

April 12, 2018

Mr. Clark C. Smith  
Chairman, President and Chief Executive Officer  
Buckeye Partners, LP  
Five TEK Park  
9999 Hamilton Boulevard  
Breinigsville, PA 18031

**Re: CPF No. 1-2017-5007**

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes one other finding of violation, and assesses a reduced civil penalty of \$36,600. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA  
Mr. Scott Collier, VP, Performance Assurance & Asset Integrity

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

<b>In the Matter of</b>	)	
	)	
<b>Buckeye Partners, LP,</b>	)	<b>CPF No. 1-2017-5007</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On October 11-14, 2016, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Buckeye Partners, LP's (Buckeye or Respondent) Everglades Pipeline and associated facilities in Florida. Buckeye owns and operates roughly 6,000 miles of underground pipelines, which include approximately 509 breakout tanks, serving approximately 110 delivery locations. These pipelines transport liquid petroleum products, including gasoline, jet fuel, diesel fuel, heating oil, and kerosene from major supply sources to terminals and airports located within end-use markets.<sup>1</sup> The Everglades Pipeline runs from Port Everglades, Florida (Port Everglades Facility), to Miami International Airport (Miami Terminal), a distance of approximately 36 miles.<sup>2</sup> The pipeline transports Jet A aviation fuel to the Miami International Airport and has an extension to the Fort Lauderdale Hollywood International Airport.<sup>3</sup> Since 1986, the Everglades Pipeline has been owned and operated by Everglades Pipeline Company, LP, an indirect wholly-owned subsidiary of Buckeye.<sup>4</sup>

As a result of the inspection, the Acting Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated March 16, 2017, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had violated 49 C.F.R. §§ 195.410 and 195.434 and proposed assessing a civil penalty of \$77,000 for the alleged violations.

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<sup>1</sup> <http://www.buckeye.com/BusinessOperations/PipelineTransportationOperations/tabid/584/Default.aspx> (last visited on December 7, 2017).

<sup>2</sup> Letter from Thomas Scott Collier to Robert Burrough, dated April 12 2017 (Response).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Buckeye responded to the Notice by letter dated April 12, 2017 (Response). The company contested the allegations of violation, offered additional information in response to the Notice, and requested that the proposed civil penalty be withdrawn in light of the additional information presented. Respondent did not request a hearing and therefore has waived its right to one.

### **FINDING OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

**Item 1:** 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:

- (1) ...
- (2) The marker must state at least the following on a background of sharply contrasting color:
  - (i) ...
  - (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 maintain line markers over each buried pipeline. Specifically, the Notice alleged that Buckeye did not include the correct name of the operator on 13 line markers along the Everglades Pipeline right-of-way (ROW). According to the Notice, the PHMSA inspector observed that the markers stated in part: “Everglades Pipeline Co., L.P. Warning Petroleum Pipeline before excavating or in emergency call Everglades Pipeline Co., L.P. Port Everglades...” The Notice alleged that the name of the operator, as listed in the National Pipeline Registry, was “Buckeye Partners, LP,” not “Everglades Pipeline Co., LP,” and should have been the name shown on the line markers.

In its Response, Buckeye contested the alleged violation and noted that the 13 line markers along the Everglades Pipeline ROW listed the name Everglades Pipeline Co., LP (Everglades), an “indirect wholly-owned subsidiary of Buckeye.”<sup>5</sup> Buckeye further stated that Everglades was the *owner* of the Everglades Pipeline and the line markers were therefore compliant with 49 C.F.R. § 195.410(a)(2)(ii), since 49 C.F.R. § 195.2 defines “operator” to mean either the “owner” or “operator” of a pipeline facility, including parent entities or subsidiaries.<sup>6</sup>

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<sup>5</sup> Response, at 1. Notwithstanding its assertion that Item 1 of the Notice was issued in error, Buckeye produced pictures showing that it placed new stickers on all markers along the Everglades Pipeline ROW with Buckeye Partners, LP, as the identified operator of the pipeline.

<sup>6</sup> See 49 C.F.R. § 195.2 (defining ‘operator’ as “a person who owns or operates pipeline facilities;” and defining ‘person’ to include “any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee or personal representative thereof”).

I agree. It is undisputed that Everglades is the owner and operator of the pipeline at issue, and is an indirect wholly-owned subsidiary of Buckeye. The regulation at issue permits a pipeline operator to include on a line marker the name of the owner or operator of the pipeline. Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent did not violate 49 C.F.R. § 195.410, as alleged in the Notice, and therefore withdraw Item 1.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.434, which states:

**§ 195.434 Signs.**

Each operator must maintain signs visible to the public around each pumping station and breakout tank area. Each sign must contain 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. § 195.434 by failing to maintain signs visible to the public around each pumping station and breakout tank area. Specifically, the Notice alleged that Buckeye's signs at the Port Everglades Facility and Miami Terminal did not include the name of the operator, and did not include a telephone number where the operator was reachable at all times, as required by the regulation. According to the Notice, the signs read: "In an emergency phone collect Mr. Belvieu, TX 1-866-514-8380 or Port Everglades, FL 1-800-345-0983." When the PHMSA inspector called one of the numbers, no one answered and a message directed the caller to the other number.

In its Response, Buckeye contested the allegation of violation, asserting that its signs at the Port Everglades Facility and the Miami Terminal included the name of both the owner and operator of the Everglades pipeline, and also included one phone number where the operator could be reached at all times.<sup>7</sup>

This is incorrect. To comply with 49 C.F.R. § 195.434, signs at each pumping station and breakout tank area must be visible to the public, contain the name of the operator, and include a telephone number where the operator can be reached at all times. Failure to meet any one of those three requirements constitutes a violation. Buckeye is correct that an operator may comply with the regulation by identifying the name of the operator or the owner on the sign. The photographic evidence in this case, however, shows that Buckeye failed to include the name of the operator on the signs at both the Port Everglades Facility (pump station) and the Miami Terminal (pump station and breakout tank).<sup>8</sup> Rather, they contained the name of two locations where Respondent had an office or control center.

In addition, the Notice alleged that Buckeye violated 49 C.F.R. § 195.434 because the phone

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<sup>7</sup> Response, at 4.

<sup>8</sup> See Pipeline Safety Violation Report (Violation Report) (March 16, 2017) (on file with PHMSA), at Exhibit A-01, photos of line marker and signs, dated October 12-13, 2016.

numbers listed on the signs were not ones at which the operator could be reached at all times. In its Response, Buckeye stated that the signs contained two numbers, one of which was reachable at all times. Buckeye stated that the first number on the signs, for Buckeye's Control Room Center in Texas, was a number where the operator could be reached at all times, but that the PHMSA inspector dialed only the second number, which was for the Port Everglades Facility. Since the record contains no evidence to rebut Buckeye's statement that one of the numbers was reachable at all times, I withdraw that portion of the allegation.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.434 by failing to maintain signs visible to the public around pumping stations at the Port Everglades Facility and the Miami Terminal that contained the name of the operator.

This finding of violation will be considered a prior offense 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.<sup>9</sup> 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 \$77,000 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$40,400 for Respondent's alleged violation of 49 C.F.R. § 195.410(a)(2)(ii), for failing to maintain line markers over each buried pipeline. For the reasons stated above, Item 1 is withdrawn in its entirety. Accordingly, the proposed penalty for Item 1 in the amount of \$40,400 is not assessed.

**Item 2:** The Notice proposed a civil penalty of \$36,600 for Respondent's violation of 49 C.F.R. § 195.434, for failing to maintain signs visible to the public around each pumping station and breakout tank area. As discussed above, I found that Buckeye's signs at the Port Everglades Facility and Miami Terminal did not include the name of the operator, as required by the regulation.

Respondent requested that the proposed penalty be eliminated or reduced, not only because no violation had taken place but because the alleged violations were low-risk items that should warrant, at most, a warning letter, and the company had taken immediate steps to address the

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<sup>9</sup> These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

issues identified during the inspection, long before the Notice was issued. Having reviewed the record and considered the assessment criteria, I find Respondent's arguments do not warrant elimination or reduction of the proposed penalty for Item 2.

With regard to the *nature* of the violation, OPS noted in the Violation Report that the probable violation concerned a failure to perform activities required by the regulation. Respondent argued that the proposed penalty should be reduced under this factor because the violation was a technical records violation as opposed to a substantive activities violation.<sup>10</sup> I am not persuaded by Respondent's argument. The failure to include the information required by 49 C.F.R. § 195.434 on signs around pump stations and breakout tank areas involves the "activity" of placing and maintaining appropriate signage around a pipeline facility, not record keeping.

With regard to *circumstances*, OPS noted in the Violation Report that PHMSA discovered the probable violation, and that the probable violation was ongoing for more than 10 days. Respondent did not challenge this assessment.

With regard to *gravity*, OPS noted in the Violation Report that the probable violation occurred in or outside a high consequence area (HCA), but that pipeline safety was minimally affected. Respondent did not challenge this assessment, but rather, argued for a reduction in the proposed penalty because the violation was a records, or less serious, violation, as opposed to more serious violations where pipeline safety was compromised. I reject this argument for the same reason stated above.

With regard to *culpability*, OPS noted in the Violation Report that the operator failed to comply with a requirement that was clearly applicable. Respondent argued that the proposed penalty should be reduced under this factor because it took significant steps to comply with the regulations and its interpretation of the regulations was reasonable. Respondent also argued that the proposed penalty should be reduced because PHMSA inspectors had failed to note concerns related to these same signs during prior inspections from 2010 and 2012.<sup>11</sup>

Buckeye's arguments are unpersuasive. The regulation at issue is clear and applied to the emergency signs at issue located at the Port Everglades Facility and Miami Terminal. The regulation requires that all signs around pump stations and breakout tank areas must contain the name of the operator. The evidence in the record reflects that signs at both the Port Everglades Facility and the Miami Terminal did not contain the name of the operator. Buckeye provided no explanation of why the emergency signs at the Port Everglades Facility and Miami Terminal did not contain the name of the operator. Respondent's noncompliance with a clearly applicable regulation is not mitigated because OPS failed to identify concerns about the same signs during prior inspections. Finally, the Part E of the Violation Report clearly states that corrective actions taken by an operator after PHMSA has learned of a violation are not considered. Accordingly, a reduction in the proposed penalty under this factor is not warranted.

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<sup>10</sup> Response, at 5.

<sup>11</sup> *Id.*

With regard to *good faith*, OPS noted in the Violation Report that the operator did not have a reasonable justification for its non-compliance. Respondent's arguments for a reduction of the proposed penalty under this factor are the same as those made under the culpability factor. For the same reasons stated above, a reduction in the proposed penalty is not warranted under this factor.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$36,600 for violation of 49 C.F.R. § 195.434.

In summary, having reviewed the record and considered the assessment criteria for the Items cited above, I assess Respondent a total civil penalty of **\$36,600**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$36,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

April 12, 2018

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued