

**APRIL 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. 1-2013-5011**

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$66,400. 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. Byron Coy, Director, Eastern Region, OPS  
Mr. Thomas S. (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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<b>In the Matter of</b>	)	
	)	
<b>Buckeye Partners, LP,</b>	)	<b>CPF No. 1-2013-5011</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**FINAL ORDER**

On April 30, 2012, 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 the Paulsboro, New Jersey, and Malvern, Pennsylvania, areas. Buckeye owns and operates a major hazardous liquid pipeline network that transports refined products, primarily in the Northeastern and upper Midwestern states.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated July 15, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had committed two violations of 49 C.F.R. § 195.402(a) and assessing a civil penalty of \$68,200 for the alleged violations. The warning item required no further action but warned the operator to correct the probable violation or face possible enforcement action in the future.

Buckeye responded to the Notice by letter dated August 13, 2013 (Response). The company contested the allegations of violation, offered additional information in response to the Notice, and requested that the proposed civil penalty be 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, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

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<sup>1</sup> Buckeye Partners, LP, About Us, *available at* <http://www.buckeye.com/AboutUs/tabid/54/Default.aspx> (last accessed 12/31/2013).

**§ 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. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities. Specifically, the Notice alleged that Buckeye failed to follow its corrosion control procedure, *Maintenance Manual, J-04-Visual Pipe Inspection* (issued 6/09), because it did not document the results of the company's triennial atmospheric corrosion inspections on the required *Form B – Triennial Visual Inspection Form*. According to the Notice, Buckeye's audit paperwork indicated that the company had conducted triennial inspections at 14 different locations between July 1, 2009, and May 25, 2011, but failed to document these inspections on *Form B*.

In its Response, Buckeye acknowledged that it lacked proper documentation for 7 of the 14 inspection locations identified in the Notice, and as required by the company's own procedures. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities with respect to 7 of the 14 instances alleged in the Notice and identified in the Violation Report.<sup>2</sup>

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and for handling abnormal operations. Specifically, the Notice alleged that Buckeye failed to follow its corrosion control procedure, *Corrosion Manual, A-02: External Corrosion Control, Section 3.7, Cathodic Protection Survey Procedures and Processes* (issued 12/11), by failing to correct, within one inspection cycle, any abnormality or equipment deficiency found in the course of its cathodic protection (CP) surveys. The Notice alleged that Buckeye supplied PHMSA with a survey report indicating six instances of equipment deficiencies at the Peck Road, Orchard Court, and Timberline Road inspection locations and that persisted without correction for more than one inspection cycle.

In its Response, Buckeye argued that its inspection records for the Orchard Court location were incorrect, insofar as “there is no casing at Orchard Court and . . . the data in the CP Survey Report reflecting a casing was incorrect.”<sup>3</sup> Therefore, according to Buckeye, the requirements of *Corrosion Manual A-02* were not triggered. Although Respondent did not provide any

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<sup>2</sup> Pipeline Safety Violation Report (Violation Report) (July 15, 2013) (on file with PHMSA).

<sup>3</sup> Response at 3.

documentation supporting its contention that its own records were inaccurate, I accept the company's representation on this point and withdraw the two allegations relating to the Orchard Court location.

However, with respect to the remaining two inspection locations, Buckeye acknowledged the existence of a shorted casing at the Timberline Road location and the existence of broken lead wires at the Peck Road location, but argued, nevertheless, that these conditions did not impair the CP at either location. Regardless of whether there was adequate CP or not, Buckeye still failed to follow its own procedures, which required that any abnormality be corrected within one inspection cycle. If a casing were shorted or a test wire broken, then such condition should have been investigated and remedied by the date of the next inspection, in accordance with Buckeye's *Corrosion Manual A-02*. Instead, the conditions persisted for several inspection cycles.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities and for handling abnormal operations.

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.<sup>4</sup> 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; 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 \$68,200 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$28,600 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its manual of written procedures for conducting corrosion control inspections. As discussed above, I found that Respondent had provided satisfactory triennial inspection reports for 7 of the 14 originally cited locations. Buckeye requested that the proposed penalty be reduced accordingly. I have reviewed the proposed penalty and believe it is appropriate to adjust the penalty by an amount equal to the increment attributed to the seven

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<sup>4</sup> The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the 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 any related series of violations.

allegations of violation that have been withdrawn.<sup>5</sup> Accordingly, based upon the foregoing, I assess Respondent a reduced civil penalty of \$27,200 for seven instances of violating 49 C.F.R. § 195.402(a).

**Item 2:** The Notice proposed a civil penalty of \$39,600 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its manual of written procedures for conducting corrosion control inspections. As discussed above, I found that Buckeye failed to correct, within one inspection cycle, four abnormalities and equipment deficiencies discovered at two locations during its CP surveys, but accepted Respondent's contention that in another location, the company's own records were inaccurate and therefore withdrew the allegations of violation.

The company requested that the proposed penalty be reduced accordingly. I have reviewed the proposed penalty and adjusted the penalty by an amount equal to the increment attributed to the two allegations of violation that have been withdrawn.<sup>6</sup> Accordingly, based upon the foregoing, I assess Respondent a reduced civil penalty of \$39,200 for four instances of violating 49 C.F.R. § 195.402(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 **\$66,400**.

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 \$66,400 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.

### **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:

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<sup>5</sup> The bulk of the penalty proposed in the Notice was based not on the number of inspection reports missed but, rather, on several other factors (e.g., the nature of the violation, whether an accident was involved, and the operator's history of prior violations) that are not affected or reduced by the number of instances of violation.

<sup>6</sup> *Id.*

49 C.F.R. § 195.583(c) (**Item 3**) — Respondent's alleged failure to provide protection against atmospheric corrosion found during an inspection conducted at the Paulsboro Refinery area.

Buckeye contested this item, arguing that according to its procedures, maintenance of above-ground piping and fittings may be deferred in certain instances for three years. In addition, the company indicated it was in the process of reviewing its inspection documentation requirements. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has the 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, 2<sup>nd</sup> 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 the 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 but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued