluene, xylene, ethyl benzene

(referred to collectively as BTEX) and methyl tertiary butyl ether (MTBE).

The RFI identified hot spot areas and/or LNAPL areas in both soil and groundwater containing a mixture of gasoline and fuel oil distillates having as primary contaminants of concern (COC): benzene, total BTEX, total polycyclic aromatic hydrocarbons or PAHs (mainly naphthalene), and lead. Between 1998 and 2006, soils have been removed from 14 hot spots including 4 areas affected by the 2003 barge explosion. The February 21, 2003 barge explosion which occurred at the facility damaged the Bulkhead Area LNAPL recovery systems, and damaged 3 other areas: Tank 48 piping system, Ship Berth No. 1A and Barge Berth No. 2. respectively. The ICM program and the MNA program initiated in 1997 and 2000 respectively have reduced significantly the contamination, but there still is soil and groundwater contamination present in certain areas at levels above EPA/NYSDEC clean up levels and above site-specific risk assessment values. Contamination is still present today at LNAPL areas, in several hot spots in the Tank Farm, and potentially underneath the liners of tank units and surface impoundments.

In summary, there have been many releases of hazardous wastes and/or hazardous constituents and other contaminants at the Facility. The effect of these releases has been contamination of surface water, sediments, soil and groundwater. As a result, the Facility performed significant source removals. However, the impacts to soil and groundwater by petroleum hydrocarbons and inorganic compounds still remain in several hot spots.

a) Groundwater Contamination

The RCRA Facility Assessment ("RFA Report", July 1993) concluded that at least

three groundwater plumes had been identified at the Facility in the past: the North Beach Groundwater Plume, the Tank Farm Groundwater Plume, and the Southern Groundwater Plume. To address this contamination, Respondent ExxonMobil installed monitoring and recovery wells. In late 1970s, hydrocarbons were found in thickness up to 6 feet in some monitoring wells, and approximately a million gallons of petroleum hydrocarbons were recovered from groundwater and surface water ("Remedial Recovery of Hydrocarbons From the Water-Table System at Mobil Oil Corporation's Port Mobil Terminal, Staten Island, New York", prepared for Mobil Oil Corporation in May 1980 by Leggette, Brashears & Graham, Inc.) After the implementation of the ICM at the Bulkhead area in 1997 and the MNA program in 2000, measurable LNAPL thickness ranged from 0.01 to 1.69 feet, with occasional sheens being observed in at least 2 wells.

From 1993 to 1999, the Facility submitted Annual RCRA Groundwater Monitoring reports to EPA, and beginning in 2000 the annual groundwater monitoring reports were integrated into a MNA program. The MNA well system that was initiated in 2000 consisted of twenty-three (23) on-site wells sampled on a semi-annual basis. The current MNA program consists of forty two (42) on-site monitoring wells including sixteen (16) perimeter wells which border the Arthur Kill (wells ICM-9, ICM-10, MW-118, ICM-7, MW-117, ICM-5, N-42, ICM-3, RFI-9, ICM-1, MH-1, RFI-8R, L-2, L-8, RFI-11, and I-3). These wells are sampled for laboratory analysis of BTEX and methyl-tertiary-butyl-ether (MTBE) on a quarterly, semi-annual, or annual basis. To ensure that onsite groundwater contamination is not adversely affecting off-site receptors, selected ICM/RFI wells are being also monitored (i.e. gauged for liquid levels) monthly along with the MOSF wells. In addition, as part of the MNA program, samples are collected on an annual basis (July) and analyzed for dissolved oxygen, carbon

dioxide, nitrate, ferrous iron, sulfate and methane to evaluate the progress of MNA.

The 2006 MNA Report showed that some wells at the Facility, including ICM-1, KM-GP5 and MW-113, have had increasing concentration trends for one or more BTEX compounds and/or MTBE. The statistical increase of all BTEX compounds and LNAPL in well ICM-1 has been linked to a NYSDEC-documented spill that occurred in 2001 from an underground siphon line upgradient of well ICM-1. The petroleum released from this spill has impacted the groundwater table migrating toward the bulkhead. In early 2003, product thickness at well ICM-1 ranged from 0.06 to 0.45 feet, and by 2005 LNAPL in the same well varied from sheens to 0.02 feet, but with an increasing trend of dissolved BTEX concentrations. Due to the proximity of well ICM-1 to the Arthur Kill, the surface water in contact with the bulkhead near ICM-1 has been a serious concern.

Groundwater sampled from wells RFI-4, RFI-6, RFI-8, I-5, I-6, ICM-1, ICM-6, ICM-9, RW-1A, MW-103, MW-111, MW-113, MW-116, KM-GP5 and KM-GP13 continues to show relatively high concentrations of BTEX and low levels of key Terminal Electron Acceptor/Product (TEAP) parameters (sulfate, nitrate and dissolved oxygen), that indicate active bioremediation in these wells, albeit at a rate potentially limited by remaining TEAP parameters. In addition, wells KM-GP5 and KM-GP13 have exhibited elevated dissolved contaminant concentrations that require further remediation. These wells are being monitored monthly and sampled semi-annually.

Currently there are two areas (ICM-1 described above, and MW-100/RFI-7 in the North Beach Recovery Area described in Section IV.3.b. of this Order) with excessively high contaminant concentration and/or the presence of LNAPL. From January 2003 to January 2006, more than 1,335 gallons of free phase petroleum product (i.e., petroleum not dissolved

in the groundwater) were recovered from well MW-100 and small amounts from wells MW-102 and RFI-7. In addition, elevated levels of BTEX concentrations were found in well MW-103 (up to 16,680 ug/L), well RW-1A (up to 15,100 ug/L), well KM-GP5 (up to 32,200 ug/L), well KM-GP13 (up to 69,600 ug/L).

The two tables below show initial detected concentrations of benzene, BTEX and MTBE for RFI/ICM wells of concern in 1995 to 1997 (or later), and maximum concentrations detected in 2006/2007, respectively. The wells of concern are groundwater wells with the highest contaminant concentration and potential exposure routes. It is assumed, however, that all wells installed at the Facility are of interest to evaluate and monitor the total potential impact in the groundwater. Values in both tables are in micrograms per liter (ug/l).

Initial Concentrations of RFI/ICM wells of concern (Sampled in December 1995, March 1997, or later)

	ICM-1	ICM-6	ICM9	RFI-6	I-6	RFI-8	KMGP5	KMGP13	MW103	MW113	MW116	RW1A	MW111
BENZENE	140**	4000	2100	6800	1600	1400	9500**	16000**	180*	7700**	2900**	5700*	1100**
BTEX	152	44200	2288	46200	40600	7540	23500**	69600**	16680*	8830**	7230**	23600	15510**
MTBE	72*	67*	27**	59**	66**	27*	170**	<50**	<200*	1600**	120**	<100*	<50**

Notes.

* sampled for the first time in 2003

** sampled for the first time in 2004

BTEX= Total BTEX

Maximum Concentrations for RFI/ICM wells of concern (Sampled in 2006 and 2007)

	ICM-1	ICM-6	ICM9	RFI-6	I-6	RFI-8	KMGP5	KMGP13	MW103	MW113	MW116	RW1A	MW111
BENZENE	58	2000	570	2300	410	32	14000	3300	32	7300	1900	5200	1400
BTEX	95	12000	633	2379	15970	81	32200	15650	4122	8670	2592	12200	6874
MTBE	53	170	96	190	55	32	370	<200	25	1200	120	230	330

Source: Quarterly MNA Sampling Program.

With regard to the Major Oil Storage Facility (MOSF) wells, wells LC-1, LC-2 and RFI-7 (LC-1 and LC-2 are not shown in Table below) have recovery remediation systems in place and are subject to monthly liquid level gauging. A number of wells show sporadic presence of LNAPL, and whose maximum thickness and the number of detections as compared to number of events in years 2006 and 2007, are also shown in the Table below. The other 17 MOSF wells consistently did not show any free phase petroleum product. Wells RFI-1, RFI-2 and L-29 consistently showed non-detectable concentrations and are also not included in the MOSF Table below. Annual Groundwater samples for MOSF wells were collected and analyzed for benzene and total BTEX, and the results for some wells showed high levels of contamination. Table below shows analytical results in micrograms per liter (ug/L).

`MOSF GROUNDWATER SAMPLING RESULTS FOR BENZENE AND TOTAL BTEX June 2005 ANNUAL MOSF REPORT

WELL	N-32	N-37	N-40	N-42	N-43	N-45	N-46	I-1	I-2	I-3	I-4	I-5	I-6
BENZENE	74	<10	5,400	450	170	490	3,400	<0.2	<5	3.3	<10	46	480
TOTAL BTEX	213	3.7	5,640	464.4	170.6	505	3,883	ND	17.8	4.3	1.4	120.1	10,604

Notes:

Results represent average concentrations for each well in parts per billion (ppb). Most of the MOSF wells show concentrations of benzene above regulatory levels (5 ug/l).

ND - Not Detected

LNAPL Thickness in Monitoring Wells in 2006 and 2007

	TMP-1	RFI-7	MW-102	ICM-1	MW-117	ICM-3	MW-100
Number of detections / number of events	8 / 24	23 / 24	10 / 24	11 / 24	1 / 24	1 / 24	35 / 41
Minimum	ND	ND	ND	ND	ND	ND	ND
Maximum	0.12	0.49	1.03	2.26	0.02	0.01	1.98
Average	0.02	0.05	0.06	0.37	<0.01	<0.01	0.24

Note:

LNAPL thickness (in feet) as observed during twenty four (24) monthly ICM O&M site visits during this time period, with the exception of MW-100 which was gauged approximately twice a month (41 times) over this time period.

Only those wells containing a measurable thickness of LNAPL during this time period are included in this table.

ND = Not Detected

b) Soil Contamination.

The July 1993 RFA Report concluded that during Facility operations releases of tank bottoms (mixture of crude oil, water, and other substances concentrated at the bottom of storage tanks) had occurred into soil at several locations within the Tank Farm area in the past. Prior to 1970, the release of tank bottoms to the surface soils was an industry practice for terminals. During 1990 and 1991, approximately 2348 cubic yards of contaminated soil were excavated and removed from the Tank Farm area in connection with Mobil's installation of impermeable Claymax liners and catch basins at the Surface Impoundment(s) and Tank Farm areas. After excavation, residual contaminated soil was left in place in certain areas. In addition, there have been several documented leaks from tanks and the underground piping system in the Tank Farm area.

The RFI Report confirmed that petroleum hydrocarbons have contaminated the soils at the Facility in several hot spots. These hot spots showed contaminants consistent with the release of No. 2 Fuel Oil and gasoline. The indicators of the overall contaminant distribution

across the Facility were the same as shown in the groundwater: benzene, total BTEX, total PAHs, MTBE, and lead. Benzene had concentrations greater than 6 mg/kg in the vicinity of the LNAPL plume (wells LC-1& LC2), near the siphon building, in the Tank 41 area, and in the North Beach area. The highest PAH concentration was 1056 mg/kg near well GPAP-7. Total BTEX and benzene reached 1280 mg/kg and 170 mg/kg respectively at sampling location HA-3. The highest concentrations of total PAH (greater than 50 mg/kg) were found near wells LC-1 and LC-2, the former Southern Recovery System Area (ICM-9), the siphon buildings, Tank 41 area, North Beach area, and north of Tanks 10, 14 and 51. Elevated lead concentrations were found near wells LC-1 and LC-2 (greater than 30 mg/kg), near the siphon building, in the Tank 41 area, in the North Beach area and north of tanks 10, 14 and 51. The soil removal activities began in 1998 at identified impacted areas, and were reported in the ICM/RFI Quarterly reports. These activities are summarized as follows:

- In late 1998 and early 1999, approximately 100 cubic yards were removed from the siphon building. The residual soil after excavation showed substantial reduction of contaminants (2/11/99 ICM Quarterly Report).

- In late 1999 and early 2000, approximately 2,500 tons of impacted soils were removed from hot spots near Tank 41.

- In February 2001, a release was detected from an underground siphon line along the access road upgradient of well ICM-1. This area was excavated and contaminated soil was removed from six pits. Confirmatory soil sampling results found were below EPA-Risk Assessment (RA) concentrations.

-In August 2002, less than a cubic yard of contaminated soil was removed from the Tank 10 area and confirmatory sampling for all COCs produced analytical results below or

within EPA-RA concentrations.

-In August 2002, less than a cubic yard of contaminated soil was removed from the Tank 14 area, and no contaminants were detected during confirmatory sampling.

- In August 2002, approximately 1.5 cubic yards of contaminated soil was removed from an area associated with Tank 27, and confirmatory sampling for all COCs produced analytical results below or within EPA-RA concentrations.

- In September and October 2002, about seven cubic yards of contaminated soils, gravel and sand were removed from two areas near Tank 12. Residual COC concentrations were below the average or maximum EPA-RA concentrations.

- On February 7, 2003, a release of #2 fuel oil occurred from an above ground storage tank (AST) in the vicinity of the Boiler House. On February 21, 2003, an unrelated explosion occurred at the Facility damaging a pipe connecting Tank 48 with the Boiler House AST and causing a petroleum release to the surface soils. Approximately 125 cubic yards of impacted soil were subsequently removed. Analytical results showed some residual contamination. Some compounds exceeded 10 times the average and maximum EPA-RA concentrations. In September 2003, an additional excavation underneath the AST, including removal of the Claymax liner, resulted in a residual contamination levels below the EPA-RA concentrations.

-The February 7, 2003 explosion also affected the South Beach Shoreline, the Ship Berth/Berth No. 1A, and Barge Berth No. 2, locations that were excavated with the subsequent removal of approximately 56 cubic yards of contaminated soil. Residual soil sampling results after the excavation showed that the shoreline was clean, and Berth No. 1A and Berth No. 2 had residual concentrations within or near EPA-RA concentrations.

- In July 2003, approximately 100 cubic yards of contaminated soil was removed to a

depth of 5 feet below surface near well RFI-8. Some constituents in residual soil after excavation exceeded average EPA-RA concentrations but not the maximum. After excavation, contaminants in groundwater plume downgradient of well RFI-8 were drastically reduced.

5. Exposure Pathways:

Hazardous wastes and/or hazardous constituents may migrate from units at the Facility into the environment through the following pathways:

a) Groundwater: Hazardous wastes and/or hazardous constituents may migrate into groundwater from spills and leakage from above ground storage tanks from which there have been either releases or leaks of liquids into the soil, both of which then penetrate the soil and enter the groundwater.

b) Soils: Contaminated residual soils in active remediation areas (hot spots), as well as impacted soils (e.g., soils contaminated with petroleum hydrocarbons) underneath the Claymax liners in the Surface Impoundments and Tank Farm areas not presently undergoing remediation may be a source of groundwater contamination.

c) Surface Water and Sediment: The discharge of contaminated groundwater can result in the contamination of surface water. Groundwater beneath the Facility generally flows to the northwest, toward the Arthur Kill. Waters within the Arthur Kill have been designated by New York State as saline surface water with a restricted use (recreation and fish propagation). Maximum values of COCs in groundwater perimeter wells along the northwestern half of the boundary where

discharge to the Arthur Kill could potentially occur are currently below surface water benchmark values except for two volatile organic compounds (VOCs) and four PAHs (See Ecological Risk Assessment [ERA] Report referenced in Section IV.4). No COCs exceeded the surface water benchmark by 100-fold. Except for well ICM-1 where results are currently under evaluation, concentrations in all perimeter wells are stable or decreasing. The ICM, the MNA and dilution play an important role in containing and/or reducing contaminant concentrations in surface water. Currently, most areas of contamination or hot spots are contained inland and do not currently pose a threat to the Arthur Kill. In conclusion, as explained in the final Ecological Risk Assessment Report, the small area of groundwater discharge to the Arthur Kill and the likelihood of lower risk-based exposure concentrations suggest that this migration, and its associated risk, is not significant. The implementation of an approved CMS will decrease further any potential threat from existing contamination from the Facility to the Arthur Kill.

With regard to sediments, samples collected from 2-6 ft. in the Arthur Kill below the sediment surface in the proximity of the Terminal shipping channel and the cove adjacent to the main dock (Appendix B, ERA Report) show a total of PAH concentration of 9.5 mg/kg. The concentration of contaminants in the sediment surface increases due to the intensive industrial use of the channel and is linked to a pre-existing impact in the Arthur Kill. The ERA Report concluded that, although most of the estimated PAH sediment concentrations immediately downstream of the Facility exceed ecological benchmarks, the risk to fish and

wildlife habitats will not be significant.

d) Air: There is no known or suspected pathway for air contamination above protective risk based levels as a result of normal facility operations. At present, there is no indoor air or soil vapor intrusion issue (i.e., subsurface contaminant vapors entering occupied structures) at the Facility. With respect to outdoor air, there is no evidence of impact from facility releases except during the 2003 explosion at the Facility when a large portion of contaminants of concern evaporated into the air and burned.

6. Need to Protect Human Health

The Human Health Risk Assessment (HHRA) Report dated December 1998 concluded that no risk to human health exists from contaminants in soil and groundwater detected at the Facility when average concentrations were used to calculate risk. However, when maximum concentrations were used to calculate risk, exceedances were noted due to hot spot soil areas around wells HA-3 and GPAP-7. Also risk from direct contact with LNAPL, for example for construction workers, was not quantified but has been addressed by following appropriate OSHA safety and monitoring guidelines. Currently, both hot spots (HA-3 and GPAP-7) and LNAPL have been addressed, and "significant" exposures due to the discovery of additional hot spots in the future are expected to be within EPA's risk assessment values as long as RCRA corrective action is in place. Hot spot and perimeter monitoring performed in conjunction with the MNA program has been effective in monitoring the Facility for potential hot spots, and implementing the required remedial measures on an on-going basis.

V. Determinations and Conclusions of Law

Based on EPA's Findings of Fact set out above, and the administrative record for this Order, the Director of the Division of Environmental Planning & Protection of EPA, Region 2, has determined that:

1. Respondents are "persons" as defined by Section 1004(15) of the Act, 42 U.S.C. 6903(15).

2. Respondents are the former and current owner and operator of a Facility that was authorized to operate pursuant to Section 3005(e) of the Act, 42 U.S.C. 6925(e).

3. There have been releases of hazardous wastes and/or hazardous constituents to the environment from the Facility as those terms are defined by Section 1004(5) of the Act, 42 U.S.C. 6903(5) and 40 C.F.R. 260.10, 261.3 and Appendix VIII of 40 C.F.R. Part 261.

4. The actions required to be taken pursuant to this Order are necessary to protect human health and/or the environment.

VI. Order: Performance Goals, Required Activity and Work to Be Performed.

Pursuant to Section 3008(h) of the Act, 42 U.S.C. 6928(h), the Director of the Division of Environmental Planning & Protection of EPA, Region 2, hereby issues the following Order to the Respondents:

1. Performance Goals. The performance goals of the RCRA corrective action at this Facility are:

a. To ensure continued containment and the reduction or eventual elimination in the concentration of benzene, toluene, ethyl benzene, xylene, total BTEX, and MTBE (methyl tertiary butyl ether) (these are "Contaminants of Concern" or "COCs" along with contaminants identified later in this section) onsite through Monitored Natural Attenuation (MNA), enhanced remediation, direct source removals and LNAPL recovery operations.

b. To reduce or eliminate human and environmental exposures in the future. Seven years of MNA and remediation results generally show continued containment of the plume onsite and a slow reduction of COCs. Accelerated reduction and/or eventual elimination of COCs must be achieved. Respondents will propose, as required by this Order, enhanced remedial technologies to achieve this goal.

c. For soil cleanup in the perimeter areas of the facility, all adverse effects to human health and environment (site risks) caused by COCs should be maintained within soil cleanup objectives to protect groundwater and surface water quality as set out in TAGM 4046 or other guidance determined by EPA to be applicable following consultation with Respondents.

d. Groundwater at perimeter wells bordering the Arthur Kill must meet remedial goals protective of surface water standards given in current NYSDEC Technical and Operational Guidance Series (TOGS) 1.1.1. Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations (NYSDEC, 1998 or later). Where no number appears under the

"Standard" Column in Table 1 of the TOGS guidance for the surface water classification given to the Arthur Kill, the remedial goal shall be protective of the Guidance Value listed.

2. Required Activity.

The performance goals at the Facility will be pursued through the following, at a minimum:

a) LNAPL Recovery, Contaminant Containment and Reduction, and Groundwater Monitoring and Sampling.

(1) Maintain the existing ICM thermal LNAPL recovery system in the Bulkhead Area, and enhance the ICM for LNAPL removal in the North Beach Area (well RFI-7) and perimeter well ICM-1 (and continue monthly ICM monitoring and O&M activities and reporting to EPA on a quarterly basis) until LNAPL is removed. In the future, Respondents may request EPA approval of a tentative determination that LNAPL has been removed to the greatest extent feasible.

(2) Continuation of the existing MNA program, including all perimeter wells, and of the current hot spot sampling program, including further and prompt remediation of newly discovered hot spots and the subsequent implementation of appropriate ICMs. (This program will include any revisions later approved by EPA.)

(3) In the Lube Tank Area elevated concentrations of VOCs, which are COCs in both soil and groundwater, persist at or below the water table at about 3 feet below grade surface. Well KM-GP05 shall be monitored for impacts on

groundwater plume in this area and based on results of the groundwater sampling, additional remediation activity may be necessary.

(4) In addition to LNAPL, dissolved VOCs are present in wells downgradient of the North Beach Area, for example in Well RW-1A of the Tank Farm. Recovery efforts must continue in this area to remove LNAPL as well as contaminated soil with COCs as source reduction measures.

(5) The sampling frequency for perimeter wells and wells in the Bulkhead area must be on a quarterly basis (January, April, July and October); the wells in the Tank Farm and/or those containing stable or downward trending dissolved concentrations must be sampled on a semi-annual basis (January and July), and those wells with non- detect and dissolved concentrations must be sampled on an annual basis according to a MNA/Perimeter Groundwater Monitoring Plan to be approved by EPA.

b) Monitored Natural Attenuation and Enhanced Remediation.

(1) Except for the wells covered by section (3) below, Respondents will continue to implement a Monitored Natural Attenuation (MNA) Program. The MNA program must be implemented in a manner consistent with EPA document entitled, "Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action and Underground Storage Tank Sites (4/21/99 OSWER Directive No. 9200.4-17P, Publication EPA/540/R-99/009 or later amendments to this guidance). The MNA well system, parameter list, and sampling frequencies must be periodically re-evaluated during the life of the

program and any major modifications to the program must be reported and approved by EPA before implementation. To this end, yearly MNA reports must continue to be submitted to EPA as part of the Annual Update report due by the end of the first quarter following the end of each calendar year in which the MNA was conducted and, at a minimum, must describe and discuss results of the continuous operation of all on-site groundwater monitoring wells according to a MNA/Perimeter Groundwater Monitoring Plan to be approved by EPA.

(2) Data collected during the MNA program must include, at a minimum, chemical concentration in soil and groundwater of benzene, toluene, ethyl benzene, xylene, total BTEX, and MTBE (methyl tertiary butyl ether), and LNAPL levels, MNA parameters, PAHs and lead.

(3) Respondents will also propose enhanced remedial technologies to achieve accelerated reduction and eventual elimination of COCs in: (a) wells showing increasing trends of concentrations of site COCs documented during sampling events performed in the preceding three years, and (b) wells showing concentrations which exceed EPA or NY State remediation standards or guidance as determined to be applicable by EPA following consultation with Respondents during the CMS process. A suitable remedial technology (in-situ chemical oxidation treatment, soil vapor extraction or other technologies) must be evaluated. Proposed pilot tests of the remedial enhancement and full-scale implementation must be described in the CMS Work Plan. A pilot test must be implemented in at least two of these contaminated areas prior to broader application. To document such activities,

yearly reports must be submitted to EPA as part of the Annual Update report due by the end of the first quarter following the end of each calendar year in which the additional remediation was conducted and, at a minimum, the yearly reports must describe and discuss results from the relevant monitoring wells according to a plan to be approved by EPA.

c) Source Removal.

(1) Surface Impoundments. Soils and groundwater underneath the synthetic liners of the Surface Impoundments will be investigated and remediated (if determined to be warranted by EPA) in accordance with EPA's 9/30/05 Closure Certification Report approval letter and Respondents' Final Closure Certification Report. The potential soil and groundwater contamination underneath the lined Surface Impoundments will be investigated and remediated (if determined to be warranted by EPA) at the time of liner replacement or decommissioning of the Surface Impoundments, whichever happens first. If by June 15, 2011, the surface impoundments have not undergone liner replacement or decommissioning, Respondents shall commence a subsurface investigation beneath the liners no later than December 31, 2011. EPA will evaluate the results from the subsurface investigation of soil and groundwater, and Respondents shall undertake remediation of subsurface soils and groundwater in the vicinity of and underneath the surface impoundments, in a manner that EPA believes to be consistent with the evaluation and remediation requirements associated with

the facility-wide RCRA Corrective Action process (Port Mobil Terminal Final Closure Report as revised on 09/28/2005) and that is approved by EPA.

(2) Tank Farm. Respondent Kinder Morgan shall notify EPA (as set forth in Section XV of this Order) and ExxonMobil, at least ninety (90) days before any single tank or multiple tanks in the Tank Farm are to be decommissioned or replaced. As directed by EPA, Respondents will pursue investigation and remediation (if determined to be warranted by EPA) of soil and groundwater underneath the liner of the tank(s) where actual or potential contamination exists, in conformance with applicable rules, policy and/or guidance in place at the time of the investigation and remediation.

(3) Other Areas. Elevated concentrations of VOC contaminated soil persist near Tank 50, and downgradient well KM-GP13 and KM-GP05 in the Lube Tank Area. In addition, elevated concentrations of benzene persist in soils in the proximity of the Marine Warehouse (near wells ICM-6 and MW-113). As part of the CMS, the Respondents shall evaluate whether further source removals or other remedial measures should be implemented in these areas or any other areas identified by EPA following consultation with Respondents (taking into account any work already performed pursuant to section VI.2.b above.)

d) Deed Restriction.

In addition, if the facility is not cleaned up to levels approved by EPA for unrestricted use, a deed restriction that rides with the land will be required to provide further limits on land use at the site, unless Respondents in writing persuade EPA that existing controls are sufficient. A proposed Notice-to Deed was included as Appendix G of the Final Closure Report, but the type and terms of the final deed restriction and the schedule for putting in place the deed restriction will be subject to EPA approval.

3. Work to be Performed

Respondents will undertake, and complete each of the following actions to the satisfaction of EPA and in accordance with the terms, procedures and schedules set forth in an approved CMS Workplan and CMI Workplan, each of which once approved by EPA, will be hereby incorporated by reference as if reproduced in full herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with the plans, reports, and schedules approved by EPA, or such other schedules as may be agreed upon by EPA and Respondents. Except for the schedule for work in the subsurface below the Surface Impoundments set forth in Section 2(c)(1) above and the Tank Farm in Section 2 (c) (2) above, the Respondents shall perform the following, in the manner and by the dates specified below.

a. Corrective Measures Study ("CMS") and Corrective Measures Implementation ("CMI")

(1) Within ninety (90) days of the date of this Order, the Respondents shall submit to EPA for approval a proposed facility-wide Corrective Measures Study ("CMS") Workplan. The CMS Workplan must include an evaluation and recommendation of corrective action alternatives using technical, human health and environmental criteria, and media protection standards or guidance values set forth in EPA and NYSDEC documents. These documents include, but are not limited to, the site-specific Human Health Risk Assessment, the EPA-approved Ecological Risk Assessment, and to the extent they are applicable, NYSDEC guidance documents such as NYCRR Subpart 375-6 Remedial Program Soil Cleanup Objective (NYSDEC, 2006); Draft Technical and Administrative Guidance Memorandum [TAGM]; Determination of Soil Cleanup Objectives and Cleanup Levels (NYSDEC, 1994); and Technical and Operational Guidance Series (TOGS) 1.1.1. Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations (NYSDEC, 1998 or later). The CMS Workplan, at a minimum, must incorporate the required activity described in Section VI.2. of this Order including, but not limited to, the enhanced MNA/Perimeter Groundwater Monitoring Plan. The CMS Workplan will also include steps to develop soil cleanup levels that are appropriate for the non-perimeter areas of the facility. The draft CMS Workplan will be reviewed as provided in Section

XI (EPA Approvals) and the review/comment/response process will result in a Final CMS Workplan.

(2) Within sixty (60) days of completion of the CMS field work or by such other date as is approved by EPA, Respondents shall submit to EPA for approval a Draft CMS Report which will discuss the alternative corrective measures studied, addressing technical, institutional, public health and environmental issues, and develop the conceptual engineering and pilot testing results for the alternative enhanced technology proposed for the facility. This Draft CMS Report will be reviewed as provided in Section XI. The review/comment/response process will result in a tentatively approved Draft CMS Report that will be available for public review and comment as described below.

(3) After tentative approval of the Draft CMS Report, EPA will prepare a Statement of Basis which will include a description of Respondents' proposed corrective measure(s), and EPA's justification for its proposed selection of corrective measure(s). The Statement of Basis will be available to the public for review and comment in accordance with any applicable EPA guidance and regulations.

(4) Within sixty (60) days of approval of the Final CMS Report, Respondents will submit a proposed Corrective Measure Implementation ("CMI") Workplan. This CMI Workplan will be reviewed in accordance with Section XI. The CMI Workplan will address the final design, construction, operation, maintenance, and monitoring of the measures selected and will

include schedules for such work.

(5) With EPA approval, CMS and CMI work may be broken into parts and the work may be conducted in phases.

(6) At the end of the CMI, Respondents shall submit a draft CMI Final Report for EPA approval. The draft CMI Final Report will be reviewed as provided in Section XI (EPA Approvals).

b. Progress Reports/Requests for Extension of Time

(1) Progress Reports. The Respondents shall submit quarterly progress reports to EPA as provided for and in accordance with the format specified in the approved CMS or CMI Workplan until termination of this Order. The Respondents shall submit quarterly reports to EPA within forty five (45) days following the end of a quarter and annual reports within sixty (60) days following the end of the calendar year. The Reports shall contain the following: 1) a summary of all activities performed pursuant to the Order during the previous quarter; 2) a summary of all analytical results that have become available during the previous quarter; and 3) supporting QA/QC documentation, in accordance with the approved "Quality Assurance Project Plan". For the purposes of this Order, quarterly and annual reporting periods are defined as follows:

First (1st) Quarter - January 1 to March 31, Quarterly Report due May 15
Second (2nd) Quarter - April l to June 30, Quarterly Report due August 15
Third (3rd) Quarter - July 1 to September 30, Quarterly Report due Nov 15
Fourth (4th) Quarter – Oct. 1 to Dec 31, Annual Report due March 1

(2) If the Respondents determine that any work required under this Order cannot be completed within the specified period, a request for a reasonable extension period must be submitted, in writing, to EPA for approval. Unless otherwise agreed upon by EPA and Respondents, this request shall be submitted no later than thirty (30) days prior to the originally scheduled completion date and must be accompanied by a Project Progress Summary Report which describes the investigative/remedial work completed to date, describes the work which still must be accomplished, details the factors which have prevented adherence to the specified schedules, and justifies the duration of the specific extension period requested. EPA will notify the Respondents whether the request has been completely or partially approved, disapproved, or requires modification.

c. Scopes of Work

(1) The CMS Workplan and CMI Workplan shall meet the performance goals set forth in Section VI.1 of this Order and satisfy all the requirements in this Order or otherwise established by EPA.

(2) The Respondents shall provide written justification for any omissions or deviations from the minimum requirements set forth in this Order. Any omissions or deviations are subject to EPA's approval as set forth in Section XI of this Order.

(3) The results of all plans and reports shall be submitted in accordance with the schedule described in the approved CMS Workplan and CMI Workplan. Extensions of the due date for submittals may be granted by EPA, pursuant to the modification provision of this Order, based on the Respondents' demonstration that reasonable justification for the extension exists.

d. Previously Submitted Documents

EPA recognizes that by the effective date of this Order, Respondents may have already submitted various documents that may be required by this Order. In such instance, Respondents may cite to previously submitted or completed items when they submit a proposed CMS Workplan, CMS Report, CMI Work Plan, etc. or any separate document. Any such claim by Respondents shall include: a description of the items previously submitted or performed and/or a summary of the previously completed investigations; the date(s) of submission and/or completion; a citation to the specific pages of a previously submitted document that are relevant; and any significant known changes or new information developed since the previous submission and/or completion.

Upon request by EPA, the Respondents shall submit additional copies of the previously submitted document(s) being cited by Respondents. EPA will thereafter determine the extent to which prior submissions and/or completions satisfy specific items required by this Order.

4. Assignment of Lead Responsibility

EPA may, subject to the agreement of both Respondents, designate either Respondent ExxonMobil Oil Corporation or Respondent Kinder Morgan as the party with lead responsibility for performing certain tasks for which Respondents are responsible pursuant to this Order, provided, however, that designation of a party with lead responsibility shall not relieve the other party of its legal responsibility to perform the tasks required by this Order. Subject to later withdrawal of this designation by EPA (which withdrawal may be done with or without the agreement of the Respondents), EPA initially designates ExxonMobil Oil Corporation as the party with lead responsibility for all of the tasks that Respondents are obligated to perform under this Order except for the notice required by the first sentence of Section VI.2.c.2 and for the steps required under Section XII. (In the event a lead party is designated, EPA will continue to send formal written communications to both parties, but any actions or inactions by the lead party will be binding on the non-lead party.)

VII. Additional Work

EPA may determine that work in addition to that detailed in this Order and in the CMS Workplan is necessary to protect human health and/or the environment. If EPA determines that any such additional work is necessary, it will notify the Respondents in writing, specifying the basis and reason for EPA's determination and the additional work deemed necessary. Within fifteen (15) days after receipt of any such notice, the Respondents shall be afforded an opportunity to meet with EPA to discuss the additional work being required by EPA. If after meeting with EPA, Respondents continue to disagree with EPA's determination that additional work is necessary, Respondents shall submit, within twenty (20) days of their meeting with EPA, a Response specifying the basis and reasons for disagreeing with EPA's determination. If, within twenty (20) days of Respondent's Response, the Parties are unable to resolve a dispute concerning additional work, Respondents may invoke the Dispute Resolution provisions of Section XXVIII. Thereafter, the Respondents shall submit a Workplan for any work agreed to or determined to be necessary as a result of the dispute resolution process and shall perform any such additional work, in accordance with the standards, specifications, and schedules established by EPA. All approved additional work performed by the Respondents pursuant to this paragraph shall be performed subject to, and in a manner consistent with, the terms and conditions of this Order. Any requirements established by EPA for additional work shall be deemed incorporated into this Order as if fully set forth

herein.

VIII. Minimum Qualifications for Directors and Supervisors

All work performed by the Respondents pursuant to this Order shall be under the direction and supervision of an individual(s) who has demonstrated expertise in RCRA investigation and corrective action. The CMS and CMI Workplan should describe briefly the overall project management, including the name, title, and qualifications of Project Coordinator (see Section IX below) and the supervisory personnel of the contractors or subcontractors to be used in carrying out the terms of this Order. In addition, the Respondent shall ensure that when a license is required, only licensed individuals are used to perform any work required by this Order.

IX. Project Coordinator/Information

1. On or before the effective date of this Order, EPA and Respondents shall designate a Project Coordinator ("PC") (one for EPA and one representing the Respondents) and the name of at least one alternate who may function in the absence of the designated PC. The PCs shall be responsible for overseeing the implementation of this Order. The EPA PC, or his/her alternate, will be EPA's designated representative at the Facility. Each party shall provide at least five (5) days written notice prior to changing the PC(s) and shall promptly provide

written notification once a new PC is selected. ExxonMobil and Kinder Morgan each reserve the right to identify a separate, independent PC to represent each party for purposes of this Order.

2. All communications between Respondents and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed to and through the respective PCs. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Order shall be in writing and the original shall be sent to the EPA PC at the following address:

U.S. Environmental Protection Agency-Region 2
Division of Environmental Planning and Protection
RCRA Programs Branch
290 Broadway, 22nd Floor
New York, New York 10007-1866
Attention: Project Coordinator

In addition, copies of the original shall be sent to the following:

1 copy:
Chief, RCRA Programs Branch
U.S. Environmental Protection Agency-Region 2
Division of Environmental Planning and Protection
290 Broadway, 22nd Floor
New York, New York 10007-1866

1 copy:
Director, Bureau of Hazardous Waste and Radiation Management
NYS Department of Environmental Conservation
625 Broadway, 9th Floor
Albany, New York 12233-7258

X. Quality Assurance/Quality Control

1. Any sampling, monitoring, analytical, and chain-of-custody plans shall be developed in accordance with the standards and recommended procedures contained in the latest edition, as amended, of SW-846 - "Test Methods for the Chemical and Physical Analysis of Solid Waste" and the EPA Region 2 Quality Assurance Manual (http://www.epa.gov/region02/desa). Any deviations from the standards and procedures in these documents must be accompanied by an appropriate justification and a demonstration of the effectiveness and applicability of the proposed alternatives. EPA must approve the use of such alternatives.

2. The CMS Workplan shall identify any NYSDOH approved laboratories to be used by Respondents to comply with this Order. Prior to the initiation of Respondents' field work, EPA may conduct a performance and QA/QC audit of the above-specified laboratory. If the audit reveals deficiencies in lab performance or QA/QC, re-sampling and analysis or selection of another laboratory may be required. EPA personnel and EPA-authorized representatives shall have access to the laboratories and personnel performing any analyses. In the event that EPA or its representatives cannot satisfactorily obtain access to the laboratories for any reason for the purposes of auditing protocols and technical proficiency, then EPA shall so inform the Respondents and the Respondents shall, within thirty (30) days, substitute another certified laboratory which provides access in a manner deemed satisfactory to EPA.

3. Unless otherwise agreed upon by Respondents and EPA, Respondents shall follow the sampling procedures, including sample custody requirements and calibration procedures and frequency procedures, identified in the Quality Assurance Project Plan and consult with EPA in planning for field sampling and laboratory analysis, including a description of the chain of custody procedures to be followed.

XI. EPA Approvals

1. Unless otherwise specified, EPA shall review any plan, report, specification or schedule, submitted pursuant to or required by this Order, and provide its written approval, disapproval, comments and/or modifications to the Respondents. Unless otherwise agreed upon by Respondents and EPA or specified by EPA, the Respondents shall submit a revised document within thirty (30) days of its receipt of EPA's written comments and/or modifications. Any such revised document submitted by the Respondents shall include revisions responsive to EPA's comments and/or modifications. EPA will then approve an acceptable revised document or modify the document and approve it with any such modifications within sixty (60) days of receipt. Alternatively, in its discretion, EPA may require the Respondents to further revise the document and resubmit it to EPA for approval or approval with modifications. The revised document, as approved by EPA, shall become final. All final approvals shall be given to the Respondents in writing.

2. Unless otherwise specified, within sixty (60) days of receipt of EPA's final

written approval, the Respondents shall commence field work or other work approved by EPA. Any noncompliance with such EPA approved plan, report, specification, or schedule shall be considered a violation of this Order.

3. Unless otherwise provided for herein, any reports, plans, specifications, or schedules, submitted pursuant to, or required by, this Order are hereby incorporated by reference into this Order effective ten (10) days following the date written approval of such document is given by EPA. Prior to this written approval, no plan, report, specification or schedule shall be construed as finally approved. Verbal advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any verbal approval or verbal assurance of approval be considered binding.

XII. On-site and Off-site Access

1. Respondent Kinder Morgan shall provide any required access to the Facility to perform all of the work required under this Order, including work to be performed at some future date, including, but not limited to, corrective action (if applicable) associated with the decommissioning of the surface impoundments and/or the tank farm.

2. Until this Order is terminated pursuant to Section XXX, Respondent Kinder Morgan shall provide the right of access for EPA employees, authorized representatives, employees, agents, contractors, subcontractors, and consultants to enter and freely move about the Facility, at reasonable times, for purposes related to

work under this Order, including, but not limited to, the following actions:

a) Interviewing Respondent Kinder Morgan and ExxonMobil or Facility personnel, contractors (including subcontractors and independent contractors), or any other entity or individual responsible for implementing any aspect or portion of this Order; inspecting records relating to the Facility and this Order;

b) Conducting sampling, monitoring, or any other such activity which EPA or the Project Coordinator deems necessary to the satisfaction of the terms of this Order; using a camera, sound recording, video or any other documentary type equipment.

c) Verifying the reports and data submitted to EPA by the Respondents in connection with the terms of this Order.

d) ExxonMobil will also grant such access as may be required to EPA and its representatives for the purposes described in (a) to (c) above.

3. The Respondents shall make available to EPA and NYSDEC employees and authorized representatives upon request all records, files, photographs, documents or any other writing, including monitoring and sampling data that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondents or their contractors or consultants for inspection, copying, or photographing.

4. In the event that any of the work required by this Order will be performed on property not owned or controlled by the Respondents, the Respondents shall promptly use their best efforts to obtain and implement a "Site Access Agreement" allowing the timely performance of such work. Any such Access Agreement shall provide for reasonable access on reasonable terms, and shall also provide for access by EPA, NYSDEC, and any of the EPA's or NYSDEC's authorized representatives, employees, agents, contractors, subcontractors, and consultants. In the event that a Site Access Agreement is not obtained within thirty (30) days, the Respondents shall notify EPA, in writing, documenting its best efforts to obtain such agreements. Best efforts, as used in this paragraph, shall include, at a minimum, two certified letters from the Respondents to the present owner of the property at issue, and if necessary any other party in control of such property, requesting permission to allow the Respondents, EPA, and any of their authorized representatives access to such property and the response of the property owner and/or other party, if any.

5. In the event that Respondents so notify EPA of their inability to obtain reasonable access on reasonable terms as specified herein, EPA may, consistent with its legal authority, assist in obtaining such authorizations that Respondents are unable to obtain. If Respondents are unable to obtain such authorizations on a timely basis, the time for performance of any obligation dependent upon such authorization will be appropriately extended by the EPA upon written request. If Respondents or EPA cannot obtain such authorization, work under this Order will be appropriately modified.

6. Nothing in this Order shall be construed to limit or otherwise affect EPA's

right of access and entry pursuant to any applicable laws and regulations, including the Act and the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq.

7. Nothing in this section shall be construed to limit or otherwise affect the Respondents' liability and obligation to perform corrective action, including corrective action beyond the Facility boundary, notwithstanding the lack of access. EPA may determine that additional on-site measures must be taken to address releases beyond the Facility boundary if access to offsite areas cannot be obtained.

XIII. Emergency Provisions

In the event the Respondents identify an existing or imminent threat to human health and/or the environment at or from the Facility, the Respondents shall immediately notify EPA orally and notify EPA in writing within ten (10) days summarizing the nature, immediacy, and magnitude of the actual or potential threats to human health or the environment. The Respondents shall, as soon as possible, submit to EPA for its approval, a plan to mitigate such threat. EPA will approve or modify this plan, and the Respondents shall implement this plan as approved or modified by EPA. (Alternatively, if time allows, EPA may request that Respondents modify the Plan and resubmit it and/or implement it.) If EPA determines that more immediate action is required, then the Director of the Division of Environmental Planning & Protection, EPA Region 2, may orally authorize Respondents to act prior to the time Respondents make any written submission to EPA. In the case of an extreme emergency, Respondents may act without prior EPA approval; any such unapproved action shall be taken at

Respondents' own risk, and Respondents shall be responsible for any different or additional action subsequently required by EPA to mitigate the threat(s).

XIV. Suspension of Implementation

If EPA determines that activities in compliance or noncompliance with this Order, have caused or may cause a release of a hazardous waste or hazardous constituent, or may pose a threat to human health or the environment, EPA may direct Respondents to stop further implementation of this Order, or a portion of this Order, for such period of time as may be needed to abate any such release or threat and/or to undertake any action which EPA determines to be necessary.

XV. Notification / Availability of Information

1. Respondents shall give the EPA Project Coordinator at least twenty (20) days advance oral notice of the following activities undertaken pursuant to this Order: all new well related activities at the Facility; any non-routine sampling or testing of soil or groundwater; and any other activity that EPA timely notifies Respondents in writing that it deems necessary for it to have prior notice. However, in the event of unforeseen situations in the field where Respondents believe such an activity must occur within a time frame that does not allow for twenty (20) days advance notice to EPA, Respondents shall inform the EPA PC, or if the EPA PC is not available, his/her Section Chief, of same by telephone and request approval to proceed within a shorter time frame. EPA will communicate its decision verbally. Respondents shall, within ten (10) days of making its verbal request, document such request in writing and document that

EPA approved such request. At the request of EPA, Respondents shall provide or allow EPA or its authorized representatives to take split samples of any or all samples collected by the Respondents pursuant to this Order. In addition, in the event EPA conducts any additional sampling, Respondents will be offered the opportunity to take split samples.

2. All data, information, and records created for or maintained by the Respondents pursuant to this Order shall be made available to EPA upon request. Respondents shall use their best efforts to insure that all employees of the Respondents and all persons, including consultants, contractors and subcontractors who engage in activities under this Order are made available to and cooperate with EPA, if information, whether written or oral, is sought.

3. All final workplans and final reports submitted to EPA by the Respondents shall be made available to the public in accordance with Respondents' Public Information Plan as provided in Section XIX of this Order.

4. Respondents agree not to assert any confidentiality claim with regard to any analytical data or other information or documents developed pursuant to the requirements of this Order.

XVI. Record Preservation

1. Respondents shall preserve or make arrangements for the preservation of, during the pendency of this Order and for a minimum of six (6) years after its

termination as specified in Section XXX of this Order, all data, records and documents in the possession of Respondents, their employees, and their agents, consultants and contractors (including subcontractors and independent contractors) which relate in any way to this Order, work being performed under it, or to the past and/or current hazardous waste management practices at the Facility. The Respondents shall make such records available to EPA at a location convenient to EPA Region 2 and/or shall provide copies of any such documents that EPA requests unless there has been a proper assertion of attorney-client privilege by or on behalf of Respondents with respect to records or documents. However, no documents, reports or other information created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged. Written notification shall be provided to EPA at least sixty (60) days prior to the destruction of any or all such documents. Such written notification shall reference the date, caption, and docket number of this Order and shall be addressed to the Regional Administrator of EPA Region 2 with copies sent to the individuals listed in Section IX.2 of this Order.

2. Each Respondent shall store copies of all documents being preserved by it pursuant to the terms of this Order in a centralized location to afford ease of access. Each Respondent may maintain the specific documents it is preserving pursuant to this Order at an independent location.

XVII. Reservation of Rights

1. EPA expressly reserves, without limitation, all of its statutory and regulatory

powers, authorities, rights, remedies and defenses, both legal and equitable, including the right to seek injunctive relief, cost recovery, or penalties with respect to a Respondent's failure to comply with the terms of this Order which are applicable to it.

2. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and or authorities which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority of the United States.

3. This Order shall not limit or otherwise preclude EPA from taking any additional legal action against the Respondents should EPA determine that any such additional legal action is necessary or warranted for any matters unrelated to the subject of this Order or as a result of Respondents' failure to comply with the terms of this Order which are applicable to it.

4. This Order shall not relieve the Respondents of their obligation to obtain and comply with any federal, state, county or local permit, nor is this Order intended to be, nor shall it be construed to be, a ruling or determination on, or of, any issue relating to any federal, state, county, or local permit.

5. EPA reserves any right it may have to perform any portion of the work required by this Order including, but not limited to, any additional site characterization, supplemental investigations, interim measure, and/or response or corrective action deemed necessary to protect human health or the environment. EPA may exercise its authority under CERCLA to undertake investigations or remedial actions at any time.

6. Notwithstanding compliance with the terms of this Order, Respondents are not released from liability for the costs of any such response actions taken by EPA. EPA

reserves the right to seek reimbursement from Respondents for any costs incurred by the United States should EPA be required to take any response actions at the Facility in the event that Respondents fail or refuse to comply with the terms of this Order.

7. If Respondents fail to comply with any terms or any provisions of this Order, which are applicable to it, EPA reserves the right to commence a subsequent action to require compliance and/or to assess a civil penalty not to exceed the then applicable statutorily authorized maximum penalty for each day of non-compliance and/or to take any other action authorized by law.

8. Respondent Kinder Morgan did not acquire the Facility from ExxonMobil until 2005, and has informed EPA that by agreement, ExxonMobil has retained the responsibility for remediation of certain site conditions caused by or which occurred during the operation of the Facility by ExxonMobil Oil Corporation or its predecessors. Kinder Morgan has informed EPA that it has no direct knowledge regarding the historical site activities or the site investigation or cleanup of the Facility. For that and other reasons, Kinder Morgan does not admit any of the factual or legal determinations made by the EPA in Sections IV and V of this Order and reserves all rights and defenses it may have regarding liability or responsibility for conditions at the Facility except as provided in Section XXIX or as explicitly provided in other sections of this Order.

9. Exxon Mobil Corporation and Respondent ExxonMobil Oil Corporation have entered into a Consent Decree between the United States and Exxon Mobill Corporation and Respondent ExxonMobil Oil Corporation (CV-96-1432 the United States District Court for the Eastern District of New York, date of entry March 14, 2002)

which required Exxon Mobil Corporation and Respondent ExxonMobil Oil Corporation to "perform such corrective action or other response measures stemming from releases at Port Mobil as the Administrator of the EPA or her delegate(s) requires to protect human health or the environment...". With the exception of admissions made in the Answer to the Complaint filed in the above referenced case and admissions made in the Consent Decree, Respondent ExxonMobil Oil Corporation does not admit any of the factual or legal determinations made by the EPA in Sections IV and V of this Order. Except as provided in the Consent Decree or in Section XXIX and other sections of this Order, Respondent ExxonMobil Oil Corporation reserves all rights and defenses it may have.

