



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

MAY 30 2012

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

Re: CPF No. 1-2009-5002

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, assesses a civil penalty of \$524,900, and specifies actions that need to be taken by Buckeye Partners, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order 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, PE, Director, Eastern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Scott Collier, Vice President, Buckeye Partners, LP,
5 TEK Park, 9999 Hamilton Boulevard, Breinigsville, PA 18031

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,)

Respondent.)

CPF No. 1-2009-5002

FINAL ORDER

During the period from May to December, 2008, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), and the New York Public Service Commission conducted on-site pipeline safety inspections of the facilities and records of Buckeye Partners, LP (BPL or Respondent), in several states, including Pennsylvania, Ohio and Michigan. BPL owns and operates approximately 6,000 miles of pipelines transporting refined petroleum 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 BPL's integrity management program.³

As a result of the inspection, the Director, Eastern Region, PHMSA (Director), issued to Respondent, by letter dated June 26, 2009, 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 BPL had committed various violations of 49 C.F.R. Part 195, assessing a civil penalty of \$645,200 for the alleged violations, and ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed finding that Respondent had committed other probable violations of 49 C.F.R. Part 195 and warning the company to take appropriate corrective action or be subject to future enforcement action.

BPL responded to the Notice by letters dated September 25, 2009 (Response), and January 6, 2010 (Supplemental Response). The company contested some of the allegations of violation and requested reduction or elimination of the associated penalties. BPL did not contest other allegations and provided information concerning the corrective actions it had taken. 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:

Operations and Maintenance Items:

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

§ 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 that the manual is effective....

The Notice alleged that BPL violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal operations and maintenance (O&M) activities and handling abnormal operations and emergencies. Specifically, it alleged that BPL had failed to conduct root-cause analyses in 25 accident reports, as required by its own O&M procedures. The *BPL Safety Manual, Section A-04*, required that a root cause analysis be conducted for each product release that required regulatory reporting.⁴

In its Response, BPL did not contest the allegation of violation but contended that in August 2006, it had created six new positions within the company and that one of the duties of these new positions was to conduct root cause analyses for accidents.⁵ BPL also stated that the 25 accident reports which lacked a root cause analysis had all been performed before the creation of the new positions.⁶ BPL stated that it had “recognized that there was a need to ensure that root cause analyses were conducted... almost two years prior to the integrated inspection” and requested that the penalty associated with this Item be “rescinded.”⁷ Since this argument relates to a potential reduction in the amount of the penalty, it is discussed in the “Assessment of Penalty” section below.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal O&M activities and handling abnormal operations and emergencies.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(b), which states:

⁴ Pipeline Safety Violation Report (Violation Report), Exhibit A (on file with PHMSA).

⁵ Response at 2.

⁶ *Id.*

⁷ *Id.*

§ 195.403 Emergency response training.

(a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel...

(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:

(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and

(2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.

The Notice alleged that BPL violated 49 C.F.R. § 195.403(b) by failing to review with company personnel their performance in meeting the objectives of the company's emergency response training program, at intervals not exceeding 15 months but at least once each calendar year.

In its Response, BPL did not explicitly contest the allegation but argued that it had reviewed the performance of its employees in responding to emergencies through the use of a form which had been "approved by the government" and which had documented personnel "responses and follow up actions to emergencies."⁸ The company further explained that its Training Manual called for a critique of employee responses after all emergencies and response drills but acknowledged that it did not "specifically document the review of the performance of its employees on the form." Notwithstanding these existing procedures, BPL indicated that it had revised the form to include a check box to document specifically that the performance of company personnel had been reviewed. The company provided OPS with a blank copy of the revised form.⁹

While BPL indicated that the form had been approved by the government, there is no indication that the form had ever been approved by PHMSA for purposes of satisfying this regulatory requirement. In addition, BPL did not provide any completed forms to demonstrate that the required reviews had actually been conducted. Therefore, it is impossible to tell whether the reviews were properly completed in a timely manner.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(b) by failing to review with company personnel, at the required intervals, their performance in meeting the objectives of BPL's emergency response training program.

