

AUGUST 22, 2013

Mr. Terrance L. McGill
President
Enbridge Pipelines (Toledo) Inc.
1100 Louisiana St., Ste. 3300
Houston, TX 77002-5217

Re: CPF No. 3-2012-5020

Dear Mr. McGill:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$68,600, and specifies actions that need to be taken by Enbridge Pipelines (Toledo) Inc., to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN 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)	
)	
Enbridge Pipelines (Toledo) Inc.,)	CPF No. 3-2012-5020
a subsidiary of Enbridge, Inc.,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On July 12-15, 2010, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of certain facilities and records of Enbridge Pipelines (Toledo) Inc. (Enbridge or Respondent). The inspection included physical inspection of a 16-inch diameter pipeline running approximately 88 miles from Stockbridge, Michigan to Oregon, Ohio, and records inspection at Respondent's offices in Griffith, Indiana.¹ Respondent, a Canadian company incorporated in Delaware, is a wholly-owned subsidiary of Enbridge, Inc.,² a transporter of crude oil with approximately 15,294 miles of pipelines delivering on average more than 2.2 million barrels per day of crude oil and other products.³

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated September 13, 2012, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enbridge had violated 49 C.F.R. §§ 195.412(a), 195.428 and 195.432(d), and proposed assessing a civil penalty of \$68,600 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible enforcement action.

¹ Pipeline Safety Violation Report (Violation Report), (September 12, 2012) (on file with PHMSA), at 1.

² Enbridge Pipelines (Toledo) Inc., Annual Report , 12 (FERC Form No. 6), FERC Accession No. 20130419-8087 (Apr. 18, 2013) *available at* <http://elibrary.ferc.gov/>.

³ Enbridge, Liquid Pipelines, *available at* <http://www.enbridge.com/DeliveringEnergy/OurPipelines/LiquidsPipelines.aspx> (last accessed July 23, 2013).

Enbridge Energy Company, Inc.,⁴ responded to the Notice on behalf of Enbridge by letter dated October, 12, 2012 (Response). The company provided an explanation of its actions and information concerning the corrective actions it had taken, and requested reconsideration of the alleged violations, proposed civil penalties and proposed compliance order. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overflow protection system

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428 by failing to inspect each pressure limiting device, relief valve, pressure regulator, and other item of pressure control equipment at intervals not exceeding 15 months, but at least once each calendar year. Specifically, the Notice alleged that Enbridge's inspection intervals exceeded the maximum 15-month interval by 14 days on two overpressure safety devices, by 17 days on one overpressure safety device, and by 24 days on nine overpressure safety devices.

In its Response, Enbridge acknowledged that the maximum inspection interval had been exceeded by 14-24 days and did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428 by failing to inspect each pressure limiting device, relief valve, pressure regulator, and other item of pressure control equipment at intervals not exceeding 15 months, but at least once each calendar year.

⁴ Enbridge Energy Company, Inc., is an indirect wholly owned subsidiary of Enbridge Inc. Enbridge Energy Partners, L.P., Amendment No. 2 to Schedule 13D (May 8, 2013) *available at* <http://www.sec.gov/Archives/edgar/data/880285/000119312513224471/d542746dsc13da.htm>.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(d), which states:

§ 195.432 Inspection of in-service breakout tanks

(a)

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653 (incorporated by reference, see § 195.3). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3).

(c) Each operator shall inspect the physical integrity of in-service steel aboveground breakout tanks built to API Standard 2510 according to section 6 of API 510.

(d) The intervals of inspection by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(d) by failing to inspect two in-service atmospheric and low-pressure steel aboveground breakout tanks according to the intervals of inspection in API Standard 653. Specifically, the Notice alleged that Enbridge exceeded the maximum internal inspection interval for tanks 300-TK-80 and 300-TK-81. For those tanks, Enbridge lacked records indicating that it had estimated the corrosion rates for the tank bottoms or the bottom plate thickness. In that circumstance, API 653 limits the maximum inspection interval to 10 years. Enbridge's records showed that the last internal inspection for tank 300-TK-80 was performed on June 25, 1998 and that tank 300-TK-81, which entered service in 1999, did not have an internal inspection until 2011.

In its response, Enbridge explained that it had made internal procedural changes to correct the historical timing issues related to the tank re-inspection intervals, but did not refute the allegation that the applicable intervals were exceeded for the specified tanks. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432(d) by failing to perform internal inspections of in-service breakout tanks according to the intervals of inspection in API Standard 653. To the extent Respondent's explanations may be relevant to the proposed civil penalty amount for this item, they will be addressed in the Assessment of Penalty section below.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature,

circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$68,600 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$39,000 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect each pressure limiting device, relief valve, pressure regulator, and other item of pressure control equipment at intervals not exceeding 15 months, but at least once each calendar year. With respect to the nature, circumstances, and gravity of this violation, timely inspection of these devices is a key part of pipeline safety because their malfunction can cause or contribute to a release incident. Respondent is culpable for this violation in light of the fact that there were 12 different instances each exceeding the maximum 15-month interval by 14-24 days and the pipeline's safe operation could have been compromised in a populated area. I recognize that Enbridge now uses the Maximo work management system to schedule compliance-related tasks and that, since the inspection, employees have undergone additional training in using the system to appropriately assign and complete maintenance tasks. However, this does not diminish Respondent's culpability at the time of the violation or constitute a good faith effort to comply prior to the violation. Enbridge did not present any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$39,000 for violation of 49 C.F.R. § 195.428(a).

Item 3: The Notice proposed a civil penalty of \$29,600 for Respondent's violation of 49 C.F.R. § 195.432(d), for failing to inspect two in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653. With respect to the nature, circumstances, and gravity of this violation, timely tank inspections are essential to ensuring that tank failures do not occur because tank failures can have serious consequences. I recognize that Enbridge has communicated with OPS in the past and began taking steps under a Corrective Action Order to evaluate the corrosion rate and revise the inspection intervals for Tanks 80 and 81 to meet the requirements of API 653. Nevertheless, for the relevant period reviewed during the OPS inspection, the tanks were still out of compliance with the applicable inspection interval. Enbridge has not presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$29,600 for violation of 49 C.F.R. § 195.432(d).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$68,600**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike

Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$68,600 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

WARNING ITEM

With respect to Item 1, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.412 (**Item 1**) — Respondent's alleged failure to adequately inspect the surface conditions at the main line valve at Hoffman Road (Toledo) at an interval not exceeding 3 weeks, but at least 26 times each calendar year.

Enbridge presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 2 and 3 in the Notice for violations of 49 C.F.R. §§ 195.428 and 195.432(d), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.428(a) (**Item 2**), pertaining to the inspection of safety devices, Respondent must submit documentation of all inspections performed on each of the devices listed in Item 2 of the Notice from 2010 to present. Respondent must submit the required documentation within 30 days after receipt of this Order.
2. With respect to the violation of § 195.432(d) (**Item 3**), pertaining to the inspection of in-service breakout tanks, Respondent must internally inspect each of the tanks in accordance with the inspection dates proposed by Enbridge and submit copies of the API 653 inspection reports for Tanks 80 and 81. Respondent must submit the required documentation within 30 days after the receipt of this Order. If the 2012

inspection for Tank 80 has not been completed, the inspection record must be submitted within 30 days after completion of the internal inspection.

3. PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. PHMSA requests that Respondent report these costs in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies, and analyses; and (2) total cost associated with personnel training or any physical changes to pipeline facilities and infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$200,000 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.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of the petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued