

FEBRUARY 4, 2014

Mr. Clark C. Smith
President and Chief Executive Officer
Buckeye Partners, LP
Five TEK Park
9999 Hamilton Boulevard
Breinigsville, PA 18031

Re: CPF No. 1-2013-5006

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$290,000, 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. Thomas Scott Collier, Vice President, Performance Assurance & Asset Integrity,
Buckeye Partners, LP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

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| In the Matter of |) | |
| |) | |
| Buckeye Partners, LP, |) | CPF No. 1-2013-5006 |
| |) | |
| Respondent. |) | |
| |) | |

FINAL ORDER

On May 21, 2010, pursuant to Chapter 601 of 49 United States Code, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), initiated an investigation of an accident that occurred on May 20, 2010, along Buckeye Partners, LP’s (Buckeye or Respondent) pipeline, designated as Line LZ601XX (Line LZ601XX or Pipeline), in Linden, New Jersey. The accident involved a release of refined petroleum through a pinhole leak. A total of one barrel of petroleum leaked from the Pipeline and resulted in property damage to a High Consequence Area (HCA).¹ Buckeye owns and operates approximately 6,000 miles of hazardous liquid pipelines in the Northeast and Upper Midwest regions.²

The PHMSA investigation revealed that almost two years prior to the leak, on August 18, 2008, Buckeye had visually inspected the Pipeline. The inspector noted that the soil-to-air interface on Line LZ601XX needed to be repaired and that there was severe coating disbondment. There is no record that Buckeye repaired the Pipeline, as recommended. Instead, the Pipeline leaked at the same location previously noted by the Buckeye inspector, in an area of “deep external corrosion.”³

As a result of the OPS investigation, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 6, 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. §§ 195.581(a) and 195.451(f) and

¹ The term “High Consequence Area” is defined as a commercially navigable waterway, a high population area, an other populated area, or an unusually sensitive area (e.g., a drinking water or ecological resource area). *See* 49 C.F.R. § 195.450.

² *See* <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> (last accessed on September 6, 2013).

³ *See* Pipeline Safety Violation Report (Violation Report), (May 6, 2013) (on file with PHMSA), at 3 (citing Det Norske Veritas, Final Report, Metallurgical Analysis of Leak on 12-inch Diameter Pipeline (May 20, 2010)).

proposed assessing a civil penalty of \$418,700 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 June 5, 2013 (Response). The company did not contest the allegations contained in Item 1 of the Notice, but requested that the proposed civil penalty be reduced. Buckeye did contest Item 2 of the Notice and requested that the proposed civil penalty be removed or reduced. 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 195.581, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a), which states:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

(b) Coating material must be suitable for the prevention of atmospheric corrosion.

(c) Except portions of pipelines in off-shore splash zones or soil-to-air interfaces, you need not protect against atmospheric corrosion any pipeline for which you demonstrate by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will –

- (1) Only be a light surface oxide; or
- (2) Not affect the safe operation of the pipeline before the next scheduled inspection.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a) by failing to clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere. Specifically, the Notice alleged that Buckeye failed to protect the soil-to-air interface of Line LZ601XX against atmospheric corrosion, from August 19, 2008, until May 20, 2010. It alleged that during a company inspection on August 19, 2008, the Buckeye inspector's report noted that severe coating disbondment was present and that the Pipeline needed repair on both sides. The Notice alleged that Buckeye never repaired the noted defects, which eventually led to the accident on May 20, 2010. The leak occurred approximately 33 months after the 2008 inspection, in the same location that Buckeye was aware needed repair.

Respondent did not contest this allegation of violation but contended that the proposed penalty was too high. Based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.581(a) by failing to protect its line from atmospheric corrosion, by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere. Buckeye's arguments regarding the proposed penalty will be addressed below in the Assessment of Penalty

section.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f), which states, in relevant part:

§ 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) . . .

(3) An analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (see paragraph (g) of this section); . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f) by failing to have, prior to August 27, 2010, an integrity management program (IMP) that included a process for conducting an analysis that integrated all available information about the integrity of Buckeye's entire pipeline, including Line LZ601XX, and the consequences of a failure, as detailed in paragraph (g) of § 195.452. Specifically, the Notice alleged that Buckeye's IMP failed to include an analysis process that correlated in-line inspection (ILI) indications with other relevant data to make decisions regarding the integrity of the line. During the PHMSA inspection, Buckeye personnel had provided a copy of its procedure, *Data Integration Procedure*, dated August 27, 2010, but was unable to provide any written procedure in effect prior that date.

In its Response, Buckeye contended that it did have an information analysis procedure in place as part of its January 2010 IMP Plan, specifically, *Section 10 – Continual Evaluation*, and provided a copy of that earlier version, that would have been in effect as of the date of the accident.

Upon reviewing *Section 10 – Continual Evaluation*, of Buckeye's January 2010 IMP Plan, I find that this earlier version does include an analysis process designed to correlate ILI indications with other relevant data to make decisions regarding the integrity of the line and that it was in effect prior to August 27, 2010. Therefore, I hereby order that Item 2, along with its related penalty and corrective action, be withdrawn.

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 \$418,700 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$290,000 for Respondent's violation of 49 C.F.R. § 195.581, for failing to protect Line LZ601XX from atmospheric corrosion, an omission that was a causal factor in the March 20, 2010 accident. As noted above, Buckeye did not contest this allegation of violation but sought a reduction in the penalty amount.

Buckeye contends that the penalty should be limited to \$100,000, the statutory limit for what the company asserts is, at most, a single-day violation. I disagree. As noted on page 5 of the Violation Report, the violation is for "[a]pproximately 635 days. From the date of non compliance to the date of the accident." By not repairing the acknowledged defect from August 19, 2008, to May 20, 2010, Buckeye's inaction created a multiple-day event. In fact, it is the very long-term nature of the violation that led to the accident and that warrants a more serious penalty. Moreover, the accident occurred in an HCA and resulted in a release of refined petroleum. Had the leak continued, the environmental harm could have been far greater. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$290,000 for violation of 49 C.F.R. § 195.581.

Item 2: The Notice proposed a civil penalty of \$128,700 for Respondent's violation of 49 C.F.R. § 195.452(f)(3), for failing to include an element in its IMP plan that integrated all available information about the integrity of the entire pipeline and the consequences of a failure. As noted above, I found that Buckeye did have an IMP Plan in place prior to August 27, 2010 that included an analysis process to correlate ILI indications with other relevant data to make decisions regarding the integrity of the line. Based upon such finding, I hereby withdraw the proposed penalty for violation of 49 C.F.R. § 195.452(f)(3).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a reduced total civil penalty of **\$290,000**.

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 \$290,000 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. §§ 195.581(a) and 195.452(f)(3), respectively. As discussed above, Item 2 has been withdrawn; therefore, the compliance terms relating to Item 2 are also withdrawn.

As for the remaining Item 1, 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 action to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.581 (**Item 1**), Respondent must amend its corrosion control procedures to give detailed instructions for inspections of any pipeline or portion of pipeline that is exposed to the atmosphere, particularly at soil-to air interfaces, under thermal insulation, under disbanded coatings, at pipe supports, in splash zones, at deck penetrations and in spans over water, in accordance with §195.583(b). Buckeye must submit the amended procedure within sixty (60) days of receipt of the Final Order.
2. All submissions must be sent to Byron Coy, PE, Director, PHMSA Eastern Region, 820 Bear Tavern Road, Suite 103, West Trenton, NJ 08628. Please refer to CPF 1-2013-5006 on each document you submit.
3. It is requested (not mandated) that Buckeye maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, PE, Director, PHMSA Eastern Region. It is requested that these costs be reported in two categories: 1) total costs associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other charges 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 [CPF No. 1-2013-5006] may result in 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.

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

Date Issued