



BUCKEYE PARTNERS

The Buckeye Building, 6161 Hamilton Blvd. Allentown, PA 18106

November 12, 2024

By Electronic Mail

Mr. Robert Burrough
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
840 Bear Tavern Road, Suite 300
West Trenton, NJ 08628

Re: Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order,
CPF No. 1-2024-053-NOPV
Request for Hearing and Settlement Conference

Dear Director Burrough:

Buckeye Partners, LP (Buckeye or the Company) is in receipt of the above-referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty, and Proposed Compliance Order (PCO), issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) on August 30, 2024 and received by the Company on September 3, 2024. The NOPV alleges a single violation of 49 C.F.R. § 195.563(a), an associated Proposed Civil Penalty in the amount of \$46,100, and one PCO requirement. On October 3, 2024, PHMSA granted an extension of time allowing Buckeye to respond to the NOPV by November 15, 2024. Accordingly, this response is timely.

Buckeye is committed to operating its system in full compliance with the federal pipeline safety requirements, including at 49 C.F.R. § 195.563 where applicable, and its Corrosion Control procedures. As explained in detail below, the Company believes that 49 C.F.R. § 195.563 is not applicable in this instance and accordingly, contests the NOPV. The Company requests that PHMSA withdraw the allegation of non-compliance and the associated Proposed Civil Penalty and PCO.

Because Buckeye believes that this matter is capable of resolution in lieu of a hearing, the Company – without admission – respectfully requests the opportunity to convene an informal settlement meeting with the Eastern Region in an effort to resolve the NOPV, Proposed Civil Penalty, and PCO pursuant to the Pipeline Safety Act, 49 U.S.C. § 60117(b)(1)(B). In the event that the parties are unable to resolve the issues, and in order to preserve Buckeye's rights, the Company is formally requesting a hearing pursuant to 49 C.F.R. §§ 190.208 and 190.211 to contest the alleged noncompliance, the associated Proposed Civil Penalty, and PCO. If the Eastern Region is amenable to an informal settlement conference, Buckeye requests that the scheduling of a hearing be postponed to allow for settlement meetings.

Below is Buckeye's written response, request for hearing, and a preliminary statement of issues to be addressed at a hearing. Buckeye reserves the right to supplement this response and preliminary statement of issues, if necessary, based on any new information or argument provided by PHMSA in this matter. In the event the parties proceed to a hearing, Buckeye will be represented by outside counsel with Bracewell LLP.

Response and Request for Hearing

The NOPV alleges that Buckeye failed to install cathodic protection on 10 breakout tanks constructed at its East Chicago West Facility and Hartsdale Terminals located in Schererville and East Chicago, Indiana. Buckeye contests this allegation. As an initial point, only 9 of the tanks cited by PHMSA are breakout tanks at Buckeye's Chicago West Facility and Hartsdale Terminals; there is no Tank 3535 at either facility.

As to the 9 breakout tanks at issue, Buckeye maintains that these tanks were constructed and installed consistent with the federal pipeline safety requirements, including the requirements at 49 C.F.R. § 195.563(a). Under this requirement, operators are required to install cathodic protection if the facility is "buried or submerged." 49 C.F.R. § 195.563(a). For purposes of the corrosion control regulations at 49 C.F.R. Part 195, Subpart H, "*Buried*" is defined to mean "covered or in contact with soil." 49 C.F.R. § 195.553 (emphasis added). The tanks identified in the NOPV have bottoms in contact with concrete; they are not buried or submerged, and they are not in contact with soil.

Further, PHMSA regulations specific to the installation of cathodic protection on breakout tanks where required under 49 C.F.R. § 195.563(a) – which Buckeye believes is not applicable here – allow an operator to "note in the corrosion control procedures [. . .] why complying with all or certain provisions of API RP 651 is not necessary for the safety of the tank." 49 C.F.R. § 195.565. Consistent with these regulations, relevant Buckeye Corrosion Control procedures do not require cathodic protection where a breakout tank is constructed such that it is not in contact with soil and not buried.

All of the 9 breakout tanks in question in the NOPV were newly constructed by Buckeye on continuous concrete pads from 2014 to 2019. The 9 tanks were constructed in accordance with API Standard 650, Welded Tanks for Oil Storage (incorporated by reference at 49 C.F.R. § 195.3) including but not limited to design characteristics to ensure the concrete pad is above grade and not in contact with soil.

Buckeye contends that there is no practical means to provide effective cathodic protection to tanks constructed in this manner as the steel tank bottom has a high contact resistance to the concrete pad and cathodic protection current distribution through the concrete pad would be limited by the high resistivity of the concrete.

Buckeye has relied upon industry standard API Recommended Practice 651, Cathodic Protection of Aboveground Petroleum Storage Tanks (incorporated by reference at 49 C.F.R. § 195.3) for supporting its determination as excerpted below:

5.1.4 Limitations of External Cathodic Protection

Cathodic protection is an effective means of corrosion control only if it is possible to pass electrical current between the anode and cathode (tank bottom). Many factors can either reduce or eliminate the flow of electrical current and, therefore, may limit the effectiveness of cathodic protection in some cases or preclude its use in others. Such factors include:

a) tank pads such as concrete;

Accordingly, for the reasons presented above, there is no requirement under the regulations or Buckeye procedures to maintain cathodic protection on a breakout tank configuration of this type.

Buckeye employs API Standard 653, Tank Inspection Repair, Alteration, and Reconstruction (incorporated by reference at 49 C.F.R. § 195.3) inspections to monitor for external tank bottom corrosion and implements repairs as required to maintain safety and integrity. Most recently, Hartsdale Tank 1623, a tank included in this NOPV, was internally inspected in 2023 for its initial interval corrosion evaluation. The out-of-service internal inspection included a Magnetic Flux Leakage (MFL) scan of the tank bottom, which did not identify any indications of soilside or external corrosion anomalies.

Given that there is no basis to support PHMSA's allegation, and in consideration of other matters as justice may require, Buckeye respectfully requests that PHMSA withdraw the NOPV, the Proposed Civil Penalty, and the PCO requirements.

Statement of Issues

1. Whether based on the facts and applicable law, PHMSA has met its burden to prove by a preponderance of the evidence that Buckeye did not comply with 49 C.F.R. § 195.563(a) as alleged in NOPV.
2. Whether PHMSA's interpretation of the requirements of 49 C.F.R. § 195.563(a) and allegation of noncompliance is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the Administration Procedure Act.
3. Whether PHMSA has complied with the requirements for due process and fair notice, as required by the U.S. Constitution and the Administrative Procedure Act, in issuing the NOPV.
4. Whether PHMSA's allegation of noncompliance, the proposed civil penalty, and the PCO items contradict PHMSA's Pipeline Safety Enforcement Procedures, prior guidance and enforcement precedent.
5. Whether the proposed civil penalty should be withdrawn or reduced to accurately reflect the statutory and regulatory penalty assessment criteria required under 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225.
6. Whether PHMSA has provided a basis to support the PCO requirements.

7. Whether PHMSA has made available a copy of the complete case file in this matter, beyond the Proposed Civil Penalty Worksheet and the Pipeline Safety Violation Report, pursuant to 49 C.F.R. § 190.209.

The Company appreciates PHMSA's consideration of this request for hearing and settlement conference and looks forward to the opportunity to resolve these issues with the Agency. Further, Buckeye respectfully requests that PHMSA provide the complete case file in this matter – to include all agency records pertinent to the matters of fact and law asserted in the NOPV whether created, obtained, and/or within PHMSA's control that are factually or legally relevant to the NOPV allegation – at the earliest possible date, not to exceed 10 days prior to a hearing to ensure that Buckeye has the opportunity to offer facts, statements, explanations, documents, testimony, or other evidence relevant and material to the issues under consideration pursuant to 49 C.F.R. §§ 190.211 and 190.212(c)(2)-(3).

If you have any questions, please do not hesitate to contact me.

Respectfully,



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