

October 6, 2015

Mr. Clark C. Smith
President & CEO
Buckeye Partners, LP
One Greenway Plaza
Houston, Texas 77046

Re: CPF No. 1-2014-5003

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$302,200, and specifies actions that need to be taken by Buckeye Partners, LP, to comply with the pipeline safety regulations.

This is also to acknowledge receipt of payment of the full penalty amount, by wire transfer dated October 2, 2014. When the terms of the compliance order have been completed, as determined by the Director, Eastern Region, 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. Byron Coy, P.E., Director, Eastern Region, OPS
Mr. Thomas S. Collier, Vice President, Performance & Asset Integrity,
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**

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In the Matter of)	
)	
Buckeye Partners, LP,)	CPF No. 1-2014-5003
)	
Respondent.)	
)	

FINAL ORDER

On August 21, 2012, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident involving the pipeline system operated by Buckeye Partners, LP (Buckeye or Respondent), in Emmaus, Pennsylvania. Respondent owns and operates liquid petroleum-product pipeline systems throughout the United States, with over 6,000 miles of pipeline. Respondent also owns approximately 100 liquid petroleum products terminals, with a storage capacity of more than 70 million barrels.¹

The investigation arose out of an accident at Respondent’s Emmaus, Pennsylvania station and tank farm complex (Macungie Station) on June 17, 2012, when it is alleged that a steel aboveground tank overfilled and spilled approximately 100 barrels of gasoline in a “High Consequence area” (HCA), resulting in costs of approximately \$87,000.

As a result of the investigation, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated September 4, 2014, 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 committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$302,200 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 September 23, 2014 (Response). The company did not contest the allegations of violation and stated that it would adhere to the proposed compliance order upon receipt of the Final Order. Buckeye paid the proposed penalty of \$302,200, as provided in 49 C.F.R. § 190.227, which serves to close the case with prejudice to Respondent.

¹ Buckeye Partners, LP, website, available at <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> (last accessed March 16, 2015).

FINDINGS OF VIOLATION

In its Response, Buckeye did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a)(c)(3), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations: . . .

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a)(c)(3) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Respondent failed to follow procedures in the company's *Operating Manual (O&M Manual), B-10 - Filling Tanks (B-10)*,² which required that tanks be filled in a safe and controlled manner.

O&M Manual, B-10, section 2.10.2 states:

If the tank volume causes the annunciation of a high-high alarm, immediately shut down the incoming stream and notify the Control Center.

O&M Manual, B-10, section 2.13 states:

Operators and Controllers share responsibility for monitoring tank alarms in SCADA. If a critical Hi Hi alarm is received from a physical device or SCADA software alarm, both parties are responsible for investigating and shutting down a receipt into the tank if a cause is not verified immediately. Controllers will respond if a Field Operator is not available, immediately.

According to the Notice, on June 17, 2012, Buckeye's Night Shift Operator failed to immediately shut down the incoming product stream to Tank 228 and notify the Control Center

² Issued September 2010.

once the “Hi Hi” alarm³ sounded. Moreover, it alleged that once the Controller was aware of the Hi Hi alarm, the Controller failed to immediately shut down the line and investigate the cause of the alarm.

The Notice further alleged that Respondent’s August 20, 2012 Incident Investigation Report (Report) of the accident found that the Macungie Night Shift Operator did not appropriately respond to the Hi Hi alarm. According to the Report, the independent Hi Hi alarm was received into the SCADA system, at which point the Controller was prepared to shut down the Macungie Station and Linden pumps; however, the Controller did not do so because he was aware that Tank 222 was being filled. Because of this circumstance, the Controller did not want to interrupt the schedule by shutting down the line. According to the Notice, the Report allegedly found that the “Macungie Night Shift Operator did not respond appropriately to [the] Hi Hi alarm received at 05:52 .am., . . . as per Operating Manual B-10 Filling Tanks, Section 2.13.”

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. § 195.402(a)(c)(3) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a)(c)(3), as quoted above, by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Respondent failed to follow its inspection and testing procedure contained in *O&M Manual, H-09 – Tank Alarms and Gauging Equipment*.⁴ This procedure stated, in relevant part:

1. Policy

- 1.1 On each tank, the level alarm/shutdown systems and tank volume gauging equipment, including the associated transmitting-receiving units for remote monitoring, shall be inspected and a functional test shall be conducted within the time frequency listed on the comprehensive scheduling chart

The Notice further alleged that Respondent’s *Comprehensive Scheduling Chart – Regulatory Inspection* sheet required “Breakout Tank Overfill Protection Inspections” to be conducted at intervals not in excess of 15 months, but at least once per calendar year, by manually gauging the tank volume and adjusting the gauge to match the manual hand-line gauge. PHMSA alleged that Buckeye did not manually gauge Tank 228 from 2010 to 2011, resulting in inaccuracies in the side gauge and tank gauging system that contributed to the overfill of Tank 228 on June 17, 2012.

The company’s procedure, *O&M Manual, Tank Gauging System for H-09 – Tank Alarms and*

³ A “Hi Hi” alarm is one level of alarm utilized by a SCADA system and configured during installation.

⁴ Issued September 2010.

Gauging Equipment, Subsection 3.2, states, in relevant part:

3.2. Tank Gauging System

- 3.2.1 Manually gauge the tank using a hand line.
- 3.2.2 Adjust the side gauge to agree with the manual hand line gauge.
- 3.2.3 Set the transmitter unit⁵ to the corresponding side gauge reading and confirm that the proper level is shown on control panel at the remote monitoring location.
- 3.2.4 Restore all equipment to the proper operating condition. Contact local Operations and the Control Center. Have them verify that they have the same tank level as is being observed in the Field and all alarms from testing have been cleared.

The Notice further alleged that the Report acknowledged that “in the past year, Macungie Station suspended hand gauging tank volumes . . . [and that] this practice [was] not compliant with Company policy as per 195 O&M Manual F-35 Tank Alarm and Gauging Equipment, Section 3.2.”

Additionally, PHMSA asserted its investigation revealed that Respondent’s employees did not perform hand gauging on Tank 228. Moreover, the Report indicated that there were deficiencies that affected both the trigger and the tank gauging system, such as the independent Hi Hi Alarm being set too high and both the tank side gauge and tank gauging system being set too low.

The Notice also alleged that following the accident, Respondent recalculated and adjusted the tank gauge level and the alarm level for Tank 228. Based on the Report and the company’s new measurements, Respondent allegedly had had incorrect alarm settings for Tank 228 since 2003.

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. § 195.402(a)(c)(3) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a)(c)(3), as quoted above, by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Respondent failed to follow a procedure in its Operations and Maintenance Manual (O&M) entitled, *195 O&M Manual, F-37: Aboveground Tanks (In-*

⁵ Transmitter unit refers to the tank gauging system.

Service) (CFR Title 49: PARTS 195.432(a), 195.432(b)),⁶ which required an external inspection of in-service aboveground breakout tanks at least one time per month but not to exceed one month. The Notice also asserted that Respondent did not inspect the local level gauge and hand gauge at Tank 228 from July 2011 to May 2012, despite the fact that a portion of the inspection form specifically asked whether the “Local level gauge [matches the] hand gauge.”

The Notice further alleged that PHMSA’s inspectors discovered that Respondent’s *Form B*⁷ for Tank 228 incorrectly indicated there was no local level gauge deficiency from July 2011 to May 2012, yet Respondent’s own Report indicated there was no monthly tank hand gauging at Macungie Station, as required by Respondent’s procedures.

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. § 195.402(a)(c)(3) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a)(c)(3), as quoted above, by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Respondent failed to follow its procedure, *Measurement Manual, A-01 – Measurement, Section 16.0 Stock Variations*,⁸ because it did not investigate a volume discrepancy in Tank 228.

Section 16.0 Stock Variations states, in relevant part:

16.1 Transportation Variations

Transportation variation shall be reviewed for each Tender Receipt. Variations greater than +/- 0.25% for pipeline and marine receipts (vessel to shore) shall be investigated and the results documented.

It is strongly recommended that variations be reviewed immediately after the receipt/delivery has terminated

The Notice alleged the Report stated that Tank 228 was emptied for Reid Vapor Pressure (RVP) turnover on March 31, 2012, and then filled with Summer Grade Product on April 1, 2012. Additionally, it alleged that Respondent personnel stated to PHMSA that there was a 1,299-barrel discrepancy on the refill movement and that it was not investigated per *Measurement Manual A-01, Transportation Stock Variation*.

⁶ Issued September 2012.

⁷ Respondent’s Monthly Tank Inspection Report Form.

⁸ Issued November, 2011.

The Notice further alleged that PHMSA inspectors investigated this discrepancy and determined that on April 1, 2012, there was a 1.8% barrel difference unaccounted for and that Buckeye could not provide any documentation showing that it had investigated this variation or discrepancy, as required by Respondent's own procedures.

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. § 195.402(a)(c)(3) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

These findings of violation will be considered prior offenses 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁹ 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; 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 \$302,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$54,700 for Respondent's violation of 49 C.F.R. § 195.402(a)(c)(3), for failing to follow the company's own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Respondent paid the proposed penalty amount in full, which serves to close this Item in the case with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$54,700 for violation of 49 C.F.R. § 195.402(a)(c)(3).

Item 2: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(a)(c)(3), for failing to follow the company's own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Respondent paid the proposed penalty amount in full, which serves to close this Item in the case with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a)(c)(3).

⁹ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

Item 3: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(a)(c)(3), for failing to follow the company's own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Respondent paid the proposed penalty amount in full, which serves to close this item in the case with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a)(c)(3).

Item 4: The Notice proposed a civil penalty of \$47,500 for Respondent's violation of 49 C.F.R. § 195.402(a)(c)(3), for failing to follow the company's own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Respondent paid the proposed penalty amount in full, which serves to close this Item in the case with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$47,500 for violation of 49 C.F.R. § 195.402(a)(c)(3).

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 **\$302,200**, which amount has been paid in full.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. § 195.402(a)(c)(3). 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. 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:

1. With respect to the violation of § 195.402(a)(c)(3) (**Item 1**), Respondent must amend its *O&M Manual* to include a detailed process for investigating an annunciation of a tank alarm that consists of, but is not limited to: inspecting on-site, communicating with appropriate personnel, and documenting the cause/results of the investigation and any other pertinent information.
2. With respect to the violation of § 195.402(a)(c)(3) (**Item 2**), Respondent must:
 - A. Amend its *O&M Manual* to include a process for recording pertinent information to ensure that the overfill protection system inspection and testing have been completed in accordance with applicable procedures and federal pipeline safety regulations.
 - B. Establish and implement a program that ensures all Department of Transportation jurisdictional breakout tanks at the Macungie Station have

the proper/correct tank level and alarm settings for operations.

3. Within 60 days after receipt of this Final Order, Respondent must submit documentation to Mr. Byron Coy, P.E., Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration (PHMSA), 820 Bear Tavern Road, Suite 103, West Trenton, New Jersey 08628, that Items 1 and 2(A) above have been completed.
4. Within 180 days after receipt of this Final Order, Respondent must submit documentation to Mr. Byron Coy, P.E., Director, Eastern Region, PHMSA, demonstrating that Item 2(B) has been completed.
5. It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mr. Byron Coy, P.E., Director, Eastern Region, PHMSA. It is requested that these costs 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.

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 and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 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.

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