

JUNE 15, 2012

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

Re: CPF No. 1-2011-5003

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes other findings of violation and assesses a civil penalty of \$74,400. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Jeremiah Ashcroft, Senior Vice President, Global Operations, 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. 1-2011-5003
)	
Respondent.)	
)	

FINAL ORDER

From August 11 – 20, 2010, pursuant to 49 U.S.C. § 60117, representatives of 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) near Boothwyn, Pennsylvania. Buckeye owns and operates approximately 6,000 miles of pipelines transporting refined products and highly volatile liquids, principally in the Northeastern and upper Midwestern states.¹ Approximately 3,558 of those pipeline miles are in or could affect High Consequence Areas (HCAs)² and are covered by Buckeye’s integrity management program.³ The inspection encompassed the Booth and Chelsea pump stations and the associated pipeline near Boothwyn, Pennsylvania.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated April 15, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice). 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 \$85,700 for the alleged violations.

Buckeye responded to the Notice by letter dated May 17, 2011 (Response). The company contested some of the allegations, did not contest one of the allegations, offered additional information in response to the Notice, provided an explanation of its actions, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> and <http://www.buckeye.com/AboutUs/tabid/54/Default.aspx> (last accessed on March 22, 2012).

² 49 C.F.R. § 195.450.

³ 49 C.F.R. § 195.452.

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. § 195.589(c), which states:

§ 195.589 What corrosion control information do I have to maintain?

(a)....

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist. Specifically, the Notice alleged that Buckeye did not maintain records of its annual cathodic protection survey readings for the ML drain unit #111 in 2008 and the M&H XHG location 1274+78 on the Line 724 pipeline in 2009.

In its Response, Buckeye acknowledged that it did not take readings at these test points for the years indicated. However, Buckeye argued that it did demonstrate adequacy of cathodic protection despite the missed 2009 reading on the Line 724 pipeline.⁴ Buckeye stated that its data prior to the 2009 survey and the data from the other test point locations on the pipeline demonstrated the adequacy of its cathodic protection, and that in its opinion, failing to take a measurement at this test station during the 2009 survey did not impact its ability to determine the pipeline's overall cathodic protection status.⁵

Under 49 CFR § 195.573(a)(1), tests on the pipeline are required each calendar year to determine whether cathodic protection complies with § 195.571. This regulation requires cathodic protection to comply with one or more of the applicable criteria in paragraphs 6.2 and 6.3 of NACE Standard RP 0169. The NACE Standard allows operators to use the criteria specified therein, but also allows the continued use of "criteria that have been successfully applied on existing piping systems."⁶ Section 195.589(c) requires Buckeye to maintain records of these tests.

Buckeye stated that, in its opinion, the failure to obtain this measurement or maintain this record did not impact its ability to determine the adequacy of cathodic protection, but did not provide

⁴ Response at 1.

⁵ *Id.*

⁶ NACE Standard RP 0169, paragraph 6.2.1.

further historical or environmental evidence to demonstrate that the cathodic protection was in compliance with NACE Standard RP 0169. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c), which states:

§ 195.589 What corrosion control information do I have to maintain?

(a)...

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist. Specifically, the Notice alleged that Buckeye failed to maintain records of the September and November 2008 performance checks of a particular rectifier. Under § 195.573(c), rectifiers must be checked for proper performance at least six times each calendar year, but at intervals not exceeding 2½ months.

In its Response, Buckeye stated that the records were not in its data management system at the time of the inspection due to a field computer issue. Buckeye also submitted work order records demonstrating that the rectifier was checked in September and November 2008 at the required intervals and was found to be operating normally on both occasions.

Accordingly, after considering all of the evidence, I find that the work orders submitted by Buckeye in its Response satisfy the record maintenance requirement for the performance checks of the rectifier. Based upon the foregoing, I hereby order that Item 2 be withdrawn.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a), which states, in relevant part:

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

a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar

year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a) by failing to conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that Buckeye failed to conduct tests at four test station locations (63rd and Lebanon location 848+53, Chester Road TR 320 location 767+71, T-394 Spohn Road location 2428+17, and LR 06062 Fritztown Road location 2490+26) in 2008 and 2009 because the test stations had been damaged.

In its Response, Buckeye acknowledged that there were no records of tests in 2008 and 2009 for these four test stations. Buckeye also stated that there was sufficient data from other test stations on the three pipelines in question to determine the adequacy of cathodic protection.⁷

Failing to take readings at particular test stations prevents an operator from reaching a comprehensive documented determination about the adequacy of its cathodic protection.⁸ During the inspection, Buckeye provided no explanation for the failure to conduct these tests other than to note that the test stations were not operational and provided no explanation for why the test stations had not been repaired following the discovery of the damage. In its Response, Buckeye did not offer any documentation to show that a determination was made at the time the tests were required to be performed that the cathodic protection was adequate without the data readings from these test stations.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a) by failing to conduct tests on the cathodically protected pipeline at least once each calendar year, but with intervals not exceeding 15 months.

Item 4: 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 identified deficiencies in corrosion control as required by § 195.401(b). Specifically, the Notice alleged that Buckeye did not take any action to correct deficiencies identified at two different locations where the pipe-to-soil test measurements taken in 2008 and 2009 were more negative than -5 volts.

⁷ Response at 2.

⁸ See, e.g., IN THE MATTER OF SUNOCO PIPELINE L.P., November 15, 2005.

In its Response, Buckeye disagreed that readings more negative than -5 volts “dictate that there is a deficiency in corrosion control for its pipeline.”⁹ Buckeye stated that such pipe-to-soil measurements “may exist in a dynamic/static stray current and should not be deemed as deficient, unresolved, or a result of inadequate mitigation.”¹⁰ Buckeye’s Response indicates that, instead of performing further evaluation or implementing mitigative measures, it simply concluded that these abnormal readings were not indicative of a deficiency in corrosion control and no further corrective action was necessary. I disagree. Abnormal pipe-to-soil measurements indicate that a condition exists where corrosion could result, and corrective action must be taken. A pipeline operator with such readings would be expected to investigate whether the stray currents could adversely affect the safe operation of the pipeline or to mitigate such interference by installing grounding sources to nullify the effects of the stray currents.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct identified deficiencies in corrosion control as required by § 195.401(b).

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c), which:

§ 195.589 What corrosion control information do I have to maintain?

(a)...

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist. Specifically, the Notice alleged that Buckeye did not maintain, for at least 5 years records of atmospheric corrosion inspections required by § 195.583(a) for its exposed pipe near the Booth and Chelsea pump stations in sufficient detail to demonstrate the adequacy of corrosion control measures. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain records of atmospheric corrosion inspections required by § 195.583(a) for at least 5 years.

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

⁹ Response at 2.

¹⁰ *Id.*

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 \$85,700 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$11,300 for Respondent's violation of 49 C.F.R. § 195.589(c), for failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist. I found that Buckeye did not maintain records of its annual cathodic protection survey readings for two test points and did not demonstrate that its cathodic protection was in compliance with NACE Standard RP 0169. Buckeye did not offer any other arguments or evidence justifying a reduction in penalty.

Inadequate cathodic protection may lead to external corrosion, which can result in pipeline leaks or failures. The proposed penalty also took this risk into account, as well as the fact that no pipeline failures or spills were associated with the violation. The nature, circumstances and gravity of the violation warrant the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$11,300 for violation of 49 C.F.R. § 195.589(c).

Item 2: The Notice proposed a civil penalty of \$11,300 for Respondent's violation of 49 C.F.R. § 195.589(c), for failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. As discussed above, Item 2 is withdrawn. Therefore, I withdraw the proposed penalty for this violation of 49 C.F.R. § 195.589(c).

Item 3: The Notice proposed a civil penalty of \$25,900 for Respondent's violation of 49 C.F.R. § 195.573(a), for failing to conduct tests on the cathodically protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. I found that Buckeye failed to conduct tests at four test station locations in 2008 and 2009 because the test stations had been damaged. Respondent stated that it believed it had sufficient data even without these tests to determine the adequacy of cathodic protection, but offered no evidence of this, no explanation for its failure to repair the test stations after the damage was initially discovered, and no other

argument or evidence justifying a reduction in the penalty. Inadequate cathodic protection can result in pipeline leaks and the release of hazardous liquid. Given the potential threat, I find that the nature, gravity, and circumstances of the violation support the proposed penalty amount. The violation continued for a substantial period yet the proposed penalty is far below the \$100,000 per violation per day limit. This reflects the fact that no pipeline failures or spills were associated with the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,900 for violation of 49 C.F.R. § 195.573(a).

Item 4: The Notice proposed a civil penalty of \$25,300 for Respondent's violation of 49 C.F.R. § 195.573(e), for failing to correct identified deficiencies in corrosion control as required by § 195.401(b). I found that Buckeye did not take any action to correct identified deficiencies at two different locations. Abnormal pipe-to-soil measurements indicate that a condition exists where corrosion could result, and corrective action must be taken. Respondent may not have had an accurate understanding of the effectiveness of its cathodic protection system. Inadequate cathodic protection may lead to external corrosion, which, in turn, can result in pipeline leaks or failures. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,300 for violation of 49 C.F.R. § 195.573(e).

Item 5: The Notice proposed a civil penalty of \$11,900 for Respondent's violation of 49 C.F.R. § 195.589(c), by failing to maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist. I found that Buckeye did not maintain, for at least 5 years, records of atmospheric corrosion inspections required by § 195.583(a) for its exposed pipe near the Booth and Chelsea pump stations in sufficient detail to demonstrate the adequacy of corrosion control measures. Buckeye neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Atmospheric corrosion can result in a release of hazardous liquids, thus posing a risk to life, property and the environment. The penalty proposed took into account that this violation lasted for a substantial period, and that no pipeline failures or spills were associated with the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$11,900 for violation of 49 C.F.R. § 195.589(c).

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 **\$74,400**.

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 \$74,400 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.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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 but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The 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