



**Michelle Lujan Grisham**  
Governor

**Howie C. Morales**  
Lt. Governor

**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**Hazardous Waste Bureau**

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**James C. Kenney**  
Cabinet Secretary

**Jennifer J. Pruett**  
Deputy Secretary

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

July 7, 2020

Scott Martin  
Director, EHS/Remediation  
Kinder Morgan, Inc  
1001 Louisiana Street, Suite 1000  
Houston, TX 77002  
Email to: [scott\\_martin@kindermorgan.com](mailto:scott_martin@kindermorgan.com)

**RE: NOTICE OF VIOLATION  
KINDER MORGAN, INC.  
EPA ID# NMR000025841**

Dear Mr. Martin:

The New Mexico Environment Department's ("NMED") Hazardous Waste Bureau ("Bureau") completed its review of your company's October 25, 2019, response to the Bureau's Request for Information relating to the December 14, 2018, petroleum spill near Anthony, New Mexico. Pursuant to the NMED's Delegation Order dated January 15, 2020, delegating to the Hazardous Waste Bureau Chief the authority to issue Notices of Violation under the Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to -14, this letter is to inform you that the Bureau determined that Kinder Morgan did not make an accurate hazardous waste determination before moving contaminated soil, a violation of 20.4.1.300 of the New Mexico Administrative Code ("NMAC"). Furthermore, Kinder Morgan has not paid its annual hazardous waste generation fee for calendar year 2018, a violation of 20.4.3.500.A NMAC. Below you will find details of the Bureau's determination and the corrective actions required to come into compliance.

On December 14, 2018, Kinder Morgan released over 400,000 gallons of refined petroleum from the failure of a 12-inch EPT pipeline (LS-18) near Anthony, New Mexico and contaminated the surrounding soil, thereby generating petroleum contaminated soil, a solid waste. In

response to the release, Kinder Morgan removed petroleum contaminated soil from the release site, stockpiled the soil next to a ditch and subsequently moved the soil at least once to another location. Testing of the soil after the stockpiles were moved reduced the hazardous component (benzene) via volatilization and was neither at the point of generation nor representative of the waste itself. Therefore, the toxicity characteristic leaching procedure (“TCLP”) analysis is not indicative of whether the petroleum contaminated soil was a Resource Conservation and Recovery Act (“RCRA”) hazardous waste. NMED HWB determined that Kinder Morgan violated the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC, as specified below:

1. Failure to make an accurate hazardous waste determination for the petroleum contaminated soil waste stream in violation of 20.4.1.300 NMAC. Specifically, Kinder Morgan failed to make a hazardous waste determination at the point of generation, before an alteration of the waste occurred. As a result, Kinder Morgan also failed to make an accurate determination as to whether the petroleum contaminated soil was a hazardous waste, a necessary step to ensure proper management of the waste stream. Accordingly, Kinder Morgan violated 20.4.1.300 NMAC, and by incorporation, 40 CFR 262.11.

**Corrective Action:** Within thirty (30) calendar days of receipt of this letter, Kinder Morgan is to provide NMED HWB with a written plan describing all actions taken to prevent future hazardous waste determination violations related to pipeline releases and mitigation activities. Any written response must include appropriate evidence and a certification from a responsible official designated to act on behalf of Kinder Morgan. The certification of the responsible official shall state:

*“I certify under penalty of law that this information in this letter and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

2. Failure to pay hazardous waste generation fees. Specifically, the Bureau determined that Kinder Morgan was a Large Quantity Generator of hazardous waste in 2018. However, the Bureau has no record of Kinder Morgan having paid annual hazardous waste fees by August 1, 2019, for hazardous waste generated in calendar year 2018, a violation of 20.4.3.500.A NMAC.

**Corrective Action:** Please review the attached Annual Hazardous Waste Fee form and submit payment within ten (10) days of receipt of this letter for the hazardous waste generation fees that were due August 1, 2019.

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Under NMED's Enforcement Response Protocol, this Notice of Violation is considered an informal enforcement action intended to provide an opportunity to come into compliance. However, the Bureau may seek elevated enforcement, which, pursuant to NMSA 1978, Section 74-4-10, includes issuing a Compliance Order requiring immediate compliance and assessing a civil penalty of up to \$10,000 a day for any past or current violations, or both. Further non-compliance could then subject Kinder Morgan to penalties up to \$25,000 per day. Alternatively, the law also enables NMED to commence a civil action in District Court to seek the appropriate relief.

If you have any questions regarding this letter, please contact me at (505) 629-6494 or by email at [kevin.pierard@state.nm.us](mailto:kevin.pierard@state.nm.us). Please address any written response to the attention of Daniel Hermanns at the address on the letterhead.

Sincerely,

Kevin M. Pierard, Chief  
Hazardous Waste Bureau

Enclosure

cc: Janine Kraemer, NMED HWB  
Michael Kesler, NMED, District Manager  
Mia Napolitano, NMED OGC  
Rebecca Roose, NMED WPD  
Stephanie Stringer, NMED RPD

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