

April 27, 2020

**VIA ELECTRONIC MAIL TO: ccsmith@buckeye.com**

Mr. Clark C. Smith  
President and Chief Executive Officer  
Buckeye Partners, LP  
1 Greenway Plaza, Suite 600  
Houston, Texas 77046

**CPF No. CPF 1-2019-5012S**

Dear Mr. Smith:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Buckeye Partners, LP, which was executed on April 27, 2020. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure: Order and Consent Agreement

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA  
Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, PHMSA  
Mr. Carl Ostach, Vice President, Domestic Operations, Buckeye Partners, LP,  
costach@buckeye.com  
Mr. Patrick Monaghan, Associate General Counsel and Chief Compliance Officer,  
Buckeye Partners, LP, pmonaghan@buckeye.com  
Ms. Claudia Pankowski, Director of Regulatory Compliance, Buckeye Partners, LP,  
cpankowski@buckeye.com

**CONFIRMATION OF RECEIPT REQUESTED**

**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, LP,</b> )	<b>CPF No. 1-2019-5012S</b>
)	
<b>Respondent.</b> )	
_____ )	

**CONSENT ORDER**

By letter dated December 5, 2019, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, issued a Notice of Proposed Safety Order (Notice) to Buckeye Partners, LP (Respondent).

In accordance with 49 C.F.R. § 190.239, the Notice alleged that conditions exist on Respondent's MU720DT (Line 720) pipeline near Marklesburg, Pennsylvania, that pose a pipeline integrity risk to public safety, property, or the environment. The Notice proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

In response to the Notice, Respondent requested an informal consultation, whereupon the parties engaged in good-faith settlement discussions that have resulted in the Consent Agreement attached to this Consent Order that settles all of the allegations in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties of up to \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

The terms and conditions of this Consent Order are effective upon service in accordance with 49 C.F.R. § 190.5.

April 27, 2020

\_\_\_\_\_  
Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

\_\_\_\_\_  
Date

**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>	)	
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<b>Buckeye Partners, LP,</b>	)	<b>CPF No. 1-2019-5012S</b>
	)	
<b>Respondent.</b>	)	

**CONSENT AGREEMENT**

On December 5, 2019, pursuant to 49 C.F.R. § 190.239, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or Agency), issued a Notice of Proposed Safety Order (Notice) to Buckeye Partners, LP (Buckeye or Respondent). The Notice alleged that conditions existed on Respondent’s MU720DT (Line 720) pipeline near Marklesburg, Pennsylvania, that posed a pipeline integrity risk to public safety, property, or the environment. Specifically, the Notice alleged that PHMSA had initiated an investigation and information review of Line 720 following notification from the National Response Center (NRC) on November 18, 2019, that Line 720 had experienced a release of approximately 650 barrels of gasoline near Marklesburg, Pennsylvania. The Notice did not cite a cause of the accident but noted that the company had submitted a safety-related condition report to PHMSA several months earlier, identifying 33 features meeting Buckeye’s “immediate repair condition” criteria and that the failure had occurred at the site of a recent repair. The Notice also proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

On December 13, 2019, Buckeye responded to the Notice by timely submitting a written response and a request for an informal consultation under 49 C.F.R. § 190.239(b)(2). An informal consultation was held on February 20, 2020, at PHMSA’s Eastern Region Office in West Trenton, New Jersey.

As a result of the informal consultation, PHMSA and Buckeye (collectively, Parties) agreed that settlement of this proceeding would avoid further administrative proceedings or litigation of the Notice and that entry into this Consent Agreement (Agreement) would be the most appropriate means of resolving the issues raised in the Notice and would generally be in the public interest. Therefore, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of Buckeye and PHMSA, the Parties agree as follows:

## **I. General Provisions**

1. Respondent acknowledges that as the operator of Line 720, Buckeye and its Line 720 are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Line 720 is a 20-inch diameter line which transports refined liquid petroleum products and runs approximately 77 miles from Mechanicsburg, Pennsylvania, to Duncansville, Pennsylvania. The line is part of a 175-mile pipeline system running from Reading, Pennsylvania, to Altoona, Pennsylvania. The "Affected Segment" of Line 720 is defined in Paragraph 12 of this Agreement.
2. Respondent agrees, for purposes of this Agreement, to address the integrity risks identified in the Notice by completing the actions specified in Section II of this Agreement (Corrective Measures) and to abide by the terms of this Agreement. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.
3. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.
4. Respondent consents to the issuance of the Consent Order incorporating this Consent Agreement, and hereby waives any further procedural requirements with respect to their issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.
5. This Agreement will apply to and be binding upon PHMSA, and upon Buckeye, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Buckeye's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.
6. For any transfer of ownership or operating responsibility of Buckeye's Line 720, Respondent will provide a copy of this Agreement to the prospective transferee at least

