

DECEMBER 18, 2012

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

Re: CPF No. 1-2012-5002

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws three of the allegations of violation, makes one finding of violation, assesses a civil penalty of \$11,800, and issues a warning to Buckeye Partners, LP, with respect to one other alleged probable violation. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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, Director, Performance Assurance, Buckeye Partners, LP,
Five TEK Park, 9999 Hamilton Boulevard, Breinigsville, PA 18031
Mr. Byron Coy, Eastern Region Director, 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, D.C. 20590**

)	
In the Matter of)	
)	
Buckeye Partners, LP,)	CPF No. 1-2012-5002
)	
Respondent.)	
)	

FINAL ORDER

Between June 15 and 19, 2009, 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 on-site pipeline safety inspection of the facilities and records of Buckeye Partners, LP (Buckeye or Respondent), in New Haven, Connecticut. Buckeye owns and operates approximately 6,000 miles of pipeline transporting refined petroleum products and highly volatile liquids.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated February 7, 2012, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$67,900 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 March 8, 2012 (Response). The company contested three allegations, agreed with one, offered additional information in response to the Notice, and requested that several of the proposed penalties be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

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. § 195.589(c), which states:

¹ <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> and <http://www.buckeye.com/AboutUs/tabid/54/Default.aspx> (last accessed on June 22, 2012).

§ 195.589 What corrosion control information do I have to maintain?

(a)....

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§ 195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain records of each inspection required by Subpart H (Corrosion Control) for at least five years. Specifically, the Notice alleged that Buckeye was unable, at the time of the PHMSA inspection, to produce records of atmospheric corrosion inspections required by 49 C.F.R. § 195.583(a) for the company's New Haven facility.

Respondent contested this allegation of violation, asserting that it did provide records at the time of the inspection. In its Response, Buckeye attached copies of the requested records. The records showed that atmospheric corrosion inspections had been performed on the New Haven facility on October 27, 2003, and again on October 24, 2006.

After considering all of the evidence, I find that the records submitted by Buckeye in its Response satisfy the record maintenance requirement for the atmospheric corrosion inspections at the New Haven facility. Based upon the foregoing, I hereby order that Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3), which states:

§ 195.404 Maps and records.

(a)....

(c) Each operator shall maintain the following records for the periods specified:...

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3) by failing to maintain a record of each inspection and test required by Subpart F (Operation and Maintenance) for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, it alleged that Buckeye failed to maintain records of each overpressure safety device inspection, as required by § 195.428(a), for at least two years from 2007 through the 2009.

The Notice alleged that during the inspection, a PHMSA representative observed three breakout tanks at Respondent's Ludlow Tank Farm, each of which had two thermal relief valves. One valve was for the inlet and one for the outlet line of each tank, for a total of six among the three tanks. Buckeye was unable to produce any records or documentation for the overpressure safety device inspections for these valves at the time of the inspection.

Under § 195.428, an overpressure safety device must be inspected and tested at intervals not exceeding 15 months, but at least once each calendar year, to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

Buckeye contested the allegation, asserting that there were only five active tank lines associated with the three tanks, not six. Tanks 1 and 2 each had an incoming and outgoing line, but Tank 3 only had one. The company further explained that Tanks 1 and 2 had no thermal relief valves on either the incoming or outgoing tank lines, but were joined together into one line, for which thermal relief protection was located in the pump house. As for Tank 3, Buckeye explained there was a thermal relief valve on the incoming/outbound line at the tank. Both thermal relief valves were inspected once per calendar year (not to exceed 15 months).

