

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 17 and Article 19 and
Article 12 of the New York State Navigation
Law and Title 6 of the Official Compilation
of Codes, Rules and Regulations
of the State of New York ("6 NYCRR"),

ORDER ON CONSENT

File No. R4-2009-0527-92

-by-

Buckeye Albany Terminal, LLC

Respondent

WHEREAS:

1. Pursuant to ECL Article 19 and the rules and regulations promulgated pursuant to Article 19, the Department of Environmental Conservation ("Department") has jurisdiction over matters concerning air resources and pollution.

2. The Department is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.

3. The Department has jurisdiction in matters concerning the handling and storage of petroleum and certification of onshore major facilities pursuant to Section 17-0303 of the ECL, Article 12 of the Navigation Law and Parts 610 and 613 of 6NYCRR.

4. Respondent, Buckeye Albany Terminal, LLC, owns and operates a major oil storage facility ("MOSF") (license #4-1120) at 301 Normanskill Street, Port of Albany, New York (Albany County) which is also subject to petroleum bulk storage ("PBS") regulations ("facility").

5. Respondent's MOSF license condition requires that a renewal application be submitted 90 days before the license expires. The license issued in March 2009 expires on March 31, 2010.

6. On April 29, 2009, Department staff conducted an inspection and discovered the following PBS violations:

6 NYCRR 612.2 (d)	Registration information does/did not reflect current site status
6 NYCRR 613.3 (d)	Failure to maintain secondary containment
6 NYCRR 613.6 (a) & (c)	Monthly inspection of AST not performed and no records maintained
6 NYCRR 613.9 (a)	Tank not properly closed temporarily (must comply with all testing and inspection requirements)
Section 12-173 of the Navigation Law	The discharge of petroleum is prohibited

7. The facility has an Air State Facility Permit (Permit # 4-0101-00070/02002) from the Department (“permit”).

8. On April 23, 2009, Department staff conducted an inspection of the facility and determined that Respondent had not installed the temporary vapor control device in accordance with the permit.

9. 6 NYCRR 201-5.3 and Condition 14, Item 14.7 of the permit required the installation of a temporary control device to ensure that emissions were in compliance with all standards.

10. Respondent’s failure to install the temporary Vapor Control Device is a violation of 6 NYCRR 201-5.3 and permit Condition 14, Item 14.7.

11. ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 thru 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.

12. ECL Section 71-2103 provides that any person who violates any provision of Article 19 of the ECL or any rule or regulation promulgated thereunder shall be liable for a civil penalty not to exceed fifteen thousand dollars (\$15,000) for a first violation plus an additional penalty not to exceed fifteen thousand dollars (\$15,000) for each day during which such violation continues and that such person may be enjoined from continuing such violation.

13. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. In respect of the aforesaid violations, a civil penalty in the amount of NINETY FIVE THOUSAND DOLLARS (\$95,000) is hereby assessed against Respondent. The civil penalty shall be paid by certified check made payable to the Department of Environmental Conservation and returned with the signed Order.

II. Environmental Benefit Project:

Respondent shall pay THIRTY THOUSAND DOLLARS (\$30,000) towards an Environmental Benefit Projects (“EBP”) to be determined by the Department. The Department shall provide the Respondent with the name and address of the EBP recipient and the amount to be paid. Respondent shall provide the EBP recipient with a certified check within 10 business days of the Department’s notification to the Respondent of the intended EBP recipient. The Department retains the sole authority to designate the recipient of an EBP. Respondent shall not use the cost of the EBP to reduce its tax liability. As of the effective date of the Order, Respondent shall establish a separate funding source in the amount of \$30,000 to cover the EBP (“EBP account”). The EBP account shall be established for the sole purpose of administering the EBP funds.

III. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

IV. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VI. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner’s designee.

VII. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent’s compliance with this Order, the ECL and regulations promulgated thereunder.

VIII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

IX. All communications except where otherwise specifically directed should be sent to:

Regional Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

X. This Order is deemed effective on the date signed by the Department.

XI. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in this Order against Respondent and their successors (including successors in title) and assigns.

This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party.

Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, their servants, their employees, their successors and their assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XII. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XIII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Within 15 days of the effective date of this Order, Respondent shall submit to the Department an application listing all tanks that exist at the facility and the current status of each tank.
2. Concurrent with implementing the work plan for the 5-year secondary containment certification due in October 2009, Respondent shall calculate the capacity of the secondary containment for tanks V101, V102, V103, and V104. Respondent shall also inspect and certify the integrity of the secondary containment.
3. Within 30 days of the effective date of this Order, Respondent shall submit to the Department the monthly visual inspections for June 2009 with tanks V101, V102, V103, and V104 included.
4. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a notification for the proper closure of tanks V101 and V102.
5. Within 60 days of the receipt of the Department's approval of the protocol stack testing, Respondent shall conduct the stack testing on the flare unit at the terminal in accordance with the protocol.
6. Within 30 days of conducting the stack test, Respondent shall submit the stack test results to the Department for review and evaluation.
7. If the stack test passes, as determined by the Department, Respondent is allowed to use the existing piece of vapor control equipment until May 1, 2010 when the permanent control device will be installed.
8. If the stack test fails, as determined by the Department, within 30 days of the receipt of the notification of the failure, Respondent shall install a temporary vapor control device and use it until May 1, 2010 when the permanent control device will be installed.
9. By May 1, 2010 the new permanent control device shall be installed.