

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

FILED

Sep 10, 2024

7:32 am

U.S. EPA REGION 5
HEARING CLERK

In the Matter of:) Docket No. CAA-05-2024-0055
)
Buckeye Terminals, LLC) Proceeding to Assess a Civil Penalty
Flint, Michigan,) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative penalty assessment proceeding commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. §§ 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3).
2. Complainant is the U.S. Environmental Protection Agency (EPA). The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.
3. Respondent is Buckeye Terminals, LLC, a corporation doing business in Michigan. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
4. The EPA and Respondent agree that settling this action is in the public interest and consent to the entry of this Consent Agreement and Final Order (CAFO) without the adjudication of any issues of law or fact.
5. Respondent agrees to comply with the terms of this CAFO.

B. Jurisdiction

6. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B) and Section 113(a)(3)(A) of the CAA.

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. In satisfaction of the notice requirements of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), on September 6, 2023, the EPA issued to Respondent a Notice of Violation/Finding of Violation (NOV/FOV) and provided a copy of the NOV/FOV to the Michigan Department of Environment, Great Lakes, and Energy (EGLE), providing notice to Respondent and EGLE that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On October 3, 2023, representatives of Respondent and the EPA conferred regarding the September 6, 2023 NOV/FOV.

9. The Regional Judicial Officer of Region 5 is authorized to ratify the consent agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

C. Statutory and Regulatory Background

Michigan State Implementation Plan

10. On June 1, 2006, EPA approved Michigan Rule R336.1604 as part of the federally enforceable SIP for Michigan. See 71 Fed. Reg. 31093.

11. Michigan R336.1604(1)(b) states that after April 30, 1981, it is unlawful for a person to store any organic compound having a true vapor pressure of more than 1.5 psia, but less than 11 psia, at actual storage conditions in any existing fixed roof stationary vessel of more than 40,000-gallon capacity, unless, among other options, the vessel is equipped and maintained with a floating cover or roof which rests upon, and is supported by, the liquid being contained and has a closure seal or seals to reduce the space between the cover or roof edge and the vessel wall. The seal or any seal fabric shall not have visible holes, tears, or other nonfunctional openings.

National Emission Standards for Hazardous Air Pollutants

12. The Subpart BBBBBB NESHAP for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, 40 C.F.R. Part 63 (Subpart BBBBBB) applies to gasoline storage tanks, used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank, at area source bulk gasoline terminals. 40 C.F.R. § 63.11081(h).

13. 40 C.F.R. § 63.11092 sets forth the testing and monitoring requirements for owners or operators subject to Subpart BBBBBB. 40 C.F.R. § 63.11092 (e) states that each owner or operator subject to the emission standard in § 63.11087 for gasoline storage tanks shall comply with the requirements in paragraphs (e)(1) through (3) of this section.

14. 40 C.F.R. § 63.11092(e)(1) states that if your gasoline storage tank is equipped with an internal floating roof, you must perform inspections of the floating roof system according to the requirements of 40 C.F.R. § 60.113b(a) if you are complying with option 2(b) in Table 1 to this subpart.

15. As referenced in Subpart BBBBBB, 40 C.F.R. § 63.11092(e)(1), the Standards of Performance for New Stationary Sources at 40 C.F.R. § 60.113b outlines the testing and procedures of storage vessels. 40 C.F.R. § 60.113b(a)(2) states that “after installing the control equipment required

to meet [40 C.F.R.] § 60.112b(a)(1) (permanently affixed roof and internal floating roof), the owner or operator” shall:

[f]or Vessels equipped with a liquid-mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Administrator in the inspection report required in § 60.115b(a)(3). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

D. Stipulated Facts

16. Respondent owns and operates an area source bulk terminal at G-5340 North Dort Highway, Flint, Michigan (the Facility).

17. At the Facility, Respondent operates Tank 1, a 2,769,784-gallon tank that contains gasoline and has an internal floating roof for controlling gasoline emissions.

18. On May 10, 2021, EGLE issued a Permit to Install to the Facility (Permit).

19. The requirements of Michigan Rule R336.1604 are incorporated into the Permit as Condition IV.1 for Flexible Group FGIFRTANKS, which includes Storage Tank #1 (Tank 1).

20. Permit Condition IV.1 for Flexible Group FGIFRTANKS requires the permittee to equip and maintain Tank 1 with a welded internal floating roof with a liquid mounted primary seal and a secondary seal.

