

AUGUST 29, 2014

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

Re: CPF No. 1-2013-5002

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$78,900, 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, 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, PE, Director, Eastern Region, OPS
Mr. Thomas S. Collier, Vice President, Performance Assurance & 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**

_____)	
In the Matter of)	
)	
Buckeye Partners, LP,)	CPF No. 1-2013-5002
)	
Respondent.)	
_____)	

FINAL ORDER

Between September 12 and 16, 2011, pursuant to 49 U.S.C. § 60117, a representative of the New York State Department of Public Service (NYSDPS), as agent for 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 (Buckeye or Respondent), in Rochester, New York. Buckeye operates approximately 6,164 miles of hazardous liquid pipelines transporting petroleum products in the Eastern and Midwestern United States.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 23, 2013, 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. §§ 195.573(e) and 195.575(a) and proposed assessing a civil penalty of \$96,500 for the alleged violations. The Notice also proposed that Respondent be required to take certain measures to correct the alleged violations.

Buckeye responded to the Notice by letter dated February 21, 2013 (Response). The company contested the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

¹ See Pipeline Safety Violation Report (Violation Report), (Jan. 23, 2013) (on file with PHMSA), at 1.

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) ...

(e) *Corrective action.* You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct deficiencies in corrosion control identified during the 2009-2011 period. Specifically, the Notice alleged that, according to its own records, Buckeye did not correct low pipe-to-soil potential readings in 35 instances at specified locations that did not meet the -0.85 volt criteria used by Buckeye in the cathodic protection (CP) surveys it conducted during that time period.

In its Response, Buckeye disagreed with the allegation that it violated § 195.573(e). Respondent explained that National Association of Corrosion Engineers (NACE) Standard Practice SP0169-2007, incorporated into its own written operating and maintenance procedures, allowed the use of three criteria alone or in combination to determine the effectiveness of CP; one of these criteria utilized a 100mV polarization criteria.² Buckeye contended that “it is not possible to draw conclusions regarding the effectiveness of the CP system based solely on the NACE - 0.85 volt criterion.”³ Buckeye also described the ongoing upgrades it had been performing on its CP system since 2005, and stated that close-interval surveys were being done to target additional upgrades and improvements to its system.

The cited regulation requires that operators correct identified deficiencies in corrosion control. Operators that use CP systems for corrosion control must therefore monitor the CP levels and correct any deficiencies found in these levels. At the time of the inspection, the NYSDPS inspector obtained a 25-page document from Buckeye, entitled “Buckeye Partners, L.P. CP Survey Report,” that covered the years 2009-2011.⁴ This document included a column with the heading “Structure P/S,” containing pipe-to-soil potential values suitable for measuring against the -0.85 volt criterion. Upon reviewing the CP Survey Report, the NYSDPS inspector questioned Buckeye’s corrosion specialist concerning the numerous test points with consecutive years of readings below -0.85 volts and whether any corrective actions had been taken with regard to those low readings. Buckeye’s corrosion specialist acknowledged that no corrective actions had been taken and stated that Buckeye had no other records demonstrating compliance with the regulation.⁵ Notably, the CP Survey Report did not include a column or columns with polarized values for measuring against the 100mV polarization criterion.

² *Buckeye Partners Maintenance Manual, Section J-02.*

³ Response at 2.

⁴ Violation Report, Exhibit A-1.

⁵ Violation Report at 2.

Buckeye is correct that its written procedures allowed the use of any of the three criteria to determine the effectiveness of CP, including the 100mV polarization criterion. The fact that these procedures existed, however, is not dispositive on the issue of whether Buckeye *actually* relied on documented 100mV polarization surveys at the time it failed to take any corrective actions in the 2009-2011 period, despite the known low pipe-to-soil readings using the -0.85 volt criterion.

In its Response, Buckeye attached a three-page document, entitled “CP Polarization Summary” and dated February 21, 2013, that included columns with values for “On,” “Off,” “Static,” and “Polarization.”⁶ Notably, this summary did not include any supporting documentation, such as actual field inspection records signed and dated by an individual responsible for taking such readings. There is no indication that this summary is, in fact, a source document from a Buckeye work management system used by its corrosion personnel at the time Buckeye failed to correct the low pipe-to-soil readings.⁷ Buckeye’s corrosion specialist, who was in a position to know, indicated at the time of the inspection that company had no polarization surveys or other records from the 2009-2011 period to support its contention that the known low pipe-to-soil readings were non-deficiencies.⁸

