



U.S. Department  
of Transportation

**Pipeline and Hazardous Materials  
Safety Administration**

901 Locust Street, Suite 462  
Kansas City, Missouri 64106-2641

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

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

March 28, 2014

Mr. Carl Ostach  
Vice President, Field Operations  
Buckeye Partners, L.P.  
5 TEK Park  
9999 Hamilton Boulevard  
Breinigsville, Pennsylvania 18031

**CPF 3-2014-5003**

Dear Mr. Ostach:

On May 17, 2011, Buckeye Partners, L.P. (Buckeye) discovered a gasoline leak on Line 413 at the Findlay Junction facility near Findlay, Ohio. The leak occurred in a two-inch diameter steel riser pipe, connected to a buried twelve-inch pipe through an isolation valve. An above ground pressure transmitter was connected to the top of the two-inch riser pipe. The riser pipe was oriented perpendicular to the twelve-inch pipe and was enclosed in a large diameter steel culvert, i.e., a vault. A representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code investigated this leak at Findlay Junction.

As a result of the investigation, 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 violations are:

**1. §195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?**

**(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.**

Buckeye failed to clean and coat each pipeline or portion of the pipeline that is exposed to the atmosphere. Specifically, Buckeye did not clean and coat a two-inch diameter steel riser pipe, connected to a buried twelve-inch pipe through an isolation valve to protect against corrosion. The pipe was installed in 1997 and, per a metallurgical analysis, the leak was caused by external pitting corrosion on the exterior of the two-inch uncoated pipe. In addition to the leaking corroded area, the metallurgical analysis report documented many relatively large and deep pits on the riser with the deepest pits being 71% of the nominal wall thickness. The two-inch riser pipe was installed in a vault that was exposed to the atmosphere with a soil-to-air interface present; therefore, the exceptions in §195.581(c) do not apply.

**2. §195.583 What must I do to monitor atmospheric corrosion control?**

**(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.**

Buckeye failed to properly monitor atmospheric corrosion of its pipe at a soil-to-air interface. Specifically, on August 4, 2010, Buckeye did not perform an adequate inspection of riser pipes exposed to the atmosphere in five vaults at the Findlay Junction facility. The riser pipes in the vaults contained soil-to-air interfaces. One of the riser pipes had a corrosion failure that resulted in a product release on May 17, 2011. The August 4, 2010, inspection documented on Buckeye's *Triennial Visual Inspection Form* indicated on the Riser Condition section of the form completed as "Air-Ground interface coating in good condition" and "No rust visible." However, during the onsite failure investigation, less than a year later, PHMSA observed that none of the riser pipes in the five vaults at Findlay Junction facility were coated and rust was visually present. The metallurgical report of the failed riser pipe documented areas of thick corrosion deposits, deep pits and no coating or paint present.

**3. §195.505 Qualification program.**

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

**(d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an accident as defined in Part 195;**

Buckeye failed to properly evaluate an individual that it had reason to believe contributed to an accident through the performance of a covered task. Specifically, following the discovery of a corrosion caused leak at the Findlay Junction facility, Buckeye did not evaluate in a timely manner a single employee regarding performance of covered task 001019 "Inspect Normally Exposed Pipe." On August 10, 2011, and repeatedly on December 7, 2011, and March 19, 2012, PHMSA made email information requests associated with the provisions of Buckeye's Operator Qualification plan. None of these information requests resulted in evaluation information being provided for this single employee. The atmospheric corrosion inspection on August 4, 2010, was inadequate and external pitting corrosion was the cause of the May 17, 2011, leak. The metallurgical report documented that there was no evidence of accelerated corrosion mechanisms such as bacteria or microbial-influenced corrosion (MIC) that played a role in the leak. On June 27, 2012, Buckeye completed the accident investigation and concluded that an inadequate inspection of the covered task on August 4, 2010, was a causal factor in the pipe failure. An additional email request was made and an answer received on June 24, 2013, indicating that an evaluation had still not been completed.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$271,300 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$123,800
2	\$100,000
3	\$ 47,500

Proposed Compliance Order


With respect to items 2 and 3 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Buckeye Partners. 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 thirty (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 3-2014-5003** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Linda Daugherty  
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 2 of the Notice pertaining to inadequate atmospheric corrosion inspection, all facilities (whether located at the Findlay Junction facility or another location) that were last inspected by employee number 4496 for atmospheric corrosion shall be re-inspected using a different qualified individual knowledgeable in corrosion control. These re-inspections must be completed within six months of the date of the Final Order. PHMSA will receive copies of the completed Triennial Visual Inspection Forms or any form that is used to document these re-inspections along with the associated individual name and qualification information completing the re-inspection work.
2. In regard to Item 3 of the Notice pertaining to evaluation of an individual employee, re-evaluate the employee completing the August 4, 2010, Task 001019 "Inspecting Normally Exposed Pipe" inspection and submit documentation of the re-evaluation within thirty (30) days of the date of the Final Order. If the individual is no longer required to perform this task, submit documentation within thirty (30) days of the date of the Final Order verifying the individual's status related to this OQ task and identify when this status change occurred.
3. It is requested (not mandated) that Buckeye maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Ms. Linda Daugherty, Director, Central 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.

## 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. Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum civil penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. Refer to 49 C.F.R. § 190.225 for assessment considerations 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. **The Rights of Small Entities To Enforcement Fairness and Policy Against Retaliation**

The Department of Transportation has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights. Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact the PHMSA Office of Chief Counsel. You also have the right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of this agency.

The Department of Transportation strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

VII. **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](http://www.sba.gov/ombudsman/dsp_faq.html).

VIII. **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 - "69140001". 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 7, 2013