

**JAN 31 2011**

Mr. Jerry J. Ashcroft III  
Vice President – Field Operations  
Buckeye Partners, L.P.  
Five TEK Park  
9999 Hamilton Boulevard  
Breinigsville, PA 18031

**Re: CPF No. 1-2010-5009**

Dear Mr. Ashcroft:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$100,000. 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. Byron E. Coy, Director, Eastern Region, PHMSA

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0041 3467]**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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<b>In the Matter of</b>	)	
	)	
<b>Buckeye Partners, L.P.,</b>	)	<b>CPF No. 1-2010-5009</b>
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On November 17, 2009, pursuant to 49 U.S.C. § 60117, a representative of the New York State Department of Public Service (NYDPS), as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an accident in Queens, NY involving the pipeline system operated by Buckeye Partners, L.P. (Buckeye or Respondent). Buckeye and its consolidated subsidiaries operate approximately 5,400 miles of pipeline and 67 active products terminals that provide aggregate storage capacity of approximately 27.2 million barrels.<sup>1</sup>

The investigation arose out of Buckeye’s failure to properly locate a 12-inch diameter pipeline, resulting in damage to the pipeline and the release of approximately 110 gallons of jet fuel. The release caused an interruption of fuel supply to LaGuardia airport.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated September 27, 2010, a Notice of Probable Violation and Proposed Civil Penalty. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had violated 49 C.F.R. § 195.402(a) and proposed assessing a civil penalty of \$100,000 for the alleged violation.

Buckeye responded to the Notice by letter dated October 25, 2010 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

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<sup>1</sup> SEC Form 10-K, Buckeye Partners, L.P., February 26, 2010, at 6.

## 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. § 195.402(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 . . . .

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its manual of written procedures for conducting normal operations and maintenance activities. Specifically, the Notice alleged that Buckeye failed to locate a pipeline in accordance with its Operating and Maintenance (O&M) procedures, *Maintenance Manual, A-03—Line Location, Section 2*. This procedure states to “[u]se a line locator to locate the line . . . use the conductive method to locate the line. If it is not possible to use this method, then proceed by using the inductive method. Mark the location with paint.”<sup>2</sup>

However, on November 12, 2009, a Buckeye employee failed to use a line locator device, and failed to use either a conductive or inductive method to locate Buckeye’s pipeline along Skillman Avenue. Instead, the Buckeye employee relied only on maps to locate the line. As a result, Buckeye provided misinformation to a New York City Mass Transit Authority (MTA) contractor, marking the location of the pipeline approximately 61 inches from its actual location.<sup>3</sup> On November 17, 2009, the MTA contractor hit Buckeye’s Line 601 and approximately 110 gallons of jet fuel were released. This release caused an interruption of fuel supply to La Guardia Airport. 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(a) by failing to follow its O&M procedures for locating a pipeline.

## 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

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<sup>2</sup> Pipeline Safety Violation Report, Exhibit A, at 1, paragraph 2.2.

<sup>3</sup> *Pipeline Failure Investigation Report*, at 1.

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 \$100,000 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its O&M procedures for locating a pipeline. In its Response, Buckeye argued that the penalty should be substantially reduced due to the history and circumstances of the accident, namely the third party contractor's role in the accidental pipeline release. Respondent conceded that its employee who initially located the pipeline on November 12<sup>th</sup> did not follow Buckeye's locating procedure and misinformed the contractor hired by the MTA, but Respondent contended that it had no knowledge of the additional drilling work conducted by the contractor or the intent to re-drill the bore hole under a modified scope of work plan. Buckeye argued that if it knew of the additional drilling activities, it would have re-analyzed its method for locating the pipeline and would have re-verified the pipeline location. On this basis, Buckeye requests a penalty reduction.

Although the MTA contractor did not notify Buckeye of the subsequent drilling on November 17<sup>th</sup>, the contractor was nevertheless drilling based solely on the erroneous information provided by Buckeye on November 12<sup>th</sup>. It was determined after the failure that Respondent's marking of the pipeline was approximately 61 inches or 5 feet from the actual location of the pipeline.<sup>4</sup> Consequently, the contractor punctured the pipeline, releasing 110 gallons of jet fuel and interrupting the fuel supply to LaGuardia Airport.

The circumstances, gravity, and culpability weighed heavily in determining the civil penalty. First, Respondent's employee failed to follow the company's own procedures regarding locating a pipeline and subsequently provided misinformation to a MTA contractor. The contractor's drilling based on Buckeye's information led to damage to the pipeline and a release of 110 gallons of jet fuel. Respondent's non-compliance occurred in a high-consequence area (HCA) and also contributed to the cause of a reportable accident.<sup>5</sup> Further, Respondent's non-compliance impacted public safety. Not only did Respondent's non-compliance result in an interruption of jet fuel to LaGuardia Airport, but 100 gallons of jet fuel was released in a HCA where it could have ignited.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(a).

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 (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.

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<sup>4</sup> *Id.*

<sup>5</sup> Violation Report, at 4.

Failure to pay the \$100,000 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.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> 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.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued