

**BUCKEYE PARTNERS, L.P.**

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May 12, 2010

RECEIVED MAY 12 2010

Mr. David A. Barrett
Director, Central Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, MO 64106-2641

RE: CPF 3-2010-5006 – Notice of Probable Violation,
Proposed Civil Penalty and Proposed Compliance Order
Buckeye Response

Dear Mr. Barrett,

Buckeye Partners, L.P. (Buckeye) supports and believes strongly in PHMSA's mission to ensure pipeline safety. We also believe strongly in fairness and common sense. The above referenced Proposed Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (CPF 3-2010-5006) dated April 14, 2010 (hereafter referred to as the NOPV), does not appear fair or sensible in its entirety, and we do not believe that it furthers the goal of ensuring pipeline safety. This NOPV relates to a tank overfill incident that occurred almost five years ago (on May 5, 2005) at Buckeye's East Chicago, Indiana facility. The NOPV asserts that a subsequent Integrated Inspection in 2008 caused the Agency to conduct a "follow-up review" of the 2005 East Chicago incident, which resulted in the issuance of this NOPV.

Buckeye respectfully contests certain items contained in this NOPV, and in the event that the parties cannot resolve the issues informally, we request a Hearing on these issues, pursuant to 49 C.F.R. Part 190.211. A formal Request for Hearing and a Statement of Issues, as required by the Agency's procedural rules, are being sent under separate cover. For the reasons set forth below, and in the attachments to this response, Buckeye respectfully requests withdrawal and/or reduction to the proposed penalty amounts associated with the contested issues.

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Background

The incident related to the six alleged violations set forth in this NOPV occurred more than 4 years and 11 months prior to the issuance of the NOPV.¹ The alleged violations relate primarily to Buckeye's Operations Manual and Operator Qualification (OQ) programs. By PHMSA's own directives, Operations Manuals and OQ programs (just like IMP programs) are intended to "continuously evolve" as operations and procedures change over time. For that reason -- as directed by PHMSA regulations -- IMP, Operations and OQ manuals are expected to change over time. That fact alone makes the issuance of this NOPV most unusual, as the enforcement action is based on manuals and procedures that were in place five years ago. Even the "follow-up review" triggered by the 2008 Integrated Inspection (which resulted in the issuance of a separate NOPV in 2009) was long past the date of the facts underlying this NOPV.

PHMSA already issued a Notice of Amendment (NOA) on May 6, 2009 (CPF 1-2009-5001M) and a separate NOPV (CPF 1-2009-5002) relating to the 2008 Integrated Inspection that ultimately triggered the issuance of this NOPV. Those prior enforcement actions made no reference to the issues identified in this proceeding, even though some of the very same issues were raised and discussed by the parties. Moreover, Buckeye has already undertaken corrective actions in response to its 2005 incident in the Central Region, and to the enforcement actions initiated after the 2008 Integrated Inspection. The Agency's last minute review of the East Chicago incident almost five years after the incident occurred -- and after several prior opportunities to address the same issues in other proceedings -- raises serious questions about the Agency's application of its regulations, as well as concerns over mootness, laches, collateral estoppel and Due Process. It is also ill considered from any practical standpoint, as it creates confusion for the regulated community as to what can be expected from the Agency in the interpretation and application of its performance based regulations.

Based on the information provided in this response, Buckeye believes that PHMSA should address what it considers to be Operator Qualification program deficiencies as part of the previously referenced CPF 1-2009-5001M NOA.

Buckeye's responses to the specific findings cited in the referenced NOPV are as follows:

1. *§195.52 Telephone notice of certain accidents.*

(a) *At the earliest practicable moment following discovery of a release of the hazardous*

¹ This NOPV was issued at the very end of the statute of limitations period for the underlying incident. Since the Hazardous Liquid Pipeline Safety Act does not establish a limitation period for administrative or civil penalties, the courts will apply the 5 year limitation period established in the Federal Tort Claims Act, 28 U.S.C. Section 2462.

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liquid or carbon dioxide transported resulting in an event described in §195.50, the operator of the system shall give notice, in accordance with paragraph (b) of this section, of any failure that:

(3) Caused estimated property damage, including costs of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000;

Buckeye did not make a telephonic notice to the National Response Center (NRC) at the earliest practicable moment following the release of gasoline at the East Chicago, Indiana storage tank facility. Sixteen hours elapsed from the time of the accident at 4:15 p.m. on May 5, 2005, and the time of notification to the NRC at 8:20 a.m. on May 6, 2005. A release of a hazardous liquid or carbon dioxide, resulting in cost of property damage and losses exceeding \$50,000, requires an accident report for each failure in a pipeline system. Buckeye reported that the costs associated with the accident totaled \$60,100. The telephonic notification is required to assure proper remedial measures are taken by the operator and to inform PHMSA in a timely manner of the occurrence.

Response:

PHMSA's longstanding release reporting requirement at issue in this allegation states simply that an operator should provide notice of reportable incidents "as soon as practicable." Nowhere in the Agency's regulations or guidance is there any time limit specified for telephonic notice. Among the various criteria that may trigger a release reporting requirement is that the event require more than \$50,000 in response costs, including cleanup. As should be clear in the record for the incident at issue, Buckeye did not have information suggesting that the incident would exceed the \$50,000 reporting criterion until several days after the incident occurred, and by that time Buckeye had in fact made a report to the NRC.

Significantly, other notifications were made in a timely manner, both to the Indiana Department of Environmental Management and the East Chicago Fire Department (both made within 15 minutes of the spill). Both agencies were on-site on May 5, 2005 to assure that remediation was being handled properly. Within five minutes of on-site spill recognition, Buckeye initiated its emergency response, transferred product to another tank and stopped product flow from the vents on Tank 133. Spilled product removal commenced on May 5, 2005, and site remediation was initiated on May 6, 2005.

PHMSA's own public records show numerous examples of release reports (Form 7000-1) that were not made until many days after an incident, precisely because the cost of response could not previously be estimated. If no other criteria requires reporting to the NRC (such as a release to "waters of the U.S."), PHMSA has routinely acknowledged in practice that its reporting regulations are not triggered until response costs can be determined.

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Accordingly, Buckeye respectfully requests that PHMSA remove this item from the NOPV and also remove the associated Civil Penalty.

2. §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.*

On May 5, 2005, Buckeye did not correct the conditions that could adversely affect the safe operation of its system designated by three different alarms in a reasonable time. The three alarms indicated an imminent hazard to property by the overfilling of Tank #133, which occurred approximately one hour after the first alarm; but Buckeye continued the filling operations. Approximately fifteen minutes after the third alarm, a maintenance crew working in the area saw product spilling through the vents of Tank #133 onto the ground and notified the local operator who diverted the gasoline flow to another tank.

Response:

This incident -- which occurred almost five years ago -- was an isolated event involving a single employee. Based on actual tank gauging data taken earlier in the day, the employee believed that the initial alarm was not accurate. Once the overfill was recognized, Buckeye took immediate actions to minimize any adverse impacts. As a result of Buckeye's own incident investigation, the local operator involved was retrained on tank filling procedures.

Although Buckeye considers any release unacceptable, we believe that the proposed penalty amount is excessive in this instance, and we respectfully request a reduction.

3. §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.*

Buckeye did not follow procedures when filling a regulated breakout tank on May 5, 2005 at the East Chicago, Indiana storage tank facility. First, the local operator did not accurately confirm

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batch information from the Control Center when he arrived for the start of his shift at 7:00 a.m. and did not compare the available tank room to batch volume as required in Buckeye's Operating Manual Procedures B-10 Section 2.1 and 2.4. These sections state:

- 2.1 *Confirm batch information shown on the orders, include product service of the designated receiving tank.*
- 2.4 *Compare the available tank room to the batch volume to ensure fill heights are not exceeded. If the room is inadequate, inform the Control Center so that appropriate schedule modifications can be made.*

Second, two high level alarms and one high-high level alarm occurred during the filling of Tank #133 and were not properly addressed by Buckeye personnel. Buckeye procedure B-10 Section 2.9 requires specific actions to be taken by Buckeye personnel:

- 2.9.1 *states if the tank volume reaches the high level alarm prior to batch completion, switch the stream and/or shutdown in accordance with orders.*
- 2.9.2 *states if the tank volume causes the annunciation of a high-high alarm, immediately shut down the incoming stream and notify the Control Center.*

As a consequence of not following the written procedures, by either the local operator or the control center, an overflow spill occurred on Tank #133 at the East Chicago, Indiana storage tank facility. Buckeye's Incident Investigation also identifies these procedure failures.

Response:

As provided in Buckeye's response to Item 2 above, the local operator with actual gauging data taken earlier in the day from the tank believed that the initial alarm was in error. Once the overflow was recognized, Buckeye took immediate actions to minimize any adverse impacts. In addition to retraining the local operator, Buckeye also reemphasized communication procedures with its Control Center employees.

Again, Buckeye feels that this was an isolated event caused by one employee not following established procedures. Such an isolated incident that occurred five years ago does not indicate any type of systemic problem across the Buckeye system. Although Buckeye considers all releases unacceptable, we believe it is inappropriate for PHMSA to allege violations under both Part 195.401 and Part 195.402 for an isolated event. Both the Agency and the industry typically view Parts 195.401 and 195.402 to function together, with 402 being the implementing regulation for 401's goals. To penalize Buckeye under both provisions for a single incident is excessive, as is the resulting amount of penalty requested. Buckeye respectfully requests a dismissal of one of the alleged violations set forth in Items 2 or 3, and/or a reduction in the amount of penalty requested.

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4. §195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) *Identify covered tasks;*

As determined from reviewing Buckeye's written operator qualification program following the 2005 tank overflow accident and again during the Integrated Inspection in 2008, Buckeye had not included all necessary covered tasks and associated requirements in its OQ program, including tasks associated with abnormal operating conditions. Missing covered tasks include, among other things, delivery operations at regulated tank facilities, radiographic examination and magnetic particle surveys.

Response:

Buckeye disagrees with this alleged violation, and requests that it be withdrawn, along with the proposed penalty. PHMSA conducted an Integrated Inspection of Buckeye's OQ program on October 19–21, 2004. During that inspection, PHMSA representatives conducted a comprehensive review of Buckeye's OQ program, including the listing of those tasks that met the four part test for covered tasks, as set forth in 49 C.F.R. Part 195.501(b). The inspection also reviewed other information relating to identified tasks (covered and non-covered), evaluation methods, evaluation intervals, span of control ratios and other relevant information. Buckeye's Task 412 (Tank Operations), which includes tank filling operations, was determined not to be a covered task under the referenced four part test, since that task was not specifically required by Part 195 regulations. Thus, this task was not included on the Covered Task Table (see attached Exhibit A), but it was included on Page 2 of 11 of Buckeye's Skills Training Table as a non-covered task (see attached Exhibit B).

As a result of the Agency's 2004 inspection, PHMSA issued an NOA on March 28, 2005 (CPF 1-2005-5007-M). The 2005 NOA suggested, in Item 1(B), that the listed non-covered Tasks 419, 711, 712 and 1501 should be identified as covered tasks in Buckeye's OQ program, with all persons performing such tasks qualified. Buckeye responded to the March 2005 NOA on May 6, 2005. With respect to the referenced Item 1(B), Buckeye agreed to add Tasks 711 and 712 to the OQ program, and it provided additional explanations regarding Tasks 419 and 1501, regarding the reason for their exclusion from Buckeye's OQ program. Included with the May 6, 2005 response was a copy of Buckeye's Training Manual, Section G, Exhibit F – "All Tasks Four Part Test Rationale," Page 2 of 12 (see attached Exhibit C), which clearly identifies Task 412 and Buckeye's determination that this task was not considered to be a covered task in Buckeye's OQ program. Buckeye submitted another written response to PHMSA's 2005 NOA on August 17, 2005, providing revised versions of "covered tasks" at issue in the NOA. In that submittal, Buckeye again emphasized that it did not agree that some of the NOA

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allegations met the Agency's own requirements for "covered tasks," and the submittal expressly asked the Agency to contact Buckeye if it disagreed with that understanding or any other classifications of covered tasks.

On July 12, 2006, PHMSA issued Buckeye an NOPV (CPF 1-2006-5006), based on the same allegations contained in the 2005 NOA, which arose out of the 2004 Integrated Inspection. The 2006 NOPV did not include any finding or allegation relating to Buckeye's failure to include all necessary covered tasks, which led Buckeye to presume that the Agency agreed with its conclusion that certain tasks -- including Task 412 (Tank Operations) -- were appropriately excluded from the OQ program.

In 2008, PHMSA representatives again performed a full review of Buckeye's OQ plan records and procedures, which included the determination of which tasks should be identified as "covered tasks" under Part 195.501(b). As a result of that 2008 inspection, the Agency issued another NOA on May 6, 2009 (CPF 1-2009-5001M). Once again, that NOA did not include Task 412 as a task that should be considered as a covered task, nor did it include a stipulation that additional tasks covering radiographic inspection and magnetic particle surveys should be added to the covered task list. Once again, Buckeye concluded that its covered task list was found to be in compliance by the Agency, since it had now been subject to a global review on several occasions, with follow-up NOAs and correspondence.

Against the backdrop of these facts, where the Agency has directly reviewed an issue on several occasions and commenced enforcement actions based on such global reviews, none of which called this specific Task 412 into question (even though Task 412 was clearly reviewed and discussed), it is inappropriate for PHMSA to subsequently go back nearly five years to allege a violation of Buckeye's OQ program for Task 412. Buckeye should be allowed to rely on the Agency's prior inspections and enforcement actions without fear of second guessing years after an incident and related enforcement actions have expired.

Buckeye respectfully requests that PHMSA remove this Item from the recent NOPV, dismiss the associated proposed penalty, and also remove the associated Proposed Compliance Order. In a good faith offer of compromise, Buckeye will agree to add tank operations, radiographic examination and magnetic particle surveys to its Operator Qualification program covered task list going forward, and we frankly recommend that PHMSA add such a provision to its prior NOA (CPF 1-2009-5001M) that relates to PHMSA's 2008 Integrated Inspection. Buckeye requests that it be allowed six months from receipt of PHMSA's revised CPF 1-2009-5001M NOA to complete training of its operators on the tank operations covered task, and to further implement its approach to training on tasks for radiographic examination and magnetic particle surveys both of which are exclusively performed by third parties for Buckeye.

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5. §195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (b) *Ensure through evaluation that individuals performing covered tasks are qualified;*

Buckeye did not qualify the local operator under its operator qualification program through evaluation for performing the task of operating regulated breakout tanks at the East Chicago, Indiana facility. Buckeye did not have a qualification record for the individual involved in delivery operations on May 5, 2005, whose actions contributed to product overflowing from Tank #133 vents onto the ground.

Response:

Please see Buckeye's response to Item 4 above. As provided, Buckeye did not find that its Task 412 was a covered task after applying the four part test established at 49 C.F.R Part 195.501(b). In addition, as a result of PHMSA's OQ program inspection in October 2004, and the associated NOA (CPF 1-2005-5007-M), the subsequent NOPV (CPF 1-2006-5006) and Buckeye's May 6, 2005 and August 17, 2005 responses, it should be clear that PHMSA already had ample opportunity to object to Buckeye's approach to compliance with this aspect of the OQ regulations, and that Buckeye's covered task list was fully reviewed by the Agency and found to be in compliance. If the Agency now wishes to reconsider -- after numerous reviews spanning a six year time period -- it should do so without allegation of violations or proposed penalty. Buckeye remains open to discussing the scope and applicability of the OQ regulations, but in this instance we strongly believe that no penalty should be retroactively applied to an incident that is five years old, when the Agency has reviewed the very same issue multiple times over the past six years without comment.

Buckeye respectfully requests that PHMSA remove this Item from the NOPV, and remove the associated proposed Civil Penalty.

6. §195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a) *Ensure through evaluation that individuals performing covered tasks are qualified;*

At the time of the Integrated Inspection in 2008, Buckeye had not ensured that individuals performing covered tasks on breakout tanks were qualified through evaluation in Buckeye's Qualification Program. Between 2005 and 2008, up to 273 individuals would have been involved in various tasks associated with operating and maintaining tanks across all of

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Buckeye's tank facilities yet Buckeye had no records demonstrating that any of these individuals had been qualified for tank operations under its operator qualification program.

Response:

Please see Buckeye's response to Item 4 above. As provided, Buckeye did not find that its Task 412 was a covered task after applying the four part test established by 49 C.F.R. Part 195.501(b). In addition, from PHMSA's OQ program inspection in October 2004, the resulting NOA (CPF 1-2005-5007-M) and NOPV (CPF 1-2006-5006) and Buckeye's May 6 and August 17, 2005 responses, Buckeye concluded that its changes made to the covered task list as a result of the NOA were considered by PHMSA to be in compliance. Therefore, from 2004 to the date of this NOPV, Buckeye had no reason to conclude that this Task 412 should be considered a covered task in Buckeye's OQ program. For the Agency to retroactively allege that the failure to identify this as a covered task for an incident that occurred five years ago is inappropriate given the intervening history of the issues.

Buckeye respectfully requests that PHMSA remove this Item from the NOPV, and also remove the associated proposed Civil Penalty. As discussed in Buckeye's response to Item 4 above, as a good faith offer of compromise, Buckeye is willing to add tank operations to its OQ program covered task list going forward, and train its operators within six months of receipt of a revised NOA (CPF 1-2009-5001M). We should not be penalized for this newly announced interpretation by PHMSA, given the long history of inspections and discussions on this issue between the parties.

In summary, Buckeye contests Items 1, 4, 5 and 6 that are contained in this NOPV, and requests that the alleged violations and associated proposed civil penalties be withdrawn, and that the proposed Compliance Order also be withdrawn. As to Items 2 and 3, Buckeye requests that the alleged violations be reduced to a single violation, and/or the amount of penalty be reduced, for the reasons set forth above. Buckeye believes the amount of civil penalties proposed for all of the Items in this NOPV is excessive, in light of the unusual background to this matter, and that such penalties should be reduced as a general matter.

It is our hope and expectation that PHMSA will agree to resolve these alleged violations amicably and in an informal manner. That would be most efficient and the most effective way to improve pipeline safety. We are willing to meet and confer with the Agency on these issues at PHMSA's convenience. In the event that the Agency is unable or unwilling to engage in informal discussions, Buckeye respectfully requests a Hearing on the issues presented, and we request that such Hearing be held in person (not telephonic). We also request that a court reporter be allowed to attend and transcribe such Hearing. As noted above, a formal Request for Hearing and a Statement of Issues, as required by the Agency's procedural rules, are being sent under separate cover.

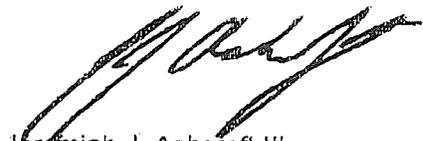
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Buckeye remains fully committed to maintaining a safe operation that provides protection for the public, our employees, and the environment in which we live and work. We look forward to working with PHMSA to continuously improve our compliance programs into the future as well as to resolve the issues related to this NOPV.

If you have any questions or need additional information please feel free to contact myself or Mr. Scott Collier, Director Performance Assurance at 610-904-4922 or by email at tcollier@buckeye.com.

Sincerely,



Jeremiah J. Ashcroft III
Vice President, Field Operations

Enclosures (3)

cc: T. S. Collier

PHMSA Proposed Notice of Probable Violation
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 Exhibit A - 2004 Covered Test Table 3 of 3

ALL TASKS FOUR PART TEST RATIONALE

Test #	Covered Test	Category and Sub-Category	1. Performed on a Pipeline Facility	2. Operations or Maintenance Task	3. Required by Part 192, subpart 199	4. Actual Operations or Integrity of Pipeline
1505	Yes	Perform minor repairs of structural valve operation (i.e., remove and replace bonnets, seals, worm gear, inspect, calibrate, replace worn or damaged parts, check regulation, enclosed valves, and remove stuck valves)	Yes This task is performed on a pipeline facility.	Yes This is an operations or maintenance task.	Yes This is required by Part 192.205 (d)	Yes This task could affect the operations or integrity of the pipeline.
1514	Yes	Check, troubleshoot and replace Check Valves	Yes This task is performed on a pipeline facility.	Yes This is an operations or maintenance task.	Yes This is required by Part 192.205 (e)	Yes This task could affect the operations or integrity of the pipeline.
1516	Yes	Check, troubleshoot and replace Control Valves	Yes This task is performed on a pipeline facility.	Yes This is an operations or maintenance task.	Yes This is required by Part 192.205 (f)	Yes This task could affect the operations or integrity of the pipeline.
1529	Yes	Inspect - Non-Pressure-Loaded Parts (Valves)	Yes This task is performed on a pipeline facility.	Yes This is an operations or maintenance task.	Yes This is required by Part 192.205 (g)	Yes This task could affect the operations or integrity of the pipeline.
1530	Yes	Inspect - Pressure-Loaded Parts (Valves)	Yes This task is performed on a pipeline facility.	Yes This is an operations or maintenance task.	Yes This is required by Part 192.205 (h)	Yes This task could affect the operations or integrity of the pipeline.
1531	Yes	Inspect - Non-Pressure-Loaded Parts (Control Valves)	Yes This task is performed on a pipeline facility.	Yes This is an operations or maintenance task.	Yes This is required by Part 192.205 (i)	Yes This task could affect the operations or integrity of the pipeline.
1532	Yes	Inspect and Lubricate Safety Devices - Control Valves	Yes This task is performed on a pipeline facility.	Yes This is an operations or maintenance task.	Yes This is required by Part 192.205 (j)	Yes This task could affect the operations or integrity of the pipeline.

