

April 26, 2024

VIA ELECTRONIC MAIL TO: stan.horton@bwpipelines.com

Mr. Stanley Horton
President and Chief Executive Officer
Boardwalk Petrochemical Pipeline, LLC
9 Greenway Plaza Suite 2800
Houston, Texas 77036

CPF No. 3-2023-020-NOPV

Dear Mr. Horton:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Boardwalk Petrochemical Pipeline, LLC, which was executed on April 23, 2024. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission 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

Enclosures: Consent Order and Consent Agreement

cc: Mr. Gregory A. Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Jeff Sanderson, Senior Vice President, Operations Engineering and Construction,
Boardwalk Pipeline Partners, LP, jeff.sanderson@bwpipelines.com
Ms. Tina Baker, Manager, Compliance Service, Boardwalk Petrochemical Pipeline, LLC,
tina.baker@bwpipelines.com

Ms. Susan Olenchuck, Outside Counsel for Boardwalk Petrochemical Pipeline, LLC, Van
Ness Feldman, LLP, sam@vnf.com

CONFIRMATION OF RECEIPT REQUESTED

	)	
In the Matter of	)	
	)	
Boardwalk Petrochemical Pipeline, LLC,	)	CPF No. 3-2023-020-NOPV
	)	
Respondent.	)	
	)	

Date Issued

	)	
In the Matter of	)	
	)	
Boardwalk Petrochemical Pipeline, LLC	)	CPF No. 3-2023-020-NOPV
	)	
Respondent.	)	
	)	

From April 4 through July 29, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of Title 49, United States Code (U.S.C.), conducted an on-site pipeline safety inspection of the ethylene pipeline system and records of Boardwalk Petrochemical Pipeline, LLC (BPP or Respondent) in Louisiana and Texas.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated August 11, 2023, a Notice of Probable Violation, Proposed Compliance Order, and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that BPP committed four violations of 49 C.F.R. Part 195, proposed ordering Respondent to take certain measures to correct the alleged violations, and proposed a civil penalty of \$152,900.

BPP responded to the Notice by letters dated October 3, 2023 (Response) and January 3, 2024 (Supplemental Response). Respondent contested the allegations of violation, proposed compliance order terms, and proposed civil penalty for Items 3 and 4; the proposed compliance order for Item 1; and requested a hearing. BPP also requested to meet informally with PHMSA to discuss the matters raised in its Response. BPP did not contest Item 2 or its associated proposed civil penalty.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 U.S.C. § 60101, *et seq.* and 49 C.F.R. Part 190, and upon consent and agreement, the Parties hereby agree as follows:

I. General Provisions

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced pipeline facilities 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 Consent Agreement (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.

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 for the Dispute Resolution provisions set forth herein. Respondent agrees to withdraw its request for an administrative hearing regarding the Notice.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, 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 Respondent'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 Notice.

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 Respondent 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 30 days prior to such transfer. Respondent will provide written notice of the transfer to the Director no later than 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. Except as set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

II. Findings of Violation:

11. ***Item 1 - 49 C.F.R. § 195.402(a)***: The Notice alleged that BPP failed to follow its written procedures for pipeline repair. Specifically, the Notice alleged that BPP's O&M Appendix (App) G – Table 3-2 prescribed repair options for pipeline defects and allowed repair with a composite sleeve when "damaged material has been removed by grinding and removal has been verified by inspection." Maintenance records for calendar year 2020 fail to show that BPP ground down to sound metal for the defect on the Highway 13 to Port Barre segment of its BPP-100 pipeline before installing a composite sleeve over a gouge containing a stress concentrator. Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.402(a).

12. ***Item 2 - 49 C.F.R. § 195.440(b)***: The Notice alleged that BPP failed to assess the unique attributes and characteristics of its BPP-100 pipeline when identifying the stakeholder audience for its public education program. Specifically, the Notice alleged that BPP's August 2015 plume analysis identified the potential impact radius (PIR) for BPP-100 pipeline to be 2,030 feet on either side of the pipeline; however, BPP's public education program communications were applied within a coverage area 1,100 feet on each side of the pipeline. As a result, BPP failed to identify additional stakeholders for at least two biennial communication cycles prior to the 2022 PHMSA inspection. Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.440(b).

13. ***Item 4 - 49 C.F.R. § 195.452(j)(2)***: The Notice alleged that BPP failed to complete its annual verification of two covered segments. Specifically, the Notice alleged that BPP failed to

conduct an information analysis on its Enterprise/Motiva-BPP-FAB-168 and Anchorage-BPP-FAB-160 facilities since BPP purchased the pipeline in November 2014. In its Response, Respondent originally contested the underlying allegation, proposed civil penalty, and proposed compliance order. Following informal discussions with PHMSA, in its Supplemental Response, BPP agreed to rescind its contest of the allegation. Thus, BPP no longer contests the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.440(b).

14. Items 1, 2, and 4, will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent.

III. Warning Item:

15. **Item 3 - 49 C.F.R. § 195.492(d)(2):** With respect to Item 3 of the Notice, the Parties agree that a warning is more appropriate given additional information provided by BPP with respect to whether it had failed to identify areas of population that meet the definition of a high consequence area (HCA) and incorporate the pipeline segments into its integrity management baseline assessment plan. During informal discussions, BPP also provided documentation showing it includes in its baseline assessment plan all of the sites identified in the Notice. BPP will continue to include these sites in future assessments of the BPP pipeline – thus achieving the goal of the proposed compliance order for this Item. In addition, BPP has designated two of the sites, Calumet Estates and CBS Mobile Home Park, as HCAs in its PODS GIS System and provided documentation demonstrating that this has occurred. Because this Item is modified to a Warning Item, it will not constitute a finding of violation for any purpose.

16. For Warning Item 3, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement action.

IV. Civil Penalty:

17. **Item 2:** The Notice proposed assessing a civil penalty in the amount of \$20,800 for Item 2. Respondent did not contest the proposed civil penalty for this Item. As such, Respondent shall pay a civil penalty in the amount of **\$20,800** for Item 2.

18. **Item 3:** The Notice proposed assessing a civil penalty in the amount of \$75,500 for Item 3. As discussed above, this Item is being changed to a Warning Item. Therefore, the proposed civil penalty associated with this Item is withdrawn.

19. **Item 4:** The Notice proposed assessing a civil penalty in the amount of \$56,600 for Item 4. Respondent requested a reduction of the proposed civil penalty. PHMSA agrees that a reduction to the proposed civil penalty is appropriate based on reconsideration of the good faith criteria, as supported by the additional information provided by Respondent during informal discussions and detailed in the Supplemental Response. Respondent agrees to pay a reduced civil penalty in the amount of **\$37,900** for the violation in Item 4.

20. Respondent will pay a total reduced civil penalty in the amount of **\$58,700**, pursuant to the payment instructions at 49 C.F.R. § 190.227(a), to be paid in full no later than 20 days from the **Effective Date** of this Agreement.

V. Compliance Order:

21. **Item 1:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent did contest the Proposed Compliance Order, but requested an alternative method of accomplishing the proposed compliance order terms. After informal discussions, PHMSA agrees to modify the compliance order terms. As such, Respondent agrees to undertake the following corrective measures:

- A. In regard to Item 1 of the Notice, pertaining to the failure to follow applicable procedures when installing a composite sleeve over a gouge containing a stress concentrator, the next time the ethylene pipeline containing the relevant gouge is taken out of service, Boardwalk Petrochemical Pipeline, LLC, must remove and replace that portion of the pipeline containing the gouge.¹ If the ethylene pipeline is not taken out of service, BPP must replace the segment no later than five years after the Effective Date. Until that portion of the pipeline containing the gouge has been removed and replaced, BPP must carry out quarterly leak detection surveys of the affected portion of the pipeline with an appropriate, calibrated instrument to detect ethylene leaks and document the findings. BPP will conduct the quarterly leak detection surveys using the Southern Cross Flame Pack 400 to detect ethylene leaks and document the findings; Central Region does not object to the use of this instrument for this purpose. The first quarterly leak detection survey must be performed no later than 90 days after the Effective Date and thereafter at intervals not to exceed 90 days. Prior to carrying out the leak detection surveys, BPP must submit its procedure to the Central Region Director for review. Following the surveys, the survey results must be submitted to the Central Region Director quarterly. If any leaks are detected, BPP will repair the pipeline pursuant to 49 C.F.R. § 195.401(b) and remove and replace that portion of the pipeline containing the gouge no later than 180-days after discovery of the leak.

22. **Item 3:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. As discussed above, this Item is being changed to a Warning Item. Therefore, the proposed compliance order associated with this Item is withdrawn.

23. **Item 4:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Following informal discussions with Respondent and further consideration of the evidence, PHMSA has determined it is not necessary to order the compliance terms as proposed in the Notice. Pursuant to § 195.452(j)(2), Respondent must verify the risk factors used in identifying pipeline segments that could affect a high consequence area on at least an annual basis not to exceed 15 months, and records to demonstrate compliance must be maintained pursuant to § 195.452(l)(1). This documentation can be reviewed by the Region in the future. Therefore, the proposed compliance order associated with this Item is withdrawn.

¹ The term “taken out of service” means that the ethylene has been removed from the pipe and the pipe has been purged with nitrogen.

VI. Enforcement:

24. This Agreement 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 \$257,664 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 the determinations made by the Director, or in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223. All work plans and associated schedules set forth or referenced in Section V are automatically incorporated into this Agreement and are enforceable in the same manner.

VII. Review and Approval Process:

25. With respect to any submission under Section V (Compliance Order) 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, Respondent will take all actions 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 Respondent a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

XIII. Dispute Resolution:

26. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Section V (Compliance Order). If Respondent and the Director are unable to informally resolve the dispute within 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. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator, no later than 10 calendar days from the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and 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.

IX. Effective Date:

27. 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.

X. Recordkeeping and Information Disclosure:

28. 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, unless a longer period of time is required pursuant to 49 C.F.R. parts 190-199. 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.

XI. Modification:

29. 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.

XII. Termination:

30. This Agreement will remain in effect until the Compliance Order in Section V is satisfied, as determined by the Director, and payment of the Civil Penalty in Section IV is made. The Agreement shall not terminate until the Director confirms, in writing, that the 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.

XIII. Ratification:

31. 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.

32. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For Boardwalk Petrochemical Pipeline, LLC:

Jeff Sanderson
SVP Operations Engineering & Construction
Boardwalk Pipeline Partners, LP

Date

For PHMSA:

Gregory Ochs
Director, Central Region, Office of Pipeline Safety, PHMSA

Date