

OCTOBER 18, 2012

Mr. Clark Smith
President & Chief Executive Officer
Buckeye Partners, LP
One Greenway Plaza
Suite 600
Houston, TX 77046

Re: CPF No. 4-2012-5015

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 \$36,200, and specifies actions that need to be taken by Buckeye Partners, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest 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. Thomas (Scott) Collier, Director, Performance Assurance, Buckeye Partners, LP,
Five TEK Park, 9999 Hamilton Boulevard, Breinigsville, PA 18031
Mr. Rod M. Seeley, Director, Southwest Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

)	
In the Matter of)	
)	
Buckeye Partners, LP,)	CPF No. 4-2012-5015
)	
Respondent.)	
)	

FINAL ORDER

Between April 25 and July 14, 2011, 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 Buckeye Partners, LP's (Buckeye or Respondent) facilities in El Paso, Texas. Specifically, OPS inspected Buckeye's 28-mile pipeline that transports refined petroleum products from El Paso, Texas, to Mexico and three related breakout tanks.¹ Buckeye owns and operates approximately 6,000 miles of pipelines transporting refined petroleum products and highly volatile liquids.²

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated April 24, 2012, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$36,200 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action but warned the operator to correct the probable violation or face possible enforcement action.

Buckeye responded to the Notice by letter dated May 24, 2012 (Response). The company contested certain items and requested that PHMSA reconsider the proposed civil penalty amount. Buckeye did not request a hearing and therefore has waived its right to one.

¹ Pipeline Safety Violation Report (Violation Report), dated April 24, 2012 (on file with PHMSA).

² <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> and <http://www.buckeye.com/AboutUs/tabid/54/Default.aspx> (last accessed on June 22, 2012).

FINDINGS 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. § 195.402(c)(5), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure the manual is effective. . . .

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

- (1) . . .
- (5) Analyzing pipeline accidents to determine their causes.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(5) by failing to follow its own written procedures for analyzing pipeline accidents to determine their causes. The Notice alleged that in January 2011, Buckeye personnel noticed a small stain at the bottom of Tank 1001. Buckeye determined that it was a pinhole leak and took Tank 1001 out of service. The company then performed a helium leak test and a magnetic particle inspection, finding the source of the leak to be a crack-like feature in the tank floor. PHMSA alleged that according to Section 2 of Buckeye's *Internal Release Investigation Procedures* and specifically "Section 2.2 - Medium Level," Buckeye was required to perform a root cause analysis of this release but failed to do so.

In its Response, Buckeye stated that the leak was not initially reportable and therefore any delay in performing the analysis did not constitute a violation. Buckeye asserted that the leak was at first treated as a low-level leak and therefore did not need a root cause analysis according to company procedures. However, on October 24, 2012, Buckeye determined that it was a reportable release under DOT regulations since the costs associated with the repair exceeded \$50,000. Therefore, a root cause analysis was required. Buckeye stated that after determining the cost of repair would exceed the \$50,000 threshold, it filed the DOT Form 7000-1 on October 24, 2011, and provided the root cause analysis in Part G-8 of the Form. Buckeye maintained that it was not in violation of the regulation since its procedures did not require a specific timeframe within which it had to conduct the analysis.

Although Buckeye has now submitted PHMSA Form 7000-1, stating that the accident occurred due to a ¼-inch crack in the floor plate, Buckeye still has not analyzed the cause of the crack. In addition, Buckeye acknowledged in its Response that it needed additional information from the tank installation contractor to complete the incident investigation report.³ Therefore, I find that

³ Response at 2.

Buckeye violated § 195.402(c)(5) by failing to follow its own procedures requiring a root cause analysis for a reportable release. Accordingly, after considering all of the evidence, I find that Buckeye violated 49 C.F.R. § 195.402(c)(5) by failing to follow its own procedures for analyzing pipeline accidents to determine their causes.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.54(a), which states:

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 must, as soon as practicable, but not later than 30 days after discovery of the accident, file an accident report on DOT Form 7000-1.⁴

The Notice alleged that Respondent violated 49 C.F.R. § 195.54(a) by failing to file an accident report within 30 days of discovery of an accident that was reportable under § 195.50. Specifically, it alleged that Buckeye failed to file an accident report within 30 days of a release that occurred on Tank 1001 in January 2011. OPS alleged in the Notice that this release met the reporting requirements of § 195.50(e) (i.e., estimated property damage exceeding \$50,000) and therefore Buckeye should have filed a DOT Form 7000-1 within 30 days. At the time of the inspection, Buckeye still had not filed the required accident report.

In its Response, Buckeye stated that this release was first discovered on January 13, 2011, but that it was not until October 24, 2011, that Buckeye determined the estimated costs of investigation and repair exceeded the \$50,000 threshold. Buckeye asserted that it then immediately filed the required report.⁵ Therefore, Buckeye requested that PHMSA withdraw this Item.

At the time of the inspection, Buckeye personnel stated to PHMSA staff that the tank was still under warranty and therefore Buckeye had no direct costs for the cleanup and repairs. Buckeye further stated that it did not consider costs covered by the warranty to be part of the estimated cleanup costs for § 195.50 purposes.⁶ I find that regardless of whether the tank was under warranty or not, all property damage and cleanup costs must be considered by an operator in determining whether an accident meets the \$50,000 threshold. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.54(a) by failing to file an accident report (DOT Form 7000-1) within 30 days of the January 2011 release.

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

⁴ The Notice inadvertently quoted the former version of 49 C.F.R. § 195.54, which had been amended as of the date of the violation. The amendments to § 195.54, however, were not substantive and do not affect the allegations of violation in the Notice.

⁵ Response at 2 (stating that the Accident Report was filed on October 24, 2011).

⁶ Violation Report at 9.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 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; the Respondent's ability to pay the penalty 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 \$36,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$20,000 for Respondent's violation of 49 C.F.R. § 195.402(c)(5), for failing to follow its own procedures requiring a root cause analysis of the January release on Tank 1001. In its Response, Buckeye requested a reduced civil penalty because there was no specified time for completing the analysis. The proposed civil penalty in this case was calculated based on the civil penalty assessment factors, including the extended period of non-compliance, the operator's prior enforcement history, and the fact that PHMSA discovered the violation. However, the reduced gravity of the violation (the fact that the safe operation of a pipeline was minimally affected) was also taken into account. Accordingly, having reviewed the record and considered the penalty assessment criteria, I assess Respondent a civil penalty of \$20,000 for violation of 49 C.F.R. § 195.402(c)(5).

Item 2: The Notice proposed a civil penalty of \$16,200 for Respondent's violation of 49 C.F.R. § 195.54, for failing to file an accident report within 30 days of the January 2011 release. In its Response, Buckeye requested that the probable violation and proposed civil penalty be withdrawn. As discussed above, I have already made a finding of violation for Item 2. The proposed civil penalty associated with this item was based on the civil penalty assessment factors, including the operator's prior enforcement history, the fact that PHMSA discovered the violation, and the reduced gravity of the violation. Accordingly, having reviewed the record and considered the penalty assessment criteria, I assess Respondent a civil penalty of \$16,200 for violation of 49 C.F.R. § 195.54.

In summary, upon review of all the evidence and consideration of the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$36,200**.

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$36,200 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. Part 195. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director has indicated that Respondent has taken the following actions to address one of the cited violations:

1. Respondent has filed the required Accident Report on DOT Form 7000-1.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 2 are not included in this Order.

As for the remaining compliance terms, 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 49 C.F.R. § 195.402(c)(5) (**Item 1**) pertaining to the pipeline accident that was discovered in January 2011 on Tank 1001, Buckeye must perform a root cause analysis to determine the cause of the accident.
2. Buckeye must complete Compliance Item 1 within 90 days of receipt of the Final Order.
3. It is requested (not mandated) that Buckeye maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R. M. Seeley, Director, Southwest 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 \$100,000 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.

WITHDRAWAL OF WARNING ITEM

With respect to Item 3, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.52 (**Item 3**) — Respondent's alleged failure to file a telephonic notice with the National Response Center (NRC) at the earliest practicable moment following discovery of a release of product that met the threshold of § 195.50.

In its Response, Buckeye stated that although the release did not meet the reporting requirements, it did file a NRC Report on January 14, 2011. I have reviewed the NRC Report # 964719 attached to the Response and find that Buckeye met its obligations under § 195.52. Therefore, I am withdrawing this warning item.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

The terms and conditions of this Final Order are effective upon receipt of service.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued