

December 15, 2016

Mr. Clark C. Smith
President & CEO
Buckeye Partners, LP
One Greenway Plaza
Houston, Texas 77046

Re: CPF No. 1-2015-5019

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes one finding of violation, assesses a civil penalty of \$50,400, 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,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Acting Director Eastern Region, OPS
Mr. Thomas S. Collier, Vice President, Performance Assurance, Buckeye Partners, LP,
5 TEK Park, 9999 Hamilton Boulevard, Breinigsville, PA 18031

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,)	
Respondent.)	CPF No. 1-2015-5019

FINAL ORDER

From July 29, 2013, through August 2, 2013, 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 Macungie, Pennsylvania. Buckeye owns and operates more than 5,000 miles of liquid petroleum-product pipelines throughout the United States.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated October 15, 2015, 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. § 195.432(b) and proposed assessing a civil penalty of \$50,400 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Buckeye responded to the Notice by letter dated November 3, 2015 (Response). The company did not contest the allegations of violation, but provided additional records and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, Buckeye 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. § 195.432(b), which states:

¹ Pipeline Safety Violation Report (Violation Report), (Oct. 15, 2015) (on file with PHMSA), at 1.

§ 195.432 Inspection of in-service breakout tanks.

(a) . . .

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to [American Petroleum Institute Standard (API Std)] 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, *see* §195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice quoted paragraph 6.3.2.1 of Section 6.3.2 of API Std 653, *Tank Inspection, Repair, Alteration and Reconstruction*, which states:

All tanks shall be given a visual external inspection by an authorized inspector. This inspection shall be called the external inspection and must be conducted at least every 5 years or $RCA/4N$ years (where RCA is the difference between the measured shell thickness and the minimum required thickness in mils, and N is the shell corrosion rate in mils per year) whichever is less. Tanks may be in operation during this inspection.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Std 653. Specifically, the Notice alleged that Buckeye failed to perform a visual external inspection in accordance with API Std 653 for breakout tank 214. During the inspection, the PHMSA inspector reviewed Storage Tank Inspection Records for breakout tank 214 from 1996 through 2013, and Buckeye's procedures for tank inspections, dating back to 2001. The records indicated that visual external inspections were conducted on Tank 214 on the following dates:

1. December 28, 1996;
2. January 2, 2002; and
3. March 27, 2013.

The Notice further alleged that the PHMSA inspector had asked if there were other tank-inspection records available that covered the timeframe from 2002 through 2013. Buckeye personnel indicated that there were no additional records and admitted that the company had not performed the required external tank inspection but could not explain why. The inspection conducted in 2013 exceeded the five-year maximum interval by six years, two months, and 25 days (i.e., 2,275 days).

In its Response, Buckeye indicated that it had also performed an inspection of Tank 214 on February 28, 2008, in addition to those described in the Notice, and asked that the finding for

Item 1 be amended and the proposed penalty reduced.² Upon review of the Response and the documents relating to the 2008 inspection, I find that the time between the January 2, 2002 inspection and the recently-submitted February 28, 2008 inspection still exceeds the five-year maximum interval between inspections, as does the time between the February 28, 2008 inspection and the March 27, 2013 inspection.

As for the proposed penalty, this will be discussed in the “Assessment of Penalty” section below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Std 653.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 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; 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 \$50,400 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$50,400 for Respondent’s violation of 49 C.F.R. § 195.432(b), for failing to inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Std 653. Buckeye did not contest the allegation of violation but requested a reduction in the proposed penalty, and submitted evidence that supported its request.³ The evidence consisted of a copy of the in-service inspection report that had been prepared for the February 28, 2008 inspection of breakout tank 214. I have reviewed this report, which confirms that the company did indeed perform the required inspection in 2008 but still exceeded the five-year maximum interval between the February 28, 2008 inspection and the March 27, 2013 inspection by 27 days.

This new evidence, however, does not eliminate the violation or alter the facts and circumstances considered in calculating the proposed penalty. I have reviewed Section E of the Violation Report and the penalty calculation itself and confirmed that a reduction in the duration of the violation did not affect the amount of the proposed penalty. On the contrary, the proposed

² Response, at 1.

³ *Id.*, and attachments.

penalty was based largely on the risk posed by the potential effect of the violation on High Consequence Areas, the company's history of prior offenses, and its failure to carry out specific maintenance and inspection activities. I can therefore find no reason to reduce the proposed penalty and Buckeye has not presented any evidence or argument that would either change the penalty assessment criteria discussed in the Violation Report or otherwise support a penalty reduction.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$50,400 for violation of 49 C.F.R. § 195.432(b).

In summary, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$50,400**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S Macarthur Blvd, Oklahoma City, OK 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$50,400 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violations of 49 C.F.R. § 195.432(b). 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 § 195.432(b) (**Item 1**), Respondent must identify any breakout tank at the Macungie facility that has not had a visual external inspection, in accordance with API Std 653, within the past five years from the date of this Final Order, or RCA/4N years (where RCA is the difference between the measured shell thickness and the minimum required thickness in mils, and N is the shell corrosion rate in mils per year), whichever is less, and shall create a detail sheet for each identified tank showing the source data and calculations for

the inspection interval.

2. Buckeye must then conduct a visual external inspection on the identified tanks, in accordance with API Std 653 and Buckeye's procedures for conducting visual external inspections.
3. Buckeye must provide a summary report demonstrating compliance with all the above items 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 receipt of the Final Order.

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, 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 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 \$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. § 190.243, 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. § 190.243. 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.

December 15, 2016

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Date Issued