

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 14, 2010

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

CPF 3-2010-5006

Dear Mr. Ashcroft:

On May 6, 2005, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected the Buckeye Partners, L.P. (Buckeye) procedures, records and field operations during an accident investigation of the May 5, 2005 overfill of Tank #133 at a Buckeye storage tank facility in East Chicago, Indiana.

On May 5 – June 22, and August 18-22 and August 25-28, 2008, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the State of New York Department of Public Safety pursuant to Chapter 601 of 49 United States Code inspected Buckeye procedures, records and field operations during an Integrated Inspection in Breinigsville, PA and other areas of Pennsylvania. During the 2008 inspection, a follow-up review of the East Chicago, IN accident that had occurred in 2005 and a review of Buckeye's response to their internal findings during the accident investigation were completed.

As a result of the initial investigation and the follow up inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation(s) are:

1. § 195.52 Telephonic notice of certain accidents.

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

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.

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 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 the 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 overfill spill occurred on Tank #133 at the East Chicago, Indiana storage tank facility. Buckeye's Incident Investigation also identifies these procedure failures.

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.

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 covered 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.

6. §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;

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 373 individuals would have been involved in various tasks associated with operating and maintaining tanks across all of 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.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$481,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
#1	\$ 10,500
#2	\$100,000
#3	\$100,000
#5	\$192,000
#6	\$ 79,300
Total	\$481,800

Proposed Compliance Order

With respect to item #4 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Buckeye. 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 Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being 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). 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.

In your correspondence on this matter, please refer to **CPF 3-2010-5006** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Ivan A. Huntoon
 Director, Central Region
 Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance 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, L.P. (Buckeye) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Buckeye with the pipeline safety regulations:

1. In regard to Item Number 4 of the Notice pertaining to Buckeye not having included all necessary covered tasks and associated requirements into their OQ program. The missing covered tasks include:
 - A. Pipeline operations at regulated tank facilities (breakout tank operations)
 - B. Radiographic examination
 - C. Magnetic particle surveys.

Buckeye shall include these covered tasks and any others deemed pertinent after a review of the covered tasks with regard to the four-part test. Buckeye shall also develop training, evaluation, and qualification requirements for those covered tasks added to the OQ program. Buckeye shall provide documentation when completed, within 3 months of receipt of the Final Order.

2. In regard to Item Number 4 of the Notice pertaining to not having all necessary covered tasks in their OQ Program, Buckeye will evaluate and qualify all personnel currently performing the three tasks and any additional tasks deemed pertinent after a review of covered tasks. Buckeye shall provide documentation when completed, within 6 months of receipt of the Final Order.
3. Buckeye shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mr. Ivan A. Huntoon, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. Costs shall 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.

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being 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).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. **When the Notice contains a proposed CIVIL PENALTY* --**
 1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
 2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
 3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
 4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

- b. When the Notice contains a proposed **COMPLIANCE ORDER*** --
1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
 2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
 3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
 4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a **WARNING ITEM** --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. **Procedures for Responding to a NOTICE OF AMENDMENT*--**

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the Notice of Amendment, you may submit such materials. This

authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release

material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "**BNF=/ALC-69-14-0001**". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "**AC-payment for PHMSA Case # /** To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009