



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

OCT 17 2012

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

Re: CPF No. 1-2012-5010

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, specifies actions that need to be taken by Buckeye Partners, L.P to comply with the pipeline safety regulations, and assesses a civil penalty of \$17,500. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated July 12, 2012. When the terms of the Compliance Order have been completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Thomas S. Collier, Vice President, Performance Assurance & Asset Integrity,
Buckeye Partners, L.P. Five TEK Park, 9999 Hamilton Boulevard, Breinigsville, PA
18031
Mr. Byron Coy, Director, Eastern 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, D.C. 20590**

_____)
In the Matter of)

Buckeye Partners, L.P.,)

Respondent.)
_____)

CPF No. 1-2012-5010

FINAL ORDER

Between December 13 and 17, 2010, 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, records, and Public Awareness Program of Buckeye Partners, L.P. (BPL or Respondent) in Breinigsville, PA. BPL owns and operates approximately 6,000 miles of pipelines 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 June 11, 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 BPL had violated 49 C.F.R. § 195.440(c) and proposed assessing a civil penalty of \$17,500 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

BPL responded to the Notice by letter dated July 10, 2012 (Response). The company did not contest the allegation of violation but stated it intended to comply with the proposed compliance order and pay the proposed civil penalty. Subsequently, BPL paid the proposed civil penalty of \$17,500, as provided in 49 C.F.R. § 190.227. Payment of the penalty serves to close the case with prejudice to Respondent.

FINDING OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(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).

§ 195.440 Public awareness.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the program recommendations of American Petroleum Institute (API) Recommended Practice (RP) 1162, including baseline and supplemental requirements. Specifically, the Notice alleged that BPL failed to follow and implement a public awareness program (PAP) meeting the general program recommendations set forth in API RP 1162, including specific program documentation and recordkeeping requirements, and failed to evaluate its PAP's effectiveness in accordance with company procedures.

The Notice stated that BPL failed to document key program elements of its PAP to demonstrate the level of implementation. Pursuant to Section 7.2 of API RP 1162, "[r]ecord keeping should include... [a]ll program evaluations, including current results, follow-up actions and expected results." PHMSA's investigation also revealed that Buckeye did not document the criteria for program improvement based on the results of the evaluation and its *Public Education Program Manual, All Sections Issued: 5106, Section K- Program Evaluation*.² PHMSA found no documentation on how Buckeye addressed changes and/or modifications to its program based on the results and findings of its effectiveness evaluation.

In its Response, Respondent acknowledged that it should have documented the results of its program effectiveness review in a manner that better met the requirements of Section K of its Public Education Program Manual and API RP 1162.³

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow and implement a public awareness program that meets the general program recommendations set forth in API RP 1162, including specific program documentation and recordkeeping requirements, and failing to evaluate its PAP's effectiveness in accordance with company procedures.

This finding of violation will be considered a prior offense 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

² Violation Report, Exhibit A.

³ Response.

related series of violations.⁴ 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 \$17,500 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$17,500 for Respondent's violation of 49 C.F.R. § 195.440(c), for failing to follow and implement a public awareness program meeting the general program recommendations set forth in API RP 1162, including specific program documentation and recordkeeping requirements, and failing to evaluate its PAP's effectiveness in accordance with company procedures. BPL neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. BPL is fully culpable for the violation. Respondent was cognizant of the requirement to follow the program recommendations of API RP 1162, including baseline and supplemental requirements. Respondent acknowledged its failure to comply with the requirements of *Section K of its Public Education Program Manual* and API RP 1162. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$17,500 for violation of 49 C.F.R. § 195.440(c), which has already been paid by Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.440(c). 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 § 195.440(c) (**Item 1**), Respondent must review its June 24, 2010-Public Awareness Program Review meeting notes regarding its program effectiveness evaluation and document the criteria for its program improvement, and record current results, follow-up actions, and expected results. If the need for improvements is identified, Buckeye Partners, L.P. must implement those improvements in accordance with its written Public Awareness Program or provide justification why the improvements have not been or will not be implemented.

⁴ 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.

2. Within 90 days after receipt of this Final Order, Buckeye Partners, L.P. must submit a summary report detailing the actions taken regarding the above Item, including a timeframe for implementation, supporting documentation and records, to the Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, 820 Bear Tavern Rd, Suite 103, West Trenton, NJ 08628. Please reference CPF# 1-2012-5010 in the title of the summary report.
3. It is requested (not mandated) that Buckeye Partners, L.P. maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions, and other changes to pipeline infrastructure

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

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

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

OCT 17 2012

Date Issued