

February 9, 2023

VIA ELECTRONIC MAIL TO: trusso@buckeye.com

Mr. Todd Russo
President and Chief Executive Officer
Buckeye Partners, LP
4200 Westheimer Road, # 975
Houston, Texas 77027

CPF No. 1-2016-5007

Dear Mr. Russo:

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 February 7, 2023. Service of the Consent Order and Consent Agreement by e-mail is deemed effective upon the date of mailing and acknowledgement of receipt, or as otherwise 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: Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, Office of Pipeline Safety, PHMSA
Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Evan Hofmann, Vice President, General Counsel and Secretary, Buckeye Partners, LP,
ehofmann@buckeye.com

Mr. William Serra, Vice President, Operations, Eastern Region, Buckeye Partners, LP,
wserra@buckeye.com
Ms. Claudia Pankowski, Director of Regulatory Compliance, Buckeye Partners, LP,
cpankowski@buckeye.com
Ms. Catherine Little, Esq., Bracewell LLP, Outside Counsel for Buckeye Partners, LP,
catherine.little@bracewell.com

CONFIRMATION OF RECEIPT REQUESTED

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

In the Matter of

Buckeye Partners, LP,

Respondent.

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CPF No. 1-2016-5007

CONSENT ORDER

By letter dated July 31, 2017, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, issued an Amended Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Amended Notice) to Buckeye Partners, LP (Buckeye or Respondent). Buckeye responded to the Amended Notice by letter dated August 25, 2017, and requested a hearing. A hearing was held on June 13, 2018, in West Trenton, New Jersey before a PHMSA Presiding Official. On October 10, 2019, PHMSA issued a final order directing Buckeye to take certain actions to ensure compliance with the pipeline safety regulations.

Buckeye met with PHMSA to discuss alternative solutions to the Compliance Order regarding field weld destructive testing. As a result of discussions between PHMSA and Respondent, and in consideration of prior inspection and test records, the API standard applicable to field welds, and the environmental implications of the Compliance Order, the Parties agree that settlement of this matter will be beneficial and will avoid further administrative proceedings or litigation.

Accordingly, the enclosed Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Buckeye 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 as set forth in 49 C.F.R. § 190.223.

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

February 9, 2023

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

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

In the Matter of

Buckeye Partners, LP,

Respondent.

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CPF No. 1-2016-5007

CONSENT AGREEMENT

From October 2, 2015, through November 13, 2015, pursuant to 49 U.S.C. § 60117, a representative of the New York State Department of Public Service, as agent for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of a pipeline construction project of Buckeye Partners, LP (Buckeye or Respondent), at the Genesee River in Livingston County, New York.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated August 25, 2016, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Initial Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Buckeye had violated 49 C.F.R. § 195.214(a)¹ and proposed assessing a civil penalty of \$38,200 for the alleged violation. The Initial Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Buckeye responded to the Initial Notice by letter dated September 14, 2016, as supplemented by letter dated April 13, 2017. Buckeye did not contest the allegation of violation and provided copies of its revised welding procedures. Following an exchange of correspondence with OPS, by letter dated June 1, 2017, Buckeye disagreed with the manner in which OPS expected it to meet the terms of the proposed Compliance Order.

On July 31, 2017, the Director issued an Amended Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Amended Notice) that superseded the Initial Notice, and which amended the testing requirement for field welds² in the compliance terms of the Initial

¹ Section 195.214(a) states “Welding must be performed by a qualified welder or welding operator in accordance with welding procedures qualified under section 5, section 12 or Appendix A of API Std 1104 (incorporated by reference, see § 195.3), or section IX of ASME Boiler and Pressure Vessel Code (BPVC) (incorporated by reference, see § 195.3). The quality of the test welds used to qualify welding procedures must be determined by destructive testing.”

² A field weld is a production weld that meets the acceptance standards for non-destructive testing on Section 9 of API 1104 (20th edition, October 2005).

Notice. In accordance with 49 C.F.R. § 190.207, the Amended Notice proposed finding that Buckeye had violated 49 C.F.R. § 195.214(a) and proposed assessing a civil penalty of \$38,200 for the alleged violation. The Amended Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. Buckeye responded to the Amended Notice by letter dated August 25, 2017, and requested a hearing on the new terms of the Amended Notice's Proposed Compliance Order. Notwithstanding the hearing request for the Amended Notice, Buckeye paid the proposed civil penalty of \$38,200 on January 12, 2018.

A hearing was subsequently held on June 13, 2018, in West Trenton, New Jersey before a PHMSA Presiding Official. During the hearing, Buckeye did not contest the allegation, but explained the difficulty of obtaining numerous field welds for qualification testing, including the considerable expense and environmental disturbance that would require. Buckeye argued that a more limited field testing of the welds would be considered an acceptable industry practice under the circumstances. During the hearing, the Director and Buckeye came to an agreement on the field testing and Buckeye agreed to no longer contest the issuance of a final order with compliance terms as modified pursuant to that agreement.

On October 10, 2019, PHMSA issued a final order ("Final Order") directing Buckeye to take the following actions to ensure compliance with the pipeline safety regulations:

- 1) Cut out all thirty-six (36) existing in-service welds, and weld new girth welds in accordance with §195.214(a); or
- 2) Buckeye must cut out one (1) field weld created using its qualified procedure, Weld Procedure Specification P15A (qualified on November 13, 2015), from the existing thirty-six (36) in-service girth welds and perform all of the destructive testing requirements on the one (1) weld (including tensile, nick break, and bend tests) as set forth in API 1104 for welding procedure qualification purposes for 10-inch diameter pipe. To the extent not all of the destructive testing can be conducted on the one (1) weld, Buckeye must cut out one (1) additional weld to perform the necessary testing. If the field weld(s) pass the qualification testing, then the existing girth welds may remain in service. Otherwise, all remaining in-service girth welds must be cut out and replaced with new girth welds in accordance with §195.214(a).

Prior to the removal of the existing weld(s) for testing, Buckeye must provide ten (10) days advance notice to the Eastern Region to enable observation of testing. Testing is to be accomplished within 180 days of receipt of the Final Order.

On January 22, 2020, Buckeye informed the Director of its intent to comply with the Compliance Order and cut out one (1) field weld using its qualified procedure on February 12, 2020. Buckeye cut out and removed an in-service field weld from the Genesee River crossing and performed the destructive testing in accordance with API 1104 for welding procedure qualification (Section 5). The field weld passed API 1104 welding procedure acceptance criteria intended for a procedure qualification weld, including tensile testing, bend testing, and the first nick break test. The second nick break test did not meet the acceptability for welding procedure qualification under API 1104 Section 5, due to a slag inclusion. While the slag inclusion was unacceptable according to welding

procedure qualification in API 1104 Section 5, it was within acceptable limits for a field weld which is evaluated using API Standard 1104, Section 9.

As a result of discussions between PHMSA and Respondent (collectively, the Parties), and in consideration of the following: 1) 2015 radiographic inspection that occurred during construction; 2) the hydrostatic pressure test that was performed before this segment was placed into service in 2015; 3) tensile, root, and face destructive testing that confirmed the strength and ductility of the welds; 4) the length of the slag inclusion in the second nick-break specimen was approximately twelve (12) percent of the allowable length for a slag inclusion in API 1104, Section 9 for field welds; and 5) the environmental implications of having to remove the remaining thirty-five (35) field welds, the Parties agree that settlement of this matter will be beneficial and will avoid further administrative proceedings or litigation.

Therefore, upon consent and agreement, the Parties hereby agree as follows:

I. General Provisions

1. Respondent acknowledges that as the operator of the Genesee River crossing in Livingston County, New York (i.e., the Affected Segment as defined below), Respondent is 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 Final Order states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder.

2. 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.

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its 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.

4. This Agreement shall 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.

5. 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 Final Order.

6. 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.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least thirty (30) days prior to such transfer. Respondent will provide written notice of the transfer to the Director no later than sixty (60) days after the transfer occurs.

8. 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, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. 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. Respondent 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 Respondent or its contractors in carrying out any work required by this Agreement.

10. Upon issuance of the Consent Order, Respondent agrees to perform the Corrective Measures set forth below.

II. Corrective Measures

Definitions:

Affected Segment – The “*Affected Segment*” means the section of pipe replaced in 2015 (Line 803 Station Number 3415+43 to 3427+12) also known as Buckeye's Genesee River crossing in Livingston County, New York.

Director – The Director, Eastern Region, PHMSA, OPS, 840 Bear Tavern Rd., Ste. 300, West. Trenton, New Jersey 08628.

Day – Calendar day.

11. ***In-line Inspection (“ILI”).*** For the remaining thirty-five (35) in-service production welds within the *Affected Segment*, Buckeye must conduct integrity assessments for all threats identified including the following:

- a. Respondent will assess the line segment from Auburn Station to Rochester Terminal (“Inspection Segment”), including the *Affected Segment* for the threats of third-party damage, corrosion, and denting using Deformation and Metal Loss ILI tools, using high-resolution (HR) magnetic flux leakage (HR-MFL) and HR deformation tools with deformation-extended sensor arms not limited by pig cups, in accordance with its Integrity Management Manual (IMM) requirements. The last assessment was in March 2020 and there were no deformation or metal loss conditions identified within the *Affected Segment*. The next assessment deadline for the segment including the *Affected Segment* is March 25, 2023. Respondent will provide the Director with the final ILI results for the *Affected Segment* within thirty (30) days of receiving them from the vendor.
- b. For newly identified threats, assessments must be completed within two (2) years of identification.
- c. Within twelve (12) months of the Effective Date, Respondent will assess the Inspection Segment, including the *Affected Segment*, for the threat of girth weld cracking using a Circumferential Ultrasonic Crack Detection ILI tool. A response plan will be developed to address any girth welds that exhibit internal diameter (ID) or outer diameter (OD) surface breaking cracking or crack-like indications in the girth weld or heat affected zone (HAZ). Respondent will provide the Director with the final ILI results for the *Affected Segment* within thirty (30) days of receiving them from the vendor.

12. ***Waterway Crossing Inspection.*** Respondent will continue to monitor the navigable Genesee River crossing of the *Affected Segment* as required by its 195 Operations and Maintenance (O&M) Manual Section F-26 (Navigable Waterways) and its IMM Appendix M-1 (Waterway Crossing Program). The last waterway dive inspection was performed in 2018 and the next inspection deadline is April 17, 2023. Respondent will provide the Director with the final results for the *Affected Segment* within thirty (30) days of receiving them from the vendor.

13. ***Opportunistic Girth Weld Inspections.*** Respondent will revise its IMM Appendix E-8 (Pipeline Supplemental Field Inspection) to include supplemental (i.e., opportunistic) girth weld inspections for the *Affected Segment*. As such, during planned excavations the next upstream and downstream girth welds will be exposed for evaluation, as practical given site conditions. Buckeye will provide the amended procedures to the Director within thirty (30) days of the Effective Date.

14. ***Valves.*** For the valves located at West River Road (3458+48), downstream of the Genesee River, and Hartwell Road (3279+53), upstream of the Genesee River, Buckeye must:

- a. Convert the manual mainline valve at Hartwell Road to an automated shutoff valve no later than December 31, 2023.

- b. Have continuous valve status monitoring (open, closed, or partial closed/open), including upstream pressure and downstream pressure.
- c. Inspect each mainline valve to determine that it is functioning properly, including exercise of the valve to ensure full closure, at least four (4) times each calendar year, at intervals not exceeding 120 days.
- d. Buckeye must repair or replace any valve used to isolate a leak or rupture that is discovered to be inoperable or unable to maintain shutoff as soon as practicable, but no later than six (6) months after discovery.

15. **Field Activity Notices to PHMSA.** Before performing field activities (i.e., any time the *Affected Segment* is exposed to the atmosphere for assessment), Buckeye must give a minimum fourteen (14) day notice to the Director to enable PHMSA to observe. Exception: Immediate response conditions do not require fourteen (14) day notice. However, Buckeye must notify the Director no later than two (2) business days after the immediate condition is discovered.

16. **Reporting.** Buckeye must submit a biannual report to the Director regarding the information below as it relates to the *Affected Segment*. PHMSA must receive the biannual report every six (6) months, starting on the last day of the sixth month after the Effective Date of the Consent Order. For example, the biannual reports for a Consent Order dated January 3, 2022, must be received by PHMSA no later than July 31 and January 31. The report must include:

- a. any occurrence of exceeding the maximum interval between right-of-way (ROW) patrols;
- b. mainline valves found to be inoperable or unable to maintain shutoff, including the location of the valve, date of discovery, and date of repair;
- c. any new integrity threats identified;
- d. results of any ILI or direct assessments performed; and
- e. all repairs on the pipeline that occurred, including the location of the repair, date of discovery, date of repair, and estimated product loss, if any.

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

18. **Appeals.** Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator will be final.

IV. Dispute Resolution

19. 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 fifteen (15) calendar days after the dispute is first raised, in writing, to the Director,

Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and the PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

V. Enforcement

20. This Agreement, including all plans and schedules incorporated by reference, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. §60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. §60122, of up to \$200,000 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

VI. Recordkeeping and Information Disclosure

21. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) 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 confidentiality. PHMSA determines 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

22. 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

23. 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

24. This Agreement shall remain in effect until Buckeye completes the actions in Paragraphs 11, 12, and 14 with approval by the Director. The Consent Agreement shall not terminate until the Director confirms, in writing, that the Consent Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

X. Ratification

25. 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.

26. The Parties hereby agree to all conditions and terms of this Agreement.

For BUCKEYE:

Mr. Evan Hofmann
Vice President, General Counsel and Secretary
Buckeye Partners, LP

Date

For PHMSA:

Mr. Robert Burrough
Region Director, Eastern Region
Office of Pipeline Safety, PHMSA

Date