



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

NOV 19 2012

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

Re: CPF No. 3-2010-5006

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$402,500, and specifies actions that need to be taken by Buckeye Partners, LP, to comply with the pipeline safety regulations. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central 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. Thomas (Scott) Collier, Vice President, Buckeye Partners LP – 5 TEK Park, 9999
Hamilton Boulevard, Breinigsville, PA 18031
Robert E. Hogfoss, Esq., Counsel for Buckeye Partners, LP, Hunton & Williams -
Bank of America Plaza - 600 Peachtree Street, N.E., Suite 4100, Atlanta, Georgia
30308
Mr. Dave Barrett, Director, Central 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, DC 20590**

In the Matter of)

Buckeye Partners, LP,)

Respondent.)
_____)

CPF No. 3-2010-5006

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, on May 6, 2005, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an overfill incident that occurred on May 5, 2005, at Tank #133, a facility operated by Buckeye Partners, LP (Buckeye or Respondent), in East Chicago, Indiana (Accident). Buckeye owns and operates petroleum refined-products pipelines and facilities in the Northeast and Upper Midwest, including 6,000 miles of pipelines and 100 liquid petroleum products terminals.¹

As a result of the investigation and a follow-up inspection in 2008, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 14, 2010, 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 committed several violations of 49 C.F.R. Part 195 and assessing a civil penalty of \$481,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations.

Buckeye responded to the Notice by letter dated May 12, 2010 (Response). The company contested the items in the Notice and requested that the proposed civil penalty be reduced or rescinded. A hearing was subsequently held on November 18, 2010, in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. After the hearing, counsel for Buckeye provided a post-hearing statement for the record, by letter dated December 3, 2010 (Closing).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

¹ See <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> (last accessed July 30, 2012).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.52(a)(3), which states:

§ 195.52 Telephonic notice of certain accidents.

(a) At the earliest practicable moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, the operator of the system shall give notice, in accordance with paragraph (b) of this section, of any failure that:

(1) . . .

(3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000;

The Notice alleged that Respondent violated 49 C.F.R. § 195.52(a)(3) by failing to provide telephonic notice to the National Response Center (NRC) at the earliest practicable moment following the company's discovery of a release of 85 barrels of gasoline. Specifically, the Notice alleged that 15 hours elapsed between the time Buckeye experienced a release at its East Chicago, Indiana storage tank facility and the time the company finally notified the NRC.

At the hearing and in the Response, Buckeye contended that the Accident did not initially meet the notification threshold of § 195.50. Rather, it was only after the Indiana Department of Environmental Protection (DEP) requested that Buckeye excavate an additional two feet of soil within the dike area to remove hydrocarbons that Buckeye determined that the clean-up costs would exceed the \$50,000 threshold. The operator stated that the Accident occurred in the late afternoon and although Buckeye contacted emergency response operators immediately, it was not until the following day that the company met with the DEP and thereafter determined that the property damage threshold for reporting had been met. Therefore, Buckeye maintained that the Accident was reported at the "earliest practicable moment following discovery of a release."

At the hearing, OPS introduced two alert notices, dated April 15, 1991 (ALN-91-01) and August 30, 2002 (ADB-02-04), which provided guidance to the industry on how the agency interpreted the term "earliest practicable moment."² This guidance and the interpretation letters that preceded the bulletins stated that PHMSA considered "earliest practicable moment" generally to mean one to two hours.³ Since Buckeye notified the NRC approximately 15 hours after discovery of the Accident, OPS argued that Buckeye had not given notice at the earliest practicable moment and therefore was in violation of § 195.52(a)(3).

Analysis

PHMSA has consistently interpreted "earliest practicable moment" to mean within one to two hours of discovery of a release of hazardous liquid. Beginning in 1997, PHMSA has applied this interpretation in various enforcement actions and found that "discovery" relates to the actual

² See ALN-91-01 and ADB-02-04, located at <http://phmsa.dot.gov/pipeline/regs/advisory-bulletin>.

³ See PI-71-011, located at <http://www.phmsa.dot.gov/pipeline/regs/interps>.

release, not to the realization that an incident has resulted in circumstances (e.g., property damage) that render the release reportable.⁴

The rationale for this interpretation is both logical and practical. In *Enstar Natural Gas Company*, PHMSA concluded that “[i]f the regulation were read to mean at the earliest practicable moment following discovery of the cause of the incident, the operator would never be required to report an incident until the cause of the incident was definitely determined.”⁵ In addition, PHMSA has stated that “[t]he delay to reporting caused by an operator waiting until it definitely decides an event meets the reporting criteria would frustrate a fundamental purpose of the regulation, which is to give OPS and other agencies the earliest opportunity to assess whether an immediate response to a pipeline incident is needed. Therefore, OPS requires pipeline operators to report incidents to the NRC at the earliest practicable moment following discovery of the incident, even if at the time of reporting there is some question as to whether reporting will be required.”⁶

There are also important public safety reasons why an operator needs to make a NRC report within one to two hours, including PHMSA’s need for immediate information to determine whether a pipeline or facility should be shut down. PHMSA must also evaluate the cause of a release as soon as possible after the release has been discovered, not after the evidence is stale.

Based on the information in the record, I find that the release in this case was reportable because it exceeded the \$50,000 threshold and therefore should have been reported within one to two hours of discovery. Instead, Buckeye reported the spill 15 hours after the release. Accordingly, I find that Respondent violated 49 C.F.R. § 195.52(a)(3) by failing to make a telephonic notice to the NRC at the earliest practicable moment following discovery of the release.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b), which states:

§ 195.401 General requirements.⁷

(a) . . .

(b) An operator must make repairs on its pipeline system according to the following requirements:

(1) *Non- Integrity Management repairs.*

Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a

⁴ E.g., *In the Matter of Texas Eastern Transmission Corporation*, CPF No. 4-2001-1003, at 3 (May 5, 2005), citing *In the Matter of Enstar Natural Gas Company*, CPF No. 52016 (May 14, 1997).

⁵ *Enstar*, at 2.

⁶ *Id.*

⁷ On August 11, 2010, PHMSA modified the language of § 195.401 to distinguish between non-integrity management repairs and integrity management repairs. See “Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits,” 75 FR 48607 (August 11, 2010). The language referenced in this item reflects the current regulation but the text of (b)(1) does not vary from the language that was in effect at the time of the inspection and quoted in the Notice.

reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b) by failing to correct an unsafe condition on its pipeline. Specifically, it alleged that Buckeye continued to fill Tank #133 at its East Chicago storage tank facility despite the discovery of a condition that presented an immediate hazard to persons or property.

On the day of the Accident, Buckeye experienced three different alarms that alerted the operator of an imminent hazard (overfilling) on Tank #133, yet company personnel continued filling operations. The first alarm occurred an hour before the release. Two subsequent alarms occurred but Buckeye continued filling. According to Buckeye's own Internal Investigation Report, its Control Center contacted the local operator after the first alarm, who responded that the alarm was not accurate due to an issue with the electronic gauging of the tank levels. Buckeye's investigation later confirmed that the local operator was incorrect in this assessment of the first alarm.⁸

In its Response and at the hearing, Buckeye did not contest this violation but argued that Items 2 and 3 should be combined. I will address the merits of this argument in the Analysis section of Item #3. For the reasons set forth below, I find that Respondent violated 49 C.F.R. § 195.401(b) by continuing to operate its pipeline system after discovery of a condition that presented an immediate hazard to persons or property.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Buckeye failed to follow two of its own written procedures when filling Tank #133 on May 5, 2005. First, it alleged that the local operator did not accurately confirm batch information from the Control Center when he arrived for the start of his shift and that he failed to compare the available room in the tank to the batch volume, as required by Buckeye's Operating Manual Procedures B-10 Section 2.1 and 2.4.

⁸ Pipeline Safety Violation Report (Violation Report), (April 9, 2010) (on file with PHMSA), Exhibit B.

Second, the Notice alleged that Buckeye experienced two high level alarms and one “high-high” level alarm during the filling of Tank #133 and that its procedures required personnel to take specific actions in response to these alarms, including shutting down the incoming stream and notifying the Control Center. OPS alleged that Buckeye personnel failed to follow these procedures in shutting down the incoming stream.