XVIII. Non-Release of Other Claims and Parties

Nothing in this Order shall constitute, or be construed to constitute, a release from any claim, cause of action or demand in law or equity brought by EPA against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating to, the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituent, hazardous substance, solid waste, hazardous waste, pollutant, or contaminant found at, taken to, taken from, or emanating from the Facility.

XIX. Public Involvement

1. Respondent ExxonMobil earlier prepared a Public Information Plan (PIP) describing how it intended to disseminate information to the public regarding the RCRA

Facility Investigation. Respondents will amend this PIP as needed to incorporate information and outreach concerning activities performed under this Order. To the extent it has not already been included, the PIP shall identify local community organizations and environmental groups which will be notified and will receive the above document and any other relevant information. Respondents shall perform community relations activities for activities under this Order in accordance with the terms of such plan.

2. As part of the PIP referenced above, Respondents shall maintain easily accessible repositories at a nearby Public Library and the Office of Environmental Affairs of the Staten Island Borough President's Office. The repositories will contain the following documents for public review: Final RFI Workplan, ICMI Report, approved RFI Report, MNA Report, approved CMS Workplan, approved CMS Report, the approved CMI Workplan and CMI Report, HHRA Report, and ERA Report. Documents will be added to the repositories promptly after they are approved by EPA. Upon approval of the CMS Report, EPA will public notice the approval in a major local newspaper in Staten Island.

3. This Order on Consent provides that Respondents are required to perform a CMS and CMI. It is EPA's policy to request public comment on each of the proposed corrective measure(s). EPA will provide the public with an opportunity to review and comment on Respondents' proposed corrective measure(s), including EPA's justification for proposing such corrective measure(s) (the "Statement of Basis"). If the public is interested, a public meeting may be held. EPA will respond to public comments received. Following the public comment period, EPA may require

Respondents to revise the CMS and/or to perform additional corrective measures studies. After consideration of the public's comments on the proposed corrective measure and the performance of additional work if determined to be necessary by EPA, EPA will notify Respondents of the final corrective measure(s) selected by EPA. EPA will indicate the reasons behind its selection of corrective measure(s). Additional public involvement activities may be conducted if decisions on corrective measures for different problems at the Facility are made in different timeperiods, or if EPA determines additional activities are appropriate.

XX. Indemnification of the United States Government

Respondents shall indemnify, save and hold harmless the United States Government, its agencies, departments, agents, and/or employees, from any and all claims or causes of action arising solely from or on account of acts or omissions of Respondents or their agents, contractors, or subcontractors in carrying out activities required by this Order. This indemnification shall not be construed as in any way affecting or limiting the rights or obligations of the Respondents or the United States under their various contracts or statutes. Respondents shall not be responsible for indemnifying the United States Government, its agencies, including EPA, departments, agents, and/or employees, for claims or causes of action from or on account of acts or omissions of EPA, its agents and/or employees.

XXI. Other Applicable Laws

Respondents shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state and federal laws and regulations. Respondents shall obtain all permits or approvals necessary to perform the work required by this Order.

XXII. Modification

1. This Order may only be amended by mutual agreement of Respondents and EPA. All such amendments shall be in writing (with the exception of Section XV above regarding Notification), shall first be signed by Respondents, and shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into the terms of this Order.

2. Notwithstanding the above, the EPA Project Coordinator and the Respondents may agree to changes in the scheduling of events. Any such changes should normally be requested in writing by the Respondents and be approved by the EPA Project Coordinator in writing. Any new approved deadlines must be memorialized in writing and shall be incorporated by reference into the Order.

3. No informal advice, guidance, suggestions, or verbal comments by EPA regarding reports, plans, specifications, schedules, and no written requests submitted by the Respondents will be construed as an amendment or modification to this Order.

XXIII. No Final Agency Action

1. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Director of the Division of Environmental Planning & Protection, EPA Region 2, or any authorized representative of EPA, shall constitute final agency action giving rise to any rights of judicial review prior to EPA's initiation of a judicial action for a violation of this Order, which may include an action for penalties or an action to compel Respondents' compliance with the terms and conditions of this Order or other relief.

2. In any action brought by EPA for a violation of this Order, EPA shall bear the burden of proving that Respondents have violated the terms of this Order and Respondents shall have the burden of proving that EPA's position was arbitrary and capricious and not in accordance with the law or this Order.

XXIV. Severability

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the remainder of the Order shall remain in force and shall not be affected thereby.

XXV. Stipulated Penalties

1. Unless the Respondents are excused under the "Force Majeure and Excusable Delay" provision contained in Section XXVI of this Order, the Respondents shall pay a stipulated penalty for failure to comply in a timely manner with any requirement, term, or condition set forth in or required by this Order. Except where a requirement is specified in this Order as being limited to one Respondent, Respondents shall be jointly and severally liable for such stipulated penalties. Respondents shall pay a stipulated penalty for each applicable non-complying act as set forth below:

Deliverable	Stipulated Penalty For Each Day of Non-Compliance		
	1st through 10th day	11th through 20th day	21st day and beyond
Submittal of Proposed CMS or CMI Workplan	$2,000	$5,000	$8,000
Submittal of Draft CMS or CMI Report	$2,000	$5,000	$8,000
Submittal of ICM,CMS, or CMI Quarterly Progress Reports	$2,000	$5,000	$8,000

Submittal of Final CMS or CMI Report	$2,000	$5,000	$8,000
Notification to EPA of Information Related to Existing or Imminent Threats to Human Health or the Environment	$4,000	$6,000	$12,000
Submittal of Revisions to Draft CMS or CMI Reports	$2000	$5,000	$8,000
Failure to begin or complete CMS or CMI	$2,000	$5,000	$8,000
Failure to submit yearly MNA Report	$2,000	$5,000	$8,000
Failure to Perform any other obligation under this Order	$500	$1,000	$2,000

2. Stipulated penalties shall be paid by cashier's or certified check, made

payable to "Treasurer, United States of America" and shall be mailed to U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. The check shall reference the complete name and address of the Respondents, the name of this Order, and its docket number. A copy of the check and letter forwarding the same shall also be submitted to the EPA Project Coordinator and EPA attorney.

3. All stipulated penalties shall begin to accrue on the day each act of noncompliance with any requirement, term, or condition set forth in or required by this Order first takes place. Said stipulated penalties shall continue to accrue through, and including, the day on which any failure to comply with such requirement, term, or condition is remedied. Nothing herein shall preclude, or is intended to preclude, the simultaneous accrual of separate stipulated penalties for each separate act of noncompliance with this Order. Penalties shall accrue regardless of whether EPA has notified Respondents of the act or acts of non-compliance, but need only be paid upon demand.

4. After receipt of a demand from EPA for stipulated penalties pursuant to this Section of the Order, Respondents may, within thirty (30) calendar days of such demand, provide EPA with a written explanation of why the stipulated penalties are not, in their opinion, appropriate for the act(s) of non-compliance cited by EPA. If Respondents elect not to file such an explanation, the stipulated penalties shall be paid within sixty (60) calendar days after receipt of the penalty demand.

5. The Director of the Division of Environmental Planning and Protection, EPA Region 2 may in his or her sole discretion, reduce or eliminate such stipulated penalties

based on the written explanation of Respondents as specified in paragraph 4 above. If Respondents submit a written explanation for why stipulated penalties are not appropriate, then EPA will notify Respondents in writing whether the original or reduced stipulated penalties must be paid.

6. At any time prior to payment of stipulated penalties by Respondents, the Director of the Division of Environmental Planning and Protection may, for good cause as independently determined by him or her, reduce or eliminate the stipulated penalties. If the Director makes such determination, EPA will notify Respondents in writing of the change.

7. Except as provided in paragraph 4 above, all stipulated penalties owed under this Section shall be due and owing within thirty (30) calendar days of the date of EPA's written notice to Respondents described in paragraphs 5 or 6 above. Interest shall accrue on any amount not paid when due at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717.

8. If Respondents fail to pay stipulated penalties as required under this Order, EPA may refer this matter to the U.S. Department of the Treasury or Department of Justice for collection under applicable law. Nothing in this section, however, limits or shall be construed as limiting, any rights or remedies available to EPA to enforce this Order and to seek compliance with the terms and conditions of this Order or any other applicable law or regulation.

XXVI. Force Majeure and Excusable Delay

1. Respondents shall perform all applicable requirements of this Order applicable to it within the time limits set forth, approved, or established herein, unless the performance is prevented or delayed by events which constitute a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes not foreseen and beyond the control of the Respondents which could not be overcome by due diligence and which delays or prevents the timely performance of any obligation under this Order by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or the failure to obtain federal, state or local permits.

2. The Respondents shall notify in writing the EPA Project Coordinator within five (5) days after it becomes aware of any event which Respondents believe constitutes a force majeure. Such notice shall detail the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondents must adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondents' right to assert a force majeure and may be grounds for EPA to deny Respondents an extension of time for performance.

3. After receiving such notice from Respondents that Respondents are invoking the force majeure provisions of this Order, EPA shall respond in writing within ten (10) days indicating either EPA's agreement that the event constitutes a force majeure or its

disagreement and the reasons therefore.

4. If EPA agrees that a force majeure has occurred, the time for performance shall be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. The time for performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be implemented in a shorter time. EPA and Respondents shall discuss whether subsequent requirements are to be delayed and the appropriate time period to be granted for any delay. Any extensions may be accomplished through an amendment to an approved Workplan or as provided in Section XXII of this Order. Such an extension does not alter the schedule for performance or completion of any other tasks required by this Order unless these schedules are also specifically altered.

5. In the event EPA does not agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, the dispute will be resolved in accordance with the Dispute Resolution provisions contained in Section XXVII of this Order.

XXVII. Dispute Resolution

1. All parties shall use their best efforts to informally and in good faith resolve all disputes and differences of opinion. Notwithstanding the above, if Respondents disagree, in whole or in part, with any disapproval or modification or other decision or directive made by EPA pursuant to this Order, Respondents shall notify EPA in writing of their objections within fifteen (15) calendar days of receipt of EPA's disapproval,

modification, decision, or directive. Said notice shall set forth the specific points of the dispute, the position Respondents maintain, the grounds for Respondents' position, and any matters Respondents consider necessary for EPA's determination. Within thirty (30) days of EPA's receipt of Respondents' written notice, or by such other date as may be agreed to between EPA and Respondents, EPA shall provide to Respondents its decision on the pending dispute, which decision shall be binding. The parties may continue to confer and use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

2. The existence of a dispute as defined herein, and EPA's consideration of such matters as are placed into dispute shall excuse, toll, or suspend during the pendency of the dispute resolution process, the compliance obligation or deadline which is in dispute and any other obligation or deadline which is demonstrably dependent on the matters in dispute, and EPA shall not seek to assess a penalty for noncompliance with the obligation or deadline for the period of time during which the obligation or deadline was excused, tolled, or suspended, regardless of the decision on the dispute. No obligation or deadline shall be excused, tolled, or suspended, unless Respondents' dispute is in good faith and Respondents exercise due diligence to resolve the dispute.

XXVIII. Effective Date

The effective date of this Order shall be ten days after the date on which the Director of the Division of Environmental Planning & Protection, Region 2, signs this Order.

XXIX. Consent

1. Respondents consent to and agree not to contest EPA's jurisdiction to issue this Order. In addition, whether brought in an administrative or judicial proceeding, the Respondents consent to and agree not to contest EPA's jurisdiction to enforce or compel compliance with any term of this Order.

2. Finding this Order to be reasonable, each of the Respondents consent to its issuance and its terms, and agree to undertake all actions required which are applicable to it by the terms and conditions of this Order, including any other documents incorporated by reference. Respondents consent to the issuance of this Order, as an Order, pursuant to Section 3008(h) of RCRA, 42 U.S.C. 6928(h), and explicitly waive their right to request a hearing on this matter. Finally, the Respondents agree not to contest, and waive any defense concerning the validity of this Order, or any particular provision contained herein.

3. Each signatory to this Order for Respondents certify that he or she is fully authorized to enter into the terms and conditions of this Order.

XXX. Termination and Satisfaction.

The provisions of this Order shall be deemed satisfied and the obligations of the Respondents under this Order shall terminate upon Respondents' receipt of a written

statement from EPA that Respondents have completed, to EPA's satisfaction, all the terms and conditions of this Order, including any additional work which EPA may require pursuant to this Order. So long as the Respondents are performing or are still obligated to perform work pursuant to, or required by this Order (other than compliance with the record retention requirements of this Order after termination of this Order), this Order shall not be deemed terminated or satisfied. At any time after Respondents complete all of the work required by this Order, Respondents may request in writing that EPA provide Respondents with this statement of completion. Within ninety (90) days after any such request by Respondents, EPA will use its best efforts to provide Respondents with this statement of completion, or a written statement as to the basis for a refusal to provide Respondents with such statement of completion.

XXXI. Financial Assurance for Corrective Action

1. Within 90 days of the selection of a corrective measure, unless otherwise directed by EPA, Respondents shall i) establish financial assurance for corrective action activities required by this Order and ii)submit to the Regional Administrator a cost estimate for all corrective action activities under this Order and a demonstration that financial assurance of an amount no less than such cost estimate has been established. Financial assurance mechanisms which Respondents may use are:

- a surety bond unconditionally guaranteeing performance of the corrective action activities required under this Order or payment at the

direction of EPA of such performance costs into a standby trust fund for the benefit of EPA;

- one or more irrevocable letters of credit, payable at the direction of EPA, into a standby trust fund for the benefit of EPA;

- a trust fund for the benefit of EPA;

- a demonstration that the Respondents meet the financial test set forth in 40 C.F.R. Section 264.143(f) or a written corporate guarantee, by an entity that demonstrates to EPA's satisfaction that it meets the financial test set forth in 40 C.F.R. Section 264.143(f) to perform the corrective action activities required by this Order or establish a trust fund for the benefit of EPA; or

- an insurance policy by a licensed carrier where the insurer shall make payments as EPA directs in writing to (1) reimburse the Respondents for expenditures made by Respondents for the corrective action activities or (2) to pay any other person or entity, including EPA, whom EPA has determined has performed or will perform the corrective action activities required under this Order. The insurance policy must increase annually to cover inflation. The policy must stipulate that the insurer may not cancel, terminate, or fail to renew the policy, unless the Respondents fail to pay the premium, and then only after 120 days prior written notice sent to the Regional Administrator by certified mail.

Respondents should refer to 40 C.F.R Part 264, Subpart H for guidance regarding acceptable use of the above mechanisms. EPA reserves the right to require modification of the financial assurance instrument(s) submitted (including updated demonstrations submitted pursuant to Paragraph XXXI.2 below) if EPA finds that Respondents' mechanism(s) does not assure adequate funding or that such funds will not be accessible to EPA, Respondents or another entity selected by EPA, to complete the corrective action activities deemed necessary and appropriate by EPA. Such instruments shall remain in force until EPA releases Respondents from the financial assurance obligation in writing, subject to EPA's approval of the completion of the corrective action activity(ies).

2. Cost estimates and financial assurance demonstrations shall be updated as necessary and submitted to EPA as appropriate. At a minimum, the Respondents shall update the cost estimate and the financial assurance demonstration when requested by EPA, upon the conclusion of the CMS, whenever proposed or selected corrective action plans are significantly modified, or when other available information indicates that there may be an increase in the anticipated costs.

Kinder Morgan Liquids Terminals LLC.
Respondent's Name

Scott Kilkenny
Signatory's Name (Print)

Scott Kilkenny
Signature

Vice President
Signatory's Title (Print)

8-26-09
Date

ExxonMobil Oil Corporation
Respondent's Name

ANDREW B WESCOAT
Signatory's Name (Print)

AGENT & ATTORNEY-IN-FACT
Signatory's Title (Print)

Signature

AUG. 17, 2009
Date

Kinder Morgan Liquids Terminals LLC.
Respondent's Name

Scott Kilkenny
Signatory's Name (Print)

Scott Kilkenny
Signature

Vice President
Signatory's Title (Print)

8-26-09
Date

It is so ordered:

Kevin Brieke, Acting Director
Division of Environmental Planning & Protection
U.S. Environmental Protection Agency-Region 2
New York, New York 10278

Date: 8/31/2009