

JUNE 10, 2013

Mr. Clark Smith
President
Buckeye Partners, LP
Five TEK Park
9999 Hamilton Blvd.
Breinigsville, PA 18031

Re: CPF No. 1-2013-5003

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 \$102,800, and specifies actions that need to be taken by Buckeye Partners, LP, to comply with the pipeline safety regulations. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated February 26, 2013. 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. Byron Coy, P. E., Director, Eastern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Thomas S. Collier, Vice President, Performance Assurance & Asset, Buckeye Partners, LP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [INSERT RECEIPT NO.]

**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. 1-2013-5003
)	
Respondent.)	
)	

FINAL ORDER

On August 23 and 24, 2011, pursuant to 49 U.S.C. § 60117, inspectors from the New York State Department of Public Service (NYSDPS), as agents for 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 Auburn, New York. Buckeye operates approximately 6,164 miles of pipeline in the United States, with 4,141 miles, or 67% of its pipeline system, located in High Consequence Areas.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 25, 2013, 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. §§ 195.410 and 195.412 and proposed assessing a civil penalty of \$102,800 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 February 25, 2013 (Response). The company did not contest the three allegations of violation and paid the proposed civil penalty of \$102,800, as provided in 49 C.F.R. § 190.227. Payment of the penalty serves to close those items in the Notice with prejudice to Respondent and authorizes PHMSA to make findings of violation as to those items.

FINDINGS OF VIOLATION

In its Response, Buckeye did not contest the allegations that it violated 49 C.F.R. Part 195, as follows:

¹ Pipeline Safety Violation Report (Violation Report), (January 25, 2013) (on file with PHMSA), at 1. *See* § 195.450 for a definition of High Consequence Areas.

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(1), which states:

§ 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(1) by failing to adequately place and maintain line markers in sufficient quantity over each buried pipeline so that its location is accurately known. Specifically, the Notice alleged that Buckeye failed to place sufficient line markers as follows: (1) at a location north of the intersection of John Glenn Boulevard and Buckley Road between Mile Post (MP) 2 and MPE on line LP806BW; (2) on the north side of Warners Road beyond the road crossing of the Buckeye right-of-way at MP 14.2 on line AB802VB; and, (3) to accurately match the pipeline location between Warners Road and a railroad crossing, as shown on the company's own maps.

Respondent did not contest these allegations of violation.² Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.410(a)(1) by failing to adequately place and maintain line markers in sufficient quantity along the company's buried pipeline so that its location is accurately known.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2), which states:

§ 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1) . . .

(2) The marker must state at least the following on a background of sharply contrasting color:

(i) The word "Warning," "Caution," or "Danger" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline", or "Carbon Dioxide Pipeline," all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an approximate stroke of ¼ inch (6.4 millimeters).

(ii) The name of the operator and the telephone number (including area code) where the operator can be reached at all times.

The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2) by failing to maintain properly three line markers over its buried pipeline in Liverpool, New York, and Camillus, New

² In its Response, Buckeye asserted that it did not contest this probable violation, but stated that when it later checked its maps, they accurately depicted the location of the buried pipelines. *See* Response at 1. Buckeye, however, failed to provide any evidence to substantiate this claim.

York. Specifically, the Notice alleged that at three different locations, the NYSDPS inspectors observed Buckeye line markers that had deteriorated to the point there was no legible wording on the markers to convey all of the information required by the regulation.

Respondent did not contest these allegations of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.410(a)(2) by failing to maintain three line markers over its buried pipeline in Liverpool, New York, and Camillus, New York.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

§ 195.412 Inspections of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) by failing to adequately inspect the surface conditions on or adjacent to each pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year. Specifically, the Notice alleged that Buckeye failed to maintain and clear the right-of-way of excessive vegetation growth, including the extent of the tree canopy. As a result, Respondent could not adequately inspect the pipeline by aerial inspection, the only method that it used.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to adequately inspect the surface conditions on or adjacent to each pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³ 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

³ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, effective January 3, 2012, increased the maximum civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for a related series of violations.

degree of Respondent's culpability; the history of Respondent's prior offenses; 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 \$102,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$25,000 for Respondent's violation of 49 C.F.R. § 195.410(a)(1), for failing to adequately place and maintain line markers in sufficient quantity so that the location of its buried pipeline is accurately known. Buckeye paid the proposed penalty, which serves to close this Item with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$25,000 for violation of 49 C.F.R. § 195.410(a)(1).

Item 2: The Notice proposed a civil penalty of \$51,600 for Respondent's violation of 49 C.F.R. § 195.410(a)(2), for failing to maintain properly three line markers over its buried pipeline in Liverpool, New York, and Camillus, New York. The penalty reflected that the violation was a repeat offense from an earlier enforcement action, CPF No. 3-2007-5026. Buckeye paid the proposed penalty, which serves to close this Item with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$51,600 for violation of 49 C.F.R. § 195.410(a)(2).

Item 3: The Notice proposed a civil penalty of \$26,200 for Respondent's violation of 49 C.F.R. § 195.412(a), for failing to adequately inspect the surface conditions on or adjacent to each pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year. Buckeye paid the proposed penalty, which serves to close this Item with prejudice to Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$26,200 for violation of 49 C.F.R. § 195.412(a).

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 **\$102,800**, which has been paid in full by Buckeye.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, and 3 in the Notice for violations of 49 C.F.R. §§ 195.410 and 195.412. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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 § 195.410(a)(1) (**Item 1**), Respondent must re-

check and ensure the accurate location of its buried pipeline at the road crossing and along the Buckeye right-of-way at MP 14.2 on line AB802VB, and for all buried pipelines under the responsibility of Buckeye within a five-mile radius of the road crossing, and then install, as necessary, appropriate line markers.

2. With respect to the violation of § 195.410(a)(2) (**Item 2**), Respondent must ensure the adequate condition of all line markers within a 10-mile radius of the two locations noted in this Item.
3. With respect to the violation of § 195.412(a) (**Item 3**), Respondent must implement one or more appropriate methods that will allow an adequate inspection of the pipeline right-of-way between Buckley and Morgan, about ¼ mile long.
4. All documentation demonstrating compliance with each of the items outlined in this order must be submitted to the Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, 820 Bear Tavern Rd., Suite 103, West Trenton, NJ 08628, within 120 days after the Final Order.
5. It is requested (not mandated) that Buckeye maintain documentation of the safety improvement costs associated with fulfilling the Compliance Order and submit the total to Byron E. Coy, P.E., 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 costs associated with replacements, additions and other changes to pipeline infrastructure.

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

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 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

Date Issued