U.S. Department
of Transportation
**Pipeline and
Hazardous Materials
Safety Administration**

840 Bear Tavern Road, Suite 300
West Trenton, NJ 08628
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NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER

OVERNIGHT EXPRESS DELIVERY

March 21, 2024

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

CPF 1-2024-001-NOPV

Dear Mr. Russo:

From June 2, 2022 to October 12, 2022, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Buckeye Partners, LP's (Buckeye) integrity management program procedures and records in Allentown, Pennsylvania.

As a result of the inspection, it is alleged that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The item inspected and the probable violation is:

1. **§ 195.452 Pipeline integrity management in high consequence areas.**

    (a) …

    (i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

    (1) ….

    (4) *Emergency Flow Restricting Devices (EFRD).* If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors

> **- the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.**

Buckeye failed to conduct an adequate Emergency Flow Restricting Device (EFRD) study to determine if one is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid release pursuant to the specific factors required under § 192.452(i)(4).

During the inspection and review of Buckeye's preventive and mitigative measures, Buckeye was asked to demonstrate which preventive and mitigative measures it uses to protect high consequence areas (HCAs) in the event of a hazardous pipeline release. One of the measures Buckeye uses is reviewing its pipeline system to determine which segments require additional analysis to determine the benefits of installing an ERFD. Section 9.5.2 EFRD Evaluation Process sub-paragraphs 1 and 2 of Buckeye's *Integrity Management Plan* stated in part:

1. Buckeye has established the following threshold criteria to determine if sufficient benefits are gained from the installation of an EFRD(s) to justify their installation. Both threshold criteria must be satisfied in order to justify installation of an EFRD.
    - Minimum spill reduction gained by installation of an EFRD(s) must be at least 50% as evaluated by the length weighted average in HCA for the line segment.

2. A screening analysis will be performed using the results of the HCA analysis in Section 4. This screening analysis will consider the volume released during the valve closure time period (Drain-up Volume) as compared to the total released volume (Total Volume Out). This screening analysis is documented in Appendix H-8. In cases where more than 50% of the release volume is during the valve closure time period (Drain-up Volume divided by Total Volume Out), a more detailed analysis to determine benefits of specific valve installations will be performed.

Thus, Buckeye completes an initial calculation to determine if this 50% threshold is met. If it is not met, then the detailed EFRD installation analysis process, which includes the factors that are required to be evaluated for EFRD's under § 192.452(i)(4), is not conducted. By implementing this process, Buckeye fails to consider all the factors required by § 195.452(i)(4) for any pipeline not meeting the 50% criterion. This volume calculation does not factor in the potential for ignition, proximity to power sources, and the specific terrain between the pipeline segment and high consequence areas as required by § 195.452(i)(4).

Following discussion after the spill volume data demonstration, Buckeye was also asked why the threshold chosen was 50% instead of 25% or 10% since the goal is to minimize the volume of a pipeline release. Buckeye responded that the 50% reduction was the value selected in a 2011 study and did not provide a scientific basis for selecting the 50% threshold.

The purpose of the regulation is to protect high consequence areas. The application of the 50% criterion, absent the evaluation of the additional required factors, ignores smaller spill volumes that could have a significant effect on HCAs.

Therefore, Buckeye failed to conduct an adequate EFRD installation evaluation pursuant to § 195.452(i)(4).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed $266,015 per violation per day the violation persists, up to a maximum of $2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023, and before December 28, 2023, the maximum penalty may not exceed $257,664 per violation per day the violation persists, up to a maximum of $2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022, and before January 6, 2023, the maximum penalty may not exceed $239,142 per violation per day the violation persists, up to a maximum of $2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021, and before March 21, 2022, the maximum penalty may not exceed $225,134 per violation per day the violation persists, up to a maximum of $2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021, and before May 3, 2021, the maximum penalty may not exceed $222,504 per violation per day the violation persists, up to a maximum of $2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019, and before January 11, 2021, the maximum penalty may not exceed $218,647 per violation per day the violation persists, up to a maximum of $2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018, and before July 31, 2019, the maximum penalty may not exceed $213,268 per violation per day, with a maximum penalty not to exceed $2,132,679.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

Proposed Compliance Order

With respect to Item 1, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Buckeye Partners, LP. 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 Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be 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).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 1-2024-001-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

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

A. In regard to Item 1 of the Notice pertaining to Emergency Flow Restricting Devices (EFRDs) needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, Buckeye must reevaluate the criteria for selecting the location of EFRDs such that the process complies with § 192.452(i)(4). Buckeye must update its process and submit revised procedures to the Director, Eastern Region within **180** days of receipt of the Final Order.

B. In regard to Item 1 of the Notice pertaining to Emergency Flow Restricting Devices (EFRDs) needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, Buckeye must submit a plan for completing an updated EFRD evaluation, utilizing its updated process determined in A, for any pipeline segment containing a high consequence area that has never received further analysis beyond its screening analysis. Buckeye must submit this plan to the Director, Eastern Region for approval within **180** days of receipt of the Final Order.

C. 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 Robert Burrough, 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.