



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 23, 2021

Carl Ostach, Vice President
Domestic Operations
Buckeye Pipe Line Company, L.P.
Five Tek Park
9999 Hamilton Blvd.
Breinigsville, PA 18031

Re: Buckeye PipeLine Company, L.P., Breinigsville, PA Consent Agreement and Final Order, Docket No. CWA-05-2021-0005.

Dear Mr. Ostach:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on September 23, 2021.

Please pay the Clean Water Act civil penalty in the amount of \$153,637 in the manner prescribed in paragraphs 26 and 27, and reference your check the docket number CWA-05-2021-0005.

Your payment is due on October 23, 2021.

Please feel free to contact Ellen Riley at (312) 86-9497 if you have any questions regarding the enclosed documents. Please direct any legal questions to Richard Clarizio at (312) 886-0559. Thank you for your assistance in resolving this matter.

Sincerely,

MICHAEL
HANS
Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Digitally signed by MICHAEL
HANS
Date: 2021.07.01 09:55:07
-05'00'

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:) Docket No. CWA-05-2021-0005
)
Buckeye Pipe Line Company, L.P.) Proceeding to Assess a Class II Civil Penalty
Breinigsville, PA) Under Section 311(b)(6) of the Clean Water
Act, 33 U.S.C. § 1321(b)(6)
Respondent)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(i) for discharge violations of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(i) and Sections 22.1(a)(6), 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. Part 22.
2. Complainant is the Director of the Superfund & Emergency Response Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Buckeye Pipe Line Company, L.P. (Buckeye), a Delaware limited partnership doing business in the state of Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent 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 its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii); its right to seek federal judicial review under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO.

Statutory and Regulatory Background

Prohibition of oil or hazardous substance discharges

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon, among other things, the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health.

General provisions and enforcement of the CWA

10. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), and Executive Order 11735 (Aug. 3, 1973), EPA determined by regulation the quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or environment of the United States, which are codified at 40 C.F.R. Part 110. Under 40 C.F.R. § 110.3, discharges

of oil which may be harmful include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the waters of the United States, including the territorial seas. The regulations at 40 C.F.R. § 112.2 (1993) further defined “waters of the United States” to include waters that are currently used, or were used in the past, or may susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide; tributaries of such waters; and lakes, ponds and impoundments of such waters.

12. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

13. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

14. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

15. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

16. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define “discharge” to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

17. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility from which oil is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), pursuant to Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i).

18. EPA may assess a class II civil penalty of up to \$18,477 per violation for each day of violation up to a maximum of \$230,958 for violations that occurred after November 2, 2015, under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 9.

Factual Allegations and Alleged Violations

19. Buckeye owns and operates an oil pipeline (facility) that runs from Lima, Ohio to Huntington, Indiana (line 402) crossing the St. Mary’s River near Decatur, Indiana. Respondent is a limited partnership and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

20. Respondent is an “owner” and “operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

21. The Facility is located on land within the United States and is therefore an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

22. The St. Mary’s River is a “navigable water” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993).

23. On or around September 7, 2018, Respondent discharged 195 barrels of jet fuel into or upon the St. Mary's River near 2nd Street and Monmouth Road in Decatur, Indiana. Respondent's discharge of an estimated 195 barrels of jet fuel into the St. Mary's River was a discharge of oil to a navigable water of the United States in such quantities as may be harmful and therefore in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

24. The Facility is located on land within the United States and is therefore an "onshore facility" as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

Civil Penalty

25. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$153,637.

26. Within 30 days of the effective date of this CAFO, Respondent must pay a \$153,637 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state that the payment is made for CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. §9509(b)(8) and the Respondent's name and the docket number of this CAFO.

27. Respondent shall send a notice of payment to EPA that states Respondent's name and the docket number of this CAFO at the following address when it pays the penalty:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
Riley.ellen@epa.gov

Richard Clarizio (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Clarizio.richard@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604 or
Whitehead.ladawn@epa.gov

28. This civil penalty is not deductible for federal tax purposes.

29. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice to bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

30. Respondent must pay the following on any amount overdue under this CAFO: the interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings; a nonpayment penalty each quarter during which the assessed penalty is

overdue, which shall be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1321(b)(6)(H).

General Provisions

31. The parties consent to service of this CAFO by email at the following valid email addresses: Richard J. Clarizio, at Clarizio.richard@epa.gov (for Complainant) and Patrick Monaghan, at pmonaghan@buckeye.com and Gary Rovner, at grovner@foley.com (for Respondent).

32. Full payment of the penalty as described above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

33. Full payment of a penalty described above, and full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

35. Respondent certifies that it has addressed the violations alleged in this CAFO and, with respect to Line 402, is now in compliance with Section 311 of the CWA, 33 U.S.C. § 1321 and its implementing regulations.

36. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

37. The terms of this CAFO bind Respondent and its successors and assigns.

38. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

39. Each party agrees to bear its own costs and attorney fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

41. The effective date for this CAFO is thirty days after it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. §§ 22.38, 22.45.

Buckeye Pipe Line Company, L.P., Respondent

June 25, 2021
Date

Carl Ostach
Carl Ostach, Vice-President
Domestic Operations
Buckeye Pipe Line Company, L.P.

United States Environmental Protection Agency, Complainant

July 1, 2021
Date

 Digitally signed by
Ballotti, Doug
Date: 2021.07.01
11:34:30 -05'00'
Douglas Ballotti
Director
Superfund & Emergency Response Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Buckeye Pipe Line Company, L.P.
Docket No. CWA-05-2021-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after filing with the Regional Hearing Clerk unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with notice simultaneously sent by certified mail to the Administrator of EPA and the Attorney General, pursuant to 40 C.F.R. § 22.45(c)(4)(viii)]. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: **ANN COYLE** Digitally signed by ANN COYLE
Date: 2021.08.23 14:05:19
-05'00'

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

Date: _____

Consent Agreement and Final Order
In the matter of: Buckeye Pipe Line Company, L.P.
Docket Number: CWA-05-2021-0005

Certificate of Service

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CWA-05-2021-0005, which was filed on September 23, 2021, in the following manner to the following addressees:

Copy by e-mail to Respondent: Patrick Monaghan
pmonaghan@buckeye.com

Copy by e-mail to Attorney for Complainant: Richard J. Clarizio
Clarizio.richard@epa.gov

Copy by e-mail to Attorney for Respondent: Gary Rovner, Foley & Lardner
grovner@foley.com

Copy by e-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5