

DECEMBER 11, 2013

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

Re: CPF No. 1-2013-5007

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the alleged violation and associated civil penalty of \$60,000, as well as the proposed compliance order. Therefore, this enforcement action is now 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, Director, Eastern Region, OPS
Mr. T. Scott Collier, Vice President, Performance Assurance & Asset Integrity
Buckeye Partners, L.P., Five Tek Park, 9999 Hamilton Boulevard, Breinigsville, PA
18031

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. 1-2013-5007
)	
Respondent.)	
)	

FINAL ORDER

Between June 11-15, 2012, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected Buckeye Partners, LP’s facilities in Boothwyn, Pennsylvania. Buckeye Partners, LP (Buckeye or Respondent), owns and operates approximately 6,000 miles of hazardous liquid pipelines in the Northeast and Upper Midwest regions.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 13, 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 proposed assessing a civil penalty of \$60,000 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Buckeye responded to the Notice by letter dated May 22, 2013 (Response). The company contested the allegations of violation and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

WITHDRAWAL 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. § 195.573(e), which states:

¹ See <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> (last accessed on September 6, 2013).

§ 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 an identified corrosion control deficiency within the time frames set by § 195.401(b).² During the inspection, OPS reviewed Buckeye's 2010 and 2011 cathodic protection survey reports for breakout tanks 1 through 19. The Notice alleged that OPS had discovered at least one location at 11 separate tanks that were below Buckeye's own stated -0.85 millivolt (mV) threshold criteria for two consecutive inspection cycles.

Specifically, between August 3-10, 2010 and June 3-21, 2011, the Notice alleged that Buckeye personnel had recorded at least one location around the perimeter of Tanks 1, 2, 3, 4, 5, 6, 8, 12, 13, and 14 that was below the -.85 mV criteria for consecutive inspection cycles. In addition, there was also a location around the perimeter at Tank 18 that was below the -.85 mV criteria for two consecutive inspection cycles. There was no evidence that these readings had been remediated. Therefore, OPS alleged that Buckeye had failed to correct these deficiencies as required by § 195.401(b).

In its Response, Buckeye argued that there were no deficiencies to correct. In support, the company pointed to Section 2.1 of its *Maintenance Manual Procedure J-02*, which listed three different methods that the company used to determine effective cathodic protection. In the case of the Boothwyn breakout tanks, Buckeye argued it had used the 100 mV test, not the -0.85 mV threshold. Section 2.1.3 of Buckeye's procedures stated that the 100 mV test required a minimum of 100 mV between the structure surface and a stable reference electrode in contact with the electrolyte. In its Response, Buckeye confirmed that by using this 100 mV test, none of the tanks at Boothwyn had insufficient cathodic protection. Therefore, Buckeye requested that PHMSA withdraw the Notice, civil penalty, and compliance order.

I have reviewed the evidence in the case file and find that there is insufficient evidence to support a finding of violation of § 195.573(e). Buckeye clearly had three different methods outlined in its procedures that company personnel could use to determine effective cathodic protection. That fact is undisputed. Moreover, it is unclear whether the 100 mV test was the correct option to use, considering that Buckeye personnel stated during the OPS inspection that

² Section 195.401(b) states, in relevant part:

“(b) An operator must make repairs on its pipeline system according to the following requirements:

(1) *Non integrity management repairs:* Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition. . . .”

they did not have effective static P/S data to support the 100 mV test.³

However, OPS has not alleged that Buckeye failed to use the proper criteria to determine the adequacy of cathodic protection (§ 195.571), that it failed to identify a corrosion control deficiency, or that it failed to follow its own procedures under 49 C.F.R. § 195.402(a). Instead, OPS alleged that Buckeye failed to *correct* an identified corrosion control deficiency. Since it is not clear from the evidence that there was an identified deficiency to correct, I cannot find a violation of § 195.573(e). Accordingly, based upon a review of all of the evidence, I am withdrawing this item and the associated civil penalty.

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 \$60,000 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$ 60,000 for Respondent's violation of 49 C.F.R. § 195.573(e), for failing to correct an identified corrosion control deficiency. As stated above, I am withdrawing the alleged violation and the associated civil penalty amount.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.573(e). 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. As stated above, since I am withdrawing the alleged violation, I am also withdrawing the proposed Compliance Order.

³ See Pipeline Safety Violation Report (Violation Report), (June 5, 2013) (on file with PHMSA), at 3.

The terms and conditions of this Final Order [CPF No. 1-2013-5007] are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued