

October 10, 2019

Mr. William Hollis
Senior VP and President, Buckeye Services
Buckeye Partners, LP
One Greenway Plaza, Suite 600
Houston, Texas 77046

Re: CPF No. 1-2016-5007

Dear Mr. Hollis:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$38,200. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated January 12, 2018. When the terms of the compliance order are completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective upon the date of mailing, as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Catherine D. Little, Esq., Troutman Sanders LLP, 600 Peachtree Street, NE,
Suite 5200, Atlanta, Georgia 30308

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. 1-2016-5007
)	
Respondent.)	
)	

FINAL ORDER

From October 2, 2015, to November 13, 2015, pursuant to 49 U.S.C. § 60117, a representative of the New York State Department of Public Service (NYSDPS), as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of a pipeline construction project of Buckeye Partners, LP (Buckeye or Respondent), at the Genesee River in Livingston County, New York. Buckeye operates approximately 6,000 miles of pipeline and stores and transports refined petroleum products from the Midwestern to the Eastern part of the U.S.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated August 25, 2016, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Initial Notice). In accordance with 49 C.F.R. § 190.207, the Initial Notice proposed finding that Buckeye had violated 49 C.F.R. § 195.214(a) and proposed assessing a civil penalty of \$38,200 for the alleged violation. The Initial Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. Buckeye responded to the Initial Notice by letter dated September 14, 2016, as supplemented by letter dated April 13, 2017. Buckeye did not contest the allegation of violation and provided copies of its revised welding procedures. Following an exchange of correspondence with OPS, by letter dated June 1, 2017, Buckeye disagreed with the manner in which OPS expected it to meet the terms of the proposed compliance order.²

On July 31, 2017, the Director issued an Amended Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Amended Notice) that superseded the Initial Notice. In accordance with 49 C.F.R. § 190.207, the Amended Notice proposed finding that Buckeye had violated 49 C.F.R. § 195.214(a) and proposed assessing a civil penalty of \$38,200 for the alleged violation. The Amended Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. These proposed measures altered the field test welding

¹ Pipeline Safety Violation Report (Violation Report), (Aug. 25, 2016) (on file with PHMSA), at 1; <https://www.buckeye.com/AboutUs/tabid/54/Default.aspx> (last accessed July 25, 2019).

² Buckeye also included a hearing request with this letter, however this request preceded the issuance of the Amended NOPV and was therefore premature.

requirement in the compliance terms of the Initial Notice. Buckeye responded to the Amended Notice by letter dated August 25, 2017, and requested a hearing. A hearing was subsequently held on June 13, 2018, in West Trenton, New Jersey before a PHMSA Presiding Official. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided additional written material for the record, by letter dated July 20, 2018.

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. § 195.214(a), which states:

§ 195.214 Welding procedures.

(a) Welding must be performed by a qualified welder or welding operator in accordance with welding procedures qualified under section 5, section 12, Appendix A or Appendix B of API Std 1104 (incorporated by reference, see §195.3), or Section IX of the ASME Boiler and Pressure Vessel Code (ASME BPVC) (incorporated by reference, see §195.3). The quality of the test welds used to qualify the welding procedures must be determined by destructive testing.

The Notice alleged that Respondent violated 49 C.F.R. § 195.214(a) by failing to perform girth welds in accordance with welding procedures qualified under section 5, section 12, Appendix A or Appendix B of API Std 1104, or Section IX of the ASME Boiler and Pressure Vessel Code (ASME BPVC). Specifically, the Notice alleged that Buckeye's qualified welding procedure for 36 X-52 butt welds called for the use of E-6010 electrodes for the first pass and E-8010 electrodes for passes 2 through 5, but all 36 X-52 butt welds had been welded using non-qualified E-7010-P1 electrodes.

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. § 195.214(a) by failing to perform girth welds in accordance with welding procedures qualified under section 5, section 12, Appendix A or Appendix B of API Std 1104, or Section IX of the ASME Boiler and Pressure Vessel Code (ASME BPVC).

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.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 degree of Respondent's culpability; the history of Respondent's prior offenses; 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 \$38,200 for the violation cited above.

In summary, having reviewed the record and considered the assessment criteria for the Item cited above, I assess Respondent a total civil penalty of **\$38,200**, which amount was paid in full by wire transfer on January 12, 2018.

COMPLIANCE ORDER

The Amended Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.214(a). 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.

With regard to the violation of § 195.214(a) (Item 1), at the hearing Buckeye explained the difficulty of obtaining numerous field welds for qualification testing including the considerable expense, environmental disturbance that would be entailed. Buckeye explained that a more limited field testing of the welds would be considered an acceptable industry practice under the circumstances. In correspondence following the hearing, the Director and Buckeye came to an agreement on the field testing and Respondent agreed to no longer contest the issuance of a Final Order with compliance terms as modified pursuant to this agreement. I find that this agreed modification to the compliance terms is consistent with the purpose of the regulation. Accordingly, the Compliance Order is modified as set forth below.

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 § 195.214(a) (**Item 1**), Respondent must cut out all thirty-six (36) existing in-service welds, and weld new girth welds in accordance with §195.214(a); or

Buckeye must cut out one (1) field weld created using its qualified procedure, Weld Procedure Specification P15A (qualified on November 13, 2015), from the existing thirty-six (36) in-service girth welds and perform all of the destructive testing requirements on the one (1) weld (including tensile, nick break, and bend tests) as set forth in API 1104 for welding procedure qualification purposes for 10-inch diameter

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

pipe. To the extent not all of the destructive testing can be conducted on the one (1) weld, Buckeye must cut out one (1) additional weld to perform the necessary testing. If the field weld(s) pass the qualification testing, then the existing girth welds may remain in service. Otherwise, all remaining in-service girth welds must be cut out and replaced with new girth welds in accordance with §195.214(a).

Prior to the removal of the existing weld(s) for testing, Buckeye must provide ten (10) days advance notice to the Eastern Region to enable observation of testing. Testing is to be accomplished within 180 days of receipt of the Final Order.

2. Respondent must complete the requirements as outlined above. All documentation demonstrating compliance with this compliance order must be submitted to Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration, Suite 103, Bear Tavern Road, West Trenton, New Jersey for review.

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.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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 may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

October 10, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued