



U.S. Department  
of Transportation  
Pipeline and Hazardous Materials  
Safety Administration

JAN 29 2009

1200 New Jersey Ave., SE  
Washington, DC 20590

Mr. Eric Gustafson  
Senior Vice President and Chief Operating Officer  
Buckeye Partners, L.P.  
Five Tek Park  
9999 Hamilton Boulevard  
Breinigsville, PA 18031

**Re: CPF No. 1-2006-5006**

Dear Mr. Gustafson:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$7,500, and specifies actions that need to be taken by Buckeye 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. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

*for*

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Byron Coy, Director, Eastern Region, PHMSA

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6163 7329]**

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

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**In the Matter of** )

**Buckeye Partners, L.P.,** )  
**f/k/a Buckeye Pipeline Company,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 1-2006-5006**

**FINAL ORDER**

On October 19-21, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), and the State of New York, Public Service Commission, conducted an on-site pipeline safety inspection of the operator qualification records of Buckeye Partners, L.P. (Buckeye or Respondent),<sup>1</sup> at the company's Emmaus, Pennsylvania, facility. Buckeye owns and operates 5,400 miles of hazardous liquid pipelines serving seventeen states.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated July 12, 2006, 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 Respondent had violated 49 C.F.R. § 195.507 and proposed assessing a civil penalty of \$15,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Buckeye responded to the Notice by letter dated August 7, 2006 (Response). Buckeye contested the alleged violations in part, offered information to explain the allegations, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.507, which states:

<sup>1</sup> On December 15, 2004, Buckeye Pipeline Company reorganized, with Buckeye Partners, L.P., as the new owner and operator of the pipeline facilities that are the subject of this Final Order.

**§ 195.507 Recordkeeping.**

Each operator shall maintain records that demonstrate compliance with this subpart.

(a) Qualification records shall include:

- (1) Identification of qualified individual(s);
- (2) Identification of the covered tasks the individual is qualified to perform;
- (3) Date(s) of current qualification; and
- (4) Qualification method(s).

(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

The Notice alleged that Buckeye violated 49 C.F.R. § 195.507 by failing to maintain proper operator qualification records for four employees (hereinafter referred to as "Employee A," "Employee B," "Employee C," and "Employee D"). Pursuant to the pipeline safety regulations, only qualified employees may perform "covered tasks," which are defined as operation or maintenance tasks that affect the integrity of the pipeline.<sup>2</sup> Operators must maintain records demonstrating that each employee is qualified for a particular covered task. However, Buckeye could not demonstrate that these four employees were properly qualified to perform their assigned covered tasks.

According to Respondent's records reviewed at the inspection site, Employee A was evaluated under the "work performance history review" method for Covered Task 747. However, using this process as the sole method to evaluate an employee's qualifications is allowed only for tasks performed by the employee prior to October 26, 1999.<sup>3</sup> Employee A, however, was hired on July 24, 2000, more than nine months after the deadline. It was therefore improper for Respondent to evaluate this employee for Task 747 using the work performance history review method. Respondent failed to produce any other documentation of Employee A's qualifications. In the Response, Buckeye admitted that Employee A's file was inaccurate and attributed the mistake to a data entry error that erroneously showed the employee as being qualified for this particular task. Accordingly, I find that Respondent violated the recordkeeping requirements of 49 C.F.R. § 195.507 by failing to maintain records that demonstrated the company's compliance with Subpart G of Part 195 (Qualification of Pipeline Personnel).

The Notice further alleged that, Respondent's qualification records for Employee C to perform Covered Task 747 were incomplete. In its Response to the Notice, Buckeye did not contest this allegation. Without accurate records authenticated by a signed evaluation, Respondent cannot establish which tasks this employee was qualified to perform.

Although Respondent has now removed Task 747 from its covered task list, the qualification records for Employee A and C were deficient at the time of the inspection. Accordingly, I find

<sup>2</sup> See 49 C.F.R. § 195.501(b).

<sup>3</sup> See 49 C.F.R. § 195.509(c).

that Respondent violated 49 C.F.R. § 195.507 by failing to maintain adequate records setting forth each individual employee's qualifications for the covered tasks.

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

### **WITHDRAWAL OF PROPOSED VIOLATIONS**

The Notice also alleged that Respondent did not maintain proper qualification records for Employee B, as required by 49 C.F.R. § 195.507. Employee B was also evaluated by the work performance history review method but his supervisor verified his qualifications two months prior to Employee B's signature on the document, thus casting doubt on the authenticity of the records. In its Response, Buckeye acknowledged that this employee had not been qualified by the work performance history review method.

