



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

FEB 11 2020

Mr. Clark C. Smith
President and Chief Executive Officer
Buckeye Partners, LP
One Greenway Plaza, Suite 600
Houston, Texas 77046

Re: CPF No. 1-2019-5003

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$616,200, 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 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
Mr. William Hollis, Senior Vice President and President, Buckeye Services, Buckeye
Partners, LP, One Greenway Plaza, Suite 600, Houston, Texas 77046

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. 1-2019-5003

FINAL ORDER

From June 22 through September 28, 2017, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), and inspectors from the New York State Department of Public Services, acting as agents of PHMSA, performed an integrated pipeline safety inspection of the facilities and records of Buckeye Partners, LP's (Buckeye or Respondent) "Buckeye East" pipeline system located throughout Pennsylvania, New Jersey and 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 March 15, 2019, 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 committed four violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$701,400 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Buckeye responded to the Notice by letter dated April 15, 2019 (Response). The company contested two of the allegations, 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:

¹ Pipeline Safety Violation Report (Violation Report), (Mar. 15, 2019) (on file with PHMSA), at 1; Buckeye Partners, LP website, *available at* <https://www.buckeye.com/AboutUs/tabid/54/Default.aspx> (last accessed January 17, 2020).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.132(b), which states:

§ 195.132 Design and construction of aboveground breakout tanks.

(a) ...

(b) For aboveground breakout tanks first placed in service after October 2, 2000, compliance with paragraph (a) of this section requires one of the following:

(1) Shop-fabricated, vertical, cylindrical, closed top, welded steel tanks with nominal capacities of 90 to 750 barrels (14.3 to 119.2 m³) and with internal vapor space pressures that are approximately atmospheric must be designed and constructed in accordance with API Spec 12F (incorporated by reference, see § 195.3).

(2) Welded, low-pressure (i.e., internal vapor space pressure not greater than 15 psig (103.4 kPa)), carbon steel tanks that have wall shapes that can be generated by a single vertical axis of revolution must be designed and constructed in accordance with API Std 620 (incorporated by reference, see § 195.3).

(3) Vertical, cylindrical, welded steel tanks with internal pressures at the tank top approximating atmospheric pressures (i.e., internal vapor space pressures not greater than 2.5 psig (17.2 kPa), or not greater than the pressure developed by the weight of the tank roof) must be designed and constructed in accordance with API Std 650 (incorporated by reference, see § 195.3).

(4) High pressure steel tanks (i.e., internal gas or vapor space pressures greater than 15 psig (103.4 kPa)) with a nominal capacity of 2000 gallons (7571 liters) or more of liquefied petroleum gas (LPG) must be designed and constructed in accordance with API Std 2510 (incorporated by reference, see § 195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.132(b) by failing to design and construct an aboveground breakout tank first placed in service after October 2, 2000, in accordance with one of the standards required pursuant to § 195.132(b). Specifically, the Notice alleged that Buckeye failed to design and construct the shop-fabricated, 476-barrel capacity relief breakout Tank 3 at its Tuckerton (RG) facility to a standard listed in § 195.132(b).

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. § 195.132(b) by failing to design and construct an aboveground breakout tank first placed in service after October 2, 2000, in accordance with one of the standards required pursuant to § 195.132(b).

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 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, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities. Specifically, the Notice alleged that Buckeye did not follow its Corrosion Manual, Procedure A-02 External Corrosion Control, developed to comply with § 195.575(c), by failing to inspect electrical isolation devices at 31 casings during its 2014-2016 annual surveys. The Notice alleged that Buckeye's records demonstrated that in 34 instances, Buckeye failed to inspect the casing's electrical isolation from the pipeline for proper operation on an annual basis during the 2014-2016 timeframe.

In its Response, Buckeye provided additional information regarding seven of the alleged instances of missed annual casing-to-soil potential readings and therefore requested that the number of instances be reduced from 34 to 27. This information included:

1. Buckeye identified three instances at two casings where records demonstrated that test points on each end of the casing were present, and one end was utilized in the given year to take a casing-to-soil reading. Buckeye contended that these counts should therefore be withdrawn because a casing isolation reading was taken each year on the casing, just not at both test points available.
2. Buckeye identified one casing which had two test points associated with it for the ends of the casing. Buckeye determined it had been inadvertently counted as two instances rather than one.
3. Buckeye identified one casing at which the test station was marked as missing, but had in fact been repaired within one inspection cycle in accordance with its procedures and was verified as isolated during the subsequent annual survey in 2017 after the test station repair.
4. Buckeye identified one instance where there is no casing, and the casing readings recorded in the 2015/2016 records were actually IR-drop test leads that were inadvertently recorded as casing readings. Buckeye stated it corrected its corrosion database to reflect the lack of a casing at this location.
5. Buckeye identified one instance where a casing had previously been removed. Buckeye stated that the former casing's wires remained in the test station, and thus imply that these were read and recorded in the records reviewed for 2014 and 2016. Buckeye stated it corrected its corrosion database to reflect the lack of a casing at this location.

After considering all of the evidence, I find Respondent has demonstrated that the number of instances should be reduced from 34 to 27. Accordingly, 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; however, I reduce the number of

instances of the violation from 34 to 27.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(b), which states:

§ 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(b) by failing to follow, for each pipeline system, a manual of written procedures for conducting normal operations and maintenance activities. Specifically, the Notice alleged that Buckeye failed to follow its Corrosion Manual, Procedure A-02 External Corrosion Control, which required that abnormalities or equipment deficiencies be corrected within one inspection cycle or that the company document the reasons why such abnormalities or equipment deficiencies could not be corrected within that timeframe.

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. § 195.402(b) by failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities.

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 tests on its cathodically protected pipelines at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that Buckeye failed in 33 instances to conduct tests at the required intervals at test stations along the RE751AX pipeline and within its Long Island Pipeline System between 2014 and 2016.

In its Response, Buckeye contested 22 of the 33 instances cited and requested that they be withdrawn. Buckeye explained that certain test points had been found paved over or otherwise damaged such that the readings could not be obtained as planned. Many of the test points, however, were remediated and tested within the timeframe established by the regulation. In particular, for 17 of those 22 instances, Buckeye provided additional records confirming testing within the regulatory interval. I find Respondent has demonstrated compliance with respect to those 17 contested instances.

For the remaining five contested instances, I find that in all cases, based on the records provided by Buckeye, the regulatory interval of 15 months was exceeded. These instances have therefore not been withdrawn.

1. MP 0.405 - Kingsland Ave/Greenpoint Ave, 2015: Read on 4/10/14 and then on 10/6/16, an interval of 30 months.
2. MP 1.192 - Varick Ave/Meeker Ave, 2015: Read on 7/10/14 and then on 10/6/16, an interval of 27 months.
3. MP 1.262 - Varick Ave/80 Ft. DS MP 1.237, 2015 and 2016: Read on 7/10/14 and then on 12/3/17, an interval of 29 months.
4. MP 1.382 - Varick-284' DS of MP 1.425, 2015: Read on 7/10/14 and then on 10/6/16, an interval of 27 months.
5. MP 1.586 - Varick-208' DS of MP 1.586, 2015: Read on 7/10/14 and then on 10/6/16, an interval of 27 months.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) by failed to conduct tests on its cathodically protected pipelines at least once each calendar year, but with intervals not exceeding 15 months; however, I reduce the number of instances of the violation from 33 to 16.

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.² 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

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$701,400 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$219,600 for Respondent's violation of 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.

Buckeye requested that the proposed civil penalty be reduced for three reasons. First, Buckeye noted that, on the Violation Report, this Item was not marked as a "Repeat Violation" (Part E2), but the penalty was increased based on "History of Prior Offenses" (Part C). Second, it requested under Part E6, "Gravity," that the number of instances be reduced from 34 to 27 instances, as discussed above. Lastly, it requested that the "Culpability" (Part E7) be reduced from "The operator failed to comply with a requirement that was clearly applicable" to "After the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and corrected the non-compliance before PHMSA learned of the violation. (Does not apply to operator post-accident/incident enforcement actions.)." It did not, however, explain its rationale for this last request.

Having considered Respondent's requests, I find Buckeye misunderstands the difference between Part E2 and Part C in the Violation Report. An operator's History of Prior Offenses in Part C is the collection of all the operator's previous violations in the last five years, whereas Part E2, Repeat Violation, considers whether the specific regulatory provision cited was previously violated. In this case, the Violation Report correctly noted that Buckeye has a history of 30 prior offenses in the past five years, but that this particular violation of § 195.402(a) was not considered a repeat violation. Therefore, the Violation Report is correct and I decline to reduce the penalty based on this argument.

Regarding "Gravity," (Part E6), as discussed above, I reduced the number of instances from 34 to 27, therefore I find that the proposed civil penalty should be reduced accordingly.

Regarding "Culpability," (Part E7), I decline to reduce the penalty as requested. Buckeye did not provide an explanation to justify its request, and there is no evidence that it took action to correct its lack of compliance with the 27 instances before PHMSA identified the issue.

Based upon the foregoing, I assess Respondent a reduced civil penalty of \$199,000 for violation of 49 C.F.R. § 195.402(a).

Item 3: The Notice proposed a civil penalty of \$265,200 for Respondent's violation of 49 C.F.R. § 195.402(b) by failing to follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities.

Buckeye requested that the proposed civil penalty be reduced for two reasons. First, Respondent argued that because the Violation Report noted this was a repeat violation, the civil penalty worksheet should not indicate there were "6 or more" under History of Prior Offenses. Instead, Buckeye states that it should only have "one" prior offense. Second, Buckeye requested that "Gravity" (Part E6) be reduced from "The violation occurred in an HCA or an HCA 'could

affect' segment" to "The violation occurred; however, pipeline safety was minimally affected." It therefore also requested that the rating under "Other Matters as Justice May Require" be changed accordingly to reflect a "Repeat Offense - gravity of 1."

Having considered Respondent's requests, I decline to reduce the proposed civil penalty for this Item. The Violation Report correctly listed Buckeye's 30 previous violations under History of Prior Offenses, therefore the penalty should not be reduced to reflect only one previous violation. Likewise, Buckeye's pipeline is located in a high consequence area (HCA) and the Violation Report correctly identifies the "Gravity" as occurring in an HCA or HCA could affect area. Because I decline to modify the "Gravity," the "Other Matters as Justice May Require" section remains as proposed as well.

Based upon the foregoing, I assess Respondent a civil penalty of \$265,200 for violation of 49 C.F.R. § 195.402(b).

Item 4: The Notice proposed a civil penalty of \$216,600 for Respondent's violation of 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on its cathodically protected pipelines at least once each calendar year, but with intervals not exceeding 15 months.

Buckeye requested that the proposed civil penalty be reduced for three reasons. First Respondent argued that the penalty was improperly increased based on "History of Prior Offenses" (Part C) because the Violation Report did not mark this Item as a "Repeat Violation" (Part E2). Second, it requested under Part E6, "Gravity," that the number of instances be reduced from 33 to 11 instances, as discussed above. Lastly, it requested that the "Culpability" (Part E7) be reduced from "The operator failed to comply with a requirement that was clearly applicable" to "After the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and corrected the non-compliance before PHMSA learned of the violation. (Does not apply to operator post-accident/incident enforcement actions.)." It did not, however, explain its rationale for this request.

For the same reasons discussed above, I find Buckeye misunderstands the difference between Part E2 and Part C in the Violation Report. The Violation Report is correct and I decline to reduce the penalty based on Respondent's first argument.

Regarding "Gravity," (Part E6), as discussed above, I reduced the number of instances from 33 to 16, therefore I find that the proposed civil penalty should be reduced accordingly.

Regarding "Culpability," (Part E7), I decline to reduce the penalty as requested. Buckeye did not provide an explanation to justify its request and there is no evidence that it took action to correct its lack of compliance before PHMSA identified the issue.

Based upon the foregoing, I assess Respondent a reduced civil penalty of \$152,000 for violation of 49 C.F.R. § 195.573(a)(1).

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 **\$616,200**.

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, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$616,200 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. § 195.132(b), respectively. 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. In its Response, Respondent did not contest the terms of the proposed compliance order. 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 § 195.132(b) (**Item 1**), Respondent must complete one of the following actions within 90 days of receipt of the Final Order:
 - a. Bring Tank 3 into compliance with § 195.132(b);
 - b. Alternatively, Respondent may apply for a special permit with PHMSA for the continued operation of the breakout tank. Tank 3 must be removed and isolated from service until such time that the special permit receives approval; or
 - c. Permanently remove the breakout tank from operation.
2. Within 90 days, Buckeye shall provide records demonstrating compliance with one of the actions listed above.

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.

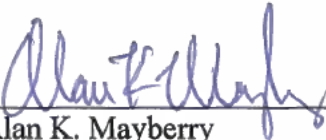
It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated

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 filing of a petition automatically stays the payment of any civil penalty assessed. The other 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.



Alan K. Mayberry
Associate Administrator
for Pipeline Safety

FEB 11 2020

Date Issued