

MAR 10 2011

Mr. Jerry J. Ashcroft
Vice President, Field Operations
Buckeye Partners, L.P.
5 TEK Park
9999 Hamilton Blvd.
Breinigsville, PA 18031

Re: CPF No. 3-2008-5004

Dear Mr. Ashcroft:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes findings of violation, and assesses a civil penalty of \$36,700. It further finds that Buckeye Partners, L.P. has completed the actions specified in the Notice to comply with the pipeline safety regulations. 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. David Barrett, Director, Central Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0041 3559]

**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, L.P.,)	CPF No. 3-2008-5004
)	
Respondent.)	
)	

FINAL ORDER

On April 24-26, May 1-3, May 29-30, June 1, June 12-13, and June 26-28, 2007, pursuant to 49 U.S.C. § 60117, representatives 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, L.P. (Buckeye or Respondent), in Kansas, Missouri, Illinois, Indiana, Ohio, and Pennsylvania. Buckeye operates approximately 5,400 miles of pipelines transporting refined petroleum products and natural gas liquids.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 2, 2008, 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. §§ 195.401(b), 195.420(b), 195.428(a), and 195.404(c) and proposed assessing a civil penalty of \$73,000 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 May 6, 2008 (Response). The company contested two of the allegations, offered additional information in response to the allegations, provided information concerning the corrective actions it had taken, 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. § 195.401(b), which states:

¹ Buckeye, L.P. website, www.buckeye.com, accessed July 28, 2010.

§ 195.401 General requirements.

(b) Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

The Notice alleged that Respondent violated 49 C.F.R. § 195.401(b) by failing to correct a condition that could adversely affect the safe operation of its pipeline system within a reasonable time. Specifically, the Notice alleged that at the time of the PHMSA inspection, large pieces of concrete debris were lying directly above a portion of buried pipeline at Mile Post 268.8, and that this debris could have adversely affected the safety of the pipeline.

In its Response, Buckeye did not contest the allegation of violation and acknowledged the presence of the concrete in the pipeline right-of-way as described in the Notice. Buckeye stated that it removed the debris immediately after PHMSA's inspectors discovered it. Buckeye stated that it did not believe that the debris had been in the pipeline right-of-way for a long period of time and stated that it had no reason to believe that the debris had damaged the pipeline.

Pipeline operators are responsible for inspecting the surface conditions on their pipeline rights-of-way on a bi-weekly basis to identify conditions like the dumping of debris above the pipeline. PHMSA's inspector observed that the concrete debris was located among high brush and weeds that appeared to have been growing undisturbed for a period of many months indicating that the debris was present for a significant length of time. Given the substantial weight of the concrete, the fact that the pipeline is buried between three and four feet deep does not demonstrate that the debris was not "a condition that could adversely affect the safe operation of its pipeline system." Buckeye's prompt removal of the concrete debris after the inspection does not negate its failure to identify and remove the debris within a reasonable time.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.401(b) by failing to identify and remove the concrete debris to correct a condition that could adversely affect the safe operation of its pipeline system within a reasonable time.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect 17 specified mainline valves at intervals not exceeding 7 ½ months, but at least twice each calendar year during 2005 and 2006. These valves were located on Buckeye's Wood River to Chicago to North Line and Wood River to Lima East Line.

In its Response, Buckeye explained that the required inspections of 11 of the 17 valves had actually been carried out in 2005 and 2006 and records of these inspections had been maintained, but were not reviewed by PHMSA's inspector at the time of the inspection because it had classified these valves under its scraper trap inspection program. Buckeye provided documentation demonstrating that these 11 valves had been inspected as required. Based on this documentation, I find that Buckeye was in compliance with respect to these 11 valves.

With respect to the remaining six valves, Buckeye acknowledged that they were not inspected in 2005. The company stated that these valves were part of assets that it acquired in 2004, and that the previous owner's records did not list the valves. Buckeye stated that as a result, it initially did not include them on its inspection list. Buckeye stated that it discovered this mistake during an audit that it carried out prior to PHMSA's inspection and that it promptly added the valves to its inspection list in 2006. Notwithstanding that the former owner gave Buckeye incomplete information, Buckeye was responsible for carrying out all required inspections of its facilities, including these six valves.

Accordingly, after considering all of the evidence, I find that Buckeye violated § 195.420(b) as to the six valves that it did not inspect in 2005.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overflow protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year . . . inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect and test certain pressure control equipment at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that Buckeye did not perform documented inspections of seven specified overpressure protection and pressure control devices for the Wood River, Illinois to Lima, Ohio East Line system in 2006.

In its Response, Buckeye provided documentation demonstrating that two of the devices had been removed from service prior to the time the inspections would have been due and therefore were not required to be inspected. With respect to the other five devices, Buckeye provided copies of its Form 741 "Safety Device Inspection, Calibration, and Replacement" records showing that it had actually carried out the inspections in 2006 as required.

Accordingly, after considering all of the evidence, I find that Buckeye did not violate § 195.428(a). Based upon the foregoing, I hereby order that the allegation of violation in Item 3 of the Notice be withdrawn.

It should be noted, however, that under § 195.404(c)(3), operators are required to “maintain” inspection records for at least two years. The requirement to maintain records means that they must be readily available to personnel and inspectors. In this case, Buckeye did not comply with the requirement to maintain the records because it was unable to produce them during the inspection visit. If § 195.404(c)(3) had been cited in the Notice, Buckeye would likely have been found in violation of this requirement for the five devices that remained in service despite later locating the records.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c), which states in relevant part:

§ 195.404 Maps and records.

(c) Each operator shall maintain the following records for the periods specified:

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c) by failing to maintain certain inspection records required by Subpart F of 49 C.F.R. Part 195 for at least two years. Specifically, the Notice alleged that Buckeye could not produce the 2005 annual tank inspection report for the L-12 tank at the Lima South terminal. 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. 195.404(c) by failing to maintain required records of the 2005 annual tank inspection for the L-12 tank for at least two years.

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 \$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.

Item 2: The Notice proposed a civil penalty of \$35,000 for Respondent's violation of 49 C.F.R. § 195.420(b) for failing to conduct required inspections of 17 mainline valves. As discussed above, I found that Buckeye violated § 195.420(b) as to six valves, but that it did not violate § 195.420(b) as to the other 11 valves cited in the Notice. Accordingly, no penalty will be assessed as to those 11 valves.

In its Response, Buckeye argued that it should not be subject to a civil penalty for its failure to inspect the six valves referenced above in 2005. Buckeye acknowledged that it failed to inspect these valves, but it stated that this oversight was attributable to the previous owner of the pipeline. Buckeye explained that the valves were part of assets that it acquired in late 2004, and that the valves were not on the previous owner's mainline valve inspection list. Because the previous owner did not list the valves, Buckeye did not include them on its inspection list and did not inspect them. Buckeye stated that it discovered this mistake during an audit that it carried out prior to the time of PHMSA's inspection, and that it then added the valves to its inspection list in 2006.

Operators that newly acquire pipeline systems are responsible for ensuring that such systems are maintained in full compliance with the pipeline safety regulations. Accordingly, successor operators are responsible for obtaining records from previous owners to demonstrate ongoing compliance with periodic inspection and maintenance requirements. To ensure full compliance, operators may need to fully audit new assets and immediately carry out required inspections. In this case, Buckeye did not perform a complete audit of its new assets until after the valve inspections should have been performed. Buckeye took ownership of the new assets in late 2004, and the required inspections should have been performed in April 2005. This presented Buckeye with adequate time to audit its system to ensure its full compliance with the regulations. Moreover, Buckeye did not act to immediately inspect the valves; instead, it added the valves to the list for the next inspection round. Valve inspection, however, is integral to pipeline safety. Valve malfunction can lead to an inability to shut-in a line section during a spill incident, and inspections are the key means by which operators identify valve problems before accidents occur. Buckeye's failure to inspect the valves had the potential to compromise the safety of its pipeline system.

With respect to the penalty for this Item, the \$35,000 amount proposed in the Notice was based on an alleged failure to inspect 17 valves. As discussed above, I found that Buckeye failed to inspect six out of the 17 valves cited in the Notice. Having reviewed the record and considered the assessment criteria, including the reduced gravity of the alleged violation, I assess Respondent a reduced civil penalty of \$27,700 for violation of 49 C.F.R. § 195.420(b).

Item 3: The Notice proposed a civil penalty of \$29,000 for Respondent's violation of 49 C.F.R. § 195.428(a) for failing to perform required inspections of certain pressure control devices. As discussed above, I ordered that Item 3 be withdrawn because Buckeye submitted documentation showing that it had carried out the inspections at issue. Accordingly, I also withdraw the proposed penalty for violation of 49 C.F.R. § 195.428(a).

Item 4: The Notice proposed a civil penalty of \$9,000 for Respondent's violation of 49 C.F.R. § 195.404(c) for failing to maintain records of a required inspection of a breakout tank. Buckeye neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Maintaining inspection records is an important part of pipeline safety. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$9,000 for violation of 49 C.F.R. § 195.404(c).

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 **\$36,700**.

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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 \$36,700 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 a violation of 49 C.F.R. § 195.401(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. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

With respect to the alleged violation of § 195.401(b) (**Item 1**), Respondent removed the debris from its pipeline right-of-way and found no indication that the debris had damaged the pipeline.

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.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued