

OCTOBER 23, 2012

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

Re: CPF No. 1-2011-5010

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 \$141,200, 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, Director, Eastern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Jeremiah J. Ashcroft, Sr. Vice President, Global Operations, Buckeye Partners, LP,
Five 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,)	CPF No. 1-2011-5010
)	
Respondent.)	
)	

FINAL ORDER

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), that occurred in Boothwyn, Pennsylvania. Buckeye owns and operates approximately 6,000 miles of pipelines transporting petroleum products, including gasoline, jet fuel, diesel fuel, heating oil and kerosene, from major supply sources to distribution terminals located in major end-use markets in the Northeast and the Upper Midwest.¹

The investigation arose out of an April 28, 2008 accident at Buckeye’s Booth Station that involved the release of approximately 2,142 gallons of fuel oil from a breakout tank designated as Tank 1. The spill occurred when the tank was returned to service following a repair on the tank bottom.

As a result of the investigation, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 18, 2011, 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 violated 49 C.F.R. §§ 195.402(c)(3) and 195.505(b), and proposed assessing a civil penalty of \$141,200 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 November 17, 2011 (Response). The company did not contest the first of the two allegations; provided an explanation of its actions and information concerning the corrective actions it had taken; requested that the second allegation be reduced to a Notice of Amendment; and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ <http://www.buckeye.com/BusinessOperations/PipelineTransportationOperations/tabid/584/Default.aspx> (last accessed September 26, 2012).

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(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. 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. . . .

(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:

(1) . . .

(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(c)(3) by failing to prepare and follow procedures for repairing its pipeline system in accordance with Subparts F and H of Part 195. Specifically, it alleged that Buckeye failed to have procedures in place to provide safety during the Tank 1 repair, which involved drilling atmospheric monitoring holes in the tank bottom, one of which was not patched and resulted in a spill of 2,142 gallons of fuel oil.² The Notice alleged that Buckeye failed to prepare and follow a process for ensuring that all of the holes were properly patched prior to returning the tank to service.

In its Response, Buckeye did not contest this allegation of violation and acknowledged that it did not have an adequate procedure for ensuring that all holes drilled in preparation for tank bottom repairs were patched.³ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to prepare and follow procedures for repairing its pipeline system in accordance with Subparts F and H of Part 195.

Item 2: 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:

² *Pipeline Failure Investigation Report*, Pipeline Safety Violation Report (Violation Report), October 18, 2011 (on file with PHMSA), Exhibit A-1 at page 1.

³ Response at 1.

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

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that an individual performing a covered task under the company's operator qualification (OQ) program was qualified. Specifically, the Notice alleged that Buckeye had no documented evaluation demonstrating that the individual performing welding on its breakout tanks during the 2008 tank repair work at Booth Station was qualified for this particular task.

In its Response, Buckeye stated that at the time the repair work took place, welding on out-of-service breakout tanks was not a covered task under its Operator Qualification (OQ) program. Buckeye noted that PHMSA representatives had reviewed its OQ program in 2004 and in 2008 but did not identify welding on out-of-service breakout tanks as a task that needed to be included among the company's list of covered tasks. Buckeye further argued that if PHMSA believed such a task needed to be included as a covered task, the agency should address the issue through a Notice of Amendment (NOA),⁴ rather than a Notice of Probable Violation and Proposed Civil Penalty.

I do not find such arguments persuasive. First, the record shows that Buckeye personnel acknowledged during the investigation that welding was indeed a covered task under the company's OQ program.⁵ Second, the NOPV did not allege Buckeye failed to include welding as a covered task in its OQ program. Rather, the NOPV alleged that the particular individual performing a covered task at the time of the repair was not qualified by evaluation. Buckeye was unable to produce any OQ qualification record for this individual at the time of PHMSA's investigation or with its Response. Third, it would have been inappropriate to address a failure to qualify a particular individual through an NOA since the company's noncompliance did not reflect an inadequacy of procedures but, rather, a failure to train and qualify a particular individual.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that an individual performing a covered task was qualified under its OQ program.

