

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 19, 2020

Mr. Bradley Shamla
Vice President, US Operation, Liquid Pipelines
Enbridge Energy, LP
7701 France Ave. S, Suite 600
Centennial Lakes Office Park
Edina, MN 55435

CPF 3-2020-5006

Dear Mr. Shamla:

From June 19 through 23, 2017, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your North Dakota Pipeline Company and Bakken Pipeline Company hazardous liquid pipeline and breakout tank facilities in North Dakota.

As a result of the inspection, it is alleged that you have committed a probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violation are:

- 1. §195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.**
 - (a) A means must be provided for containing hazardous liquids in the event of spillage or failure of an aboveground breakout tank.**
 - (b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:**
 - (1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, see § 195.3);**

(i) Impoundment around a breakout tank must be installed in accordance with section 22.11.2; and ...

NFPA-30

Chapter 22 Storage of Liquids in Tanks — Aboveground Storage Tanks

22.1 Scope. This chapter shall apply to the following:

(1) The storage of flammable and combustible liquids, as defined in 3.3.33 and Chapter 4, in fixed tanks that exceed 60 gal (230 L) capacity

(2)....

22.11 Control of Spills from Aboveground Storage Tanks. Every tank that contains a Class I, Class II, or Class IIIA liquid shall be provided with means to prevent an accidental release of liquid from endangering important facilities and adjoining property or from reaching waterways. Such means shall meet the requirements of 22.11.1, 22.11.2, 22.11.3, or 22.11.4, whichever is applicable.

22.11.1 Remote Impounding. ...

22.11.2 Impounding Around Tanks by Open Diking. Where control of spills is provided by means of impounding by open diking around the tanks, such systems shall meet the requirements of 22.11.2.1 through 22.11.2.8.

22.11.2.1 ...

22.11.2.7.1 Control of drainage shall be accessible under fire conditions from outside the dike.

Enbridge failed to make the impoundment area for its aboveground breakout tanks constructed after October 2, 200 compliant with §195.264(b)(1)(i) and incorporated by reference NFPA30. NFPA-30, paragraph **22.11.2.7.1** stats that “[c]ontrol of drainage shall be accessible under fire conditions from outside the dike.” During PHMSA’s inspection of the Alexander, Trenton, Grenora, and Little Muddy terminals, inspectors observed that the impoundment areas for the aboveground tanks did not meet the requirements of NFPA-30 as the impoundment area drain valve location was only accessible from inside the dike, and not outside the dike.

PHMSA made Enbridge aware of the probable violation during a verbal briefing on June 23, 2017, and from an email notification of findings on August 8, 2017. Enbridge responded to the inspection findings on November 7, 2017, to inform PHMSA that an authorization for expenditure (AFE) would be issued to install secondary valves. Enbridge responded on January 11, 2018, that valves would be added at the four locations noted above to “give access to drain the impoundment from outside the impoundment area per NFPA 30”, and that the work would be completed “during the 2018 calendar year.” On August 13, 2018, Enbridge sent photographic evidence via email of the completed work.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and

before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. We have reviewed the circumstances and supporting documentation involved for the above probable violation and have recommended that you be preliminarily assessed a civil penalty of \$23,500.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material submit in response to this enforcement action may be 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from the receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2020-5006** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Allan C. Beshore
Director, Central Region, OPS
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Enforcement Proceedings*

Cc:

Mr. Danny Schall, North Dakota Pipeline Company LLC, 2625 – 5th Avenue NE,
Minot, ND 58703