21. Tank 1 at the Facility is subject to requirements of Subpart BBBBBB at 40 C.F.R § 63.11092(e) and Table 1.

22. On September 6, 2023, EPA issued to Respondent a Notice and Finding of Violation (NOV/FOV), which alleged that the Facility failed to properly maintain and make timely repairs to Tank 1's internal floating roof.

23. On October 3, 2023, and in subsequent teleconferences and information exchanges, representatives of Respondent and EPA discussed the September 6, 2023 NOV/FOV and resolution of the alleged violations.

24. Respondent reported finding liquid (Water) on Tank 1's internal floating roof during its annual inspections for 2019, 2020, 2021, and 2022.

25. On February 8, 2023, EPA issued an information request to the Facility which included a request that Respondent inspect Tank 1's internal floating roof more closely than is required during annual inspections. On February 19, 2023, Respondent conducted its scheduled routine annual inspection of the internal floating roof for that year, unrelated to the inspection request included in EPA's information request, discovered water and gasoline on the roof, and took Tank 1 out of service.

26. Respondent then conducted an out-of-service inspection, as well as EPA's requested inspection of Tank 1's internal floating roof and discovered defects in the steel internal floating roof caused by corrosion as well as deficiencies in the primary and secondary rim seals.

27. Respondent took corrective actions to address all the issues with Tank 1's internal floating roof, and on June 8, 2023 conducted an inspection that confirmed that the internal floating roof had been repaired and no longer contained deficiencies.

E. Alleged Violations of Law

28. Respondent failed to take corrective actions after reporting liquid (Water) on Tank 1's internal floating roof during its annual inspections for 2019, 2020, 2021, and 2022.

29. 40 C.F.R. § 63.11092(e)(1) and C.F.R. § 60.113b(a)(2) require Respondent to make timely repairs in response to observations of liquid accumulation on Tank 1's internal floating roof during annual inspections.

30. Respondent's failure to make repairs in response to observed liquid accumulation on Tank 1's internal floating roof is a violation of 40 C.F.R. § 63.11092(e)(1) and 40 C.F.R. § 60.113b(a)(2).

31. Permit Condition IV.1 for Flexible Group FGIFRTANKS and R336.1604(1)(b) of the Michigan SIP require Respondent to store gasoline in Tank 1 only if Tank 1's internal floating roof and seals are properly maintained.

32. Respondent's failure to properly maintain Tank 1's internal floating roof and seals is a violation of Permit Condition IV.1 for Flexible Group FGIFRTANKS and rule R336.1604(1)(b).

F. Terms of Consent Agreement

33. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits to the jurisdictional allegations in this CAFO;
- b. admits to the stipulated facts stated above and neither admits nor denies the alleged violations of law stated above;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to any conditions specified in this CAFO;
- e. waives any right to contest the alleged violations of law set forth in Section E of this CAFO; and
- f. waives its right to appeal this CAFO.

34. For the purposes of this proceeding, Respondent:

- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;

- b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1); and
- d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for noncompliance and agrees that federal law shall govern in any such civil action.

35. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and Respondent's cooperation, the EPA has determined that an appropriate civil penalty to settle this action is \$100,000.

36. Respondent agrees to pay a civil penalty in the amount of \$100,000 (Assessed Penalty) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date).

37. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

38. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, (CAA-05-2024-0055),
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5

r5hearingclerk@epa.gov

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Cynthia King
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
King.cynthia@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

39. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate. Any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, the EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the

Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

40. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

41. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

42. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

43. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (Fines, Penalties, and Other Amounts) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (Request for Taxpayer Identification Number and Certification), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

44. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

45. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal capacity to bind the party they represent to this CAFO.

46. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that, under 18 U.S.C. § 1001, there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information.

47. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

G. Effect of Consent Agreement and Attached Final Order

48. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: king.cynthia@epa.gov (for the EPA), and ringalls@buckeye.com and ABeggs@foley.com (for Respondent).

49. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO.

50. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to this matter.

51. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

52. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$121,275 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

53. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

54. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

55. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The EPA will give

Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

H. Effective Date

56. This CAFO will be effective after the Regional Judicial Officer executes the attached Final Order, on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

Buckeye Terminals, LLC, Respondent

Date

Robert T. Ingalls, Senior Vice President,
Pipelines & Terminals Commercial Development
Buckeye Terminals, LLC

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Buckeye Terminals, LLC
Docket No. CAA-05-2024-0055

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5