

OCT 13 2011

Mr. Terry McGill  
President  
Enbridge Energy Partners, L.P.  
1100 Louisiana Street, Suite 3300  
Houston, TX 77002

**Re: CPF No. 3-2009-5006**

Dear Mr. McGill:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$100,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is complete upon mailing as 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: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety

Mr. Shaun Kavajecz  
Compliance Manager  
Enbridge Pipelines (Lakehead) L.L.C.  
119 N 25th Street E  
Superior, WI 54880

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [7005 1160 0001 0070 4107]**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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<b>In the Matter of</b> )	
)	
<b>Enbridge Energy Partners, L.P.,</b> )	<b>CPF No. 3-2009-5006</b>
)	
<b>Respondent.</b> )	
_____ )	

**FINAL ORDER**

On February 3, 2007, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), initiated an investigation of an accident involving the release of crude oil from a pipeline operated by Enbridge Energy Partners, L.P. (Enbridge or Respondent). The accident occurred in Rusk County, Wisconsin, near the village of Exeland, on Enbridge's 24-inch crude oil pipeline designated as Line 14. The accident was reported to the National Response Center on February 2, 2007 (NRC Report No. 825338). Enbridge owns and operates approximately 17,700 miles of pipeline transporting crude oil and natural gas in the Midwest.<sup>1</sup>

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated June 29, 2009, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enbridge committed a violation of § 195.202 and proposed a civil penalty of \$100,000 for the alleged violation.

After receiving an extension of time, Enbridge responded to the Notice by letter dated September 8, 2009 (Response). In its Response, Respondent did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing.

**FINDING OF VIOLATION**

**Item 1** in the Notice alleged that Respondent violated 49 C.F.R. § 195.202, which states:

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<sup>1</sup> SEC Form 10-K, Enbridge Energy Partners, L.P., February 2011, at 6.

**§ 195.202 Compliance with specifications or standards.**

Each pipeline system must be constructed in accordance with comprehensive written specifications or standards that are consistent with the requirements of this part.

The Notice alleged that Respondent violated § 195.202 by failing to construct a pipeline in accordance with the company's written standards. Specifically, the Notice alleged that Enbridge did not follow its Construction Safety Program (CSP) procedures, which included requirements for maintaining minimum clearance from existing underground facilities when excavating with powered equipment. On February 2, 2007, Enbridge struck its existing 24-inch crude oil pipeline (Line 14) using powered equipment during an excavation associated with the construction of a new 20-inch pipeline. The impact ruptured Line 14 resulting in the release of approximately 3,000 barrels of crude oil, a portion of which contaminated local groundwater.

Enbridge's written procedures, section 10.12.4 of the CSP, stated that "Powered equipment shall remain at least two feet from an underground facility until it has been daylighted by hand or water washing."<sup>2</sup> In addition, section 10.12.15 of the CSP required Enbridge to "Maintain minimum allowable clearances to facility with powered excavation equipment until daylighted."<sup>3</sup>

In its Response, Respondent did not contest the allegation of violation, but provided some additional explanation of its actions to ensure that construction specifications and procedures were understood and followed. The company stated that "[s]pecifications, procedures and change management processes were in place to safeguard existing facilities, however local actions and decision-making circumvented procedural controls in this instance."<sup>4</sup>

Based upon the evidence, I find that Respondent violated § 195.202 by failing to construct a pipeline in accordance with its written CSP procedures.

This finding of violation will be considered a prior offense 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

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<sup>2</sup> OPS Pipeline Safety Violation Report (Jun. 29, 2009), Exhibit C, page 70 (Violation Report).

<sup>3</sup> Violation Report, Exhibit C, page 75.

<sup>4</sup> Response at 4.

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.

**Item 1** in the Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.202. Enbridge failed to construct a new pipeline in accordance with its written CSP procedures.

In its Response, Enbridge explained that it had distributed its construction specifications, including the CSP, to its contractor at preconstruction meetings and had taken other actions in an effort to ensure that construction specifications and procedures were understood and followed. The company also provided information about post-accident changes and initiatives implemented to reduce the risk of reoccurrence.

Despite its efforts to ensure that construction procedures were followed, the CSP procedures were not followed on February 2, 2007. This failure created a significant risk to the safety of the public, property, and the environment. The damage to the pipeline caused by the excavation resulted in a pipeline release of approximately 3,000 barrels of crude oil, a portion of which contaminated local groundwater. For these reasons, the nature, circumstances, and gravity of the violation, including adverse impact to the environment, justify the civil penalty proposed for the violation.

I have considered the above-referenced assertions by Enbridge regarding its conduct prior to the accident to ensure compliance with its program procedures and its actions following the accident to reduce the risk of reoccurrence. I find, however, they do not warrant reducing the proposed penalty due to the significant gravity of the violation, including adverse impact on the environment.

Enbridge is culpable for the violation. I have also considered the company's history of prior offenses and find the history of prior offenses does not warrant reducing the proposed civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$100,000** for its violation of 49 C.F.R. § 195.202.

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 \$100,000 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.

Under 49 C.F.R. § 190.215, Respondent may submit a Petition for Reconsideration of this Final Order. Address any petition to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590. The petition must be received within 20 days of Respondent's receipt of this Final Order, contain a 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. If Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued