

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS DELIVERY

August 30, 2024

Mr. Todd Russo
Chief Executive Officer
Buckeye Partners, LP
4200 Westheimer Road Suite #975
Houston, Texas 77027

CPF 1-2024-053-NOPV

Dear Mr. Russo:

From July 10 to October 27, 2023, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Buckeye Partners, LP's (Buckeye) East Chicago West Facility and Hartsdale Terminal located in Schererville and East Chicago, Indiana.

As a result of the inspection, it is alleged that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The item inspected and the probable violation is:

- 1. § 195.563 Which pipelines must have cathodic protection?**
 - (a) Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in § 195.401(c) must have cathodic protection. The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.**

Buckeye failed to have cathodic protection in operation not later than one year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable. Specifically, Buckeye failed

to install cathodic protection not later than one year after construction to protect the bottom of breakout tanks 136, 137, 160, 161, 162, 163, 1623, 1624, 1625, and 3535.

During the inspection, PHMSA requested cathodic protection records for breakout tanks 136, 137, 160, 161, 162, 163, 1623, 1624, 1625, and 3535. Buckeye was unable to provide cathodic protection records because cathodic protection was not installed on the tanks. Buckeye stated that this was due to the breakout tanks in question being built on a concrete slab.¹ However, Section 195.565² requires the operator provide justification in its corrosion control procedures for “all or certain provisions of ANSI/API RP 651 is not necessary for the safety of the tank.” However, Buckeye was unable to provide evidence to justify its failure to install cathodic protection on the breakout tanks in question.

The table below lists the dates of tank construction completion for the ten (10) breakout tanks:

Tank #	Construction Completed
136	2016
137	2016
160	2019
161	2019
162	2019
163	2019
1623	2014
1624	2014
1625	2014
3535	2020

Therefore, Buckeye failed to have cathodic protection in operation on ten breakout tanks not later than one year after construction, in accordance with § 195.563.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before December 28, 2023, the maximum penalty may not exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the

¹ The concrete pad may provide an electrolytic path of connection between the tank bottom and soil.

² § 195.565 – How do I install cathodic protection on breakout tanks?

After October 2, 2000, when you install cathodic protection under §195.563(a) to protect the bottom of an aboveground breakout tank of more than 500 barrels 79.49m³ capacity built to API Spec 12F (incorporated by reference, *see* §195.3), API Std 620 (incorporated by reference, *see* §195.3), API Std 650 (incorporated by reference, *see* §195.3), or API Std 650's predecessor, Standard 12C, you must install the system in accordance with ANSI/API RP 651 (incorporated by reference, *see* §195.3). However, you don't need to comply with ANSI/API RP 651 when installing any tank for which you note in the corrosion control procedures established under §195.402(c)(3) why complying with all or certain provisions of ANSI/API RP 651 is not necessary for the safety of the tank.

maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679.

We have reviewed the circumstances and supporting documentation involved for the above probable violation and recommend that you be preliminarily assessed a civil penalty of \$46,100 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$46,100

Proposed Compliance Order

With respect to Item 1, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Buckeye Partners, LP. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. § 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. § 552(b).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 1-2024-053-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Buckeye Partners, LP (Buckeye) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Buckeye with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice pertaining to failure to have cathodic protection in operation not later than 1 year after construction, Buckeye must install cathodic protection to protect the bottom of breakout tanks 136, 137, 160, 161, 162, 163, 1623, 1624, 1625, and 3535. Or Buckeye must provide an engineering justified note in the corrosion control procedures established under § 195.402(c)(3) stating why complying with all or certain provisions of ANSI/API RP 651 is not necessary for the safety of the tank within **365** days of receipt of the Final Order.
- B. It is requested (not mandated) that Buckeye Partners, LP maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. 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.