



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

July 5, 2002

Mr. Dan C. Tutcher
President
Enbridge Energy Company, Inc.
Suite 2950
1100 Louisiana
Houston, TX 77002-7002

Re: CPF No. 3-2002-5017

Dear Mr. Tutcher:

Enclosed is a Corrective Action Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. Service is being made by certified mail and telecopy. Your receipt of the enclosed document constitutes service of that document under 49 C.F.R. § 190.5. The terms and conditions of this Corrective Action Order are effective upon receipt.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND TELECOPY

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC 20590

In the Matter of
Enbridge Energy Company, Inc.
Respondent.

CPF No. 3-2002-5017

CORRECTIVE ACTION ORDER

Purpose and Background

This Corrective Action Order is being issued, under authority of 49 U.S.C. § 60112, to require Enbridge Energy Company, Inc. (Enbridge), to take the necessary corrective action to protect the public and environment from potential hazards associated with its 34"-diameter Line 4 pipeline. The pipeline system originates in Gretna, Manitoba, Canada transporting crude oil south to Superior, Wisconsin. The Office of Pipeline Safety (OPS) has found that corrective action is necessary to determine the cause, and prevent possible recurrence, of the pipeline failure that occurred on July 4, 2002.

On July 4, 2002, at approximately 1:15 AM CDT, a release of approximately 3,000 to 6,000 barrels of crude oil occurred from the pipeline at milepost (MP) 1003.1, approximately ½ mile west of the city of Cohasset, Minnesota. The release was contained in an open marsh area.

Pursuant to 49 U.S.C. § 60117, the Central Region, OPS, initiated an investigation of this incident.

Preliminary Findings

- On July 4, 2002, at approximately 1:15AM CDT Enbridge's 34"-diameter Line 4 pipeline failed at MP 1003.1, approximately ½ mile west of the city of Cohasset, Minnesota, in Itasca County. The rupture location was downstream of the Deer River Pump Station (MP 995.83) in an open marsh area. The release was approximately 1/4 mile west of Pincherry Road, on the west side of Cohasset. The failure resulted in the release of approximately 3000 to 6000 barrels of crude oil.
- Indications of a pressure drop at 1:15 AM CDT on July 4, 2002 were noticed at Enbridge's Edmonton Control Center. The leak was confirmed at 6:57 AM CDT, and the NRC was notified at 6:59 AM CDT the same day.
- No injuries or fatalities occurred.

- To control the release, the Minnesota Pollution Control Agency initiated a controlled burn, which is ongoing as of the writing of this order.
- The pipeline is owned and operated by Enbridge and transports crude oil from Gretna, Manitoba, Canada, to Superior, Wisconsin.
- The Enbridge pipeline was installed in 1967 and traverses through the city of Superior, Wisconsin. The Superior Terminal is located at MP 1096.95. The pipeline crosses environmental areas.
- The release occurred on a 49 mile segment of the pipeline that runs from the Deer River Pump Station to the Floodwood Pump Station (1044.33). This segment is constructed with 0.312-inch wall thickness, API 5L-X52, double-submerged-arc-welded (DSAW) pipe manufactured by U.S. Steel.
- The Deer River to Floodwood segment has a maximum operating pressure (MOP) of 687 psig. The segment was last pressure tested in 1991.
- The operating pressure in effect at the time of the release at approximately 1:15 AM CDT on July 4, 2002, is unknown.
- The cause of the incident is currently unknown as the investigation is on-going and all facts have not yet been determined.
- The failed pipe has not yet been viewed by investigators as the site has not been deemed safe for investigative efforts.
- The pipeline was the subject of a hazardous facility order in 1991.

Determination of Necessity for Corrective Action Order and Right to Hearing

Section 60112 of Title 49, United States Code, provides for the issuance of a Corrective Action Order, after reasonable notice and the opportunity for a hearing, requiring corrective action, which may include the suspended or restricted use of a pipeline facility, physical inspection, testing, repair, replacement, or other action as appropriate. The basis for making the determination that a pipeline facility is hazardous, requiring corrective action, is set forth both in the above referenced statute and 49 C.F.R. §190.233, a copy of which is enclosed.

Section 60112, and the regulations promulgated thereunder, provide for the issuance of a Corrective Action Order without prior opportunity for notice and hearing upon a finding that failure to issue the Order expeditiously will result in likely serious harm to life, property or the

environment. In such cases, an opportunity or a hearing will be provided as soon as practicable after the issuance of the Order.

After evaluating the foregoing preliminary findings of fact, I find that the continued operation of this pipeline without corrective measures would be hazardous to life, property and the environment. Additionally, because of the location of the pipeline with respect to populated and environmental areas, and the uncertainties as to cause of the failure, I find that a failure to issue expeditiously this Order, requiring immediate corrective action, would result in likely serious harm to life, property, and the environment.

Accordingly, this Corrective Action Order mandating needed immediate corrective action is issued without prior notice and opportunity for a hearing. The terms and conditions of this Order are effective upon receipt.

Within 10 days of receipt of this Order, the Respondent may request a hearing, to be held as soon as practicable, by notifying the Associate Administrator for Pipeline Safety in writing, delivered personally, by mail or by telecopy (at (202) 366-4566). Any hearing will be held in Kansas City, Missouri, or Washington, D.C. on a date that is mutually convenient to OPS and the Respondent.

After receiving and analyzing additional data in the course of this investigation, OPS may identify other longer term measures that need to be taken. Respondent will be notified of any additional measures required and amendment of this Order will be considered. To the extent consistent with safety, Respondent will be afforded notice and an opportunity for a hearing prior to the imposition of any additional corrective measures.

Required Corrective Action

Pursuant to 49 U.S.C. § 60112, I hereby order Enbridge to immediately take the following corrective actions with respect to its 34"- diameter Line 4 pipeline.

With respect to the Deer River Pump Station to the Superior Terminal (MP 1096.95) segment:

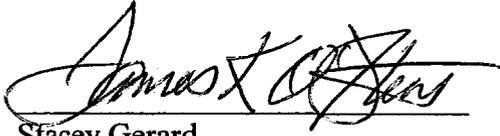
1. Do not operate this segment until completing Items 3 and 4.
2. Conduct a detailed metallurgical analysis of the pipe that failed on July 4, 2002 to determine the cause and contributing factors. Submit to the Regional Director, Central Region, OPS, within one week of its receipt by Enbridge Energy Company, Inc.
3. Submit a return-to-service written plan, with a schedule, to verify the integrity of the line from the Deer River Pump Station to the Superior Terminal. The plan must provide integrity testing that addresses all known or suspected factors in the failure, including if relevant:

- A. Internal inspection tool surveys and remedial action. The type of internal inspection tools used shall be technologically appropriate for assessing the system based on the type of failure that occurred on July 4, 2002, with emphasis on identifying and evaluating the following: 1) anomalies associated with dents, gouges and grooves; 2) metal loss due to corrosion; 3) the orientation of the longitudinal seam of the pipe; 4) pipe deformation, and 5) longitudinal cracks, mill defects and stress corrosion cracking.
 - B. A detailed description of the inspection and repair criteria that will be used in the field evaluation of the anomalies that are excavated. This is to include a description of how any defects are to be graded and the schedule for repairs or replacement.
 - C. An evaluation of the line for areas of damaged or disbonded coating, including but not limited to, a close-interval, current interrupted, pipe-to-soil potential survey.
 - D. Integration of all available data from internal inspections, metallurgical analyses, and historical data, including repair and cathodic protection records.
 - E. Hydrostatic pressure testing of line segment.
 - F. A schedule and means for providing the results and data for testing programs performed to the Central Region.
4. Each element of the plan must be approved by the Director, Central Region, OPS, who may provide approvals incrementally. Implement the plan as approved.
5. Submit the plan to Director, Central Region, Office of Pipeline Safety, Research and Special Programs Administration, 901 Locust Street, Suite 462, Kansas City, MO 64106-2641.
6. The Director, Central Region, OPS, may grant an extension of time for compliance with any of the terms of this order for good cause. A request for an extension must be in writing.

The procedures for the issuance of this Order are described in Part 190, Title 49, Code of Federal Regulations, § 190.233, a copy of which is enclosed, is made part of this Order and describe the Respondents' procedural rights relative to this Order.

Failure to comply with this Order may result in the assessment of civil penalties of not more than \$25,000 per day and in referral to the Attorney General for appropriate relief in United States District

Court.



St Stacey Gerard
Associate Administrator
for Pipeline Safety

July 5, 2002

Date Issued

each violation, and if any violation is a continuing one, violation constitutes a separate.

Person who is determined to be in violation of any standard or order under § 60103 shall be subject to a fine of not to exceed \$50,000, in addition to any other penalties to which such person is subject under paragraph (a) of this section.

Person shall be subject to a fine under this section for the violation of any requirement of this section and an order issued under § 190.219 or § 190.233 if both violated on the same act.

Mar. 27, 1980, as amended by 49 FR 32344, Aug. 7, 1989; Amdt. 190-6, 56 FR 18515, Apr. 26, 1996; 61 FR 38403.

Assessment considerations.

Associate Administrator, OPS shall determine the appropriate penalty under this part considering: nature, circumstances and severity of the violation; and the degree of the respondent's

Respondent's history of prior

Respondent's ability to pay; good faith by the respondent to achieve compliance; effect on the respondent's operations; and other matters as justice

Mar. 27, 1980, as amended by 49 FR 18515, Apr. 26, 1996]

Amount of penalty.

For payments exceeding that of a civil penalty provided under this subpart by certified check or money order containing the CPF Number (see § 190.219) payable to "U.S. Department of Transportation" to the Associate Administrator, Mike M. McQuinn, Financial Services Division (AMZ-320), 400 Seventh Street, SW, Oklahoma City, OK 73102. Payments exceeding

\$10,000 must be made by wire transfer. Payments, or in the case of wire transfers, notices of payment, must be sent to the Chief, General Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

(b) Payment of a civil penalty assessed in a final order issued under § 190.213 or affirmed in a decision on a petition for reconsideration must be made within 20 days after receipt of the final order or decision. Failure to do so will result in the initiation of collection action, including the accrual of interest and penalties, in accordance with 31 U.S.C. 3717 and 49 CFR part 89.

[Amdt. 190-7, 61 FR 27792, June 3, 1996]

CRIMINAL PENALTIES

§ 190.229 Criminal penalties generally.

(a) Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder shall upon conviction be subject for each offense to a fine of not more than \$25,000 and imprisonment for not more than five years, or both.

(b) Any person who willfully violates a regulation or order under this subchapter issued under the authority of 49 U.S.C. 5101 *et seq.* as applied to offshore gas gathering lines shall upon conviction be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility or any interstate pipeline facility (as those terms are defined in 49 U.S.C. 60101 *et seq.*) shall, upon conviction, be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

(d) Any person who willfully and knowingly defaces, damages, removes, destroys any pipeline sign, right-of-way marker, or marine buoy required by 49 U.S.C. 60101 *et seq.* or 49 U.S.C. 5101 *et seq.*, or any regulation or order issued thereunder shall, upon conviction, be subject for each offense to a

fine of not more than \$5,000, imprisonment for a term not to exceed 1 year, or both.

(e) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under § 190.217, § 190.219 or § 190.229 if both violations are based on the same act.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-2, 54 FR 32344, Aug. 7, 1989; Amdt. 190-4, 56 FR 63770, Dec. 5, 1991; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

§ 190.231 Referral for prosecution.

If an employee of the Research and Special Programs Administration becomes aware of any actual or possible activity subject to criminal penalties under § 190.229, the employee reports it to the Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

SPECIFIC RELIEF

§ 190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, and § 190.211(a), a particular pipeline facility to be hazardous to life or property, the Associate Administrator, OPS shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

(b) The Associate Administrator, OPS may waive the requirement for notice and hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in

§ 190.233

the likelihood of serious harm to life or property. However, the Associate Administrator, OPS shall include in the order an opportunity for hearing as soon as practicable after issuance of the order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise such an opportunity for hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether the order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) Notice and hearing:

(1) Written notice that OPS intends to issue an order under this section shall be served in accordance with § 190.5, upon the owner or operator of an alleged hazardous facility. The notice shall allege the existence of a hazardous facility, stating the facts and circumstances supporting the issuance of a "hazardous facility order", and providing the owner or operator an opportunity for a hearing, identifying the time and location of the hearing.

(2) An owner or operator elects to exercise his opportunity for a hearing under this section, by notifying the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section or, under paragraph (b) of this section when applicable. Absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to proceed to issue a "hazardous facility order" in accordance with paragraphs (d) through (h) of this section.

(3) A hearing under this section shall be presided over by an attorney from the Office of Chief Counsel, Research and Special Programs Administration, acting as Presiding Official, and conducted without strict adherence to rules of evidence. The Presiding Official presents the allegations contained in the notice issued under this section. The owner or operator of the alleged hazardous facility may submit any relevant information or materials, call witnesses and present arguments on the issue of whether or not a "hazardous facility order" should be issued.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a "hazardous facility order" is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility to be hazardous to life or property the Associate Administrator, OPS shall issue an order in accordance with this section. If the Associate Administrator, OPS does not find the facility to be hazardous to life or property, the Associate Administrator, OPS shall dismiss the allegations contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in § 190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator, OPS determines the particular facility is hazardous to life or property;

or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

(1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials

48 hours after conclusion of the hearing under this section, the official shall submit a recommendation to the Associate Administrator as to whether or not a "facility order" is required. If the Associate Administrator, OPS finds the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (a) of this section. If the Associate Administrator, OPS does not find the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (b) of this section.

(b) If the Associate Administrator, OPS finds the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (a) of this section. If the Associate Administrator, OPS does not find the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (b) of this section.

(c) If the Associate Administrator, OPS finds the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (a) of this section.

(d) If the Associate Administrator, OPS finds the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (a) of this section.

(e) If the Associate Administrator, OPS finds the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (a) of this section.

(f) If the Associate Administrator, OPS finds the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (a) of this section.

(g) If the Associate Administrator, OPS finds the facility hazardous to life or property, the Associate Administrator, OPS shall issue an order in accordance with paragraph (a) of this section.

are transported, and the pressure required for such transportation;

(3) The aspects of the areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

(f) The order shall contain the following information:

(1) A finding that the pipeline facility is hazardous to life or property.

(2) The relevant facts which form the basis for that finding.

(3) The legal basis for the order.

(4) The nature and description of particular corrective action required of the respondent.

(5) The date by which the required action must be taken, or completed and, where appropriate, the duration of the order.

(6) If a hearing has been waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing is provided at a particular location and at a certain time after issuance of the order.

(g) The Associate Administrator, OPS shall rescind or suspend a hazardous facility order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under § 190.207.

(h) At any time after an order issued under this section has become effective, the Associate Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.

(i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction,

to enforce orders issued under this section by appropriate means.

[45 FR 20413, Mar. 17, 1980, as amended by Amdt. 190-3, 56 FR 31090, July 9, 1991; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

§ 190.235 Injunctive action.

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.* or any regulations issued thereunder, the Administrator, RSPA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

[Amdt. 190-6, 61 FR 18516, Apr. 26, 1996]

§ 190.237 Amendment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under § 190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Associate Administrator, OPS shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator, OPS shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the plans or procedures are appropriate for the particular type