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November 26, 2008

VIA CERTIFIED MAIL AND FACSIMILE

Ivan A. Huntoon
Director, Central Region,
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
901 Locust , Suite 462
Kansas City, MO 64106-2641

Re: Response to NOPV; CPF No. 3-2008- 5011;

Dear Mr. Huntoon:

On behalf of Enbridge Energy Partners, L.P. (“Enbridge” or the “Company”), we respectfully submit this letter in response to the attached Notice of Probable Violation (“NOPV”), Proposed Civil Penalty and Proposed Compliance Order, dated October 1, 2008,¹ in which the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) asserts certain violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (“CFR”), and pursuant to the extension that you agreed to by letter dated October 29, 2008.

The eight violations proposed by the NOPV are alleged to relate to the incident that occurred on November 28, 2007, near MP 912 of Enbridge’s 34-inch crude oil pipeline designated as Line 3 near Clearbrook, Minnesota. The incident, unfortunately, involved two fatalities and approximately \$2 million in property damage.

Enbridge does not intend to contest the merits of the allegations, nor the terms of the Proposed Compliance Order contained in the NOPV. However, Enbridge will seek to modify the Proposed Compliance Order to the extent that the proposed order contains requirements that are already in place as part of Enbridge’s compliance program. Also, Enbridge does believe that the civil penalty amount proposed in the NOPV should be reduced and for that reason hereby requests an in-person hearing under 49 CFR Part 190, Subpart B (§§ 190.201- 190.237). A statement of the issues is set forth below.

¹ See Tab A.

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Enbridge will be represented by counsel at the hearing. In addition, Enbridge may present additional facts, information and argument related to and in support of the issues outlined herein and intends to present evidence at the hearing in the form of facts and arguments regarding the appropriate application of the civil penalty criteria contained in 49 CFR § 190.225 and in the enabling statute, 49 USC § 60122. Enbridge will provide a transcript of the hearing (at its own expense) and will provide copies of the transcript to OPS and the presiding official.

Statement of Issues for Hearing

CPF No. 3-2008-5011

Incident on Enbridge Line 3

November 28, 2007

I. Excessive Civil Penalties

Related Series of Violations. Enbridge would contend that the civil penalty amount set forth in the NOPV exceeds the amount permitted by law under 49 CFR § 190.223, which limits the maximum penalty for “any related series of violations” to \$1,000,000. In particular, Enbridge would submit that violations one, two, three, four, six, seven and eight alleged in the NOPV constitute one “related series of violations” within the meaning of the regulation, as each alleges Enbridge violated 49 CFR §§ 195.402, 195.406, 195.422, 195.118 and 195.505 because Enbridge failed to conduct the installation of the Weld+Ends couplings at the Line 3, MP 912 incident site properly. Because the entire sequence of the overlapping and cumulative events that underlies probable violations one, two, three, four, six, seven and eight (including Enbridge’s alleged failure to evaluate and train certain personnel on proper procedures for installing Weld+Ends couplings) constitute a related series of violations, the civil penalty amount for these allegations combined should be no more than \$1,000,000.

II. Inadequate Consideration of Civil Penalty Assessment Factors

Enbridge asserts that the civil penalty amount set forth in the NOPV has not been adjusted appropriately to reflect the considerations required by 49 CFR § 190.225. Specifically, the amount does not appear to have taken appropriate account of the following assessment considerations:

1. *The full nature and circumstances of the violations as required under 49 CFR § 190.225(a)(1).* Not to diminish in the least the fact that two tragic fatalities occurred in this matter, the civil penalty amount does not sufficiently reflect the fact that the November 28, 2007 incident arose from an unfortunate and uncanny combination of circumstances. Additionally, based on the NOPV, and as reflected in the substantial proposed civil penalty amount, it seems that PHMSA’s view is that Line 3 was not anchored at all at the time of the incident, because the Line was not “fully” anchored. Enbridge would respectfully submit that there exists a state between a line not being anchored at all and a line being fully anchored – i.e., “partially anchored”. PHMSA should find that Line 3 was “partially” anchored at the time of the incident (as opposed to not anchored at all), consider Enbridge’s culpability in the matter under 49 CFR § 190.225(a)(2) lessened as a result, and reduce the proposed civil penalty amount accordingly.
2. *The good faith by the respondent in attempting to achieve compliance as required under 49 CFR § 190.225(a)(5).* The penalty amounts do not appropriately reflect that Enbridge exercised good faith in attempting to achieve compliance prior to the incident.

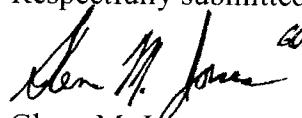
As examples, Enbridge has developed extensive Operating and Maintenance Procedures (“O&MP”) in consultation with PHMSA. Enbridge developed a System Integrity and Compliance Department to reliably manage the integrity of its pipelines systems including ensuring regulatory compliance with all relevant regulatory agencies is maintained. Enbridge developed a Pipeline and Facilities Integrity Department which creates processes and programs to monitor, assess and mitigate threats to the integrity of the pipeline system. Enbridge also arranges pre-audits with PHMSA several months in advance of the bi-annual PHMSA facilities audits.

3. *Other matters as justice may require under 49 CFR § 190.225(b)(2)*. Enbridge intends to discuss at the requested hearing all efforts it has made since the November 28, 2007 incident to respond to the various issues brought to light by the incident. For example, as outlined in Enbridge’s Final Report dated May 22, 2008, Enbridge immediately responded to the incident by assembling an internal investigation team who cooperated fully with PHMSA and conducted extensive testing and devoted many staff hours to determine the cause of the incident so as to prevent it from happening again. Following the incident, Enbridge implemented interim procedures regarding the Weld+Ends installation which now have been adopted for Mainline Pipe pipeline repair. Enbridge imposed its own recommendations to address deficiencies in process identified during the internal investigation which Enbridge continues to complete.
4. Enbridge will provide evidence and testimony regarding its efforts to accomplish the terms of the Proposed Compliance Order requested by PHMSA pursuant to 49 USC § 60118. Enbridge maintains that it has placed in its internal compliance program many of the requirements requested in the Proposed Compliance Order.

* * * * *

Many thanks for your attention to this matter. Please contact the undersigned with any questions at (202) 662-4605, or by e-mail at gmjones@fulbright.com.

Respectfully submitted,



Glenn M. Jones
Counsel for Enbridge

cc: Christopher Kaitson, Vice President-US Law & Deputy General Counsel, Enbridge Energy Company, Inc.

TAB A



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

VIA CERTIFIED MAIL AND BY FACSIMILE TO: (713) 653-6711

October 1, 2008

Mr. Terry McGill
President
Enbridge Energy Partners, L.P.
1100 Louisiana
Houston, Texas 77002

CPF 3-2008-5011

Dear Mr. McGill:

Beginning on November 28, 2007, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Minnesota Office of Pipeline Safety (MnOPS) pursuant to Chapter 601 of 49 United States Code, investigated an accident that occurred on your 34-inch crude oil pipeline designated as Line 3 on November 28, 2007 downstream of your terminal near Clearbrook, Minnesota. The accident involved two fatalities and over \$2 million in property damage.

As a result of the investigation, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The probable violations are:

1. **§195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

Enbridge did not follow its written procedures for Weld+Ends couplings in connection with the two Weld+Ends couplings used by its field personnel for a pipe replacement at MP 912 on November 28, 2007. Enbridge Procedure 06-03-13, entitled Plidco Weld+Ends Couplings, requires that all clamp screws be tightened evenly around the pipe and to the torque specifications listed in the procedure. Prior to installation of the couplings in the field, personnel at the Enbridge Bemidji PLM shop had already cut or burned off approximately one half of the clamp screws. The procedure does not permit the cutting or burning off of the clamp screws before the fillet welds to install the coupling onto the pipeline are completed.

In addition, the procedure contained a highlighted note to "Double-check all clamp screws to ensure each has received the specified torque." For the 34-inch diameter pipeline involved in the accident, the appropriate torque value specified in Figure 8 of the procedure is approximately 88 ft-lbs. Enbridge personnel did not ensure that the proper torque was applied to the clamp and thrust screws during the installation of the couplings or double-check the torque applied to the clamp screws as required by the procedure.

2. **§195.402 Procedural manual for operations, maintenance, and emergencies.**

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

Enbridge did not follow its written procedures for ensuring its pipeline was sufficiently anchored when installing two Weld+Ends couplings at an intended operating pressure of approximately 406 psig.

The procedure states that the "Pipe is anchored if it is protected from movement in all directions so it will be unaffected by, for example, abrupt pressure changes, temperature changes, or soil movement (e.g., buried pipe)." Enbridge personnel stripped out the pipeline downstream of the installation to allow for a better alignment of the pipeline for installing the replacement segment utilizing butt welds. This exposed a bend in the pipeline of approximately 1-1/2 degrees. The Enbridge personnel involved in the project did not understand the adverse effect on the pipeline's anchoring that this exposed bend created and, given the pressure levels involved, did not anchor the pipeline to protect from movement in all directions as required by the procedure. The maximum safe working pressure for installation on an unanchored pipeline was only 74 psig (assuming all of the clamp screws were intact). When returning the pipeline to service to begin flow and complete the Weld+Ends installation, the Enbridge control center was in the process of increasing the pressure at the site of the installation to a maximum of 406 psig. The Weld+Ends coupling failed at a pressure of approximately 282 psig.

3. §195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(13) Periodically reviewing the work done by operator personnel to determine the effectiveness of the procedures used in normal operation and maintenance and taking corrective action where deficiencies are found.

Enbridge did not adequately review the work performed by its personnel to determine the effectiveness of its procedures for the installation of Weld+Ends fittings. Enbridge Procedure 06-03-13 was not followed during the installation of the fittings involved in this accident and interviews conducted with Enbridge personnel across its pipeline system indicated that these procedures had not been followed consistently for a number of years.

Several Enbridge personnel indicated that the removal of some of the clamp screws in advance of the installation of the Weld+Ends fittings was a practice that had been followed for years at locations across the system, not just in the area covered by the Bemidji PLM shop. There was

no evidence to indicate that Enbridge supervisors ensured that their crews checked torque values during projects that included the installation of a Weld+Ends fitting. The supervisor involved in this accident indicated that clamp screws had been removed on Plidco couplings on the projects he had been involved in since he started with Enbridge in 1984.

4. §195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:
(2) The design pressure of any other component of the pipeline.

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

On November 28, 2007, during the installation of Weld+Ends couplings at the MP 912 accident site, Enbridge operated the pipeline in excess of the design pressure of the Weld+Ends couplings as determined by the manufacturer and outlined in its recommended installation instructions. PLIDCO installation instructions contain a "Safety Check List" that notes the installer needs to determine the type of joint that the coupling is expected to connect and then determine the appropriate ratings from those listed on the label on the coupling. Three types of joints are listed; Pipe Not Anchored, Anchored Pipe, and After Welding. The Plidco instructions define Pipe Not Anchored as "A joint in which the pipe ends could move when subjected to internal or external forces, such as internal pressure..." The instructions also contain additional specifications for thinner wall pipe, such as the Enbridge pipeline, and notes that the installer should contact Plidco for a revised maximum working pressure and clamp screw torque values when working on a thinner wall pipeline. The installation instructions also contained several warnings and a note that "Pipelines should be carefully blocked at elbows and bends to prevent pullouts caused by internal and external forces; or a Plidco Clamp+Ring should be used." An exposed 1-1/2 degree bend was located just downstream of the couplings.

Enbridge Procedure 06-03-13 reflected this information and contained a figure that determined the effective maximum working pressure of the Weld+Ends coupling on unanchored pipe of approximately 74 psig. The removal of the clamp screws prior to installation of the coupling further reduced its maximum safe working pressure until the welding was completed. The pipeline was started to allow the coupling to be welded up at the ends and the Weld+Ends couplings were operated at a maximum pressure of 282 psig until the accident occurred. This pressure not only exceeded the maximum operating pressure determined by the design pressure, but also exceeded 110% of the coupling's rated maximum pressure, as limited by §195.406(b).

Enbridge Procedure 06-03-13 also specified, "Refill the pipeline, allowing pressure to rise slowly and without surges to 50% of the recommended working pressure for the pipeline or the fitting, whichever is lower, and check for leaks." Calculating 50% of the recommended working pressure for the fitting would limit the pressure to 37 psig.

5. §195.422 Pipeline Repairs.

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

Enbridge failed to perform the repair of its pipeline in a safe manner so as to prevent damage to persons or property. Enbridge personnel were in the process of installing two Weld+Ends couplings to complete the replacement of a section of pipe in the 34" Line 3 pipeline near MP 912 on November 28, 2007 when the accident involving the failure of the Weld+Ends couplings occurred. Enbridge failed to remove multiple ignition sources near the uncompleted Weld+Ends couplings installation, one of which (most likely a heater left running beside the excavation) ignited the escaping product when the Weld+Ends coupling installation failed upon initiation of flow in the pipeline.

6. §195.422 Pipeline Repairs.

(b) No operator may use any pipe, valve, or fitting, for replacement in repairing pipeline facilities, unless it is designed and constructed as required by this part.

§195.118 Fittings.

(c) The fitting must be suitable for the intended service and be at least as strong as the pipe and other fittings in the pipeline system to which it is attached.

Enbridge used two fittings in repairing its pipeline facilities that were not designed and constructed as required by Part 195. During a pipeline replacement project at MP 912 on November 28, 2007, Plidco Weld+Ends couplings were used to join a replacement section of pipe into the existing 34" diameter, Line 3 pipeline. The couplings were not suitable for the intended service, nor as strong as the pipe and other fittings in the system because they had been improperly modified at an earlier time in the Bemidji PLM shop prior to their being transported to the site of installation. The modification significantly reduced the pull-out resistance of the couplings making them weaker than the existing pipeline. Despite their being unsuitable for the intended service, Enbridge field personnel installed these fittings.

7. §195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task;

Enbridge did not follow the procedures it had developed for evaluating covered task changes to determine whether employees need to be re-qualified to perform a covered task.

Prior to October 2007, Enbridge's OQ Plan considered Pipeline Repair (Task 40) by a variety of methods as a single task for field performance verification purposes. This task included the following activities: "oversleeve, tight fitting sleeve, stopple, stopple tie-in, weld plus couplings, plidco split repair and clocksprings." Personnel qualification records indicate that employees on site at the time of the accident had only been performance evaluated on installation of tight fitting repair sleeves, but were considered by Enbridge to be qualified for all covered tasks under the Pipeline Repair category. None of these employees had been qualified in the Pipeline Repair task by installing a Weld+Ends coupling.

In October 2007, Enbridge determined that their qualification process should be split into separate tasks for the various activities that had previously been included within the Pipeline Repair task, as recommended by API. This revision was subsequently completed on November 8, 2007. A significant number of other tasks were also revised at this time.

Enbridge's DOT Operation Qualification Plan (OQ Plan), in Section 9.0 – Change Management requires that "Changes, which affect covered tasks, will be assessed by the plan administrator to determine if re-qualification is necessary. If re-qualification is required, all affected individuals will be notified and re-qualified by their supervisors/evaluators." Proper installation of a Weld+Ends coupling, which requires qualification involving a certain set of knowledge, skills, and abilities specifically with regards to the importance of properly installing the clamp screws, ensuring proper anchoring and support, and selecting appropriate working pressures is a task that should have been separately evaluated from general repairs such as the installation of a clockspring or tight fitting repair sleeve (which do not involve these skills) all along. As a separately evaluated task, Enbridge should have determined that these employees needed to be re-qualified for the task and initiated steps to do so. Enbridge did not assess these changes to determine whether re-qualification was necessary and therefore failed to ensure that the affected individuals were re-qualified as required.

8. §195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities;

Enbridge did not provide appropriate training related to installation of Weld+Ends couplings to employees who perform this covered task. As a result, the employees who performed installation of the Weld+Ends couplings involved in the November 28, 2007 accident near MP 912 did not have the necessary knowledge and skills to perform the covered task in a manner that ensures the safe operation of the pipeline facilities. The PHMSA and MnOPS investigation of the accident revealed that Enbridge personnel on site were not familiar with clamp bolt and thrust bolt torque requirements, piping restraint and support requirements, and operating pressure requirements pertaining to the installation of the Weld+Ends couplings.