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

⁴ An NOA is a type of PHMSA enforcement action under 49 C.F.R. 190.237 that alleges an operator's procedures are inadequate but does not include an allegation of violation or a proposed civil penalty.

⁵ In an e-mail dated June 6, 2008, a Buckeye representative effectively acknowledged that it considered welding to be an OQ task by stating that "...there was only one OQ task being conducted and that was welding." Violation Report, Exhibit A-6.

\$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.⁶ 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 \$141,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(c)(3) for failing to prepare and follow procedures for repairing its pipeline system in accordance with Subparts F and H of Part 195. As discussed above, I found that Buckeye failed to have a procedure ensuring that all of the holes drilled in preparation for a tank repair were patched prior to returning the tank to service.

The nature, circumstances, and gravity of this violation are significant in light of the fact that a large fuel oil tank was involved. Moreover, there were serious consequences from the failure to patch all of the holes drilled in the tank bottom because this violation was the direct cause of a spill of over 2000 gallons of fuel oil. The accident occurred at a facility that has 19 tanks and an office building. The safety of numerous Buckeye personnel could have been at risk if the fuel oil had ignited. In addition, the facility is located in a High Consequence Area near an elementary school and an ecologically sensitive area, where the public and the environment could have been at risk if the fuel oil had ignited.

I recognize that Buckeye has now revised its tank repair procedures, but this does not diminish its culpability at the time of the violation or constitute a good-faith effort to comply with the regulation prior to the violation. Respondent has presented no information or arguments that would warrant a reduction in the proposed penalty. 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(c)(3).

Item 2: The Notice proposed a civil penalty of \$41,200 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that an individual performing a covered task was qualified under the company's OQ program.

The nature, circumstances, and gravity of this violation are significant in light of the fact that welding of a large fuel oil tank was involved. Welding involves the introduction of an ignition source in an area where petroleum product vapors may be present. Critical safety issues involved in OQ welder training include confined-space entry and abnormal operating conditions.

⁶ Effective January 3, 2012, the maximum administrative civil penalties for violations of the federal pipeline safety regulations were doubled to \$200,000 per violation with a maximum of \$2,000,000 for a related series of violations (The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112-90)). Because the violations in this case occurred prior to the increase, the higher maximums do not apply.

Having an individual that is not OQ qualified perform welding on a tank increases the risk of an accident or injuries to the non-qualified individual himself and to others in the vicinity, as demonstrated by this accident. I recognize that Buckeye has now taken steps to ensure tank repair welding is performed by an OQ qualified individual, but this does not diminish the gravity of the violation or constitute a good-faith effort by the company to comply with the regulation prior to the violation.

Respondent has presented no information or arguments that would warrant a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$41,200 for violation of 49 C.F.R. § 195.505(b). 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 **\$141,200**.

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 \$141,200 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 1 and 2 in the Notice for violations of 49 C.F.R. §§ 195.402(c)(3) and 195.505(b), 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.

With respect to the violation § 195.402(c)(3) (Item 1), the Director has indicated that Respondent has established procedures to ensure that all holes drilled during tank bottom repairs are patched prior to returning the tank to service, including documenting the number and location of all holes drilled. Accordingly, I find that compliance has been achieved with respect to this violation. The compliance terms proposed in the Notice for Item 1 are therefore not included in this Order.

As for the remaining compliance terms, 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(b) (**Item 2**), Respondent must provide for documented training and qualification of individuals performing welding on its breakout tanks to ensure such individuals are qualified under its OQ program.
2. Within 90 days following receipt of this Order, Respondent must submit documentation demonstrating compliance with the above item to the Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, Suite 103, 820 Bear Tavern Road, West Trenton, NJ 08628.
3. It is requested, but not required, that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. Costs should be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies, and analyses; and (2) total cost associated with personnel training or any physical changes to pipeline facilities and 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 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. Should Respondent elect to do so, 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

Date Issued