Item 13: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow its manual of written procedures for conducting normal O&M activities and handling abnormal operations and emergencies. Specifically, it alleged that BPL failed to follow its *Maintenance Manual, Procedure E-08, Damaged or Defective Non-Leaking Pipe*, on two occasions. On March 22, 2005, the company allegedly failed to repair a sharp dent at Sta. 913+96 on its 209 Line in Wayne, Michigan, using a sleeve required by its own written procedures. Similarly, the Notice alleged that on June 1, 2005, the company allegedly failed to repair a wrinkle bend in accordance with BPL's own written procedures.¹⁰

⁸ Response at 3.

⁹ *Id.*

¹⁰ Violation Report, Exhibit B.

According to the Notice, BPL’s procedures stated that at the pipeline’s listed Maximum Operating Pressure (MOP) of 1233 psig, the wrinkle bend had to be repaired in accordance with the company’s *Procedure MA E-08, Exhibit 1*. The company allegedly decided, however, that no repair was needed for the wrinkle bend because the line did not normally operate at over 900 psig. However, BPL did not subsequently lower the MOP on the line to 900 psig.

BPL did not contest the alleged violations. The company acknowledged that in August 2009, it had excavated and re-evaluated the sharp dent in the 209 line and had installed a repair sleeve.¹¹ As for the wrinkle bend, the company stated that it was in the process of conducting an engineering evaluation to determine the appropriate MOP for this line segment.¹² Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal O&M activities and handling abnormal operations and emergencies.

Corrosion Control Items

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a), which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore.....	At least once every 3 calendar years, but with intervals not exceeding 39 months.
Offshore.....	At least once each calendar year, but with intervals not exceeding 15 months.

The Notice alleged that BPL violated 49 C.F.R. § 195.583(a) by failing to inspect the above-ground pipeline facilities at the company’s Mantua Station for atmospheric corrosion at least once every three calendar years, but at intervals not exceeding 39 months. Specifically, it alleged that BPL’s own records showed inspections had been conducted on May 4, 2004, and January 29, 2008, an interval that exceeded 39 months.

BPL did not contest this allegation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.583(a) by failing to inspect, at the required intervals, each pipeline exposed to the atmosphere for atmospheric corrosion. It is noted that BPL represents that it has improved its process for conducting such inspections.

¹¹ Response at 6.

¹² *Id.*

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c), which states:

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

(a)

(c) *Rectifiers and other devices.* You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier..... Reverse current switch. Diode. Interference bond whose failure would jeopardize structural protection.	At least six times each calendar year, but with intervals not exceeding 2½ months.
Other interference bond.....	At least once each calendar year, but with intervals not exceeding 15 months.

The Notice alleged that BPL violated 49 C.F.R. § 195.573(c) by failing to electrically check several rectifiers for proper performance at the required frequency. Specifically, it alleged the following failures:

1. Three rectifiers in the Harristown Shell system were not inspected at the required intervals twice during 2006, each time exceeding the 2½-month maximum by 1½ months;
2. The rectifiers in the BPL Trans PA, Malvern Station Tank Farm, Paulsboro Deep Well, and Chester Park systems were not checked at least six times each year during 2006-2007;
3. The Booth rectifier LP-07 for Tank #15 was not inspected between March 5, 2006, and May 26, 2006, an interval that exceeded 2½ months; and
4. The Booth rectifier LP-08 STA40009 BH724SK was not inspected between September 5, 2006, and January 12, 2007, an interval that exceeded 2½ months.

In its Response, BPL only contested the portion of the allegation relating to the rectifiers on the Harristown Shell system. The company asserted that during the March and July inspections, the Harristown rectifiers were out of service due to tank projects and were noted as “locked

out/tagged out” on the company’s inspection records.¹³ BPL’s rectifier output-history documents included comments for the Harristown rectifiers for the March and July inspections. In March, the rectifiers were noted as “Locked out – Due to cleaning tank” and in July they were listed as “Down – Due to construction.” Based on these records and BPL’s explanation for them, it is plausible that the rectifiers were out of service during these inspections.

To remain in compliance with the regulation, however, BPL was obliged to check the rectifiers before they were put back into service. The company failed to inspect them until the next scheduled inspection two months later, resulting in a four-month interval between inspections. BPL stated that it had subsequently revised its procedures to require that rectifiers be checked both prior to and after being locked out and that the company had added a field in its work order system to show when an inspection would be out of compliance with § 195.573(c).¹⁴

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(c) by failing to check several rectifiers for proper performance within the required intervals.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.571, which states:

§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by [Subpart H] must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE SP 0169 (incorporated by reference, *see* § 195.3).

The Notice alleged that BPL violated 49 C.F.R. § 195.571 by failing to ensure that cathodic protection for the company’s facilities at the Philadelphia Airport (Airport) complied with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE Standard SP 0169 (NACE Standard). Specifically, it alleged that BPL had failed to take any pipe-to-soil readings at the Airport since October 2006 and that therefore the adequacy of cathodic protection at these locations was unknown.

In its Response, BPL acknowledged that it did not take pipe-to-soil readings at the Airport test points, but contended that it had been unable to gain access to the Airport in 2007 and that the test points at the Airport represented only a small fraction of the points on its entire system.¹⁵ BPL stated that all the other test points had been tested in 2007 and that the Airport points were accessed and tested in October 2008. The company also stated that it had now arranged a new method for arranging security escorts at the Airport and that it had made arrangements for the 2009 inspection within the required interval.¹⁶

¹³ Response at 4.

¹⁴ *Id.*

¹⁵ Response at 4.

¹⁶ Response at 4-5.

BPL is obligated to ensure that cathodic protection is adequate and complies with the NACE Standard at all times. BPL's failure to gain access to the Airport does not serve to refute the allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.571 by failing to ensure that cathodic protection on its pipeline complied with the applicable criteria and other considerations for cathodic protection contained in the NACE Standard.

Item 11: 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 BPL violated 49 C.F.R. § 195.573(e) by failing to correct identified deficiencies in corrosion control, as required by § 195.401(b), which states that an operator must correct, within a reasonable time, any deficiency that could adversely affect the safe operation of the pipeline. Specifically, the Notice alleged that the company's own work orders showed that several locations along the pipeline with low cathodic protection readings had been scheduled for work between 2005 and 2007, but that the work had not been completed by the time of the PHMSA inspections in 2008.

BPL did not contest this allegation and explained that it had improved its process for remediating low cathodic protection readings by adding a field in its work order system to show when proposed remediation efforts would fail to be in compliance.¹⁷ Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(e) by failing to correct identified deficiencies in corrosion control within a reasonable time.

Integrity Management Program (IMP) Items

Item 14: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?—*

(1) *General.* After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

(2) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base

¹⁷ Response at 5.

the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in paragraph (e) of this section. The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

The Notice alleged that BPL violated 49 C.F.R. § 195.452(j)(2) by failing to conduct periodic evaluations as frequently as needed to assure pipeline integrity. Specifically, the Notice alleged that “BPL could not demonstrate that periodic evaluations of the pipeline integrity program were performed as required by the integrity management regulations.”¹⁸ BPL contested the allegation, stating that the company’s “process for periodic evaluation of the integrity of BPL’s pipelines and compliance with integrity regulations involves its Risk Management Team.”¹⁹ The Response broadly described the responsibilities and activities of the team, including ensuring “[c]ompliance with all regulatory requirements regarding operational risk management” and a “[c]ontinuous improvement process for BPL’s integrity management program.”²⁰ BPL also stated that minutes and “action items” from the team’s meetings documented the company’s periodic evaluation process.²¹

BPL did not offer any documentation or evidence of any of its integrity program evaluations. The meeting minutes and actions items which BPL referenced in its Response were not provided, nor did BPL demonstrate that results of any evaluations were used to make decisions about remediation and preventive and mitigative (P&M) actions. BPL offered examples of “programs that were recommended through the periodic evaluations” but did not offer any documentation of the evaluations or the recommendations that they had claimed to have made.²²

Neither party has presented sufficient proof to prove its position, but OPS bears the burden of proving that BPL has committed the violation. Section 195.452(j) requires continuous evaluation and assessment of an operator’s individual pipeline *segments*, not simply its overall IMP. The evidence presented by OPS in the Violation Report and Notice are insufficient to prove that Respondent’s IMP failed to include periodic pipe segment evaluations under § 195.452(j). The record contains no documents, procedures, interview notes or any other evidence to support the allegation that the company’s IMP was devoid of the sort of continuous evaluations required by the regulation. Accordingly, based upon the foregoing, I find that OPS has failed to meet its burden of proof and hereby order that Item 14 be withdrawn.

Item 17: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f)(6), which states:

¹⁸ Notice at 7.

¹⁹ Response at 6.

²⁰ *Id.*

²¹ Response at 7.

²² *Id.*

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) . . .

(6) Identification of preventive and mitigative measures to protect the high consequence area (see paragraph (i) of this section).

The Notice alleged that BPL violated 49 C.F.R. § 195.452(f)(6) by failing to include in its IMP a process for identifying (P&M) measures to protect HCAs. Under § 195.452(f), an operator's IMP must contain eight separate elements, including a process for identifying HCAs, a baseline assessment plan, an information-integration analysis, criteria for taking remedial action, a continual process of periodic assessments of line pipe segments (see Item 14 above), the identification of P&M measures tailored to the operator's unique system, and methods to measure the IMP's overall effectiveness.

The Violation Report stated that the OPS inspection team had found no indication that BPL had ever developed a process within its IMP for identifying P&M measures that would reduce the likelihood and consequences of pipeline releases, had ever identified specific P&M measures to protect HCAs, or had compiled any documentation to show such processes were in place. The Violation Report also noted that BPL's integrity manager had stated that BPL would be developing such procedures in the future.

In its Response, BPL contested the alleged violation, stating that its Integrity Management Manual (IMM) did indeed contain a process for identifying potential P&M measures and summarizing the process. It claimed that Section 6 of its IMM fully described the company's process for identifying P&M measures, including the use of a Risk Model to identify high-risk areas, the use of subject matter expert teams to develop and test "various preventive and mitigative scenarios that potentially will provide positive impacts to reducing the identified risk," the selection and evaluation of "physically feasible" measures, and the implementation of those measures having the greatest benefit in terms of risk reduction and financial feasibility.²³ In addition, the company contended that the "Exhibit A-01A flowchart in Buckeye's IMM and referenced in Section 6 clearly shows that preventive and mitigative measures are an integral part of the Continual Assessment Program."²⁴ The company, however, did not submit any of these procedures or any other documentation in either its Response or Supplemental Response.

²³ Response at 8.

²⁴ Response at 8.

Such general statements do not constitute credible evidence that BPL actually had a process for identifying P&M measures or that it had actually developed specific measures to reduce the likelihood or consequences of failures on HCAs. Not only did BPL fail to produce documentation of a P&M process that was in effect as of the date of the OPS inspection in May 2008, but it also failed to provide any evidence showing that any specific P&M measures had ever been actually identified, evaluated by its subject matter expert team, or implemented by the company.

While BPL may indeed have had some general framework of a process for identifying P&M measures, the company failed to produce any evidence that it had implemented any such process or that it had met the requirements of the regulation. Accordingly, based upon a review of all of the evidence, I find that BPL violated 49 C.F.R. § 195.452(f)(6) by failing to include a process for identifying P&M measures to protect HCAs in its written IMP.

Item 19: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(i)(4), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?-*

(1)

(4) *Emergency Flow Restricting Devices (EFRD).* If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

The Notice alleged that BPL violated 49 C.F.R. § 195.452(i)(4) by failing to determine whether EFRDs were needed to protect against failures that could affect HCAs along its pipeline and, if so, to install them. Specifically, the Notice alleged that, since 2005, BPL had failed to conduct annual EFRD analyses of pipeline segments scheduled for integrity re-assessments, as required by § 195.452(i) and Section 15 of the company’s own IMM. The Notice also alleged that BPL had failed to install certain EFRDs that had been recommended as a result of a 2002 evaluation.

In its Response, BPL noted that pipelines scheduled for integrity assessments between 2002 and 2005 had been analyzed for EFRDs and that the recommended devices had been included in BPL’s capital plan. The company claimed, however, that it had ultimately decided to allocate funds to other risk-management projects instead.²⁵ BPL also noted that its spending on pipeline maintenance had drastically increased since 2000 and that EFRDs were “still being considered

²⁵ Response at 8-9.

and installed when the benefits match the expenditure.”²⁶ For example, it cited the example of a block valve that had been installed as a “risk mitigation project,” which showed that BPL was “not opposed to adding EFRDs.”²⁷ The company, however, did not contest the facts set out in the allegation.

BPL’s spending on other maintenance projects does not lessen the potential consequences of the violation at hand, nor do budgetary considerations absolve BPL of its obligation to comply with the regulation and its own IMP. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(i)(4) by failing to determine whether EFRDs were needed on its pipeline to protect against failures, and, if so, to install them.

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 \$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 \$645,200 for the violations cited above.

Item 3: The Notice proposed a civil penalty of \$41,500 for Respondent’s violation of 49 C.F.R. § 195.402(a), for failing to follow its own manual of written procedures for conducting normal O&M activities and handling abnormal operations and emergencies. As noted above, I found that BPL failed to conduct root cause analyses in 25 accident reports, as required by its O&M procedures. Respondent argued, however, that the penalty should be “rescinded” because BPL had recognized the need to ensure root cause analyses were done, and had created a job position for this purpose two years before the OPS inspection. I fail to see any basis for rescission or reduction of the penalty. Recognizing a need to comply and actually complying are two different things. Respondent’s arguments do not mitigate the fact that BPL prepared 25 accident reports during 2002–2007 that did not include a root cause analysis, as required by its own procedures.

A root cause analysis is an important tool for identifying safety problems before they cause accidents. Presumably, this is the very reason BPL included the requirement in its O&M manual. The gravity of the violation is not mitigated by the fact that BPL recognized the

²⁶ Response at 9.

²⁷ *Id.*

problem and made plans to correct it. On the contrary, it is troubling to see that the violation continued for years because the company apparently did not place a high enough priority on investigating the root causes of 25 separate accidents or complying with its own internal procedures. BPL has not presented any evidence or argument that would justify a reduction or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$41,500 for violation of 49 C.F.R. § 195.402(a).

Item 4: The Notice proposed a civil penalty of \$29,000 for Respondent's violation of 49 C.F.R. § 195.403(b), for failing to review with company personnel their performance in meeting the objectives of BPL's emergency response training program, at intervals not exceeding 15 months but at least once each calendar year. I found that, while Respondent used a form to document employee responses to emergencies, it did not document such reviews on the forms and did not provide PHMSA with copies of any completed forms to demonstrate that the required reviews had actually been conducted.

Adequate emergency response training is essential to the safety of the public and protection of the environment in the event of emergencies. Respondent's failure to review or document the performance of its personnel reduced the safety of its operations insofar as the company had no established method of regularly reviewing employee performance that was related specifically to emergency response. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$29,000 for violations of 49 C.F.R. § 195.403(b).

Item 7: The Notice proposed a civil penalty of \$14,000 for Respondent's violation of 49 C.F.R. § 195.583(a), for failing to inspect the above-ground pipeline facilities at the Mantua Station for atmospheric corrosion at least once every three calendar years, but at intervals not exceeding 39 months. BPL neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty; therefore, I found that Respondent failed to inspect each pipeline exposed to the atmosphere for atmospheric corrosion at the required intervals. Atmospheric corrosion at the Mantua Station could result in a release of hazardous liquids, thus posing a risk to life, property and the environment. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$14,000 for violation of 49 C.F.R. § 195.583(a).

Item 8: The Notice proposed a civil penalty of \$14,000 for Respondent's violation of 49 C.F.R. § 195.573(c), for failing to check several rectifiers for proper performance at the required frequency. Respondent contested the allegations relating to the Harristown Shell system but not the others. As discussed above, I found that Respondent was required to check the locked-out rectifiers before putting them back into service. The proposed penalty amount reflects the fact that neither pipeline integrity nor safe operations were seriously affected by the violations. Based upon the foregoing, I assess Respondent a civil penalty of \$14,000 for violation of 49 C.F.R. § 195.573(c).

Item 9: The Notice proposed a civil penalty of \$35,300 for Respondent's violation of 49 C.F.R. § 195.571, for failing to ensure that cathodic protection for the company's pipeline facilities at the Airport complied with the NACE Standard. BPL failed to take any pipe-to-soil readings at the Airport from October 2006 until October 2008, and therefore the adequacy of the

cathodic protection at this location was unknown. As noted above, I found that BPL's failure to gain access to the Airport did not serve to refute the allegation of violation.

BPL has a responsibility to ensure that its facilities can be operated safely, which includes maintaining adequate cathodic protection. The potential failure of this pipeline in an HCA near the Airport could jeopardize the safety and operation of an important facility where the public often congregates in large numbers. The importance of ensuring adequate cathodic protection at such a facility increases the gravity of the violation, as does its duration. BPL has not presented any evidence or argument justifying a reduction or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$35,300 for violation of 49 C.F.R. § 195.571.

Item 11: The Notice proposed a civil penalty of \$29,000 for Respondent's violation of 49 C.F.R. § 195.573(e), for failing to correct, within a reasonable time, identified deficiencies in corrosion control. Respondent's work orders showed that several locations having low cathodic protection readings along the pipeline had been scheduled for work between 2005 and 2007 but the work had not been completed by the time of the PHMSA inspections in 2008. BPL neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Inadequate cathodic protection can result in pipeline leaks and the release of hazardous liquid. Two of the identified deficiencies were located within an HCA, thus aggravating the gravity of the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$29,000 for violation of 49 C.F.R. § 195.573(e).

Item 13: The Notice proposed a civil penalty of \$41,500 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its own manual of written procedures for conducting normal O&M activities and for handling abnormal operations and emergencies. BPL neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. As noted above, I found that Respondent failed on two occasions to repair abnormal conditions, as required by its written procedures. These conditions potentially affected HCAs, meaning the safety of the public and the environment were at increased risk. Therefore, the gravity of the violation supports the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$41,500 for violation of 49 C.F.R. § 195.402(a).

Item 14: The Notice proposed a civil penalty of \$120,300 for Respondent's violation of 49 C.F.R. § 195.452(j)(2), for failing to conduct periodic evaluations as frequently as needed to assure pipeline integrity. As discussed above, the allegation is withdrawn. Therefore, I also withdraw the proposed penalty for violation of 49 C.F.R. § 195.452(j)(2).

Item 17: The Notice proposed a civil penalty of \$200,300 for Respondent's violation of 49 C.F.R. § 195.452(f)(6), for failing to include a process in its IMP for identifying P&M measures to protect HCAs. As noted above, I found that BPL failed to produce evidence of a P&M process that was in effect as of the date the PHMSA inspection began in May 2008. Early identification and implementation of P&M measures can help prevent some or all of the damage that can result from a pipeline failure. The unique features of each pipeline, the terrain

and environment around the pipeline, and the particular features of the surrounding community mean that each operator must implement a process uniquely tailored to its own individual system. This process is a critical element of the IMP and helps to ensure its efficacy. Such a process was required to be in BPL's written IMP no later than March 2002, but there is no evidence that it was in place by the time of the inspection in May 2008.

More than half of BPL's pipelines are either located within or could affect HCAs. The company is therefore required to implement and maintain a complete IMP to protect the public and the environment in HCAs from potentially dangerous pipeline failures. The failure to do so is a serious violation of the integrity management regulations, as a pipeline failure in or near an HCA could have catastrophic consequences for the public and the environment. Therefore the nature and gravity of the violation and BPL's culpability justify the proposed penalty.

This violation continued for years, yet the amount of the proposed penalty is far below the limit of \$100,000 per violation per day. BPL has not presented any other evidence or argument justifying a reduction or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$200,300 for violation of 49 C.F.R. § 195.452(f)(6).

Item 19: The Notice proposed a civil penalty of \$120,300 for Respondent's violation of 49 C.F.R. § 195.452(i)(4), for failing to determine whether EFRDs were needed on its pipeline to protect against failures that could affect HCAs. Specifically, it alleged that BPL had failed to conduct annual EFRD analyses of pipeline segments scheduled for integrity re-assessments and to install EFRDs that the company had previously determined were needed.

BPL's defense was that instead of installing the EFRDs, the company had allocated funds to other repairs with greater risk-mitigation benefits. In addition, Respondent noted that it had dramatically increased spending on pipeline maintenance between 2000 and 2008.

EFRDs have been shown to be effective in mitigating the consequences of many hazardous liquid pipeline releases. If the need for EFRDs is not assessed and appropriate action taken, a pipeline failure can cause additional damage that could have been prevented, thereby putting the environment and public safety at unnecessary risk. Spending on other maintenance activities, while commendable, does not mitigate an operator's duty to conduct EFRD evaluations and install them as needed, as required under both § 195.452(i)(4) and the company's own procedures. That BPL did not complete the EFRD installations that were recommended in its own 2002 evaluation is particularly troubling because the company recognized a safety hazard but consciously decided to forego action that could mitigate the effects of a spill. Therefore, the nature and gravity of the violation and the culpability of the operator justify the proposed penalty amount.

BPL has not presented any other evidence or argument justifying a reduction or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$120,300 for violation of 49 C.F.R. § 195.452(i)(4).

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 **\$524,900**.

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 \$524,900 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 Items 3, 9, 17, and 19 in the Notice for violations of 49 C.F.R. §§ 195.402(a), 195.571, 195.452(f)(6), and 195.452(i)(4), 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 § 195.402(a) (**Item 3**), Respondent must develop a plan to ensure that a root cause analysis is conducted and documented for all accidents, as required by BPL's O&M Manual, and that any corrective actions recommended by each analysis are implemented.
2. With respect to the violation of § 195.571 (**Item 9**), Respondent must establish and implement a plan to gain access to BPL facilities at the Philadelphia Airport in order to ensure its cathodic protection complies with paragraphs 6.2 and 6.3 of NACE Standard SP 0169.
3. With respect to the violation of § 195.452(f)(6) (**Item 17**), Respondent must establish and implement processes to evaluate its pipeline segments for additional P&M measures. Upon completion of the evaluation of pipeline segments, a schedule for implementing any needed P&M actions must be submitted.
4. With respect to the violation of § 195.452(i)(4) (**Item 19**), Respondent must establish an improved process to evaluate the need for additional EFRDs. Upon establishment of the improved process, Respondent must perform EFRD evaluations on its pipeline

segments, develop a schedule for installing EFRDs where necessary, and document the reasoning for why EFRDs are not necessary for all locations Respondent considered.

5. Respondent must submit a plan and schedule for completing the Compliance Order items listed above to PHMSA for review and approval within 60 days after receipt of the Final Order. Upon receiving approval of the plan and schedule, Respondent must submit evidence of completion for the Compliance Order items listed above to PHMSA within 180 days after receipt of the Final Order. Submit all correspondence for review and approval to the Director, Eastern Region, Office of Pipeline Safety, PHMSA, 820 Bear Tavern Road, Suite 306, West Trenton, NJ 08628.
6. It is requested that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit that total to the Director, Eastern Region, PHMSA. It is requested that costs be reported in two categories: (1) total cost associated with preparation and 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 \$100,000 per 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.

WARNING ITEMS

With respect to Items 1, 2, 5, 6, 10, 12, 15, 16, 18, 20, 21, and 22, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.401(b) (**Item 1**) – Respondent’s alleged failure to correct four conditions that could have adversely affected the safe operation of its pipeline within a reasonable time.

49 C.F.R. § 195.402(a) (**Item 2**) – Respondent’s alleged failure to review and update its operations, maintenance, and emergency manuals at intervals not exceeding 15 months, but at least once each calendar year. Respondent claimed that its manual review process satisfied the requirements of § 195.402(a) and that it had revised its procedures to include a documented annual review of its manuals.²⁸ However, Respondent did not provide any evidence that the reviews had been conducted at the required intervals.

²⁸ Response at 2.

49 C.F.R. § 195.412(a) (**Item 5**) – Respondent’s alleged failure to inspect the surface conditions on or adjacent to each pipeline right-of-way at intervals not exceeding 3 weeks, but at least 26 times a year.

49 C.F.R. § 195.557 (**Item 6**) – Respondent’s alleged failure to provide coating for external corrosion control as required for certain pipelines.

49 C.F.R. § 195.573(e) (**Item 10**) – Respondent’s alleged failure to correct identified deficiencies in external corrosion control within a reasonable time period. Cathodic protection survey test results in 2006 and 2007 identified inadequate levels of cathodic protection, but this condition was not addressed until 2008. In its Response, BPL claimed these test results were not indicative of a deficiency in corrosion control, but were simply the result of defective test leads.²⁹ Regardless of the cause of the test results, the condition needed to be corrected before the next annual test.

49 C.F.R. § 195.438 (**Item 12**) – Respondent’s alleged failure to prohibit smoking and open flames at each pump station and breakout tank area where there was a possibility of leakage of a flammable hazardous liquid or the presence of flammable vapors. BPL had “No Smoking” signs at some, but not all, tank areas, and not at the entrance to tank dikes at the Booth Station, an inconsistency that could confuse workers and visitors regarding where it was safe to smoke within the facility. In its Response, BPL claimed that signs were not required at each tank dike since the company had signs on its perimeter fences and its written policy prohibited smoking inside the fenced areas.³⁰ While it is necessary and appropriate for operators to have written policies prohibiting smoking and open flames in pump station areas, the existence of such procedures alone does not constitute compliance with the regulation.³¹ In addition, the presence of “No Smoking” signs at some, but not all, tank areas could lead to confusion and an ineffective implementation of the “no smoking” policy.

49 C.F.R. § 195.452(b)(2) (**Items 15 and 16**) – Respondent’s alleged failure to identify all pipelines that could affect a HCA.

49 C.F.R. § 195.452(i)(2) (**Item 18**) – Respondent’s alleged failure to properly consider all relevant risk factors in its evaluation of what P&M measures were needed to protect HCAs in the event of a pipeline release.

49 C.F.R. § 195.452(f)(3) (**Item 20**) – Respondent’s alleged failure to continually update its IMP to reflect relevant operating experience.

²⁹ Response at 5.

³⁰ Response at 6.

³¹ See *In the Matter of Nustar Logistics, L.P., F/K/A Valero Logistics Operations, L.P.*, CPF No. 4-2005-5048 (March 11, 2009). Final orders are generally available on PHMSA website at http://primis.phmsa.dot.gov/comm/reports/enforce/Actions_opid_0.html?nocache=8998#_TP_1_tab_2.

49 C.F.R. § 195.561(b) (**Item 21**) – Respondent’s alleged failure to properly repair any coating damage discovered during an inspection of external pipe.

49 C.F.R. § 195.406(b) (**Item 22**) – Respondent’s alleged failure to provide adequate controls and protective equipment to keep the surge pressure on the pipeline below 110% of the operating pressure limit established under § 195.406(a). The Notice listed three documented events where the surge pressure exceeded 110% of the MOP. In its Response, BPL stated that in two of these instances, the pressure did not actually exceed 110% of the MOP, and that the company’s Abnormal Operating Event forms had mismarked the pressure due to an employee’s miscalculation. However, BPL did not provide any evidence to substantiate this explanation. The third event was not disputed.³²

BPL presented information in its Response showing that it had taken certain actions to address the cited items. Accordingly, having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. § 195.401(b) (Item 1), § 195.402(a) (Item 2), § 195.412(a) (Item 5), § 195.557 (Item 6), § 195.573(e) (Item 10), § 195.438 (Item 12), § 195.452(b)(2) (Items 15 and 16), § 195.452(i)(2) (Item 18), § 195.452(f) (Item 20), § 195.561(b) (Item 21), and § 195.406(b) (Item 22) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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

MAY 30 2012

Date Issued

³² Response at 10.