According to Respondent, the document in question referred to a review conducted by both the employee and supervisor to determine work history and was not intended to serve as a qualifying document for a covered task. Respondent provided Employee B's "Qualifications Checklist" and attached it to the Response to show that this employee had been qualified by another method. Upon reviewing all of the documents available at the time of the inspection, including the Qualifications Checklist, I find that Respondent did indeed maintain adequate records under 49 C.F.R. § 195.507, demonstrating that Employee B was properly qualified. Accordingly, the allegation under Item 1 relating to Employee B is hereby withdrawn.

The Notice further alleged that Respondent did not maintain proper qualification records for Employee D, as required by 49 C.F.R. § 195.507. Specifically, the Notice alleged that Respondent's records failed to indicate that a demonstration of Tasks 1005, 1019, and 1025 had occurred. Under Buckeye's Operator Qualification Plan, employees must perform a demonstration of these particular tasks in order to be deemed qualified.

The pipeline safety regulations require operators to confirm through various evaluation methods that each individual performing covered tasks on the operator's pipeline facilities is properly qualified.<sup>4</sup> Operators may use various methods to evaluate an individual's qualifications, as long as the process is established and documented by the operator to determine such individual's actual ability to perform a covered task.<sup>5</sup> In this case, Buckeye chose to use a demonstration of the task by the employee and documented this technique in its Operator's Qualification plan.

The records for Employee D, however, showed that a demonstration did not occur. In its Response, Respondent admitted that the qualification documents did not reference a demonstration but contended the belief that there had been a misunderstanding during the inspection regarding the availability of records in Employee D's file. Buckeye stated that the OPS inspector had been provided with additional documentation at the time of the inspection

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<sup>4</sup> 49 C.F.R. § 195.505(b).

<sup>5</sup> 49 C.F.R. § 195.503(b).

confirming that the demonstration did occur. Respondent re-submitted this documentation in its Response. Upon reviewing the documents available at the time of the inspection, I find that Respondent did indeed maintain adequate records under 49 C.F.R. § 195.507, demonstrating that Employee D was properly qualified. Therefore, the allegation under Item 1 relating to Employee D is hereby withdrawn.

### 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.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I 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 \$15,000 for the various violations of 49 C.F.R. § 195.507.

The Notice alleged that Respondent failed to produce records demonstrating the qualifications of four employees. Respondent provided explanations for Employees B and D and documents that were available at the time of the inspection. As noted above, I find that Respondent did, in fact, maintain adequate qualification records for Employees B and D. Therefore, those portions of Item 1 have been withdrawn.

As for Employees A and C, I found that Respondent violated 49 C.F.R. § 195.507 by failing to maintain adequate records demonstrating compliance with Subpart G of Part 195. Pursuant to the pipeline safety regulations, only qualified employees may perform covered tasks. The safety of the pipeline and the public is dependent upon operators implementing these qualification standards. If an operator is unable to produce accurate records at the time of an inspection, then the public cannot be assured that only qualified employees are conducting those tasks affecting the integrity of the pipeline. At the time of the inspection, Respondent failed to produce records demonstrating the qualifications of Employees A and C. Accordingly, having reviewed the record and considered the assessment criteria for the alleged violations of 49 C.F.R. § 195.507 relating to those two employees, I assess Respondent a civil penalty of **\$7,500.00**.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 269039, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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, OK 73125; (405) 954-8893.

Failure to pay the \$7,500 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 United States District Court.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 for violation of 49 C.F.R. § 195.507.

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 Buckeye has satisfied Requirement 1 of the proposed compliance order. Specifically, Respondent removed Task 747 from the covered tasks list and supplied documentation regarding Employee D's qualifications. These actions obviate the need for Respondent to re-evaluate Employees A, B, C, and D, as directed in Requirement 1 of the proposed compliance order.

However, Requirements 2, 3, 4 of the proposed compliance order still remain outstanding. 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. Respondent shall:

1. Review the records for all of its employees other than Employees A, B, C, and D that are covered under Buckeye's Operator Qualification Plan and re-qualify all employees lacking proper records.

2. Maintain documentation of the safety improvement costs associated with completing this Compliance Order and submit the total to the Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, 409 3<sup>rd</sup> Street, S.W., Suite 300, Washington, D.C. 20024, within 90 days of receipt of this Final Order. Costs shall 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.

3. Respondent shall complete the above-referenced tasks within 90 days of receipt of the Final Order and submit correspondence demonstrating compliance with these items to the Eastern Region Director.

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 demonstrating good cause for an extension.

Failure to comply with this Order may result in 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.

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 received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

*William H. Giese*

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

JAN 29 2009

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Date Issued