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

In the matter of:	)	
	)	
Enbridge Storage (Cushing) L.L.C.,	)	CPF No. 4-2015-5016
a subsidiary of Enbridge Energy Partners, LP,	)	
	)	
Respondent.	)	
	)	

PETITION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, PETITION TO AMEND LANGUAGE OF THE FINAL ORDER AND BRIEF IN SUPPORT

Respondent Enbridge Storage (Cushing) L.L.C., a subsidiary of Enbridge Energy Partners, LP ("Respondent"), through its counsel, Rooney Rippie & Ratnaswamy LLP, submits its Petition for Reconsideration or, in the alternative, Petition to Amend Language of the Final Order, and Brief in Support, pursuant to 49 C.F.R. § 190.243.

By letter dated March 24, 2017, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") transmitted to Respondent a Final Order in the matter of CPF No. 4-2015-5016 (the "Final Order"), which Respondent received on March 31, 2017. Respondent files this Petition within twenty days of receipt of the Final Order.

In this Petition, Respondent respectfully seeks reconsideration by the Associate Administrator for Pipeline Safety of specific language to support two factual findings in the Final Order regarding the assessment of the civil penalty, as set forth in more detail herein. Respondent is not seeking reconsideration of the finding that Respondent violated 49 C.F.R. § 195.214, the amount of the penalty, or the compliance order. Rather, Respondent simply requests that the Associate Administrator amend the language in the Final Order regarding the two factual findings.

PROCEDURAL BACKGROUND

1. Following an inspection of Respondent's Cushing Terminal in Cushing, Oklahoma, PHMSA transmitted to Respondent a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order dated August 25, 2015 (the "NOPV"). In the NOPV, PHMSA alleged that Respondent violated 49 C.F.R. § 195.214, by failing to comply with welding procedures. PHMSA proposed a civil penalty in the amount of $40,300, and issued a compliance order requiring Respondent to follow through with certain corrective actions. The NOPV is attached hereto as Exhibit A.

2. Respondent responded to the NOPV by letter dated October 2, 2015 (the "Response"). In the Response, Respondent explained in detail why it believed it operated in compliance with 49 C.F.R. § 195.214. Respondent also asserted that the penalty should be adjusted downwards based on mitigating factors. Respondent also sought clarification of the terms of the compliance order, but otherwise did not object to the proposed corrective actions. The Response is attached hereto as Exhibit B.[1]

3. The Associate Administrator issued the Final Order on March 24, 2017. The Associate Administrator upheld the finding that Respondent violated 49 C.F.R. § 195.214, reduced the civil penalty to $33,100, and clarified the scope of the corrective actions. The Final Order is attached hereto as Exhibit C.

4. While Respondent respectfully believes the position set forth in its Response is legally correct, Respondent accepts the Associate Administrator's determination and is not challenging the substance of the Final Order. Accordingly, Respondent paid the civil penalty in full on April 11, 2017. Respondent also began undertaking necessary steps to comply with the compliance order. Respondent is already in communication with the Southwest Region regarding compliance.

STANDARD FOR PETITION FOR RECONSIDERATION

5. The standard for a Petition for Reconsideration is set forth in 49 C.F.R. § 190.243, which provides that a Respondent may petition the Associate Administrator for reconsideration of a Final Order. Respondent meets the requirements to seek reconsideration of specific language to support the two factual findings in the Final Order.

AMENDMENT OF LANGUAGE IN THE FINAL ORDER

6. In the Response, Respondent argued for a reduction in the penalty based on a reassessment of the mitigating factors set forth in 49 C.F.R. § 190.225. In the Final Order, the Associate Administrator agreed with Respondent's argument that a reduction of the civil penalty was justified based on history of prior offenses, disagreed with other arguments raised by Respondent, and reduced the civil penalty from $40,300 to $33,100.

7. Respondent accepts the Associate Administrator's ultimate findings regarding the mitigating factors at issue, but specifically requests that PHMSA amend the language regarding two of the mitigating factors: economic benefit and good faith.

8. PHMSA's discussion of economic benefit is on page 10 of the Final Order. In the Response, Respondent argued that it did not derive an economic benefit, and OPS countered that it believed that Respondent did derive an economic benefit. The Associate Administrator found that Respondent "probably realized an economic benefit." However, the Associate Administrator then specifically found that economic benefit was not considered in the proposed penalty. As a result, the Associate Administrator held that "the proposed penalty was not

[1] The exhibits originally attached to Respondent's Response to the NOPV are not included in Exhibit B hereto.

designed to offset any economic benefit, and the penalty should not be mitigated on those grounds." Respondent accepts the holding that the civil penalty should not be adjusted based on economic benefit, but respectfully requests that PHMSA amend the Final Order to remove the gratuitous reference that Respondent probably realized an economic benefit. This finding is entirely irrelevant to the determination on the civil penalty, unnecessarily depicts Respondent in a negative light regarding a point that is specifically in contention, and can easily be misinterpreted, as this Final Order is a matter of public record. Given that economic benefit was not taken into account in the original proposed penalty, Respondent respectfully suggests that it was unwarranted to make a finding on economic benefit in this manner. This finding can be corrected by simply removing the reference, as follows:

a. Current Language:

> "I find that Respondent probably realized an economic benefit by not removing the work done on the first part of the welding and simply completing the work using a different procedure. However, economic benefit was not considered in the proposed civil penalty. Accordingly, the proposed penalty was not designed to offset any economic benefit, and the penalty should not be mitigated on those grounds."

b. Proposed Language:

> "Economic benefit was not considered in the proposed civil penalty. Accordingly, the proposed penalty was not designed to offset any economic benefit, and the penalty should not be mitigated on those grounds."

9. PHMSA's discussion of good faith is also on page 10 of the Final Order. In the Response, Respondent argued that it made a good faith interpretation of the welding regulation. The Associate Administrator disagreed, holding that Respondent's interpretation of the regulation does not qualify for a good faith reduction in the penalty. However, the Associate Administrator went on to state that the Respondent's action of removing a welding crew due to a confined space violation was not acting in good faith because Respondent was required to remove the welding crew. Respondent respectfully states that the removal of the welding crew for non-compliance with confined space rules was acting in good faith, even if that does not qualify for a good faith reduction in the civil penalty. The comment by the Associate Administrator of not acting in good faith for removing a welding crew that violated confined space rules does not make sense on its face and, therefore, will almost certainly be misinterpreted. Furthermore, this finding is completely irrelevant to the determination regarding good faith and unnecessarily depicts Respondent in a negative light. This finding can be corrected by simply removing the reference, as follows:

a. Current Language:

> "When considering the good faith of Respondent in attempting to comply with the pipeline safety regulations, PHMSA looks at

whether the operator made a reasonable interpretation of the requirement. Complying with pipeline safety regulations by removing a welding crew due to a confined space violation is not acting in good faith. The operator is *required* to remove a crew in these circumstances. Respondent's interpretation that the regulation permitted the mixing of two different welding procedures is not reasonable because neither the welding procedures nor the regulation permitted this conduct. In addition, this compromised the regulations' safety purpose. To the extent Respondent believed the regulation permitted different welding procedures to be combined along the same seam, Respondent's interpretation was unreasonable and does not justify reducing the penalty."

b. Proposed Language:

"When considering the good faith of Respondent in attempting to comply with the pipeline safety regulations, PHMSA looks at whether the operator made a reasonable interpretation of the requirement. Respondent's interpretation that the regulation permitted the mixing of two different welding procedures is not reasonable because neither the welding procedures nor the regulation permitted this conduct. In addition, this compromised the regulations' safety purpose. To the extent Respondent believed the regulation permitted different welding procedures to be combined along the same seam, Respondent's interpretation was unreasonable and does not justify reducing the penalty."

CONCLUSION

10. For the foregoing reasons, Respondent Enbridge Storage (Cushing) L.L.C., a subsidiary of Enbridge Energy Partners, LP respectfully requests that the Associate Administrator grant its Petition for Reconsideration and amend the language of the Final Order as proposed herein.

Dated: April 19, 2017

Respectfully Submitted,

Counsel for Enbridge Storage (Cushing) L.L.C.,
a subsidiary of Enbridge Energy Partners, LP

_____

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Ben Fred

U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

8701 South Gessner, Suite 1110
Houston, TX 77074

NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
And
PROPOSED COMPLIANCE ORDER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 25, 2015

Mr. Brad Shamla
Vice President, U.S. Operations
Enbridge Storage (Cushing) L.L.C.
1100 Louisiana Street, Suite 3300
Houston, TX 77002

CPF 4-2015-5016

Dear Mr. Shamla:

On multiple occasions between July 23, 2012 and April 20, 2015, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code were onsite and conducted inspections of the Enbridge Storage (Cushing) L.L.C (Enbridge) terminal in Cushing, Oklahoma, specifically procedures and records related to the Enbridge BP/Amoco Pipe Modification Project (BP/Amoco Project), AFE#1490541118. The project is ongoing and inspections are continuing.

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

1. **§195.214 Welding Procedures.**

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 API 1104 or Section IX of the ASME Boiler and Pressure vessel Code (incorporated by reference, *see* §195.3). The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying test. This record must be retained and followed whenever the procedure is used.

Enbridge failed ensure that welding was performed by a qualified welder in accordance with qualified welding procedures for the BP/Amoco Project. This welding procedure, 106 LT, limited the maximum time between filler passes to no more than 15 minutes. On the afternoon of March 6, 2015 at approximately 3:45 PM, Enbridge was performing welding on the BP/Amoco project. Welders completed the root bead and a portion of the hot pass on a tie-in weld when Enbridge personnel stopped the process after determining that welding personnel may have failed to follow confined space procedures on a previous weld. After a lengthy discussion among Enbridge personnel a decision was made that there was a violation of the Enbridge confined space procedure and at approximately 6:30 PM the welding personnel were sent offsite to be drug tested in accordance with Enbridge procedures.

At approximately 8:30 PM, Enbridge brought in another team of welders to complete the weld. These welders, who were normally assigned to perform maintenance welding, were not provided procedure 106 LT and were instructed to complete the weld as they described it "like other welds we had made." Rather than grinding out the partially completed weld and re-welding (because more than 15 minutes had elapsed between passes) the welders were instructed to complete the weld, disregarding the requirements of the qualified welding procedure.

According to the second set of welders, they completed the weld using a completely different welding procedure than was used to start the weld. They used maintenance welding procedure DB 48. This procedure differed from the 106 LT procedure that had been used to start the weld in that DB 48 was qualified under ASME IX and 106 LT was qualified under API 1104. The procedures also differed in some essential variables, including but not limited to, the filler metal, the speed of travel, and the preheat temperature. DB 48 also required the hot pass be started within 5 minutes of the root bead pass. Enbridge mixed welding procedures with different essential variables on the same weld and failed to perform the welding according to the qualified procedure.

In addition, the second set of welders that completed the weld had not qualified to weld the 106 LT procedure and stated that no readings were taken during the welding to ensure the heat input was consistent with the requirements of the qualified welding procedure.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed $200,000 per violation per day the violation persists up to a maximum of $2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed $100,000 per violation per day, with a maximum penalty not to exceed $1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of $40,300.

Proposed Compliance Order

With respect to items 1 pursuant to 49 United States Code §60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Enbridge Storage (Cushing) L.L.C. 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. All material you 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). 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 4-2015-5016** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

R. M. Seeley
Director, SW 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 Storage (Cushing) L.L.C. A Compliance Order incorporating the following remedial requirements to ensure the compliance of Enbridge Storage (Cushing) L.L.C. (Enbridge) with the pipeline safety regulations:

1. Related to Item Number 1 of the Notice pertaining to Enbridge failing to properly perform welding according to a qualified welding procedure with qualified welders, Enbridge must review all welding records associated with the Enbridge Cushing, OK terminal, and remove and re-weld all welds not made according to a specific, applicable, appropriate qualified welding procedure using properly qualified welders. This must include the weld performed on March 6, 2015 that is the subject of this violation. Enbridge must provide PHMSA copies of all of the welding records reviewed, weld maps showing locations of each weld, and documentation of all welds removed and re-welded including but not limited to the qualified welding procedure used, the welder qualification records, the visual inspection records, inspection records showing that the welding was performed according to the essential variables and parameters of the qualified welding procedure, and NDE records showing that no defects were present in the welds greater than allowed by API 1104 (ibr). The records must be organized so that it is clear to PHMSA which welding records apply to each weld on the weld maps.

2. Item 1 shall be submitted to PHMSA no later than 30 days from the issuance of the Final Order in this case.

3. It is requested (not mandated) that Enbridge maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R.M Seeley, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs 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.

Exhibit B

David Stafford
Senior Manager
U.S. Pipeline Compliance
tel 715 394 1511
cell 218 591 7247
david.stafford@enbridge.com
Enbridge Energy, Limited Partnership
119 North 25th Street East
Superior, WI USA

October 2, 2015

R. M. Seeley, Director Southwest Region
PHMSA Pipeline Safety
8701 S. Gessner Dr.
Suite 1110
Houston, TX 77074
713-272-2859

SUBMITTED VIA ELECTRONIC TRANSMISSION

Re: Enbridge Storage (Cushing) L.L.C.
Response to NOPV
CPF 4-2015-5016

Dear Mr. Seeley:

Please consider this letter and the supporting exhibits as the response of Enbridge Storage (Cushing) L.L.C. ("Enbridge") to the Notice of Probable Violation ("NOPV"), Proposed Civil Penalty, and Proposed Compliance Order (collectively, the "Notice") issued by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") on August 25, 2015, in Docket No. CPF 4-2015-5016. Enbridge received the Notice on September 3, 2015, and PHMSA confirmed that the deadline to respond is October 3, 2015.

Enbridge objects to the allegations set forth in the Notice that it violated 49 C.F.R. § 195.214, and further objects to the proposed civil penalty and proposed compliance order. In accordance with 49 C.F.R. § 190.209(a)(2) and (b)(3), Enbridge provides a written explanation in support of its position. Enbridge does not request a hearing.

Background

On April 21 and 22, 2015, representatives of PHMSA conducted an onsite inspection of the procedures and records related to the Enbridge BP/Amoco Piping Modification Project ("Project"). Contrary to the Notice, this was the only inspection that PHMSA performed related to the Project.

PHMSA's inspection focused on one specific weld that was started by one crew of welders using a qualified welding procedure specification (WPS) 106LT (copy attached for reference as Exhibit 1) with welders qualified per API 1104 to weld the same, and subsequently finished by a different crew utilizing qualified WPS DB48 (copy attached for reference as Exhibit 2) with welders qualified per ASME IX to perform that weld.

Response to the Allegation that Enbridge Violated Section 195.214

Following the inspection, PHMSA issued a single-item NOPV alleging that Enbridge violated section 195.214, which provides:

§ 195.214 Welding procedures.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference, *see* § 195.3). The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

For the following reasons, Enbridge acted in compliance with section 195.214.

The Notice alleges that "Enbridge failed to ensure that welding was performed by a qualified welder in accordance with qualified welding procedures for the BP/Amoco Project." Contrary to the Notice, and as evidenced by the attached welder qualification records, all welders were qualified to the respective procedure that they were performing and all procedures were qualified under API 1104 or ASME IX with the quality of the test welds determined by destructive testing (see Exhibits 3, 4 and 5).

Section 195.214 mandates that weld procedures and welders must be qualified, tested, and recorded in accordance with API 1104 or ASME IX standards (CFR referenced editions). It does not, however, contain a prohibition against the use of more than one such procedure or one such welder in a given joint. In this case, both welds were qualified in accordance with the referenced standards and all welders were qualified to perform the procedures they were executing.

The API 1104 WPS 106LT contained a 15-minute maximum interpass time between the first (root) and the second (hot) passes - an essential variable per API 1104 Section 5.4.2.8. The ASME IX WPS DB-48 contained a requirement to commence the hot pass within 5 minutes of completing the root pass as an engineering best practice requirement for avoidance of hydrogen cracking in the vulnerable lone root pass, but this is not an essential variable for SMAW welding per ASME IX QW-253. When welding resumed after the delay, DB-48 was the governing procedure. Since the maximum interpass time of DB-48 was not an essential variable per the governing standard (ASME IX), the final weldment was dispositioned in accordance with engineering judgement per the above description.

A subject matter expert ("SME") within Enbridge's Pipeline Integrity Department was consulted and determined that the weld met the standard of acceptability and was not an integrity concern predicated on the following:

- Both procedures involved were acceptable for the application;
- Both procedures were welded by welders qualified to weld their respective procedures;
- Verification of WPS 106 LT weldment soundness prior to deposition of DB-48 weldment by AWS-CWI visual inspection. Leaving the thin, highly stressed 106 LT cellulosic deposits to cool more than 15 minutes would have allowed sufficient time for hydrogen to diffuse into (and subsequently away from) the sensitive HAZ during the delay, but no such cracking was observed in this instance;

- The successful radiographic inspection following completion of the weldment also confirmed weld soundness;
- A comparison of the root and hot passes demonstrate that the two weld procedures are very similar, as reflected in the following table:

Root Pass (1/8" electrode)

	Electrode	Progression	Amperage	Volts	Travel Speed (in/min)	Heat Input (kJ/in)
106 LT	E6010	Downhill	90-115	27-32	8-12	N/A
DB-48	E6010	Downhill	75-130	19-30	1.5-14	</= 18.8

Hot Pass (5/32" Electrode)

	Electrode	Progression	Amperage	Volts	Travel Speed (in/min)	Heat Input (kJ/in)
106 LT	E6010	Downhill	118-135	28-35	8-10	N/A
DB-48	E8010-G	Downhill	100-185	21-31	4.0-16	</= 15.5

- The difference in strength of the electrode employed on the hot pass for the two procedures would have no material impact on the overall strength of the weld, which is predominantly a function of the fill/cap electrode; and
- It is not uncommon under ASME IX to construct weld procedures by combining multiple supporting PQR (i.e., qualification and test records) rather than testing a new test coupon that is a composite of all; thus, the rationale is not inconsistent with accepted methodology.

In addition, combining two similar weld procedures is not prohibited under PHMSA or consensus standards.

Response to the Proposed Civil Penalty

If PHMSA believes that Enbridge violated section 195.214, Enbridge respectfully states that a Warning Letter is more appropriate than an NOPV under the circumstances. Enbridge inspected the weld in accordance with PHMSA requirements and determined that the weld met the standard of acceptability. Enbridge acted in good faith at all times.

Alternatively, if PHMSA believes that a civil penalty is appropriate, Enbridge respectfully avers that PHMSA did not correctly assess the mitigating factors. Section 190.225 provides:

> § 190.225 Assessment considerations.
>
> **(a)** The Associate Administrator, OPS shall consider:
>
> **(1)** The nature, circumstances and gravity of the violation, including adverse impact on the environment;
>
> **(2)** The degree of the respondent's culpability;
>
> **(3)** The respondent's history of prior offenses;
>
> **(4)** The respondent's ability to pay;

(5) Any good faith by the respondent in attempting to achieve compliance;
(6) The effect on the respondent's ability to continue in business; and
(b) The Associate Administrator, OPS may consider:
(1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and
(2) Such other matters as justice may require.

These factors, taken together, do not support the imposition of a penalty in this case. The nature, circumstances and gravity of the alleged violation do not warrant a penalty. As stated, both welding procedures were acceptable and were welded by qualified welders for their respective procedure. The welds were properly inspected and were determined to meet the standard of acceptability. Enbridge engaged a welding SME to ensure that safety and pipeline integrity had not been compromised. There were also no adverse impacts to the environment.

At all times, Enbridge reasonably believed that it acted in compliance with all PHMSA and industry standards. Enbridge also acted in good faith. Enbridge removed the first crew for violating confined space rules, and then assigned a second crew who was qualified on a different but very similar procedure. Enbridge believed that these actions were acceptable and compliant. For these reasons, the degree of Enbridge's culpability is low.

Enbridge's compliance history also does not support the imposition of a penalty. As noted, the weld in question is related to the BP/Amoco Pipe Modification Project, which PHMSA inspected in April 2015. PHMSA had not conducted an inspection of the Project prior to April 2015. The inspections that are referenced in the NOPV between 2012 and 2015 were performed on other larger breakout tank construction projects which involved a material number of welds. PHMSA performed field and record (including welding records) audits for these projects, with no documented or material findings.

Enbridge did not derive any economic benefit as a result of the alleged non-compliance. To the contrary, Enbridge removed a crew for not complying with confined space procedures, and brought in another qualified crew to complete the work. Enbridge believed that its actions were permitted.

For all of these reasons, Enbridge requests that a Warning Letter be issued in place of the NOPV. Alternatively, Enbridge requests a reasonable reduction in the proposed civil penalty.

Response to the Proposed Compliance Order

The proposed Compliance Order provides that Enbridge must review <u>all</u> welds and must re-weld <u>all</u> welds that were not made according to a specific, applicable, appropriate qualified welding procedure by qualified welders. Enbridge respectfully states that the proposed Compliance Order, as written, is overbroad in scope and time. However, based on an email communication between PHMSA and Enbridge dated September 14, 2015, a copy of which is attached as Exhibit 6, Enbridge believes that the broad language of the proposed Compliance Order was inadvertent.

In the email, PHMSA states that the proposed Compliance Order is limited to reviewing all welds related to the Project. With this clarification, Enbridge does not object to its terms.

If PHMSA agrees to issue a Warning Letter in place of the NOPV, Enbridge will still agree to undertake this review, as it deems the request reasonable.