Enbridge provided PBT and OQ records for all personnel on site at the time of the accident. Only four Enbridge employees had any documented training on Weld+Ends couplings. None of this training had been provided since December 16, 2004 as required by the rule. None of the other personnel on-site had received any documented training on the installation of Weld+Ends couplings. This was typical of all Enbridge Operating Regions, although some Regions have not used Weld+Ends couplings.

Prior to the accident, other Enbridge supervisory personnel had contacted Plidco and were in the process of arranging for some additional training on the installation of the Weld+Ends couplings, but this training did not occur prior to the accident.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$2,405,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1.	\$ 100,000
2.	\$ 100,000
3.	\$ 1,000,000
4.	\$ 36,000
5.	\$ 100,000
6.	\$ 39,000
7.	\$ 30,000
8.	\$ 1,000,000

Proposed Compliance Order

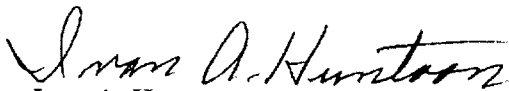
With respect to item(s) 1 – 4, 7, and 8, pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Enbridge. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being 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). 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.

In your correspondence on this matter, please refer to **CPF 3-2008-5011** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Ivan A. Huntoon
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Enbridge Energy Partners, L.P. (Enbridge) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Enbridge with the pipeline safety regulations:

1. In regard to Item 1 of the Notice pertaining to Enbridge's failure to follow its written procedures for Plidco Weld+Ends couplings, Enbridge shall review these procedures, revise and/or supplement them if necessary, and communicate the proper procedures for these couplings to all affected personnel to ensure that unauthorized component modifications such as cutting off clamp bolts do not occur.
2. In regard to Item 2 of the Notice pertaining to Enbridge's failure to follow its written procedures for ensuring sufficient anchoring of pipe undergoing repairs at the pressures involved, Enbridge shall review these procedures, revise and/or supplement them if necessary, and communicate the procedures for proper anchoring to all affected personnel to ensure that pipe is sufficiently anchored when performing repairs such as coupling installations in pressurized lines.
3. In regard to Item 3 of the Notice pertaining to Enbridge's failure to adequately review the work performed by its personnel to determine the effectiveness of its procedures, Enbridge shall develop and/or supplement existing procedures to ensure that appropriate reviews of the work performed by its personnel are conducted. Enbridge shall then implement these procedures and review all of its repair procedures and observe and consult with its field personnel to identify any ineffective or inconsistently implemented repair procedures and shall feed this information back into its periodic updates to its procedural manual and training programs.
4. In regard to Item 4 of the Notice pertaining to Enbridge operating at a pressure exceeding 110% of the design pressure of a component (the coupling), Enbridge shall communicate to all affected personnel the proper technique for pressurizing a line in connection with completing repairs such as coupling installation including calculating the appropriate pressure for various anchoring conditions.
5. In regard to Item 7 of the Notice pertaining to Enbridge's failure to follow its written Operator Qualification program that required Enbridge to determine whether its employees needed to be re-qualified on Weld+Ends coupling installation procedures once the Pipeline Repair task had been separated into separate individual tasks, Enbridge shall re-qualify its employees to ensure they are fully qualified to install Plidco Weld+Ends couplings in accordance with the Enbridge procedures as modified above.
6. In regard to Item 8 of the Notice pertaining to Enbridge's failure to provide training to its employees on the proper installation of the Plidco Weld+Ends couplings, Enbridge shall provide training to its employees to ensure they have the necessary knowledge and skills to safely install Plidco Weld+Ends couplings.

7. Enbridge shall perform the above required activities prior to utilizing any additional Weld+Ends couplings on its pipeline system. Enbridge shall submit a schedule for completing these activities within 45 days of receipt of a Final Order in this matter to Ivan A. Huntoon, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. Enbridge shall also submit:
 - All revised and supplemental procedures,
 - Evidence to document any reviews of the work performed by its personnel,
 - Evidence to document the qualification of its employees,
 - Specific training materials to be utilized, and
 - Documentation of the training provided to its employees.

8. Enbridge shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Ivan A. Huntoon, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. Costs shall 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.

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being 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).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to make findings and to close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;

2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;
- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or

d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you

wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 25082
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

May 2008