- 30 days prior to such transfer and provide written notice of the transfer within 30 days to the PHMSA Eastern Region Director (Director) who issued the Notice.
7. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.
  8. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Buckeye pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.
  9. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, nor a modification of any permit, under any Federal, State, or local laws or regulations. Buckeye remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.
  10. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Buckeye agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Buckeye or its contractors in carrying out any work required by this Agreement.
  11. Upon issuance of the Consent Order, Buckeye agrees to perform the Corrective Measures set forth below.
  12. Definitions
    - A. The "Affected Segment" means the approximately 77 miles of Buckeye's 20-inch Line 720 pipeline running from the upstream Mechanicsburg Pump Station (Mile Post 107.4) near Mechanicsburg in Cumberland County, Pennsylvania, through the downstream Duncansville Pump Station (MP 184.7) near Duncansville in Blair County, Pennsylvania. The "Affected Segment" generally runs westerly through portions of Cumberland, Perry, Juniata, Huntingdon, and Blair Counties in Pennsylvania.

- B. The “Director” means the Director, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, Eastern Region. The Director’s address is 840 Bear Tavern Road, Suite 300, West Trenton, New Jersey 08628.
- C. The “Failure” means the release of approximately 650 barrels of gasoline that occurred on Buckeye’s 20-inch Line 720, which the NRC reported to PHMSA on November 18, 2019.

## II. Corrective Measures

Buckeye agrees to take the following corrective measures to address the Preliminary Findings and Proposed Corrective Actions set forth in the Notice, as follows:

1. ***Pressure Reduction.*** Buckeye shall maintain the existing operating-pressure reduction for the Affected Segment that was initiated at the time of its filing the August 23, 2019 safety-related condition report with PHMSA. This pressure reduction is based on 80% of the maximum pressure experienced in the 60 days prior to the in-line inspection (ILI) tool trap date from Line 720’s July 12, 2019 assessment.
2. ***Removal of Pressure Restriction.*** The Director may allow the removal or modification of the pressure restriction upon a written request from Respondent demonstrating that restoring the pipeline to its normal operating pressure is justified based on a reliable engineering analysis showing that the pressure increase is safe, considering all known defects, anomalies, and operating parameters of the pipeline. The Director may also consider a demonstration that temporary mitigative and preventive measures are implemented prior to and during the temporary removal or modification of the pressure restriction. The Director’s determination will be based on the determined cause of the Failure and evidence of the analyses and measures taken.
3. ***Review of Affected Segment.*** Buckeye must review and inspect the Affected Segment for conditions similar to those of the Failure or other Buckeye-determined immediate conditions it discovers, including a review of operating and maintenance and integrity management records, such as, but not limited to, ILI results, hydrostatic tests, a root cause failure analysis (RCFA) of the Failure, aerial and ground patrols, excavations, and pipe replacements. Respondent must address any findings that require remedial measures to be implemented within 30 days of discovery.
4. ***Metallurgical Testing.*** In accordance with the Notice, on March 30, 2020, Respondent delivered to the Director a metallurgical testing report on the pipe joint that failed, entitled *Metallurgical Analysis of Leak at Girth Weld on 20-Inch Diameter 720L*, prepared by DVN-GL and dated March 27, 2020 (Metallurgical Report). Prior to finalization of the Metallurgical Report, Respondent asked DVN-GL to simultaneously provide a draft of the report, dated February 4, 2020, to PHMSA. Respondent maintained chain-of-custody documentation for transporting the pipe to the DVN-GL laboratory, and the metallurgical analysis followed established testing protocols.

Additionally, arrangements were made to provide PHMSA with the opportunity for a PHMSA representative to observe the metallurgical testing.

5. **Root Cause Failure Analysis.** Within 90 days following receipt of this Agreement and Order, Buckeye must complete a RCFA and submit a final report of this RCFA to the Director. The RCFA must be supplemented and facilitated by an independent third party with prior written approval of the Director, and must document the decision-making process used in the analysis and all factors contributing to the Failure. The final report must include findings, any lessons learned, and whether the findings and lessons learned are applicable to other locations within Buckeye's pipeline system.
6. **Remedial Work Plan.** Within 90 days following receipt of this Agreement and Order, Buckeye must submit a Remedial Work Plan (RWP) to the Director for approval. The Director may approve the RWP incrementally without approving the entire RWP. Buckeye must revise the RWP as necessary to incorporate new information obtained during the Failure investigation and remedial activities, to incorporate the results of actions undertaken pursuant to this Agreement, and to incorporate modifications required by the Director. Buckeye must submit any such plan revisions to the Director for prior approval. The Director may approve plan revisions incrementally. Once approved by the Director, the RWP, and any revisions, will be incorporated by reference into this Agreement. Buckeye must implement the RWP as approved by the Director, including any revisions to the plan. The RWP must:
  - A. Specify the tests, inspections, assessments, evaluations, and remedial measures Buckeye will use to verify the integrity of the Affected Segment. It must address all known or suspected factors and causes of the Failure. Buckeye should consider both the risk and potential consequence of another failure to develop a prioritized schedule for RWP-related work along the Affected Segment.
  - B. Include a procedure or process to identify pipe in the Affected Segment with characteristics similar to the contributing factors identified for the Failure.
  - C. Include a procedure or process to gather all data necessary to review the failure history (in service and pressure test failures) of the Affected Segment and to prepare a written report containing all the available information such as the locations, dates, and causes of leaks and failures.
  - D. Include a procedure or process to integrate the results of the metallurgical testing, RCFA, and other corrective actions required by this Agreement with all relevant pre-existing operational and assessment data for the Affected Segment. Pre-existing operational data includes, but is not limited to, construction, operations, maintenance, testing, repairs, prior metallurgical analyses, and any third-party consultation information. Pre-existing assessment data includes, but is not limited to, ILI tool runs, hydrostatic pressure testing, direct assessments, close interval surveys, and DCVG/ACVG surveys.

- E. Include a procedure or process to determine if conditions similar to those contributing to the Failure are likely to exist elsewhere on the Affected Segment.
- F. Based on the results of the like and similar condition review, Buckeye shall:
- i. Develop excavation prioritization criteria and perform inspections;
  - ii. Add the Affected Segment to the *Buckeye Integrity Management Plan Pipeline Supplemental Field Inspections* protocol and commit to manage the issue within its integrity management plan; and
  - iii. Evaluate the benefit of including inertial mapping unit tools to assist with strain measurements.
- G. Include a procedure or process to conduct additional field tests, inspections, assessments, and/or evaluations to determine whether, and to what extent, the conditions associated with the Failure or any other integrity threats are present elsewhere on the Affected Segment. At a minimum, this process must consider all failure causes and specify the use of one or more of the following:
- i. ILI tools that are technically appropriate for assessing the pipeline system based on the cause of the Failure, and that can reliably detect and identify anomalies;
  - ii. Hydrostatic pressure testing;
  - iii. Close-interval surveys;
  - iv. Cathodic protection surveys, to include interference surveys in coordination with other utilities (e.g. underground utilities, overhead power lines, etc.) in the area;
  - v. Coating surveys;
  - vi. Stress corrosion cracking surveys;
  - vii. Selective seam corrosion surveys; and,
  - viii. Other tests, inspections, assessments, and evaluations appropriate for the Failure causes.

*Note: Buckeye may use the results of previous tests, inspections, assessments, and evaluations if approved by the Director, provided the results of the tests, inspections, assessments, and evaluations are analyzed with regard to the factors known or suspected to have caused the Failure.*



- H. Describe the inspection and repair criteria Buckeye will use to prioritize, excavate, evaluate, and repair anomalies, imperfections, and other identified integrity threats. Include a description of how any defects will be graded and a schedule for repairs or replacement.
  - I. Based on the known history and condition of the Affected Segment, describe the methods Buckeye will use to repair, replace, or take other corrective measures to remediate the conditions associated with the Failure, and to address other known integrity threats along the Affected Segment. The repair, replacement, or other corrective measures must meet the criteria specified in paragraph H, above.
  - J. Include a procedure or process to implement continuing long-term periodic testing and integrity verification measures to ensure the ongoing safe operation of the Affected Segment, considering the results of the analyses, inspections, evaluations, and corrective measures undertaken pursuant to this Agreement.
  - K. Include a proposed schedule for completion of the RWP.
7. **Schedule.** The RWP must include a proposed timeline for completion of Corrective Measures required in Paragraph 18.
8. **Documentation.** Respondent will retain on file documentation of compliance with the RWP. Respondent will provide copies of such documentation to the Director upon written request.
9. **Monthly Reports.** Buckeye must submit monthly reports to the Director that: (1) include analyses of all available data and results of the testing and evaluations required by this Agreement; (2) describe the progress of repairs and other remedial actions being undertaken; and (3) document all mandated actions and management of change plans to ensure that all procedural modifications are incorporated into Buckeye's operations and maintenance procedures manual. The first report will be due 30 days from issuance of the Order.
10. **Consent Agreement Documentation Report (CADR).** When Buckeye has completed all the items in this Agreement it will submit a final CADR in its entirety to the Director. This will allow the Director to conduct a thorough review of all actions taken by Buckeye with regards to this Agreement prior to approving the closure of this Agreement. The intent is for the CADR to summarize all activities and documentation associated with this Agreement in one document.
- A. The Director may approve the CADR incrementally without approving the entire CADR.
  - B. The CADR must include but is not limited to:

- i. Table of Contents;
- ii. Summary of the Failure, and the response activities;
- iii. Summary of pipe data/properties and all prior assessments of the Affected Segment;
- iv. Summary of all tests, inspections, assessments, evaluations, and analysis required by this Agreement;
- v. Summary of the mechanical and metallurgical testing as required by this Agreement;
- vi. Summary of the RCFA with all root causes as required by this Agreement;
- vii. Documentation of all actions taken by Buckeye to implement the RWP, the results of those actions, and the inspection and repair criteria used;
- viii. Documentation of any revisions to the RWP including those necessary to incorporate the results of actions undertaken pursuant to this Agreement and whenever necessary to incorporate new information obtained during the Failure investigation and remedial activities;
- ix. Lessons learned while completing this Agreement;
- x. A path forward describing specific actions Buckeye will take on its entire pipeline system as a result of the lessons learned from work on this Agreement; and
- xi. Appendices (if required).

11. ***Extensions of Time.*** The Director may grant an extension of time for compliance with any of the terms of this Agreement upon a written request timely submitted demonstrating good cause for an extension. The Director will respond in writing to any such request.

12. ***Documentation of Costs.*** It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Agreement and submit the total to the 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.

### III. **Review and Approval Process**

1. With respect to any submission under Section II (Corrective Measures) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified, reasonable conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Buckeye will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Buckeye with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

#### **IV. Dispute Resolution**

1. The Director and Buckeye will informally attempt to resolve any disputes arising under this Agreement. If Respondent and the Director are unable to informally resolve the dispute within 15 business days, Respondent may request in writing, within 10 days, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, Respondent will provide all information that Respondent reasonably believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a written determination that shall constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing.

#### **V. Enforcement**

1. This Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All work plans and associated schedules set forth or referenced in Section II will be automatically incorporated into this Agreement and are enforceable in the same manner.

#### **VI. Recordkeeping and Information Disclosure**

1. Unless otherwise required in this Agreement, Buckeye agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim

of confidentially. PHMSA will determine the release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

**VII. Effective Date**

1. The term “Effective Date,” as used herein, is the date on which the Consent Order is issued by the Associate Administrator incorporating the terms of this Agreement. Unless specified to the contrary, all deadlines for actions required by this Agreement run from the Effective Date of the Consent Order.

**VIII. Modification**

1. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

**IX. Termination**

1. This Agreement and Order terminates upon completion of the Corrective Measures and other actions within Section II, as determined by the Director. Buckeye may request written confirmation from PHMSA when this Agreement and Order are terminated and the Director will provide such confirmation within a reasonable time. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

**X. Ratification**

1. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.
2. The Parties hereby agree to all conditions and terms of this Agreement.

**For Buckeye Partners, LP (Respondent):**

April 21, 2020

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Clark C. Smith  
President and CEO  
Buckeye Partners, LP

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Date

**For PHMSA:**

April 27, 2020

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Alan K. Mayberry  
Associate Administrator for Pipeline Safety  
Pipeline and Hazardous Materials Safety  
Administration  
U.S. Department of Transportation

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Date