Buckeye contended at the hearing and in its Closing that although it did not contest that the local operator’s actions caused the Accident, Items #2 and #3 should be combined. Buckeye maintained that it should not be charged with two separate violations and civil penalties for a single instance of operator error.⁹

Analysis

I have reviewed both the facts and evidence presented by OPS that support Notice Items 2 and 3 and Buckeye’s opposing evidence and arguments. In Item #2, the Notice alleged that Buckeye became aware of a condition that presented an immediate hazard to its system but continued filling operations, in direct violation of § 195.401(b). In Item #3, Buckeye personnel failed to follow the company’s own procedures, which required the local operator to confirm batch information at the start of his shift and to compare the available tank room to the batch volume. In addition, company procedures required the Control Center to shut down the incoming stream upon acknowledgment of a “high-high” level alarm. None of these actions took place. Since Items 2 and 3 are based on *different* actions that Buckeye was supposed to take in this situation and because the allegations are supported by different evidence, I find that both items can stand independently as separate violations. Accordingly, I find that Respondent violated § 195.401(b), by failing to correct an unsafe condition, and § 195.402(a), by failing to follow its own procedures when filling Tank #133.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

- (a) Identify covered tasks;...

The Notice alleged that Buckeye did not include all necessary covered tasks in its Operator Qualification (OQ) program, including tasks associated with abnormal operating conditions. The missing tasks included delivery operations at regulated tank facilities, radiographic examination, and magnetic particle surveys.¹⁰ Buckeye argued at the Hearing and in its Closing that there is no list of specific covered tasks required by Part 195 and that it is a “performance based program like much of the Part 195 regulations,” under which an operator can determine its own list of

⁹ Closing at 4.

¹⁰ Although the Notice alleged that Buckeye violated 49 C.F.R. § 195.505 by failing to include radiographic examinations and magnetic particle surveys as covered tasks in its OQ program, the record does not contain sufficient evidence to conclude that these two activities meet the four-part test in § 195.501 for purposes of Buckeye’s system. Therefore, this Order neither addresses nor finds that Buckeye should have included radiographic examinations or magnetic particle surveys as covered tasks on its system.

covered tasks. Buckeye focused specifically on delivery operations and contended that since there is no explicit regulatory requirement to include tank operations (Task 412) as a covered task, there is no basis to include a compliance order for this Item. Instead, Buckeye argued that it would be more appropriate and typical for this Item to be covered by a Notice of Amendment.¹¹

In addition, Buckeye pointed out that OPS had previously reviewed the company's OQ program in October 2004, which resulted in two enforcement cases (CPF Nos. 1-2005-5007M and 1-2006-5006). Neither enforcement action, however, required Buckeye to add Task 412 to its covered task list. Therefore, Buckeye asserted that OPS was now estopped from bringing such a violation.

Analysis

Section 195.505(a) requires each operator to have and follow a written qualification program that includes provisions to identify covered tasks. Although Buckeye is correct that many of the requirements in the pipeline safety regulations are performance-based and not prescriptive in nature, this does not mean that performance-based activities are somehow excluded as "covered tasks" under an operator's OQ program.¹² An operator is required to identify all of its covered tasks, using the four-part definition set forth in § 195.501(b). Specifically, "a covered task is an activity identified by the operator, that: (1) Is performed on a pipeline facility; (2) Is an operations and maintenance task; (3) Is performed as a requirement of [Part 195]; and (4) Affects the operation or integrity of the pipeline."¹³

Buckeye's breakout tank operations, as addressed generally by Task 412, meet this four-part test. It is a task performed on a pipeline facility, is an operations and maintenance task, is performed as a requirement of Part 195,¹⁴ and, as is evident from the Accident, affects the operation or integrity of the pipeline. Therefore, Buckeye should have included tank operations, particularly those procedures related to abnormal operations, on its covered task list.¹⁵

In the Notice, OPS proposed a compliance order for Item #4. Although Buckeye did not cite any prior cases to support its argument that a Notice of Amendment would be the most appropriate enforcement tool, I have reviewed past enforcement cases involving violations of § 195.505(a) and have determined that a proposed civil penalty, a compliance order, or both, may be

¹¹ *Id.*

¹² E.g., *In the Matter of Enterprise Products Operating, LLC*, CPF No. 3-2009-5022 (August 14, 2012).

¹³ See 49 C.F.R. § 195.501(b).

¹⁴ Each operator is required under § 195.505 to scrutinize its own unique system to identify all those activities performed on its system that meet the four-part definition of a "covered task" and to develop a proper qualification process for each one. In this case, Buckeye was required under § 195.402 to have and follow procedures for identifying, responding to, and correcting abnormal conditions in the receipt and delivery of product.

¹⁵ The Violation Report noted that the API 1161 Committee had previously identified breakout tank operations as a covered task. While the adoption of consensus standards and industry committee policies may be supportive of PHMSA's interpretation and application of its regulations, they are not dispositive.

appropriate enforcement actions in such cases, particularly ones involving accidents. For example, in *The Matter of Sunoco Pipeline L.P.*, CPF No. 1-2009-5003, PHMSA issued a compliance order for failure to identify the installation of completion plugs as a covered task.¹⁶ In *The Matter of Enbridge Energy Company, Inc.*, CPF No. 4-2005-8004, PHMSA issued a compliance order and a civil penalty for failure to include a large number of tasks in the operator's covered task list.¹⁷ Finally, in *The Matter of Norfolk Southern Corporation*, CPF No. 2-2010-6004, PHMSA issued a compliance order and a civil penalty for failure to include many specific covered tasks that were performed on the operator's pipeline system.¹⁸ Under the circumstances of the instant case, I find that a compliance order is an appropriate remedy to address Buckeye's failure to include Task 412 as a covered task.

I also find no merit in Buckeye's argument that because OPS did not find this particular OQ violation in 2004, it is somehow estopped from asserting a probable violation following a failure and subsequent inspection. Buckeye was required to include in its OQ program all those particular tasks that met the four-part test by April 27, 2001. If another inspector in another region chose not to cite a violation at that time, it does not eliminate Buckeye's responsibility to be in compliance with the code. Since Buckeye must identify covered tasks in its OQ program and failed to include tank operations activities that met the four-part definition of a covered task under § 195.501(a), I find that Buckeye violated § 195.505(a) and that the proposed compliance order is appropriate.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states:

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program.

The program shall include provisions to:

- (a) . . .
- (b) Ensure through evaluation that individuals performing covered tasks are qualified.

The Notice alleged that Buckeye failed to ensure through evaluation that individuals performing covered tasks were qualified. Specifically, OPS alleged that Buckeye failed to qualify the local operator at the East Chicago tank storage facility for performing the covered task of operating regulated breakout tanks. Buckeye did not have a qualification record for the individual involved in delivery operations at the time of the Accident.

In its Response and Closing, Buckeye argued that this task was not a covered task and therefore the evaluation requirements did not apply. As discussed above in Item # 4, Task 412 is a covered task and therefore Buckeye was required to ensure through evaluation that individuals performing covered tasks were qualified. Buckeye also argues that this Item should have been

¹⁶ *In the Matter of Sunoco Pipeline L.P.*, CPF No. 1-2009-5003 (November 25, 2011).

¹⁷ *In The Matter of Enbridge Energy Company, Inc.*, CPF No. 4-2005-8004 (October 2, 2009).

¹⁸ *In the Matter of Norfolk Southern Corporation*, CPF No. 2-2010-6004 (April 8, 2011).

addressed by a Notice of Amendment instead of a proposed civil penalty. As discussed above, I find no authority for this argument. PHMSA has issued several civil penalties for violations of § 195.505(b).¹⁹ Accordingly, I find that a probable violation and civil penalty, not a notice of amendment, is appropriate under the circumstances and that Buckeye violated § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks were qualified.

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

WITHDRAWAL OF ITEM

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), as quoted above, by failing to ensure, as of the date of the Integrated Inspection in 2008, that *all* individuals performing covered tasks on breakout tanks were qualified through evaluation under the company's OQ Program. As alleged in the Notice, between 2005 and 2008, up to 373 individuals "would have been involved in various tasks associated with operating and maintaining tanks across all of Buckeye's tank facilities," yet the company had no records demonstrating that any of these individuals had been qualified through evaluation for tank operations under its operator qualification program.

As discussed above in Item #5, I have found that Buckeye failed to ensure through evaluation that the local operator of the East Chicago tank facility was qualified to perform Task 412. The allegation here, however, is that "up to 373 individuals would have been involved in various tasks associated with operating and maintaining tanks across all of Buckeye's tank facilities...." I can find no evidence in the record that 373 individuals actually performed Task 412 or other tasks that should have properly been considered "covered tasks" under § 195.504. Instead, there is only a list of Buckeye personnel who received tank operations training and were therefore permitted by company policy to perform such activities. I find such a list insufficient to prove that these individuals *actually performed* one or more covered tasks without being properly qualified. Therefore, I am withdrawing Item #6.

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

¹⁹ E.g., *In the Matter of Kinder Morgan Energy Partners, L.P.*, CPF No. 5-2008-5042 (March 4, 2010); *In the Matter of Tampa Bay Pipeline Company*, CPF No. 2-2008-6002 (April 26, 2010); *In the Matter of Norfolk Southern Corporation*, CPF No. 2-2010-6004 (April 8, 2011).

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 \$481,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$10,500 for Respondent's violation of 49 C.F.R. § 195.52, for failing to make a telephonic report to the NRC at the earliest practicable moment following discovery of a reportable release. In its Response, Buckeye argued that this Item was not a violation and therefore the civil penalty should be removed. Having analyzed and determined that a violation did occur and having considered the assessment criteria listed under 49 C.F.R. § 190.225, I find that the proposed penalty is appropriate. Buckeye has not produced any evidence or argument that would warrant a reduction or elimination of the penalty. Accordingly, I assess Respondent a civil penalty of \$10,500 for violation of 49 C.F.R. § 195.52.

Item 2: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.401(b), for failing to correct a condition that could adversely affect the safe operation of its pipeline system. Specifically, Buckeye experienced an imminent hazard involving three separate alarms and yet continued filling operations.

In its Response, Buckeye argued that the proposed civil penalty amount is excessive and should be reduced. At the hearing and in its Closing, the operator argued that this item should have been brought as a Notice of Amendment and not a probable violation punishable by civil penalty. I considered that argument, as discussed above, and have determined that a civil penalty in this case is appropriate. The proposed civil penalty amount of \$100,000 is based on the assessment criteria set out in 49 C.F.R. § 190.225, including the fact that the violation was a causal factor in the Accident. Had Buckeye personnel acknowledged the alarms and discontinued filling operations, the spill amount would have been reduced or eliminated. Accordingly, based upon the foregoing, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.401(b).

Item 3: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its own procedures when filling a regulated breakout tank. In its Response, Buckeye argued that the proposed civil penalty amount is excessive and should be reduced. At the hearing and in its Closing, the operator argued that this item should have been brought as a Notice of Amendment and not a probable violation punishable by civil penalty.

I have considered Respondent's argument, as discussed above, and have determined that a civil penalty in this case is appropriate. The proposed civil penalty amount of \$100,000 is based on the assessment criteria set out in 49 C.F.R. § 190.225, including the fact that the violation was a causal factor in the Accident. If the Buckeye control center had shut down the line or the local operator had taken other precautions, as discussed in the Findings section above, the Accident could have been avoided. Accordingly, based upon the foregoing, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a).

Item 5: The Notice proposed a civil penalty of \$192,000 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that the local operator at the East

Chicago storage tank facility was qualified to perform Task 412. In its Response, Buckeye argued that the civil penalty should be removed because OPS had previously inspected Buckeye's OQ program and had not alleged a violation. I have reviewed the proposed civil penalty and the assessment factors set out in 49 C.F.R. § 190.225. I find that the proposed civil penalty was appropriately based on the fact that PHMSA, not the operator, discovered the violation and that the violation contributed to an accident. Therefore, I assess a civil penalty of \$192,000.

Item 6: The Notice proposed a civil penalty of \$79,300 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that all personnel were qualified to perform Task 412. As stated above, I have withdrawn this Item and therefore also withdraw the associated civil penalty of \$79,300.

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 **\$402,500**.

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 \$402,500 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 4 in the Notice for violation of 49 C.F.R. § 195.505(a), respectively. 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 § 195.505(a) (**Item 4**), Respondent must include the missing covered task (delivery operations at regulated tank facilities) in its OQ program. Buckeye must also develop training, evaluation, and qualification requirements for this covered task.

2. Buckeye must provide documentation of completion of these actions within three months of receipt of the Final Order.
3. Buckeye must evaluate and qualify all personnel currently performing this task and any additional tasks deemed pertinent after a review of covered tasks.
4. Buckeye must provide documentation of this action within six months of receipt of the Final Order.
5. It is requested (but not required) that Buckeye maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mr. David Barrett, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. Costs should be reported in two categories: 1) total costs associated with preparation/revision of plans; procedures, studies, and analyses; and 2) total costs 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 \$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 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.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

NOV 19 2012

Date Issued