



U S Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave S E
Washington DC 20590

AUG 22 2007

Mr. Rich Adams
Vice President of Operations & Technology
Enbridge Energy Company, Inc.
1100 Louisiana
Suite 3300
Houston, TX 77002

Re: CPF No. 4-2005-8004

Dear Mr. Adams:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$100,000. It further finds that you have completed the actions specified in the Notice to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

A handwritten signature in black ink, appearing to read "James Reynolds".

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

_____)
In the Matter of)

Enbridge Energy Company, Inc.,)

Respondent)
_____)

CPF No. 4-2005-8004

FINAL ORDER

On November 17 and 18, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, conducted an on-site pipeline safety inspection of Enbridge Energy Company, Inc. (Respondent), the operator of an interstate natural gas and hazardous liquid pipeline system located primarily in the Midwest. The inspection took place at Respondent's headquarters in Houston, Texas, and focused on Respondent's operator qualification program and records. As a result of the inspection, the Director, Southwest Region, issued to Respondent, by letter dated April 18, 2005, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.805 and 195.505, proposed assessing a civil penalty of \$100,000 for the alleged violations, and proposed that Respondent take certain corrective measures to remedy the alleged violations. The Notice also contained a warning item regarding other probable violations of §§ 192.805 and 195.505 and advised Respondent to take appropriate corrective action.

Respondent responded to the Notice by letter dated May 18, 2005 (Response). Respondent contested the allegations of violation, requested the proposed civil penalty be eliminated or reduced, and requested an informal hearing. Respondent subsequently withdrew its request for a hearing and submitted a copy of its revised operator qualification program by letter dated February 3, 2006.

FINDINGS OF VIOLATION

The Notice alleged that Respondent committed violations of 49 C.F.R. Parts 192 and 195, as follows:

Item 1A: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a), which states.

§ 195.505. Qualification Program

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

(a) Identify covered tasks

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(a) by failing to have and follow a qualification program that identified each covered task performed on Respondent's hazardous liquid pipelines. The Notice noted that Respondent had not revised its operator qualification program since it acquired its Enbridge Transportation South hazardous liquid pipeline facilities.

In its Response, Respondent asserted that it had complied with § 195.505(a) by including in its operator qualification program references to its hazardous liquid pipeline facilities, covered tasks associated with those pipelines, and applicable regulations. Respondent submitted for the record portions of its operator qualification program in effect at the time of the inspection. Respondent also submitted a revision log to substantiate its claim that the program had been revised numerous times since its inception in April 2001, most recently in November 2004.

After a thorough review of the evidence in the record, including the entirety of Respondent's operator qualification program in effect at the time of the inspection, I find Respondent had included some references to its hazardous liquid pipelines and the applicable regulations.¹ However, with respect to the requirement that Respondent identify each covered task performed on its hazardous liquid pipelines, I find Respondent had identified only two specific covered tasks that pertained to hazardous liquid pipelines. Respondent had identified "Inspection of Breakout Tanks" (Task 61) and "Inspecting Navigable Waterway Crossings" (Task 62) as having evaluation requirements pertaining to hazardous liquid pipelines. The remaining covered tasks identified in Respondent's operator qualification program had evaluation requirements pertaining to natural gas, not liquid, pipelines and therefore were not applicable to Respondent's hazardous liquid pipelines.² In fact, Respondent's operator qualification program stated that the covered tasks listed were "geared towards natural gas operations."³

Respondent's operator qualification program stated that the covered tasks identified for natural gas pipelines could also be used to qualify individuals performing tasks on liquid pipelines.⁴ However, the program did not actually identify the covered tasks performed on Respondent's hazardous liquid pipelines or the associated abnormal operating conditions.

¹ For example, the plan defined the term "covered task" to include an activity "performed as a requirement of Part 192 or Part 195." The plan also defined "pipeline facility" to include pipelines "used in the transportation of gas or crude." PHMSA Violation Report, April 12, 2005. Respondent's Operator Qualification Plan revised November 2004 (Exhibit 1).

² Exhibit 1, section *Evaluation Requirements for Covered Tasks*, at page 26.

³ *Id.* at page 4, stating "Covered tasks below are geared towards natural gas operations."

⁴ *Id.*, stating "In cases when individuals are qualifying on liquid pipeline systems[,] natural gas evaluations such as K1 should be substituted with the liquid specific evaluations such as K1A."

Therefore, the program did not comply with the regulation. To comply with § 195.505(a), Respondent must specifically identify *each* covered task performed on its hazardous liquid pipeline system, including the abnormal operating conditions associated with each task. Because covered tasks and abnormal operating conditions are specific to the operating conditions, pipeline components, and hazards presented by the type of product being transported, it is not sufficient for Respondent to identify covered tasks performed on its natural gas pipelines and then assume those same tasks and abnormal operating conditions are transferable to hazardous liquid pipelines.

With respect to Respondent's assertion that it made revisions to its operator qualification program subsequent to acquiring its hazardous liquid pipelines, I find that although Respondent had made revisions to the plan, it still failed to update the plan to identify each covered task performed on the liquid pipelines. Therefore, Respondent did not comply with § 195.505(a).

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(a) by failing to have and follow a qualification program that identifies each covered task performed on Respondent's hazardous liquid pipeline system.

Item 1B: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(a), which states:

§ 192.805. Qualification program.

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

- (a) Identify covered tasks

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(a) by failing to have and follow a qualification program that identified each covered task performed on Respondent's natural gas pipeline system. The Notice alleged that Respondent failed to identify all covered tasks performed on its gas pipelines.

In its Response, Respondent explained that every attempt was made to ensure that covered tasks were identified in accordance with both the language and intent of applicable regulations. Respondent asserted that covered tasks and non-covered tasks were identified using the definition of the term "covered task" set forth in 49 C.F.R. § 192.801(b). Respondent submitted for the record the list of non-covered tasks from its operator qualification program in effect at the time of the inspection to show that Respondent had analyzed those tasks and concluded that each one did not meet the definition of a covered task.

To comply with § 192.805(a), Respondent must identify each covered task that is performed on its natural gas pipeline system. The evidence in the record demonstrates that at the time of the PHMSA inspection, Respondent's operator qualification program did not identify many covered tasks that were being performed on the gas facilities, such as: isolation of a gas compressor unit; compressor station inspection and testing of remote control shutdown devices; start-up, shutdown, and operation of a turbine-driven gas compressor unit; maintenance of rectifiers; electrically inspection of bare pipe; remediation of internal corrosion; maintenance and repair of

relief valves; preparation of lines for ILI runs; and many others.⁵ The documentation submitted by Respondent to substantiate its non-covered task list does not address the missing covered tasks and therefore does not demonstrate compliance with respect to § 192.805(a).

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805(a) by failing to have and follow a qualification program that identified each covered task performed on Respondent's natural gas pipeline system.

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 a 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. The Notice proposed a total civil penalty of \$100,000 for the violations of 49 C.F.R. §§ 192.805(a) and 195.505(a).

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The federal pipeline operator qualification regulations are designed to ensure a qualified work force and reduce the probability and consequence of pipeline incidents caused by human error. A key component of the regulations is the requirement that Respondent identify each activity that could affect the safe operation and integrity of its pipelines. Identification of these "covered tasks" includes the identification of any abnormal operating conditions that may occur and whether such conditions would indicate a malfunction of a component or a deviation from normal operations, such as a condition exceeding design limits or other circumstances that could result in a hazard to persons, property, or the environment. Respondent must also ensure through evaluation that individuals performing such covered tasks can perform them safely and recognize and react to abnormal operating conditions. These regulations were promulgated in 1999 and had an effective date of April 2001. Operators had to complete qualifications by October 2002.

Respondent failed to comply with a key component of the operator qualification regulations by failing to identify many of the covered tasks being performed on its pipeline system. Respondent's noncompliance spanned a period of several years from the date the rule was effective until the PHMSA inspection took place in November 2004. Furthermore, Respondent's operator qualification program affected 179 employees and approximately 50 contractor personnel.

⁵ See Respondent's revised Operator Qualification Plan, dated August 1, 2005 (Rev 0), Section 13.2, Exhibit B: Covered Task List with Old Numbers.

By failing to identify covered tasks, Respondent permitted these individuals to perform critical tasks without proper qualifications and evaluation to ensure that they could perform the tasks and recognize and react to abnormal operating conditions that may occur. Respondent's violations of 49 C.F.R. §§ 192.805(a) and 195.505(a) constituted a significant safety risk, considering their potential to affect the safe operation and integrity of Respondent's pipelines, the number of workers concerned, and the long period of noncompliance.

Although Respondent contested the allegations of violation, Respondent did not present any information specific to mitigating the proposed civil penalty in accordance with the assessment criteria. Therefore, Respondent has not justified a reduction in the civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$100,000 for the violations of 49 C.F.R. §§ 192.805(a) and 195.505(a). Respondent has the ability to pay the penalty amount without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 25082, Oklahoma City, OK 73125; (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 United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1A and 1B in the Notice for violations of 49 C.F.R. §§ 195.505(a) and 192.805(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas and hazardous liquid by pipeline or who owns or operates a gas or hazardous liquid pipeline facility is required to comply with the applicable safety standards established under Chapter 601. The Director, Southwest Region, PHMSA, has reviewed the corrective actions taken by Respondent and has indicated that the Respondent's corrective actions have achieved compliance with respect to these violations. Accordingly, since compliance has been achieved, it is not necessary to include any compliance terms in this order.

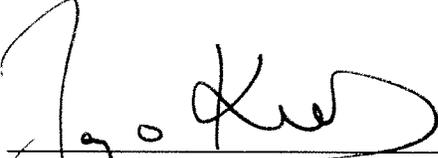
WARNING ITEM

With respect to **Item 2**, the Notice alleged other probable violations of Parts 192 and 195 but did not propose a civil penalty or compliance order for the Item. Therefore, this is considered to be a warning item pursuant to 49 C.F.R. § 190.205. The warning was for:

49 C.F.R. §§ 192.805(b) and 195.505(b) – Respondent’s failure to have and follow a written qualification program that includes provisions to ensure through evaluation that individuals performing covered tasks are qualified. The Notice alleged that Respondent could not provide documentation that persons performing typical covered tasks were qualified because the written qualification program did not address every covered task.

Respondent has presented information showing that it has taken actions to address this Item. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. §§ 192.805(b) and 195.505(b) have occurred, and that Respondent has taken action toward addressing the cited Item. Respondent is advised that if PHMSA finds a violation for this Item in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent’s receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However, if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative action and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

AUG 22 2007

Date Issued