Conclusion

Enbridge places the safety of the general public, our employees and the pipeline system as our most important priority. We will not compromise safety. In this case, we determined that one welding crew violated confined space procedures and, as a result, we halted work. New qualified welders were assigned to complete the weld using a qualified procedure. Enbridge reviewed the circumstances and conducted an inspection to assess the integrity of the weld in accordance with PHMSA requirements and industry standards. We believe that we acted in compliance with all applicable rules and safety was never compromised.

We respectfully request that PHMSA consider all of the attendant facts and circumstances and modify the Notice as set forth herein.

Please do not hesitate to contact me at (715) 394-1511 if you have any questions or require any additional information.

Sincerely,

David Stafford
Senior Manager
U.S. Pipeline Compliance

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

MAR 2 4 2017

Mr. Mark A. Maki
President
Enbridge Energy Partners LP
1100 Louisiana St., Suite 3300
Houston, Texas 77002

Re: CPF No. 4-2015-5016

Dear Mr. Maki:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, assesses a reduced civil penalty of $33,100, and specifies actions that need to be taken by Enbridge Storage (Cushing) L.L.C., a subsidiary of Enbridge Energy Partners LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is effective as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Rodrick Seeley, Director, Southwest Region, OPS
Mr. David Stafford, Senior Manager, U.S. Pipeline Compliance, Enbridge Energy Limited Partnership, 119 North 25th Street East, Superior, WI 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 Storage (Cushing), LLC, a subsidiary of Enbridge Energy Partners, LP,	)	**CPF No. 4-2015-5016**
Respondent.	)	

FINAL ORDER

Between July 23, 2012 and April 20, 2015, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Enbridge Storage (Cushing), LLC (Enbridge or Respondent), in Cushing, Oklahoma. The inspection focused specifically on the procedures and records related to the Enbridge BP/Amoco Pipe Modification Project (BP/Amoco Project). Enbridge operates a terminal facility in Cushing, Oklahoma, that is part of the Ozark Pipeline, which begins in Cushing and terminates in Wood River, Illinois. Enbridge has approximately 75 breakout tanks in the Cushing Terminal, with additional tanks under construction.[1]

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 25, 2015, 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 Enbridge had violated 49 C.F.R. § 195.214, and proposed assessing a civil penalty of $40,300 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Enbridge responded to the Notice by letter dated October 2, 2015 (Response). The company contested the allegation, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Enbridge did not request a hearing and has therefore waived its right to one.

[1] Pipeline Safety Violation Report (Violation Report), (Aug. 25, 2015) (on file with PHMSA), at 1.

FINDING 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. § 195.214,[2] which states:

> **§ 195.214 Welding procedures.**
> (a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference, *see* § 195.3). The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.
> (b) Each welding procedure must be recorded in detail, including the results of the qualifying test. This record must be retained and followed whenever the procedure is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.214 by failing to ensure that welding was performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (ASME IX). Specifically, the Notice alleged that on March 6, 2015, at approximately 3:45 PM, Enbridge performed welding on its BP/Amoco project. After completion of the root bead on a tie-in weld, the welders started the second pass or "hot-pass," but stopped before the welding was completed for a potential violation of confined space procedures on a previous weld. Only the root bead and approximately half of the hot pass weld had been completed when the welding was stopped. Welding Procedure 106 LT limits the maximum time between filler passes to no more than 15 minutes.

Approximately five hours later, a second team of welders was brought in by Enbridge to complete the weld using Maintenance Welding Procedure DB-48. These welders were not provided Welding Procedure 106 LT. Rather than grinding out the partially completed weld and re-welding (because more than 15 minutes had elapsed between passes), the welders were instructed to complete the weld, disregarding the requirements of the qualified welding procedure. The second set of welders was not qualified to weld in accordance with Welding Procedure 106 LT.

Maintenance Welding Procedure DB-48 differs from Welding Procedure 106 LT procedure in that Maintenance Welding Procedure DB-48 is qualified under ASME IX, while Welding Procedure 106 LT is qualified under API 1104. The procedures also differ in some essential variables, including, but not limited to, the filler metal, the speed of travel, and the preheat temperature. Maintenance Welding Procedure DB-48 also requires that the hot pass be started within five minutes of the root bead pass.

OPS stated that "Enbridge mixed welding procedures with different essential variables on the

[2] 49 C.F.R. § 195.214 (2015). Note, this section was amended, effective Oct. 1, 2015; however, because the violation occurred before the amendment was effective, the previous version of the regulation applies here.

same weld and failed to perform the welding according to the qualified procedure."[3]

In its Response, Enbridge argued that § 195.214 does not contain a prohibition against the use of more than one welding procedure. It stated that "[i]n this case, both welds were qualified in accordance with the referenced standards and all welders were qualified to perform the procedures they were executing."[4] Enbridge asserted that when welding resumed after the delay, Maintenance Welding Procedure DB-48 "was the governing procedure." While an essential variable for Welding Procedure 106 LT contains "a 15 minute maximum interpass time between the first (root) and the second (hot) passes,"[5] this is not an essential variable for Maintenance Welding Procedure DB-48.[6] Instead, Maintenance Welding Procedure DB-48 contains "a requirement to commence the hot pass within 5 minutes of completing the root pass as an engineering best practice requirement for avoidance of hydrogen cracking in the vulnerable lone root pass," but this is not an essential variable for Maintenance Welding Procedure DB-48.[7] Enbridge argued that because "the maximum interpass time of DB-48 was not an essential variable per the governing standard (ASME IX), the final weldment was dispositioned in accordance with engineering judgement..."[8]

Enbridge consulted a subject matter expert in its Pipeline Integrity Department, who "determined that the weld met the standard of acceptability and was not an integrity concern."[9] Enbridge concluded that "combining two similar weld procedures is not prohibited under PHMSA or consensus standards."[10]

OPS responded that once Enbridge originated the weld using the Welding Procedure 106 LT, it "had to follow the procedure or remove the weld and start over" to be in compliance with § 195.214.[11] OPS argued that Welding Procedure 106 LT governed the procedure because it was used to initiate the weld.[12] It continued to oppose Enbridge's statement that because the interpass time was not an essential variable, it did not have to be followed. "An essential variable change requires the procedure to be completely requalified but this does not mean that

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[3] Notice, at 2.

[4] Response, at 2.

[5] API 1104 WPS 106LT, Section 5.4.2.8.

[6] Response, at 2.

[7] *Id.*

[8] *Id.*

[9] *Id.*, at 2-3.

[10] *Id.*, at 3.

[11] Region Recommendation, at 3.

[12] *Id.*, at 7.

the other specifications on the qualified welding procedure required by the standard don't have to be followed."[13]

OPS stated that Welding Procedure 106 LT prescribes the performance of an entire weld.[14] Similarly, Maintenance Welding Procedure DB-48 is for an entire weld and is qualified under the ASME IX Code.[15] Enbridge completed approximately half of the weld using Welding Procedure 106 LT then completed it with the Maintenance Welding Procedure DB-48.[16] Neither procedure allows the welding "to be stopped partially through the weld and resumed outside of the maximum time between passes… with a completely different procedure qualified under a different standard."[17] While ASME IX Code permits using multiple Welding Procedure Specifications on the same weld joint, it also requires that "all essential, nonessential, and supplementary essential variables be followed and that welding procedures used on the same joint be qualified under the ASME IX Code. Consequently, a welding procedure qualified under API 1104 could not be part of an ASME Welding Procedure Specification, and therefore could not be used on the same weld joint as an ASME qualified procedure."[18] Therefore, OPS alleged that neither welding procedure was properly followed.[19]

In response to Enbridge's argument that because the essential variables for the welding procedures are different and it only needed to follow the essential variables of the second welding procedure, OPS stated that § 195.214 specifies that the welding *procedure* must be followed, not that "only essential variables must be followed and the rest of the procedure can be ignored."[20] OPS argued that even if Enbridge were permitted to combine procedures, it "was still required to weld according to the procedure specifications, including the interpass time."[21]

OPS disagreed with Enbridge's argument that it could "indiscriminately mix and match any number of procedures on the same weld joint without regard to following the incorporated standards, procedure specifications, essential variables, welding parameters, and welder qualification requirements is completely contrary to the requirements of 49 CFR [§] 195.214 and

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[13] *Id.*, at 7.

[14] *Id.*, at 3.

[15] *Id.*, at 5.

[16] *Id.*, at 5.

[17] *Id.*, at 3.

[18] *Id.*, at 7.

[19] *Id.*, at 5.

[20] *Id.*, at 5-6.

[21] *Id.*, at 6.

the incorporated standards."[22] OPS explained that Maintenance Welding Procedure DB-48 differed from Welding Procedure 106 LT "in filler metals, speed of travel, and several other essential variables."[23]

Regarding Enbridge's reliance on its subject matter expert's advice in using two different welding procedures, OPS responded that the subject matter expert's opinion could not "eliminate the requirement that an operator must follow the qualified welding procedure" required by 49 C.F.R. § 195.214.[24]

The central issue in this case is whether an operator is permitted to combine two welding procedures qualified under different standards on the same joint. I find that Enbridge violated 49 C.F.R. § 195.214 when it used two different welding procedures with different essential variables on the same weld, and therefore failed to perform the welding according to either qualified procedure.

The regulatory requirement to follow the qualified welding procedure in 49 C.F.R. § 195.214 is based on the fact that performing welding by following the requirements of the qualified welding procedure is the only way that an operator can have the necessary assurance that the completed weld will have the required strength and mechanical properties.[25] A welding procedure is qualified by first welding the proposed procedure, then destructively testing weld coupons in order to ensure that the procedure will result in the weld having the proper strength and mechanical properties for the intended application. This process is performed under strict compliance with the requirements of one of the standards incorporated by reference into Part 195, and relies on establishing parameters for all essential variables and other welding procedure specification information that must be followed every time the procedure is used.[26]

Consequently, the only assurance that welds in the field will have the strength and mechanical properties comparable to the qualifying welds is to follow the essential variables and other welding procedure specification information written in the qualified welding procedure.[27] Replicating the welding procedure "recipe" each time a weld is made in the field is the only way that an operator can have any certainty that each weld will have the strength and mechanical properties comparable to the qualifying weld.[28]

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[22] *Id.*, at 6-7.

[23] *Id.*

[24] *Id.*, at 9.

[25] *Id.*, at 3.

[26] *Id.*

[27] *Id.*, at 4.

[28] *Id.*, at 3.

Section 195.214 states that "[w]elding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 ***or*** Section IX of the ASME Boiler and Pressure Vessel Code.[29] The regulation does not contemplate, or permit, an operator to partially weld with one welding procedure and then complete the work with another procedure.[30] Each procedure must be completed fully or restarted from scratch. API Standard 1104, Section 5.4.l, states that "[a] welding procedure must be re-established as a new procedure specification and must be completely requalified when any of the essential variables listed in 5.4.2 are changed."[31] Likewise, the two welding procedures are not compatible, and neither contains provisions for re-initiating welding using a different welding procedure qualified under a different standard with different essential variables.

Welding Procedure 106 LT limits the maximum time between filler passes to no more than 15 minutes. Outside of this time frame, an operator cannot restart the welding process without removing the original welding and start from scratch. According to API Standard 1104, Section 5.4.2.8, the length of time between passes is an essential variable and any changes require the welding procedure to be completely requalified. Restarting the welding after over five hours had elapsed disregarded Welding Procedure 106 LT's essential variable of maximum time between passes. When Enbridge stopped the welding and failed to re-initiate the next welding pass within the 15-minute time period as specified by the qualified procedure, the partially-completed weld was required to be ground out and the entire weld redone because there were no provisions in the procedure for an interpass time exceeding 15 minutes. Enbridge therefore violated § 195.214 by failing to perform the welding according to API Standard 1104.

Essential variables are those welding variables that have the most significant influence on the strength and mechanical properties of the weld, such as tensile strength and ductility.[32] Before any changes can be made to an essential variable, the welding procedure must be completely requalified.

Enbridge also did not comply with the Maintenance Welding Procedure DB-48, which does not permit completing a weld initiated using another welding procedure with different essential variables. For Enbridge to use Maintenance Welding Procedure DB-48, which was qualified under a different standard (ASME IX) with different essential, non-essential, and supplemental variables, they would have had to remove the weld, material deposited using Welding Procedure 106 LT, re-bevel the pipes, and re-weld the joint.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.214 by failing to ensure that welding was performed by a qualified welder in accordance with welding procedures qualified under Section 5 API 1104 or Section IX of the ASME Boiler

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[29] 49 C.F.R. § 195.214(a) (emphasis added).

[30] API Standard 1104 defines a *weld* in Paragraph 3.2.19 as follows: "The *completed* weld joining two sections of pipe, a section of pipe to a fitting, or two fittings." Region Recommendation, at 4.

[31] *Id.*

[32] *Id.*

and Pressure Vessel Code.

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 $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 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; 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 $40,300 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $40,300 for Respondent's violation of 49 C.F.R. § 195.214, for failing to ensure that welding was performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code.

Respondent argued that "[the factors of Section 190.225], taken together, do not support the imposition of a penalty in this case. The nature, circumstances and gravity of the alleged violation do not warrant a penalty."[33] It requested that the proposed penalty be eliminated or reduced.

OPS responded that "[t]he actions by the Operator may have compromised the strength and mechanical properties of the weld and as a consequence potentially placed the safety of their employees and the public in danger. The actions by Enbridge justify the imposition of a civil penalty."[34]

Nature and Circumstances

Respondent offered no reason for reducing the proposed penalty based on the nature of the violation. Based on the evidence, I find that there is no justification for reducing the proposed penalty based on the nature of the violation. With regard to circumstances, I note that the

[33] Response, at 4.

[34] Region Recommendation, at 11.

violation was discovered by OPS rather than being self-reported by the operator.[35] I find that there is no justification for reducing the proposed penalty based on circumstances.

Gravity

Respondent argued that the proposed penalty should be reduced based on the gravity of the alleged violation, stating that "both welding procedures were acceptable and were welded by qualified welders for their respective procedure. The welds were properly inspected and were determined to meet the standard of acceptability. Enbridge engaged a welding subject matter expert to ensure that safety and pipeline integrity had not been compromised."[36]

The Violation Report categorized the gravity of the alleged violation as "Pipeline safety or integrity was compromised in areas other than [a High Consequence Area (HCA)] or an HCA 'could affect' segment."[37] It continued that "The compromise to integrity due to the Operator not following the qualified welding procedures is not specifically known without destructive testing of the weld."

By failing to follow proper welding procedures, Respondent compromised the integrity of its pipeline. Contrary to Respondent's claims that "both welding procedures were acceptable and were welded by qualified welders for their respective procedure," combining different welding procedures is not acceptable. In considering the gravity of the violation, I find that pipeline safety or integrity was compromised by Respondent's violation. I therefore find that there is no justification for reducing the proposed penalty based on the gravity of the violation.

Culpability

Respondent stated that its degree of culpability was "low" because "[a]t all times, Enbridge reasonably believed that it acted in compliance with all PHMSA and industry standards....Enbridge removed the first crew for violating confined-space rules, and then assigned a second crew who was qualified on a different but very similar procedure. Enbridge believed that these actions were acceptable and compliant."[38]

When evaluating an operator's culpability, PHMSA considers the extent to which the operator was responsible for the violation that occurred.[39] An operator is expected to be cognizant of the regulatory requirements applicable to its operations and is held responsible for complying with those requirements. An operator will generally be considered culpable for any failure to comply with the requirements absent some justification for the failure, such as an

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[35] Violation Report, at 9.

[36] Response, at 4.

[37] Violation Report, at 9.

[38] Response, at 4.

[39] *Belle Fourche Pipeline Co.*, CPF No. 5-2009-5042, at 19, 2011 WL 7006607 (Nov. 21, 2011).

unforeseeable event outside of its control. Finding an operator culpable does not increase the level of the penalty, but if there is a lesser degree of blameworthiness, such as where there is some justification for a failure to comply, PHMSA may find it appropriate to propose or assess a reduced penalty.

The Violation Report categorized Respondent's culpability as "[t]he operator made a conscious decision not to comply with a requirement that was clearly applicable."[40] Properly completing welding procedures is fundamental to ensuring pipeline integrity and safety. Respondent made a conscious decision to begin its welding project with one procedure and then complete it with a different procedure, despite neither procedure permitting the procedures to be combined or not completed in full. I find that there is no justification for a reduction of the proposed penalty based on culpability.

History of Prior Offenses

Respondent stated that its "compliance history also does not support the imposition of a penalty."[41] It stated that OPS inspectors had not inspected the BP/Amoco project prior to April 2015, and therefore violations found in any previous inspections were inapplicable.[42] Further, Respondent stated that "[t]he inspections that are referenced in the NOPV between 2012 and 2015 were performed on other larger breakout tank construction projects which involved a material number of welds. PHMSA performed field and record (including welding records) audits for these projects, with no documented or material findings."[43]

The history of an operator's offenses is not based on individual projects, but the compliance history of the operator as a whole. Respondent is mistaken in asserting that because the inspection, which identified the alleged violation at issue, was the only inspection on the BP/Amoco project, then this is the only history PHMSA can or should consider. PHMSA considers the operator's compliance history for all of its pipeline facilities during the five-year period prior to the approximate date of the Notice.

In this case, the Violation Report contains no history of prior offenses relating to Respondent. The proposed penalty inadvertently included a penalty for prior offenses. Based on this error, I find justification for reducing the proposed civil penalty.

I therefore find that Respondent's history of prior offenses supports a reduction in the proposed penalty.

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[40] Violation Report, at 10.

[41] Response, at 4.

[42] *Id.*

[43] *Id.*

Economic Benefit

Respondent contended that it "did not derive any economic benefit as a result of the alleged non-compliance. To the contrary, Enbridge removed a crew for not complying with confined space procedures, and brought in another qualified crew to complete the work."[44]

OPS disagreed, stating that "The actions taken by Enbridge was a short-cut done to avoid the time and cost required to remove the partial weld initiated using the 106LT procedure, re-bevel the pipes, and re-weld the joint. Consequently, Enbridge did derive economic benefit from the decision to not comply with Part 195 requirements."[45]

I find that Respondent probably realized an economic benefit by not removing the work done on the first part of the welding and simply completing the work using a different procedure. However, economic benefit was not considered in the proposed civil penalty. Accordingly, the proposed penalty was not designed to offset any economic benefit, and the penalty should not be mitigated on those grounds.

Good Faith

Respondent contended that it made a reasonable, good-faith interpretation of the pipeline safety welding regulation.[46]

The Violation Report stated, under the "Good Faith" penalty criteria, that "[t]he operator did not make a reasonable interpretation of the requirement."[47]

When considering the good faith of Respondent in attempting to comply with the pipeline safety regulations, PHMSA looks at whether the operator made a reasonable interpretation of the requirement." Complying with pipeline safety regulations by removing a welding crew due to a confined space violation is not acting in good faith. The operator is *required* to remove a crew in these circumstances. Respondent's interpretation that the regulation permitted the mixing of two different welding procedures is not reasonable because neither the welding procedures nor the regulation permitted this conduct. In addition, this compromised the regulations' safety purpose. To the extent Respondent believed the regulation permitted different welding procedures to be combined along the same seam, Respondent's interpretation was unreasonable and does not justify reducing the penalty.

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 **$33,100**.

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[44] *Id.*

[45] Region Recommendation, at 12.

[46] Response, at 4.

[47] Violation Report, at 12.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, OK 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $33,100 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for a violation of 49 C.F.R. § 195.214. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.214 (**Item 1**), Respondent must review all welding records associated with BP/Amoco Project, and remove and re-weld welds not made according to a specific, applicable, appropriate qualified welding procedure using properly qualified welders, including the weld performed on March 6, 2015 that is the subject of this violation.

   Enbridge must provide PHMSA copies of all of the welding records reviewed, weld maps showing locations of each weld, and documentation of all welds removed and re-welded, including, but not limited to, the qualified welding procedure used, the welder qualification records, the visual inspection records, inspection records showing that the welding was performed according to the essential variables and parameters of the qualified welding procedure, and NDE records showing that no defects were present in the welds greater than allowed by API 1104 (incorporated by reference). The records must be organized so that it is clear to PHMSA which welding records apply to each weld on the weld maps.

2. Documentation demonstrating compliance with Item 1 shall be submitted to PHMSA no later than 30 days from the issuance of the Final Order in this case.

It is requested (not mandated) that Enbridge maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R.M Seeley, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs 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.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent has a 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 this 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. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

MAR 24 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

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
Financial Operations Division (AMK-325)
ATTN: Shelby Jones
6500 S MacArthur Blvd.,
Oklahoma City, OK 79169

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) 954-8845, 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) 954-8845, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) RECEIVER ABA NO. 021030004	(2) TYPE/SUB-TYPE (Provided by sending bank)
(3) SENDING BANK ABA NO. (Provided by sending bank)	(4) SENDING BANK REF NO. (Provided by sending bank)
(5) AMOUNT	(6) SENDING BANK NAME (Provided by sending bank)
(7) RECEIVER NAME TREAS NYC	(8) PRODUCT CODE (Normally CTR, or as provided by sending bank)
(9) BENEFICIAL (BNF) = AGENCY LOCATION CODE BNF = /ALC-69-14-0001	(10) REASONS FOR PAYMENT 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) 954-8845 at the time you send the wire transfer.

Exhibit C

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

1200 New Jersey Avenue, SE
Washington, DC 20590

Official Business
Penalty for Private Use $300

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E26-105

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Mr. Mark A. Maki
President
Enbridge Energy Partners, LP
1100 Louisiana Street, Suite 3300
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