

JULY 27, 2012

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

Re: CPF No. 1-2012-5009

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$22,500. When the civil penalty has been paid, 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 S. (Scott) Collier, Vice President, Performance Assurance & Asset Integrity
Buckeye Partners, LP, Five TEK Park, 9999 Hamilton Blvd., Breinigsville, PA 18031
Mr. Byron Coy, Director, Eastern 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. 1-2012-5009
)	
Respondent.)	
_____)	

FINAL ORDER

Between September 20, 2011, and March 12, 2012, 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 accident investigation regarding the September 20, 2011 incident that occurred at the Buckeye Partners, LP (Buckeye) Auburn Terminal in Auburn, New York. The incident occurred due to internal corrosion on a 14-inch diameter tank line (Line 318). Buckeye owns more than 100 refined petroleum products terminals with an aggregate storage capacity of over 64 million barrels.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated April 6, 2012, a Notice of Probable Violation and Proposed Civil Penalty. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had violated 49 C.F.R. § 195.54(b) and proposed assessing a civil penalty of \$22,500 for the alleged violation.

Buckeye responded to the Notice by letter dated May 4, 2012 (Response). The company did not contest the allegations of violation but requested that the proposed civil penalty be reduced. Buckeye did not request a hearing and therefore has waived its right to one.

FINDING 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. § 195.54(b), which states:

¹ See <http://www.buckeye.com/AboutUs/tabid/54/Default.aspx> (last accessed June 4, 2012).

§ 195.54 Accident reports.

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000-1, or a facsimile.

(b) Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days.

The Notice alleged that Respondent violated 49 C.F.R. § 195.54(b) by failing to submit a Supplemental Accident Report within 30 days upon receiving changes or additions to the original report submitted using DOT Form 7000-1. Specifically, Buckeye submitted the original Accident Report on October 19, 2011. On or around December 22, 2011, Buckeye received the Final Metallurgical Report from Det Norske Veritas (DNV), which identified the potential cause of the leak of the 14-inch diameter pipe. In accordance with § 195.54(b), Buckeye should have submitted a supplemental accident report within 30 days of receiving this new information. Buckeye did not submit the Supplemental Accident Report until March 20, 2012.

In its Response, Buckeye acknowledged that it did not file a Supplemental Accident Report within 30 days of receiving the Final Metallurgical Report. However, Buckeye stated that on December 29, 2011, the company submitted the Final Metallurgical Report to the NYSDPS, PHMSA's agent. Since Buckeye notified the regulatory agency acting for PHMSA that there was new information, Buckeye requested a reduction in the proposed civil penalty.

I will analyze the civil penalty argument in the Assessment section below. In terms of the allegation of violation, Buckeye was required to submit the Supplemental Accident Report within 30 days of its receipt of changes or additions to the original report but failed to do so. Therefore, I find that Buckeye violated 49 C.F.R. § 195.54(b) by failing to submit the required Supplemental Accident Report.

This finding of violation will be considered a prior offense 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 \$22,500 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$22,500 for Respondent's violation of 49 C.F.R. § 195.54(b), for failing to submit a Supplemental Accident Report within 30 days of receiving new information. In its Response, Buckeye argues that a penalty reduction is appropriate since it notified PHMSA's agent, NYSDPS, that it had received a copy of the Final Metallurgical Report and provided the state with that information. In addition, Buckeye stated that it did file its Supplemental Accident Report, albeit late, with PHMSA and revised its internal process to ensure that future reports are filed within the required timeframe.

The civil penalty amount is based on the civil penalty assessment factors listed in 49 C.F.R. § 190.225, including, but not limited to, culpability, gravity, duration of the violation, and prior enforcement history of the operator. As stated in the Violation Report, the non-compliance posed a minimal effect on pipeline safety since it was a paperwork violation. The Violation Report further noted that the violation was discovered by PHMSA, not Buckeye, and continued for a period of approximately 56 days. The report was due on approximately January 23, 2012, but was not filed until March 20, 2012.

While it may seem that the gravity of the violation is lessened because the metallurgical report was provided to the NYSDPS, Buckeye is required by regulation to submit a Supplemental Accident Report to PHMSA. PHMSA needs this information to conduct failure analyses and take appropriate action to address critical safety issues arising out of accidents. Without the receipt of accurate and timely accident reports, PHMSA cannot effectively carry out its transportation safety mission. Therefore, having reviewed the penalty factors and the facts of this case, I find that the proposed civil penalty of \$22,500 is justified. Accordingly, I assess Respondent a civil penalty of **\$22,500**.

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 \$22,500 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 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 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