

**July 6, 2015**

Mr. Clark C. Smith  
President and CEO  
Buckeye Partners, LP  
One Greenway Plaza  
Houston, Texas 77046

**Re: CPF No. 1-2015-5001**

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$89,400, and specifies actions that need to be taken by Buckeye Partners, LP, to comply with the pipeline safety regulations.

This is also to acknowledge receipt of payment of the full penalty amount, by wire transfer dated February 27, 2015. When the terms of the compliance order have been completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Byron Coy, Director, Eastern Region, OPS  
Mr. Thomas S. Collier, Vice President, Performance & Asset Integrity,  
Buckeye Partners, LP

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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<b>In the Matter of</b>	)	
	)	
<b>Buckeye Partners, LP,</b>	)	<b>CPF No. 1-2015-5001</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

Between September 17-27, 2013, pursuant to 49 U.S.C. § 60117, New York State Department of Public Service (NYSDPS) inspectors, acting as agents of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities of Buckeye Partners, LP (Buckeye or Respondent), in Auburn, New York. Respondent owns and operates liquid petroleum-products pipeline systems throughout the United States, with over 6,000 miles of pipeline.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 26, 2015, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had violated 49 C.F.R. §§ 195.410(a)(1), 195.410(a)(2)(ii), and 195.412(a), and proposed assessing a civil penalty of \$89,400 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Buckeye responded to the Notice by letter dated February 12, 2015 (Response). The company did not contest the allegations of violation, paid the proposed civil penalty of \$89,400 as provided in 49 C.F.R. § 190.227, and indicated its intention to comply with the terms of the Proposed Compliance Order. Payment of the penalty serves to close the case with prejudice to Respondent.

**FINDINGS OF VIOLATION**

In its Response, Respondent did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

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<sup>1</sup> Buckeye Partners, LP, website, available at <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> (last accessed March 16, 2015).

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(1), which states:

**§ 195.410 Line markers.**

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(1) by failing to properly maintain line markers in sufficient quantity along Buckeye's buried pipeline so that its location is accurately known. Specifically, the Notice alleged that Respondent failed to properly maintain line markers in sufficient quantity along its buried pipeline in two locations within the town of Lenox, New York. The first was along the dead-end portion of Old Indian Opening Road, looking southeast and toward the New York State Thruway. The second was at the end of Old Indian Opening Road, looking back toward the northwest and east. According to the Violation Report, Respondent's personnel allegedly conceded during the NYSDPS inspection that the pipeline could use more line markers and more right-of-way (ROW) clearing.<sup>2</sup>

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.410(a)(1) by failing to maintain line markers along its buried pipeline in sufficient number so that its location is accurately known.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2)(ii), which states:

**§ 195.410 Line markers.**

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following: . . .

(2) The marker must state at least the following on a background of sharply contrasting color: . . .

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2)(ii) by failing to properly maintain a line marker over its buried pipeline. Specifically, the Notice alleged that Respondent failed to properly affix to its line marker located over the 701 pipeline north of Virgil Creek Road, Cortland County, New York, a telephone number where the company could be reached at all times. The Notice also alleged that the NYSDPS inspector dialed both telephone numbers shown on the line marker and received no answer after several minutes. The Notice further alleged that subsequent investigation revealed that the telephone numbers on the marker were

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<sup>2</sup> Pipeline Safety Violation Report (Violation Report), (January 26, 2015) (on file with PHMSA), at 9.

out-of-date.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.410(a)(2)(ii) by failing to properly maintain a line marker along its buried pipeline by showing on the marker a telephone number at which Buckeye could be contacted at all times.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

**§ 195.412 Inspection of rights-of-way and crossings under navigable waters.**

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) by failing to adequately inspect the surface conditions on or adjacent to various sections of its pipeline ROW. Specifically, the Notice alleged that Respondent did not adequately inspect surface conditions along its pipeline ROW in sections 802 and 803, as evidenced by what appeared to be uncontrolled vegetation, including low-growing plants, shrubs and tree canopy that had grown to sufficient height to obscure the ROW surface.

According to the Notice, Buckeye personnel told NYSPDS inspectors that aerial surveillance was the method of inspection used by the company to inspect its ROW in this area. As a result, Respondent allegedly failed to maintain and clear the ROW so as to allow for adequate aerial inspection of the surface conditions along the ROW.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find Respondent violated 49 C.F.R. § 195.412(a) by failing to adequately inspect the surface conditions on or adjacent to sections 802 and 803 of the company's pipeline ROW.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

**ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of

Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$89,400 for the violations cited above in Item 2 and Item 3, both of which were cited as repeat violations.

**Item 2:** The Notice proposed a civil penalty of \$44,600 for Respondent's violation of 49 C.F.R. § 195.410(a)(2)(ii), for failing to properly maintain a line marker over its buried pipeline. Respondent paid the proposed penalty in full, which serves to close the case with prejudice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$44,600 for violation of 49 C.F.R. § 195.410(a)(2)(ii).

**Item 3:** The Notice proposed a civil penalty of \$44,800 for Respondent's violation of 49 C.F.R. § 195.412(a), for failing to adequately inspect the surface conditions on or adjacent to its pipeline ROW. Respondent paid the proposed penalty in full, which serves to close the case with prejudice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$44,800 for violation of 49 C.F.R. § 195.412(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$89,400**, which amount has been paid in full.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1 and 3 in the Notice for violations of 49 C.F.R. §§ 195.410(a)(1) and 195.412(a), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquid by pipeline or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.410(a)(1) (**Item 1**), Respondent must reexamine and ensure the accurate location of the buried pipeline at the road crossing and along the right-of-way (ROW) on Old Indian Opening Road between the end of the dead-end road looking southeast and towards the New York State Thruway, and at the end of Old Indian Opening Road looking back to the northwest and back towards the east. Once the pipeline is located, Respondent must install line markers so that the location of the buried pipeline is accurately known.
2. With respect to the violation of § 195.412(a) (**Item 3**), Respondent must implement one or more appropriate methods that will allow for adequate inspection of the pipeline ROW along sections 802 and 803 of its pipeline.

3. All documentation demonstrating compliance with each of the items outlined in this Order must be submitted to Byron Coy, P.E., Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, 820 Bear Tavern Road, Suite 103, West Trenton, NJ 08628 within 120 days of receipt of this Final Order.
4. It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, P.E., Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued