

AUGUST 22, 2013

Mr. Richard Bird
Chief Executive Officer
Enbridge Energy, Limited Partnership
City Center Office
1409 Hammond Avenue
Superior, Wisconsin 54880-5247

Re: CPF No. 3-2012-5018

Dear Mr. Bird:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$112,500. 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 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
Mr. Bradley F. Shamlala, Vice President, U.S. Operations, Enbridge Energy, Limited Partnership, East Duluth Office, 26 East Superior Street, Suite 309, Duluth, MN 55802
Mr. Shaun Kavajecz, Manager, U.S. Pipeline Compliance, Enbridge Pipelines (Lakehead) L.L.C., 119 N. 25th Street E, Superior, Wisconsin 54880

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 Energy, Limited Partnership,)	CPF No. 3-2012-5018
)	
Respondent.)	
_____)	

FINAL ORDER

On May 22, 2009, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), investigated a crude oil release that occurred on Enbridge Energy, Limited Partnership’s Line 61 in Superior, Wisconsin. The accident resulted in the release of 154 barrels of crude oil, removal of 700 cubic yards of contaminated soil, and reported property damage, lost product, and clean-up costs of \$117,257. Enbridge Energy, Limited Partnership (Enbridge or Respondent) owns and operates approximately 3,386 miles of liquid pipelines running from Oklahoma to Illinois, North Dakota to Illinois, Montana to Minnesota, and across Louisiana and Mississippi.¹

As a result of the investigation, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated August 27, 2012, 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 had violated 49 C.F.R. §§ 195.52, 195.402(c)(3) and 195.402(d)(1) and proposed assessing a civil penalty of \$118,700 for the alleged violations.

Enbridge responded to the Notice by letter dated October 16, 2012 (Response).² The company contested the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

¹ See <http://enbridgepartners.com/Delivering-Energy/Pipeline-Systems/Liquids-Pipelines> (last accessed on May 6, 2013).

² The Notice was mailed on August 27, 2012 and the Response was dated October 16, 2012. Pursuant to 49 C.F.R. § 190.209, a response must be submitted to PHMSA within 30 days of receipt of the Notice.

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.52, which states in relevant part:

§ 195.52 Immediate notice of certain accidents.

(a) Notice requirements. At the earliest practicable moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, the operator of the system must give notice, in accordance with paragraph (b) of this section, of any failure that...

(3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

The Notice alleged that Respondent violated 49 C.F.R. § 195.52 by failing to provide notice of a crude oil release meeting PHMSA's immediate reporting requirements. Specifically, the Notice alleged that Enbridge did not report its May 21, 2009 release from the Pig Trap Sender on Line 61 at the Superior Terminal within 1-2 hours.

In its Response, Enbridge contends that this release did not initially meet any of the reporting criteria since the oil was immediately contained on Enbridge property in an isolated retention basin. However, the company made the notification to the National Response Center (NRC) as a precautionary measure. According to Enbridge, the incident occurred at 16:00 Central Daylight Time and the company contacted the NRC at 18:32 Central Daylight Time.³ In light of the circumstances involving this release and the fact that Enbridge made its notification within 2.5 hours of discovery of the release, Enbridge believes it contacted the NRC at the earliest practicable moment, in compliance with § 195.52.

Section 195.52 requires that operators report releases meeting certain requirements at the earliest practicable moment following discovery of a release. Since 1971, through interpretations, advisory bulletins, and numerous enforcement cases, PHMSA has interpreted "earliest practicable moment" to mean within 1-2 hours. Furthermore, PHMSA has held that "discovery" relates to the actual release, not to the realization that an incident has resulted in circumstances (e.g., property damage) that render the release reportable.⁴

Enbridge was required to report the release within 1-2 hours and failed to do so. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.52 by

³ See Response.

⁴ E.g., *In the Matter of Texas Eastern Transmission Corporation*, CPF No. 4-2001-1003, at 3 (May 5, 2005), citing *In the Matter of Enstar Natural Gas Company*, CPF No. 52016 (May 14, 1997). See also, *In the Matter of Buckeye Partners, LP*, 3-2010-5006 (November 19, 2012).

failing to provide notice of a crude oil release at the earliest practicable moment, within 1-2 hours of discovery.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c), which states in relevant part:

§ 195.402(c) 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...

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to follow its written procedures for Lock Out/Tag Out (LOTO) of equipment. Specifically, the Notice alleged that Enbridge had locked out the valves associated with Enbridge's Line 61 Pig Sending Trap but no LOTO log was completed. In addition, Enbridge personnel failed to complete the Pressure Piping Isolation (Valve Positioning) Form, as required by its LOTO procedures. As a result, a technician was unaware that the trap vent valve had been left in the open position, and when the control center issued a de-isolation command, crude oil flooded the trap, drained through the open valve, and overflowed the trap sump, resulting in a release of 154 barrels of crude oil.

In Response, Enbridge acknowledged that the main cause of this incident was a miscommunication between Enbridge personnel regarding the open vent line. In its Response, Enbridge discussed corrective actions it had taken, including revising the LOTO procedures and creating a detailed communication process to avoid a similar occurrence.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(c)(3) by failing to follow its written LOTO procedures.

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 \$118,700 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$18,700 for Respondent's violation of 49 C.F.R. § 195.52, for failing to give proper notice of a hazardous liquid release. As discussed above, operators are expected to report releases meeting the criteria of § 195.50 within 1-2 hours of discovery of the release. Respondent should have reported the release within 1-2 hours. Therefore, a civil penalty is appropriate. I have reviewed the civil penalty criteria listed in § 190.225 and note that the prior history factor is particularly relevant since Enbridge had 12 violations in the five years preceding the date of the Notice.⁵ However, the fact that Enbridge reported the release only 32 minutes late should be accounted for, to some degree, as part of the culpability factor. Therefore, I am reducing the proposed civil penalty amount from \$18,700 to \$12,500.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$12,500 for violation of 49 C.F.R. § 195.52.

Item 2: The Notice proposed a civil penalty of \$100,000 for Respondent's violation of 49 C.F.R. § 195.402(c)(3), for failing to follow its written LOTO procedures. Enbridge did not contest the associated civil penalty for this item. I have reviewed the assessment criteria listed in § 190.225 and find that the proposed civil penalty amount is appropriate considering that this violation was critical to the cause of the 154 barrel spill. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$100,000 for violation of 49 C.F.R. § 195.402(c)(3).

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 **\$112,500**.

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 \$112,500 civil penalty will result in accrual of interest at the current annual

⁵ See Part D-History of Prior Offenses, Pipeline Safety Violation Report, page 23.

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

49 C.F.R. § 195.402(d)(1) (**Item 3**) — Respondent's alleged failure to establish procedures for responding to deviations from normal operation. Respondent's procedures for responding to a Sump Level High-High alarm for the Line 61 Pig Sending Trap Sump were inadequate because they did not require specific corrective action to be taken by the Control Center Operator.

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

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. 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 the Final Order by the 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 a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued