

December 7, 2016

Mr. Clark Smith
President
Buckeye Partners, LP
One Greenway Plaza
Suite 600
Houston, TX 77046

Re: CPF No. 1-2015-5021

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes other findings of violation, and assesses a reduced civil penalty of \$213,800. It further finds that Buckeye Partners, LP, has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, 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, PHMSA, OPS
Mr. Thomas. S (Scott) Collier, Vice President, Performance Assurance & Asset Integrity,
Buckeye Partners, LP, Five TEK Park, 9999 Hamilton Boulevard, Breinigsville,
Pennsylvania 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,)	CPF No. 1-2015-5021
)	
Respondent.)	
)	

FINAL ORDER

From July 15 through July 19, 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 records of Buckeye Partners, LP (Buckeye or Respondent), at Respondent’s headquarters in Breinigsville, Pennsylvania, including a review of survey records from Respondent’s Malvern and Booth inspection units in Pennsylvania. Buckeye owns and operates approximately 6,000 miles of hazardous liquid pipelines transporting refined products and highly volatile liquids, principally in the Northeastern and upper Midwestern states.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated December 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. §§ 195.402 and 195.573 and proposed assessing a civil penalty of \$270,600 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations.

Buckeye responded to the Notice by letter dated January 11, 2016 (Response). The company contested only one of the allegations of violation and provided information concerning the corrective actions it had already taken regarding another, referencing materials and information submitted to the Eastern Region on November 24, 2015. 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:

¹ <http://www.buckeye.com/BusinessOperations/tabid/56/Default.aspx> (last accessed May 27, 2016).

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

§ 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. . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Buckeye failed to inspect electrical-isolation devices for proper operation during annual corrosion control surveys, as required by Buckeye's own procedures. According to the Notice, Buckeye's Maintenance Manual required the annual inspection of installed electrical-isolation devices for proper operation. The Notice alleged that Buckeye's electrical-isolation survey records showed the company had failed to inspect electrical-isolation devices for proper operation on 37 instances at 37 locations from 2011 to 2012.

Respondent did not contest this allegation of violation.² Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Buckeye failed to monitor pipelines "within or near high-voltage AC corridors" for induced alternating-current (AC) interference on an annual basis, as required by Buckeye's own procedures. The Notice alleged that Buckeye's Maintenance Manual required pipelines within "high-voltage AC (HVAC) corridors" to be monitored for induced AC interference on an annual basis. The Notice alleged that Buckeye's electrical surveys revealed AC corridors had not been identified or monitored for induced AC interference in 140 instances from 2011 to 2012.

Respondent did not contest this allegation of violation.³ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

² Response at 1.

³ *Id.*

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), as quoted above, by failing to follow, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Specifically, the Notice alleged that Buckeye failed to maintain and repair, within one inspection cycle, test stations that had been found to be defective. According to the Notice, Buckeye's Maintenance Manual required that any test station found to be defective must be repaired within one inspection cycle. The Notice alleged that inspection records from the Respondent's Malvern and Macungie mainlines showed invalid, missing or abnormally low test station readings in five separate instances on three different segments, without corresponding records reflecting repairs within one inspection cycle.

Respondent did not contest this allegation of violation.⁴ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with §195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct external corrosion tests on a protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that Buckeye failed to take electrical measurements to demonstrate adequate levels of cathodic protection on a protected pipeline at 11 different locations during the company's 2011 annual survey.

Respondent did not contest this allegation of violation.⁵ Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct external corrosion tests on a protected pipeline at least once each calendar year, but with intervals not exceeding 15 months.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d), which states:

§ 195.573 What must I do to monitor external corrosion control?

⁴ *Id.*

⁵ *Id.*

(a)

(d) *Breakout tanks*. You must inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API RP 651 (incorporated by reference, *see* § 195.3). However, this inspection is not required if you note in the corrosion control procedures established under § 195.402(c)(3) why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(d) by failing to inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system were in accordance with API RP 651, 3rd edition, January 2007 (RP 651). Specifically, the Notice alleged that Buckeye failed to conduct electrical surveys on Tank 10 at the Booth station in Boothwyn, Pennsylvania, from 2010 through 2012.

In its Response, Buckeye acknowledged that it did not conduct electrical surveys on Tank 10 at the Booth Station in 2011, but indicated that the tank was taken out of service on December 9, 2010, for an internal inspection and that product was cleared from the tank at that time.⁶ Buckeye explained that, as a result of its inspection, a new tank bottom was installed, which included a new cathodic-protection system between the old floor and the new floor. This project was not completed until April 27, 2012, and no product was in the tank until that time. Buckeye argued that the company was not required to perform a cathodic-protection survey in 2010 on Tank 10 because the tank was out-of-service while these installations were being made, with no product in the tank from December 2010 through April 2012. Further, Buckeye stated that a cathodic-protection survey was conducted in 2012 following the installation of the new tank bottom.

After considering all of the evidence, I find that a cathodic protection survey of Tank 10 at Booth Station was not required in 2011. Section 11.1.2 of API RP 651 states: “If tanks are empty, there may be large areas of the bottoms which are not in contact with the underlying soil. Potential surveys, in this case, may give misleading information.” The Recommended Practice further instructs that “potential surveys should be conducted with an adequate level in the tank to maximize contact of the tank bottom with the pad material.” Due to the repair work being performed by Buckeye from December 2010 through April 2012, I find that it was unnecessary for Respondent to perform a potential survey when there was an inadequate level of product in the tank to meet the inspection provisions of RP 651. Based upon the foregoing, I hereby order that Item 5 be withdrawn.

Findings of violation for Items 1-4 will be considered prior offenses in any subsequent enforcement action taken against Respondent.

⁶ *Id.*

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.⁷ 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 \$270,600 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$69,100 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow, for each pipeline system, its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Buckeye neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$69,100 for violation of 49 C.F.R. § 195.402(a).

Item 3: The Notice proposed a civil penalty of \$90,700 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow, for each pipeline system, its own manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Buckeye neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$90,700 for violation of 49 C.F.R. § 195.402(a).

Item 4: The Notice proposed a civil penalty of \$54,000 for Respondent's violation of 49 C.F.R. § 195.573(a)(1) for failing to conduct tests on a cathodically protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. Buckeye neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$54,000 for violation of 49 C.F.R. § 195.573(a)(1).

Item 5: The Notice proposed a civil penalty of \$56,800 for Respondent's violation of 49 C.F.R. § 195.573(d), for failing to inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank, to ensure that operation and maintenance of the system are in accordance with RP 651. As discussed above, Item 5 has been withdrawn. Based upon the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 195.573(d).

⁷ 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.

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 **\$213,800**.

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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$213,800 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 2, to correct an alleged violation of 49 C.F.R. § 195. 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. The Director indicates that Respondent has taken the following action specified in the proposed compliance order:

1. With respect to the violation of § 195.402(a) (**Item 2**), on November 24, 2015, Respondent submitted its Interference Currents Procedure to PHMSA in response to the Notice of Amendment issued in connection with a related proceeding, CPF No. 1-2015-5016M. The Director has indicated this procedure satisfies the requirements of the Notice's Proposed Compliance Order with respect to Item 2.⁸

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

⁸ Region Recommendation, (January 21, 2016) (on file with PHMSA), at 2.

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

December 7, 2016

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Date Issued