



BUCKEYE PARTNERS, L.P.

RECEIVED APR 13 2017

Thomas S. (Scott) Collier
Vice President, Performance Assurance
(610) 904-4922
E-Mail: tcollier@buckeye.com

Five TEK Park
9999 Hamilton Blvd.
Breinigsville, PA 18031

April 12, 2017

Mr. Robert Burrough
Acting Director, Eastern Region
Pipeline & Hazardous Materials Safety Administration
820 Bear Tavern Road, Suite 103
West Trenton, New Jersey 08628

RE: Everglades Pipeline NOPV (CPF No. 1-2017-5007)

Dear Director Burrough:

On March 17, 2017, Buckeye Partners, L.P. (Buckeye or the Company) received a Notice of Probable Violation (NOPV or Notice), CPF No. 1-2017-5007, concerning our Everglades pipeline in Florida. The NOPV alleged two potential violations of the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) regulations at 49 C.F.R. Part 195. The NOPV included a Proposed Civil Penalty of \$77,000 (\$40,400 for Item 1 and \$36,600 for Item 2). The inspection referred to in the NOPV was conducted on October 11-14, 2016.

Buckeye contests the alleged violations and the associated proposed civil penalties. In the interest of efficiency for all parties, we are not requesting a hearing, but through this letter we are submitting a written response to the NOPV and Proposed Civil Penalty, pursuant to 49 C.F.R. Part 190.208(a)(3). For the reasons set forth below, we respectfully request that the Agency withdraw the two alleged violations and the Proposed Civil Penalty, or, at a minimum, reduce the penalty to be more commensurate based on the information provided below and the nature of alleged findings.

Background

The Everglades Pipeline was constructed in 1959 and was owned by a consortium of four companies that included Buckeye. The pipeline runs from Port Everglades, Florida to Miami International Airport, for a distance of roughly 36 miles. The line is used to transport Jet A aviation gas, a hazardous liquid under 49 C.F.R. Part 195, to the Miami International Airport and has an extension to the Fort Lauderdale Hollywood International Airport. Since August 1986 the pipeline has been owned by Everglades Pipe Line Company, L.P., an indirect wholly-owned

subsidiary of Buckeye, and is operated through offices in Port Everglades, Florida and a Control Room in Mont Belvieu, Texas.

NOPV Item 1: Line Markers (49 C.F.R. Part 195.410)

Item 1 of the NOPV states that: “*Buckeye failed to maintain line markers over each buried pipeline. Specifically, the line markers on the Everglades pipeline in Florida did not include the correct name of the operator.*” *NOPV p. 1.* The Notice goes on to say that the Inspector observed 13 line markers along the Everglades Pipeline right-of-way (ROW), that listed the name “Everglades Pipeline Co.,” which the Inspector and NOPV assert should have been listed as Buckeye. The NOPV further alleges a violation of Part 195.410 because the Pipeline Operator National Registry lists the operator name for this pipeline as “Buckeye Partners, L.P.” and the markers do not show Buckeye as the “operator” of the pipeline, but instead list Everglades Pipeline.

To be clear, Buckeye *does* have line markers over the Everglades pipeline as required by Part 195.410 (in contrast to the allegation in the first sentence in Item 1 of the NOPV). The only issue associated with the alleged violation set forth in Item 1 of the NOPV, therefore, is whether these line markers are required by law to say “Buckeye Partners, L.P.,” rather than “Everglades Pipe Line Co.,” which is an indirect wholly-owned subsidiary of Buckeye and owner of the pipeline.

ROW Line Markers Can Show Either the ‘Owner’ or ‘Operator’ of a Pipeline

The regulation at issue — 49 C.F.R. Part 195.410 — requires that all pipelines be marked above ground with the “name of the operator.” *49 C.F.R. Part 195.410(a)(2)(ii).* Part 195.2, however, defines the term “operator” broadly for all provisions in Part 195 to mean *either* the ‘owner’ *or* ‘operator’ of pipeline facilities, to include relevant parent entities or subsidiaries. *49 C.F.R. Part 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.”). It is common throughout the U.S. for pipeline line markers to show the name of the local pipeline entity, even where a larger parent company is the ultimate owner or operator. PHMSA’s own files and records reflect this fact. This interchangeable reference to ‘operator’ as meaning either ‘owner’ or ‘operator’ in Part 195 works to both the Agency’s and the industry’s benefit, as either entity can address compliance obligations – or be held liable for failure to address such obligations.

Thus, it is consistent with PHMSA regulations for a pipeline line marker to show *either* the name of the pipeline company, *or* the name of the parent company for that pipeline company. Either name meets the requirements of the applicable law. Part 195.2 makes that clear, as does industry practice and PHMSA files and records.

A National Registry Listing Has No Relation to Line Marker Designations

The National Pipeline Registry was created by PHMSA in late 2010, and became effective on January 1, 2012. *Final Rule, 75 Fed. Reg. 72907 (Nov. 26, 2010)*. The purpose of the Registry was to help PHMSA better track pipeline performance and trends. The new rule required pipeline operators to obtain Operator Identification (OPID) numbers for that purpose, to use in incident reporting and for filing required annual reports.

Although not required by the new National Registry/OPID rule, PHMSA encouraged pipeline companies to use “*one OPID across a company’s reporting requirements [for various pipelines or facilities] ...thereby reducing the burden on both PHMSA and the industry for tracking...multiple and duplicative OPIDs.*” *Final Rule, 75 Fed. Reg. at 72887*. Again, it is not uncommon for parent companies to be listed on the National Registry for all of their subsidiary pipeline companies. The fact that Buckeye voluntarily designated itself on the National Registry on behalf of the Everglades Pipeline is not only permissible under applicable law, it is consistent with PHMSA’s suggested approach. A listing on the National Registry has no relation to the owner or operator name shown on line markers.

In short, Item 1 of the NOPV is incorrect as a matter of law: PHMSA regulations do not require line markers to show only the parent company of a given line; the markers can show either the owner or the operator of the pipeline.

NOPV Item 2: Signs (49 C.F.R. Part 195.434)

Item 2 of the NOPV states that: “*Buckeye failed to maintain signs visible to the public around each pumping station and breakout tank area. Specifically, the signs at Buckeye’s Everglades Facility and Miami Terminal did not include the name of the operator, and included a telephone number where the operator was not reachable at all times.*” *NOPV, p. 2*. The NOPV notes that the Inspector observed signs that displayed two telephone numbers: the first number listed was a toll free number to Buckeye’s Control Room Center in Mount Belvieu, Texas, while the second number listed was a toll free number for the Everglades Pipeline offices in Port Everglades, Florida.

The NOPV states that the Inspector tried to call the Port Everglades telephone number (the second one listed on the marker), despite the fact that Company personnel had already advised the Inspector that the Port Everglades facility is not staffed 24/7, and would not be answered after hours. Company personnel also advised the Inspector that the Texas Control Room Center number – the number listed first on the signs – is indeed staffed 24/7 and “reachable at all times” as required by the rule. The Inspector called the local Port Everglades number and got a recording. The Inspector did not attempt to call the Texas Control Room Center number, listed first on the signs and staffed 24/7.

Item 2 of the NOPV also repeats the allegation in Item 1, asserting that “the name of the operator” was not listed on the pump station and terminal signs. As already noted, PHMSA’s

Part 195 regulations define the term “operator” to mean ‘owner’ or ‘operator.’ *49 C.F.R. Part 195.2*. In the case of these signs, however, both the owner and operator of the Everglades Pipeline were listed on the signs, with two separate toll free numbers shown. The telephone number for the ‘owner’ Buckeye was listed first, and it is indeed a number that is “reachable at all times,” as required by the regulation at issue. The alleged violation is thus incorrect as a matter of fact and law.

The Proposed Civil Penalty Should Be Withdrawn

The two alleged violations of this NOPV are not well founded in applicable law, or in fact. The rules in issue do not mandate that the company entity listed in the National Pipeline Registry for purposes of reporting performance data across multiple pipelines, be shown on line markers and signs, nor that all telephone numbers on signs at facilities must be manned 24/7.

Because the two Items of the NOPV should be withdrawn, the entire Proposed Civil Penalty, of seventy-seven thousand dollars (\$77,000) should also be withdrawn. Further, but for the fact that the applicable law and facts show that no violations were present, this is the type of “lower risk” situation that should at most warrant a Warning Letter without a Proposed Civil Penalty, consistent with PHMSA internal enforcement procedures. *Pipeline Safety Enforcement Procedures, Section 3, p. 4 (Oct. 29, 2015)* (explaining that a Warning Letter/Item is “generally used for lower risk items” that do not warrant a proposed civil penalty or proposed compliance order). Pipeline safety or integrity was never compromised, the alleged violations were of a more technical than substantive nature, and Buckeye made the requested changes shortly after the inspection, in an attempt to show cooperation.

Even if the alleged violations set forth in Item 1 and 2 are not withdrawn in whole or in part or converted to Warning Items, the Proposed Civil Penalty should be withdrawn or greatly reduced because the penalties are excessive and fail to account for and appropriately apply the penalty considerations required by statute and regulation. In determining the amount of a civil penalty, PHMSA must consider the following factors, among others: the nature, circumstances and gravity of the violation, including adverse impact on the environment; (2) the degree of culpability; and (3) good faith in attempting to achieve compliance. *49 U.S.C. 601022(b); 49 C.F.R. Part 190.225*. PHMSA recently implemented a new practice of issuing a detailed proposed civil penalty calculation to respondents upon request, which is intended to outline a framework that the Agency uses in applying these factors. *Notice, 81 Fed. Reg. 71566 (Oct. 17, 2016)*.

The Pipeline Safety Violation Report (PSVR) provided to Buckeye as part of the investigation report (which is allowed to respondents in PHMSA enforcement actions) is inaccurate in several respects. First, under “Good Faith,” the worksheet states that “the operator did not have a reasonable explanation for its non-compliance.” As set forth above, Buckeye’s explanation is that the alleged violations are incorrect as a matter of fact and law. In similar fashion, the penalty worksheet’s entry for “Culpability” states that “the operator failed to comply with a requirement that was clearly applicable.” Again, Buckeye believes the alleged violations are

inapplicable, and significantly, PHMSA has inspected this facility several times in recent years without noting any such alleged violations. Inspectors from the Southern Region visited these facilities in 2010 and again in 2012, when the same line markers and signs were in place. No concerns were noted.

With respect to the alleged violations — listing Everglades Pipeline on the line marker signs and including two phone numbers on other signs, only one of which is not manned 24 hours, 7 days a week — pipeline safety or integrity was never compromised, there was no impact to the environment, Buckeye took significant steps to comply, its interpretation of the regulations was reasonable, and its actions were justified under applicable law. As applied to PHMSA’s penalty calculation worksheet, the “nature” of the alleged violations are more technical “records” violations as opposed to more substantive violations associated with “activities” such as inspections, testing, maintenance, etc. or “equipment” that is missing, defective, inoperative, etc. Similarly with respect to “gravity,” these are “records” or less serious violations where pipeline violations as opposed to more serious violations pipeline safety or integrity was compromised or a causal factor in an accident. With respect to “culpability” and “good faith,” Buckeye took significant efforts to comply with the regulations and its interpretation of the regulatory requirements was reasonable and justified. As such, if not withdrawn, the Proposed Civil Penalty should be greatly reduced.

Summary and Requested Relief

Item 1 of the NOPV should be withdrawn as a matter of law, because Part 195.410 does not require that only the name of a pipeline operator as listed in the National Pipeline Registry be shown on line markers; *either* the ‘owner’ *or* ‘operator’ fulfills the legal obligation (*see* Part 195.410; Part 195.2). The National Pipeline Registry encourages (but does not require) only ‘owners’ to obtain an OPID and submit Annual Reports, to assist the Agency in tracking trends. The ‘operator’ of a given pipeline as listed on the National Registry is not required to be the same ‘owner’ or ‘operator’ as shown on line markers. It is a common practice throughout the country for a subsidiary pipeline company of the ultimate pipeline owner or operator to be designated on line markers, rather than the parent company (even if the parent company is listed for that line on the National Registry). PHMSA’s own files and records reflect that fact.

Item 2 of the NOPV should be withdrawn as a matter of fact and law, because all of the signs at pumping stations or terminals *did* provide a telephone number that “could be reached at all times,” as required by Part 195.434. Again, Part 195.2 allows either the ‘owner’ or ‘operator’ of a pipeline to be the 24/7 contact name and number for purposes of compliance with Part 195.434.

In light of the mistakes of fact and law alleged in the NOPV, the Proposed Civil Penalty should be withdrawn, or the NOPV converted to a Warning Letter based on prior PHMSA inspections which did not make issue of Buckeye’s pipeline markers and signs and the low risk nature of the alleged violations. In the alternative and at a minimum, the Proposed Civil Penalty should be greatly reduced, both because the alleged violations were more technical than substantive in

April 12, 2017

nature and because Buckeye made the requested changes shortly after the inspection in an attempt to demonstrate cooperation, months before the NOPV was issued.

If you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Thomas S. Collier".

Thomas S (Scott) Collier

cc: C. Ostach
D. Corbello
C. Pankowski
M. Miller