I agree. Having reviewed the records and photograph, along with the company's description of the valve configuration, it appears that the two thermal relief valves were inspected at the prescribed interval. Accordingly, I find that the records submitted by Buckeye in its Response satisfy the record maintenance requirement for the overpressure safety devices at Ludlow Tank Farm. Based upon the foregoing, I hereby order that Item 2 be withdrawn.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.589(c), as cited above, by failing to maintain a record of each inspection required by Subpart H (Corrosion Control) for at least five years. Such records must show sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures do not exist. Specifically, the Notice alleged that on September 18, 2008, Buckeye conducted a pipeline replacement project at Waterfront Street. Although Buckeye's project engineer claimed that the company performed an internal pipe visual inspection, as required by 49 C.F.R. § 195.579(c), the company had no records to document that it had actually performed such an inspection.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.589(c) by failing to maintain a record of the internal inspection of the pipe in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures do not exist.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3), as quoted above, by failing to maintain a record of each inspection and test required by Subpart F (Operation and Maintenance) for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, the Notice alleged that Buckeye failed to maintain records of Right-of-Way (ROW) inspections required by § 195.412(a) for at least two years. According to the Notice, Buckeye provided incomplete records of ROW inspections for the entire pipeline from New Haven, Connecticut, to Ludlow Station in Massachusetts between February 18, 2009, and May 21, 2009. The records produced only showed a segregated section of the facility rather than the entire facility and had no information regarding the surface conditions on or adjacent to each pipeline ROW.

In its Response, Buckeye contested this allegation, contending that it used air patrols to perform

ROW inspections at intervals not exceeding three weeks, but at least 26 times per year. The record provided to PHMSA for the period between February 18, 2009, and May 21, 2009 was only a summary listing of the work orders for ROW *walking patrols* in addition to the 26 required during the calendar year.

Upon review of the record, it appears that Buckeye submitted spreadsheets indicating that air patrols for eight line sections were performed every two weeks from January 3, 2006, to June 14, 2009. Buckeye also submitted six examples of pilot reports dated: January 3, 2007, June 18, 2007, January 21, 2008, June 17, 2008, January 12, 2009, and June 8, 2009.

Accordingly, I find that the records submitted by Buckeye in its Response satisfy the record maintenance requirement for the ROW inspections for the entire pipeline. Based upon the foregoing, I hereby order that Item 5 be withdrawn.

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 \$67,900 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$11,800 for Respondent's violation of 49 C.F.R. § 195.589(c), for failing to maintain records of each atmospheric corrosion inspection for at least five years. As discussed above, Item 1 is withdrawn. Therefore, I also withdraw the proposed penalty for violation of 49 C.F.R. § 195.589.

Item 2: The Notice proposed a civil penalty of \$18,800 for Respondent's violation of 49 C.F.R. § 195.404(c)(3), for failing to maintain records of each overpressure safety device inspection as required by § 195.428(a) for at least two years from 2007 through the 2009. As discussed above, Item 2 is withdrawn. Therefore, I also withdraw the proposed penalty for violation of 49 C.F.R. § 195.404.

Item 4: The Notice proposed a civil penalty of \$11,800 for Respondent's violation of 49 C.F.R. § 195.589(c), for failing to maintain a record of the internal inspection of the pipe in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures do not exist. Buckeye did not contest this allegation of violation or

offer any argument or evidence justifying a reduction in penalty. Internal corrosion can lead to a leak or rupture of the pipeline, thus posing a risk to life, property, and the environment. The proposed penalty taken into account the substantial period of time that elapsed between the time of the replacement project in 2008 and the date of the inspection. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$11,800 for violation of 49 C.F.R. § 195.589.

Item 5: The Notice proposed a civil penalty of \$25,500 for Respondent's violation of 49 C.F.R. § 195.404, for failing to maintain records of ROW inspections for at least two years. As discussed above, Item 5 is withdrawn. Therefore, I withdraw the proposed penalty for violation of 49 C.F.R. § 195.404.

In summary, having reviewed the record and considered the assessment criteria for Item 4 cited above, I assess Respondent a total civil penalty of **\$11,800**.

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 \$11,800 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 2 and 5 in the Notice for violations of 49 C.F.R. § 195.404. However, I have withdrawn these items. Accordingly, the compliance terms proposed in the Notice are not included in this Order.

WARNING ITEM

With respect to Item 3, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.430 (**Item 3**) — Respondent's alleged failure to maintain adequate firefighting equipment at each pump station and breakout tank area in

good operating condition at all times. During the inspection, a Buckeye representative could not move the lever on the nozzle of a foam hose at Ludlow Tank Farm because it was jammed and therefore inoperable.

Buckeye presented information in its Response showing that it had taken certain actions to address this item. Buckeye explained that it had inspected and lubricated the nozzle, which then functioned properly, and that it intended to lubricate the nozzle every month to ensure its operability. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued