



BUCKEYE PARTNERS, L.P.

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June 5, 2013

Mr. Byron Coy
Director, Eastern Region
U.S. Department of Transportation, PHMSA
Office of Pipeline Safety
820 Bear Tavern Road, Suite 103
West Trenton, NJ 08628

RE: PHMSA Notice of Proposed Violation - CPF No. 1-2013-5006
Buckeye Partners, L.P. – Line 601 Incident – May 20, 2010

Dear Mr. Coy:

Please be advised that Buckeye Partners, L.P. (Buckeye) received the Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (NOPV) in the above referenced matter on May 7, 2013. This action concerns a pinhole leak that occurred on Buckeye's 12" Line 601 liquid petroleum line that was not in operation at the time of the incident. Approximately one barrel of product was released, primarily to soil, in an industrial area. Buckeye promptly reported the release and undertook corrective action. There were no injuries and no significant environmental damage associated with this incident to soil or surface water.

The NOPV alleges two violations of the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations, and proposes an administrative civil penalty of \$418,700. The Proposed Compliance Order (PCO) requests that Buckeye amend both its Integrity Management Program (IMP) manual and its corrosion control procedures to address the issues as alleged.

Buckeye is not requesting a Hearing on this enforcement action, but pursuant to 49 C.F.R. Part 190.209(a) (2), we are submitting additional information in the form of this letter, and requesting a reduction of the amount of the proposed penalty. We also contest the alleged violation for Item 2, for the reasons set forth below. Without admitting any liability, we will amend our respective IMP and corrosion control procedures as requested by the PCO, so that these documents will be more specific in the areas requested. These revisions will be furnished within the timeframes provided in the PCO upon receipt of the Final Order

We understand that, pursuant to 49 C.F.R. Part 190.213(c), the Associate Administrator of PHMSA will issue a Final Order upon review of the case file, including this letter. Upon receipt

of a Final Order, Buckeye will pay the assessed penalty within the time frames and by the manner specified.

Amount of Penalty Proposed

The NOPV proposes an administrative penalty of \$418,700 for the two violations alleged (\$290,000 for Item 1 and \$128,700 for Item 2). For both of those alleged violations, the Agency proposes penalties exceeding the daily statutory maximum available through the Pipeline Safety Act (PSA), without alleging any multi-day aspect to the alleged violations in issue. The authorizing statute for PHMSA penalties states that “[a] person [who has] violated [the PSA] is liable for a civil penalty of not more than \$100,000 per violation. A separate violation occurs for each day the violation continues. The maximum civil penalty available under this paragraph for a related series of violations is \$1,000,000.” 49 U.S.C. Section 60122(a) (1) (prior to amendments effective January 3, 2012).¹ PHMSA regulations repeat this admonition: “[civil penalties for violations occurring in 2010 are] not to exceed \$100,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations.” 49 C.F.R. Part 190.223.

Buckeye believes that the clear language of the PSA, and the Agency’s own rules, limits the maximum penalty for this matter to no more than \$100,000 for each of the two violations (for a combined maximum of no more than \$200,000). There is no allegation of multi-day violations in the NOPV as issued, and we believe the record reflects that the Agency has rarely assessed multi-day penalties historically. We are only aware of a few PHMSA enforcement actions to date that have assessed penalties in excess of the statutory maximums (either the “per violation, per day” maximum or the “related series of violations” maximum). Notably, those matters either involved fatalities or significant environmental damage.² Other than the Final Orders written for those two matters, we are not aware of any other explanation by PHMSA about when or how it intends to assess civil penalties beyond the \$100,000 or \$1,000,000 statutory caps (for alleged violations occurring prior to January 3, 2012). We expect the Agency to apply its penalty interpretations consistently.

The incident at issue in this matter was small by any account (less than 1 barrel released, from a line that was shut down, located in an industrial area). There were no injuries, no fatalities, and no significant property or environmental damage to surface water. Buckeye promptly reported

¹ These statutory penalty maximums were doubled for alleged violations occurring after January 3, 2012, by Section 2 of the Pipeline Safety Act Amendments of 2012.

² See, e.g., *Colorado Interstate Gas Co.*, Final Order, CPF 5-2008-1005, 2009 WL 5538649 (Nov. 23, 2009); *Enbridge Energy Partners*, Final Order, CPF No. 3-2008-5011, 2010 WL 6531629 (August 17, 2010).

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and responded to the incident, and we have already reviewed our IMP manual and corrosion procedures for revision, as requested by PHMSA.

Although this was a minor incident, the NOPV implies some form of multi-day multiplier (even though there is no allegation of multi-day violation in the NOPV), on an unexplained proportioned basis.

For all of these reasons, including the fact that Buckeye is attempting to conserve resources for all parties by not requesting a hearing on this matter, we respectfully ask that PHMSA reduce the civil penalty in this matter, to no more than \$200,000 in total.

Item 2: Alleged Failure to Integrate Data under IMP Plan

Item 2 of the NOPV alleges that Buckeye failed to conduct data integration as required by Part 195.452(f) (3) of the IMP rules. The IMP rules require that an operator have a written plan to identify potential threats, integrate all related data, and then undertake preventive and mitigative measures as indicated by the data and threat analysis. The NOPV alleges that Buckeye “did not have [written] procedures that addressed Part 195.452(f) (3) prior to August 27, 2010 (the date of the incident). That statement is clearly erroneous, as Buckeye did have written procedures as part of its January 2010 IMP Plan that addressed data integration. See the attached Buckeye Integrity Management Manual, Section 10 – Continual Evaluation.

Buckeye agrees to amend its IMP Plan to more specifically address certain aspects in its data integration, but the facts show that the Company did in fact have a written plan expressly addressing data integration at the time of the incident.

We respectfully request that the Agency either withdraw this alleged violation, or further reduce the proposed civil penalty below the applicable maximum of \$100,000.

Summary and Request for Relief

Buckeye had a minor release incident on its 12” Line 601 petroleum product pipeline located in Linden, New Jersey in May 2010. It was a pinhole leak that occurred while the line was shutdown. Less than one barrel was released, primarily to soil, in an industrial area. Buckeye promptly reported and responded to the incident, and conducted all appropriate corrective action.

Through this NOPV, PHMSA proposes a civil penalty of \$418,700 for two alleged violations. The NOPV does not allege multi-day violations, nor does it explain the basis for how it calculated the unusual amounts of \$290,000 for one alleged violation and \$128,700 for the other.

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The Pipeline Safety Act, and PHMSA's own regulations, establishes a maximum civil penalty of \$100,000 per violation per day for incidents occurring prior to January 3, 2012. The Agency has not issued any rule, preamble, guidance or interpretative letter for when and where it may seek to exceed this maximum. To our knowledge, the Agency has only expressly sought multi-day penalties on limited occasions in the past, and those incidents all involved either fatalities or significant environmental harm. For the reasons stated above, Buckeye believes that the two alleged violations in this NOPV should be subject to a maximum civil penalty of no more than \$100,000 each (for a total penalty not to exceed \$200,000).

In addition, Buckeye believes that Item 2 in the NOPV is not supported by the full facts. Buckeye's IMP Plan that was in effect at the time of this incident included written procedures to address data integration. Although Buckeye agrees to revise its IMP Plan to more specifically address certain aspects of its data integration, we believe that we met the minimum requirements of the rule at the time of the incident.

Buckeye has not requested a Hearing on this NOPV, but has instead submitted this letter as additional information, as a request for mitigation of the penalty and correction of the record, and to contest alleged violation for Item 2.

Sincerely,



Thomas Scott Collier
Buckeye Partners, L.P.

Attachment

cc: C. Ostach
J. Mattis
J. Reinbold