Notwithstanding the complications introduced by Buckeye’s failure to produce the polarization readings at the time of the inspection, OPS did not allege that Respondent used the incorrect CP criteria under the circumstances. Rather, OPS alleged that Buckeye failed to correct an identified corrosion control deficiency. Assuming that the CP Polarization Summary reflects polarization readings taken during the 2009-2011 period, it appears to show that the 100mV criteria were met for only 29 of the 35 instances specified in the Notice. Having reviewed the record, I find that there is insufficient evidence to show that there was a deficiency to correct in these 29 instances. For the following six instances, however, even the 100mV criteria were not met: IX751WA 1747+26; RX751RQ 711+24; WX751TV 6387+98; WX751TV 6403+70; WX751TV 6415+20; and WX751TV 6436+95. Therefore, I also find that there is sufficient evidence to show that there were deficiencies in these six instances that should have been corrected.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) insofar as it failed to correct six deficiencies in corrosion control identified during the 2009-2011 period. The remaining 29 of the 35 instances cited in the Notice are hereby withdrawn. This reduction from 35 instances to six will be reflected in the Assessment of Penalty section below.

⁶ Response, Attachment 2.

⁷ This document indicates that a significant number of the specified test points are deficient even under the 100mV criteria.

⁸ Violation Report at 2. Buckeye may well have been in violation of applicable recordkeeping requirements and nothing in this Final Order should be construed otherwise. However, OPS did not cite Buckeye for violating recordkeeping requirements.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.575(a), which states:

§ 195.575 Which facilities must I electrically isolate and what inspections, tests, and safeguards are required?

(a) You must electrically isolate each buried or submerged pipeline from other metallic structures, unless you electrically interconnect and cathodically protect the pipeline and the other structures as a single unit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.575(a) by failing, at five locations, to electrically isolate carrier pipes in casings or electrically interconnect and cathodically protect the carrier pipe and casing as a single unit. Specifically, the Notice alleged that despite the existence of shorted casings, indicating possible shielding of the pipe from CP and requiring isolation measures or other corrective action, Buckeye did not take such action.

In its Response, Buckeye disagreed with the allegation that it violated § 195.575(a). Respondent acknowledged that metallic shorts did exist between the carrier pipeline and the casing, but contended that the shorts were actually the means being used to cathodically protect the pipe and casing as a single unit.⁹ Respondent further noted that no pipe corrosion had been detected by its periodic in-line inspections. Finally, Respondent provided information contending that one of the five locations specified in the Notice was not, in fact, a cased crossing.

The regulation states that an operator must electrically isolate the carrier pipe from the casing “unless you electrically interconnect” the structures as a single unit. This would involve an affirmative act by an operator to install an interconnection, such as a cable running between the two structures, and then conducting specific testing and analysis to verify that the structures were being protected as a single unit. Letting casings become shorted over time does not constitute taking action to interconnect the structures.¹⁰ It should also be noted that Buckeye did not provide records of any technical analysis conducted at the time it decided not to clear or interconnect the shorted casings indicating that dependence on the short itself to provide sufficient current transfer was a reliable means of cathodically protecting the pipe and casing as a single structure.¹¹

Section J-05 of Buckeye’s Maintenance Manual, entitled “Shorted Casing,” sets forth the company’s policies and procedures for addressing shorted casings.¹² It states that a corrective action plan to remediate all metallicity-shortened casings shall be initiated within six months of identifying the short. It states that such remediation shall include one or more corrective actions, such as removing the casing, clearing the short, filling the annular space with dielectric material,

⁹ Response at 3.

¹⁰ In this case, the pipe-to-soil readings in the vicinity of the casings crossings were also low.

¹¹ In a Final Order issued to Buckeye dated July 27, 2012, I found Buckeye in violation of the same section of the regulation for failure to electrically isolate a pipeline and a casing on its PY742PL pipeline. See *In the matter of Buckeye Partners, L.P.*, CPF No. 1-2011-5013 (July 27, 2012), Item 2. Therefore Buckeye was well aware of the requirement.

¹² Response, Attachment 4.

monitoring the casing with leak-detection equipment, or monitoring the condition of the pipeline inside the casing using data from in-line inspections. Notably, the procedures do not allow for the short itself to be a means used to protect the pipe and casing as a single unit.

Furthermore, with respect to Respondent's argument that no corrosion was detected by its periodic in-line inspections, this does not change the fact that Buckeye did not electrically interconnect the structures or isolate the pipe by clearing the short or eliminating the metallic contact. It did not fill the casing annulus with dielectric material, nor did the company provide any explanation for its failure to do so. In-line inspections are a basic requirement of maintaining a pipeline as part of an integrity management program; conducting in-line inspections only shows compliance with minimum integrity management requirements and detects corrosion after it occurs, as opposed to protecting the pipe from corrosion. Similarly, the pipe-to-soil readings provided by Buckeye in its Response do not, by themselves, demonstrate compliance with the cited regulation.¹³

Finally, in its Response, Buckeye did provide information showing that one of the five locations cited in the Notice, AN751BO 315+80, was not a casing location.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.575(a) by failing to electrically isolate cased carrier pipes or electrically interconnect and cathodically protect the carrier pipe and casing as a single unit with respect to four of the five instances cited in the Notice, but find that Buckeye was not in violation with regard to AN751BO 315+80, the fifth instance cited in the Notice. The fifth instance is hereby withdrawn. This reduction from five instances to four will be reflected in the Assessment of Penalty section below.

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 \$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 \$96,500 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$69,500 for Respondent's violation of

¹³ Response, Attachment 5.

49 C.F.R. § 195.573(e), for failing to correct 35 deficiencies in corrosion control that had been identified during the 2009-2011 period. In its Response, Buckeye explained that it had used the 100mV polarization criterion and therefore that it did not believe there had been any deficiencies. Respondent also described its long-term efforts to upgrade its CP system, including adding test leads, replacing aged rectifiers and ground beds, adding new impressed-current systems, and performing additional close-interval surveys.

With respect to the nature, circumstances, and gravity of this violation, any failure to correct deficiencies in CP has the potential to impact safety because corrosion rates can be impacted. Respondent is culpable for the violation, as pipeline operators are obligated to correct all CP deficiencies in a timely manner. I acknowledge the long-term actions taken by Respondent to upgrade its corrosion control program overall, but these do not constitute, under the penalty assessment criteria set forth in the Violation Report, a good-faith effort to comply with the requirement to correct the particular deficiencies that were present at identified locations. As discussed above, 29 of the 35 alleged instances of deficiency have been withdrawn and therefore I find that a partial reduction in the civil penalty amount proposed in the Notice for this violation is warranted.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$52,100 for violation of 49 C.F.R. § 195.573(e).

Item 2: The Notice proposed a civil penalty of \$27,000 for Respondent's violation of 49 C.F.R. § 195.575(a), for failing, at five locations, to electrically isolate cased carrier pipes or electrically interconnect and cathodically protect the carrier pipe and the casing as a single unit. In its Response, Buckeye acknowledged that metallic shorts existed between the pipeline and the casing, but explained that it believed the shorts were actually the means being used to cathodically protect the pipe and casing as a single unit. Respondent also stated that it had monitored the cased crossings in accordance with its procedures by conducting periodic in-line inspections and that no pipe corrosion had been detected by these internal inspections. Finally, Respondent provided information showing that one of the five locations specified in the Notice was not, in fact, a cased crossing.

With respect to the nature, circumstances, and gravity of this violation, any failure to isolate or interconnect metallic structures has the potential to impact safety. The reason why an electrical isolation requirement was made part of the federal pipeline safety regulations is that to cathodically protect a pipeline, it is necessary to protect it from corrosion in its entirety. When a casing is not electrically isolated from the carrier pipe, it can adversely affect the integrity of the pipe by shielding CP current from the pipe and reducing the effectiveness of the CP in the vicinity of the casing.

Further, Respondent is culpable for the violation, as operators are obligated under the regulation to either isolate the structures or electrically interconnect them. In this case, Buckeye did not clear the shorts or interconnect the pipes and casings to achieve protection as a single unit. It did not take any other action, such as filling the casings annulus with dielectric material, to properly isolate each carrier pipe nor did the company provide any explanation for why it would not have been feasible to do so. I acknowledge the in-line inspection monitoring that was conducted by

Respondent, but this does not constitute, under the penalty assessment criteria set forth in the Violation Report, a good-faith effort to comply with the isolation/interconnection requirement prior to the inspection. As discussed above, one of the five alleged instances of noncompliance has been withdrawn and therefore I find that a partial reduction in the civil penalty amount proposed in the Notice for this violation is warranted.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$26,800 for violation of 49 C.F.R. § 195.575(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 **\$78,900**.

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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$78,900 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. §§ 195.573(e) and 195.575(a), respectively. 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. 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 § 195.573(e) (**Item 1**), Respondent must remediate the six locations specified above that have identified deficiencies in corrosion control and bring them into compliance with the applicable CP criteria.
2. With respect to the violation of § 195.575(a) (**Item 2**), Respondent must remediate the four locations specified above and bring them into compliance with the requirement to electrically interconnect the structures to protect them as a single unit or isolate the pipe.

3. Submit documentation demonstrating completion of the actions required by Items 1 and 2 above within 120 days following receipt of this Order to the Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, 820 Bear Tavern Road, Suite 103, West Trenton, NJ 08628.

4. It is requested, (not mandated) that Buckeye maintain documentation of the safety improvement costs associated with fulfilling this Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation or revision of plans, procedures, studies, and analyses; and (2) total cost associated with repairs, replacements, additions, and other changes to physical pipeline facilities.

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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued