

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7012 3050 0000 4246 2538

November 19, 2014

Eric M. Kovich, PE
Sr. Director, HSSE
Buckeye Albany Terminal LLC
9999 Hamilton Blvd.
Five TEK Park
Breingsville, PA 18031

Re: Order on Consent
R4-2014-0902-145

Dear Mr. Kovich:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$36,000 the civil penalty pursuant to Paragraph I and the documentation for the escrow account.

Sincerely,

Richard Ostrov
Regional Attorney
Region 4

Enclosure

cc: Holly K. Austin, Esq.
haustin@hancocklaw.com

STATE OF NEWYORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 19
of the Environmental
Conservation Law of the State of
New York and Title 6 of the Official
Compilation of the Codes, Rules and
Regulations of the State of New York

DEC CASE NO.
R4-2014-0902-145

ORDER ON CONSENT

Buckeye Albany Terminal LLC
Five TEK Park-9999 Hamilton Boulevard
Breinigsville, Pa. 18031

Respondent.

Jurisdiction

1. The New York State Department of Environmental Conservation (DEC or Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). In particular, DEC is and has been responsible for the protection of air resources of the State pursuant to ECL Article 19 and the rules and regulations promulgated there under.

Respondent

2. Respondent, Buckeye Albany Terminal LLC, owns and operates an ethanol truck loading rack at its Major Oil Storage Facility on property leased from the Albany Port District Commission (“facility”).

3. Respondent operates the facility pursuant to a 6 NYCRR Part 201-6 Title V permit (#4-0101-0007/02003) that contains general and special conditions (“permit”).

Facts

4. On December 2, 2011, Respondent entered into an Order on Consent (R4-2011-1109-141) for its failure to achieve the permit’s minimum requirement of 98% destruction efficiency for the Vapor Combustion Unit emission control device on the facility’s ethanol truck loading rack.

5. Respondent’s November 30, 2011 compliance stack test established that the burning of natural gas (referred to as “assist gas”) is a necessary component to the compliant operation of the Vapor Combustion Unit.

6. On May 7 and 8, 2014, Department and the United States Environmental Protection Agency (“EPA”) inspected the facility and during the inspection Respondent was requested to confirm that the “assist gas” was being used in the Vapor Combustion Unit.
7. On June 17, 2014, during a follow up conference call between EPA, DEC and Respondent, DEC staff reiterated their request for information on use of “assist gas” in the Vapor Combustion Unit.
8. On July 21, 2014, Respondent informed Department staff that “assist gas” had not been used at the time of the May 7, 2014 inspection and that a report on the duration of the period of noncompliance would be submitted to the Department.
9. On September 2, 2014, Respondent submitted a report to the Department indicating that the Vapor Combustion Unit was operated from January 19, 2012 until July 18, 2014 without “assist gas”. This assessment was allegedly based on Buckeye’s preliminary discussions with its former and current staff.
10. On October 20, 2014, Respondent submitted a second noncompliance report to the Department with a revised period of noncompliance from September 4, 2013 to July 18, 2014. Respondent’s review of the Vapor Combustion Unit temperature data for the period from January 1, 2012 until July 18, 2014 found that from January 2012 to September 4, 2013 the temperature levels consistently ranged between 1000 to 1100 degrees F. On September 4, 2014, the average temperature “sharply decreases” and varies until July 18, 2014 which is indicative of operating the Vapor Combustion Unit without assist gas. Department staff reviewed the Vapor Combustion Unit temperature data from January 1, 2012 to July 18, 2014.

Applicable Regulations

11. Regulations at 6 NYCRR 200.7 provides that: “Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively.”

Violation of 6 NYCRR 200.7

12. Respondent’s operation of the Vapor Combustion Unit without assist gas from September 4, 2013 to July 18, 2014 is a continuous violation of 6 NYCRR 200.7.

CIVIL PENALTIES

13. ECL section 71-2103(1) provides that: “any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto; or any order except an order directing such person to pay a penalty by a specified date issued by the commissioner pursuant thereto, shall be liable, in the case of a first violation, for a penalty not less than five hundred dollars nor more than eighteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues... In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided”.

WAIVER OF HEARING

14. Respondent has affirmatively waived its 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 the terms, provisions and conditions contained therein.

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

I. Civil Penalty

Respondent is hereby assessed a civil penalty in the amount of THIRTY SIX THOUSAND DOLLARS (\$36,000). The civil penalty shall be paid to the Department of Environmental Conservation by certified check with the return of the signed and executed Order.

II. Environmental Benefit Project

A. Respondent shall pay ONE HUNDRED FORTY FIVE THOUSAND DOLLARS (\$145,000) towards an Environmental Benefit Projects (“EBP”) to be reviewed and approved by the Department in accordance with the procedures below. As of the effective date of the Order, Respondent shall establish an escrow account in the amount of ONE HUNDRED FORTY FIVE THOUSAND DOLLARS (\$145,000) to fund the EBP (“EBP account”). The EBP account shall be established for the sole purpose of holding the EBP funds until the Department notifies Respondent where to send the EBP funds. The Department retains the sole authority to approve the EBP and the designated recipient of the EBP funds (“EBP sponsor”).

B. Within 60 days of the effective date of this Order, Respondent shall:

- 1) Notify interested stakeholders regarding the Order’s requirement for Respondent to fund an EBP and solicit EBP project proposals from the interested stakeholders;
- 2) Meet with interested stakeholders to discuss potential EBPs; and

- 3) Submit the proposed EBP to the Department for review and approval after completing discussions with interested stakeholders.

C. The Department will review the proposed EBP project(s) submitted by the Respondent for conformity with the requirements of CP-37.

D. Within 10 days of the Department notification to the Respondent of the approval of the EBP, Respondent shall deliver a check to the EBP sponsor and submit copies to the Department of the transmittal letter to the EBP sponsor and the check made out to the EBP sponsor for the amount of the EBP funds. The EBP sponsor will be required to certify in writing to the Department that the EBP funds were spent in accordance with the approved Department EBP.

E. Any statements, whether oral or written, that Respondent (or a third party at the request of the Respondent) makes with respect to the EBP will include language stating that the project was undertaken as part of the resolution of an enforcement matter brought by the Department for applicable violations. Respondent shall not use the cost of the EBP to reduce its tax liability.

III. Settlement

Timely payment of the civil penalty and full compliance with the terms and conditions of this Order and Schedule of Compliance including the Schedule of Compliance is accepted as full settlement of the violations described above.

IV. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance which is incorporated into the Order on Consent.

V. Communications

All communications required herein shall be made to:

Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Attorney and Regional Engineer; and

Respondent – Jason Lawhorn, Assistant General Counsel, Buckeye Partners, L.P.,
One Greenway Plaza, Suite 600
Houston, TX 77046 and Holly Austin, Esq., Hancock Estabrook, LP1500 AXA Tower 1,
100 Madison Street, Syracuse, New York 13202.

VI. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL. The Department inspector shall have, at his discretion, full and unrestricted access to Respondent's records, and employees to discuss or inquire about all state, federal and Order on Consent compliance matters, and complaints.

VII. Summary Abatement

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.

VIII. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, 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.

IX. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

X. Document Reviews

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

c. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XI. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

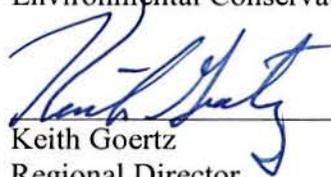
XII. Termination Date

This Order shall terminate upon the Respondent's compliance with all the terms, conditions and provisions of this Order and Schedule of Compliance as solely determined by the Department.

DATED: Rotterdam, New York
November 19 2014

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:

A handwritten signature in blue ink, appearing to read "Keith Goertz", is written over a horizontal line.

Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order on Consent, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: [Signature]

TITLE: President, Domestic Pipelines + Terminals

DATE: 11-17-2014

STATE OF ~~NEW YORK~~ Pennsylvania)
COUNTY OF Lehigh) ss.:

On the 17th day of November in the year 2014, before me, the undersigned, personally appeared Robert A. Malecky,
(Full name)

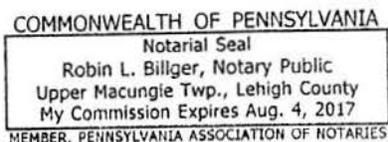
personally known to me who, being duly sworn, did depose and say that he/she/they reside at FiveTEK Park, 9999 Hamilton Blvd., Breinigsville, Pa. 18031
(Full mailing address)

and that he/she/they is (are) the President, Domestic Pipelines + Terminals
(President or other officer or director or attorney in fact duly appointed)

of the Buckeye Albany Terminal LLC,
(Full legal name of corporation)

the limited partnership described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said company.

Robin Billger
Notary Public, State of ~~New York~~ Pennsylvania



SCHEDULE OF COMPLIANCE

- A. Within 10 days of the effective date of this Order, Respondent shall submit a report to the Department prepared by a New York State Licensed Professional Engineer confirming the programming of the Programmable Logic Controller (PLC) to prevent loading of trucks prior to the Vapor Combustion Unit (VCU) achieving a minimum of 1200 degrees F. and a certification that the facing of the temperature gauge at the VCU's control panel has been replaced or cleaned, and the gauge is fully operational and calibrated.
- B. Within 30 days of the effective date of this Order, Respondent install and operate a monitoring system to record the temperature of the Vapor Combustion Unit, and shall thereafter inspect the temperature gauge on a daily basis to ensure the truck loading rack is not dispensing ethanol without the Vapor Combustion Unit reaching a minimum of 1200 degree F.
- C. Respondent consents to the following modifications of its Title V permit and waives any right to contest such conditions in an administrative or civil proceeding:
 - (1) The continuous operation and maintenance of the existing Programmable Logic Controller (PLC) programmed to ensure that the ethanol truck loading rack does not dispense prior to the Vapor Combustion Unit reaching 1200 degrees F.;
 - (2) The continuous operation and maintenance of the temperature gauge and the monitoring system to record the temperatures of the Vapor Combustion Unit; and
 - (3) A minimum temperature limit of 1200 degree F. for the operation of the Vapor Combustion Unit while loading trucks.