



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BUCKEYE TERMINALS, LLC
FOR
BUCKEYE FAIRFAX TERMINAL
Registration No. 70220**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Buckeye Terminals, LLC, regarding the Buckeye Fairfax Terminal, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Buckeye" means Buckeye Terminals, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Buckeye Terminals, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Buckeye Terminals, LLC facility, located at 9601 Colonial Avenue in Fairfax County, Virginia.

6. "FCE" means a full compliance evaluation by DEQ staff.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "Permit" means a Title V permit to operate a petroleum liquids storage and distribution terminal which was issued under the Virginia Air Pollution Control Law and the Regulations to Amoco Oil Company for the Fairfax Terminal on January 11, 2001. DEQ was notified on June 13, 2011 of a change of ownership from Amoco Oil Company to Buckeye Terminals, LLC effective June 1, 2011.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Buckeye owns and operates the Facility in Fairfax County, Virginia. The Facility is a petroleum liquids storage and distribution terminal and is engaged in the receipt, storage, blending, and distribution of petroleum products. Facility operations include receipt of various petroleum products and additive components, storage of said materials, and blending and distribution of finished products. The Facility is the subject of a Title V Permit.
2. The Facility has six above ground vertical storage tanks with internal floating roofs for gasoline, ethanol, or diesel storage, and several small tanks for the storage of additives. The Facility also has a six lane loading rack for gasoline and distillate oil, and a John Zink Vapor Recovery Unit (VRU) and John Zink Vapor Combustion Unit (VCU) to control Volatile Organic Compound (VOC) emissions from the loading rack.
3. Condition IV.A.2 of the Permit states that the total organic compound emissions from the vapor control units (VRU and VCU) shall not exceed ten milligrams per liter of

gasoline loaded. Monitoring of this emission limit is covered under Condition IV B.1(a) and (b) of the Permit.

4. Permit Condition IV.B.1 states in relevant part that the permittee shall perform one of the following monitoring scenarios to demonstrate compliance with the ten milligrams per liter emission limit.
 - b) Within 180 days of the issuance of this permit, the permittee shall initiate a monitoring/audit program under a protocol approved by the DEQ that will show that the emissions from the VRU or VCU have not exceeded the expected norm as verified in the stack test that demonstrated compliance with the ten milligram TOC/ liter loaded (9 VAC 5-80-110.E)
5. In a letter dated August 8, 2001, the Facility's previous owner submitted a letter to DEQ, in accordance with Condition IV.B.1 of the Permit, that identified a proposed monitoring method to demonstrate compliance with the ten milligrams per liter emission limit from the VRU and VCU. This method included the daily measuring and recording of the vacuum level and temperature in the carbon bed; and gasoline pressure at the top of the VRU. DEQ reviewed and accepted this monitoring method.
6. On February 28, 2013, Buckeye submitted its Calendar Year 2012 Title V Annual Compliance Certification and its Title V Semi-annual Monitoring Report. On March 18, 2013, DEQ conducted a PCE which included a review of these two documents. On both documents, Buckeye indicated that the vacuum pressure at the inlet to the VRU had not been recorded continuously or once daily as required by the Permit.
7. On March 28, 2013 Department staff conducted an FCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation, follow-up information, and review of applicable records, Department staff made the following observations:
 - a) Facility staff indicated that from June 1, 2011 to approximately January 1, 2013, Buckeye did not record the gas pressure at the top of the VRU as required in its monitoring method accepted by DEQ.
 - b) Facility staff indicated to DEQ that it had incorrectly confirmed continuous compliance with its Title V Permit on its semi-annual monitoring reports from June 1 to June 30, 2011, July 1, 2011 to December 31, 2011, January 1, 2012 to June 30, 2012, and its annual compliance certification from June 1 to December 31, 2011.
8. Permit Condition IX.C.3 states that the permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1, and September 1, of each calendar year. This report must be signed by a responsible official consistent with 9 VAC 5-80-80.G and shall include:
 - a) All deviations from permit requirements. For purposes of this permit, a

deviation means any condition determined by observation, data from any monitoring protocol, or any other monitoring which is required by the permit that can be used to determine compliance. Deviations exclude exceedances documented by continuous emissions monitoring or excursions from control performance indicators documented through periodic or compliance assurance monitoring (9 VAC 5-80-110.F).

9. Permit Condition IX.D states exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and DEQ no later than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices.
10. On May 16, 2013, based on the evaluation and follow-up information, the Department issued a Notice of Violation to Buckeye for the violations described in paragraphs C(6) through C(8), above.
11. On April 5, 2013, Buckeye submitted a written response to compliance issues noted during the March 28, 2013 FCE.
12. On June 17, 2013, Department staff met with representatives of Buckeye to discuss the violations, including Buckeye's written response.
13. Based on the results of the March 28, 2013 FCE and Buckeye's April 5, 2013 response letter, the Board concludes that Buckeye has violated Permit Conditions IV.A.2, IV.B.1, IX.C.3, and IX.D as described in paragraphs C(6) through C(9) above.
14. Buckeye has submitted revised semi-annual monitoring reports and annual compliance certification, and a response dated April 8, 2013, that verifies that the violations described in paragraphs C(6) through C(9) above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Buckeye and Buckeye agrees to pay a civil charge of \$14,262.36 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Buckeye shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Buckeye shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Buckeye Terminals, LLC for good cause shown by Buckeye Terminals, LLC or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated May 16, 2013. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Buckeye Terminals, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Buckeye Terminals, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Buckeye Terminals, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Buckeye Terminals, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Buckeye Terminals, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other

acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Buckeye Terminals, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Buckeye Terminals, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Buckeye Terminals, LLC. Nevertheless, Buckeye Terminals, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Buckeye Terminals, LLC has completed all of the requirements of the Order;
 - b. Buckeye Terminals, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Buckeye Terminals, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Buckeye Terminals, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Buckeye Terminals, LLC, and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Buckeye Terminals, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Buckeye Terminals, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Buckeye Terminals, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Buckeye Terminals, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of September, 2013.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Buckeye Terminals, LLC voluntarily agrees to the issuance of this Order.

Date: 9/9/2013 By: [Signature], President Domestic Pipelines & Terminals
(Person) (Title)
Buckeye Terminals, LLC

Commonwealth of ~~Virginia~~ Pennsylvania
City/County of Lehigh

The foregoing document was signed and acknowledged before me this 9th day of September, 2013, by Robert A. Malecky who is Pres., Domestic Pipelines & Terminals of Buckeye Terminals, LLC, on behalf of the company.

[Signature]
Notary Public
1027540
Registration No.

My commission expires: 8-4-2017

Notary seal:

