

**NOTICE OF PROBABLE VIOLATION,
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 7, 2017

Mr. Terry Mc Gill
President, CCPS Transportation, LLC
1100 Louisiana
Suite 3300
Houston, TX 77002

CPF 4-2017-5037

Dear Mr. McGill:

On October 8, 2015, pursuant to 49 U.S.C. § 60118(b) and 49 CFR § 190.213, the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Final Order to CCPS Transportation, LLC (CCPS, the Operator, Enbridge), a subsidiary of Enbridge Energy Company, Inc. The Final Order (CPF 4-2014-5005) found that CCPS committed violations of the pipeline safety regulations, 49 CFR § 195.202 and ordered CCPS perform certain specified actions to ensure compliance with the pipeline safety regulations applicable to its' operators. Specifically, the Compliance Order required CCPS to perform the following items:

1. a. In regard to Item Number one of the Notice pertaining to issuance of waivers modifying the company Specifications or Standards for the manufacture of steel pipe for pipeline projects, Enbridge must provide technical justification for the waivers granted on the project and show that the waivers did not result in the pipeline being constructed with pipe that would pose a integrity threat to the public or the environment.
- b. This action, for item 1, should be completed within 30 days of issuance of the Final Order.

As a result of a review of this matter, it appears that Enbridge has committed a probable violation of 49 CFR § 190.213 regarding the above-referenced Final Order. Specifically, Enbridge has failed to comply with Item 1 of the Compliance Order issued with the Final Order. The deadline for completion of the items in the Compliance Order was November 7, 2015. To date, PHMSA has not received adequate technical justification for the waivers granted on the project.

In the previous enforcement case (CPF 4-2014-5005), Enbridge specified enhanced pipe manufacturing specifications as part of an overall effort to improve the integrity of their pipelines. This came in the wake of two accidents resulting in significant releases, specifically a 24,000 bbl of crude oil release into the Kalamazoo River in MI in July 2010 and a 1,200 bbl of crude oil release in Adams County, Wisconsin in July 2012. Following the Wisconsin release PHMSA issued a CAO and Enbridge responded (August 2012) by submitting the “Lakehead Plan” which included actions Enbridge committed to take and included more stringent specifications for the manufacture of steel pipe for pipeline construction projects. However, Enbridge failed to follow their own pipe manufacturing specifications for the CCPS Flanagan South pipeline. In fact CCPS waived many of their enhanced specifications for the manufacture of the pipe. As a result, PHMSA issued a NOPV with a Compliance Order requiring Enbridge to provide engineering justification for the waivers.

The Final Order on this case was issued on October 8, 2015 and it found that CCPS failed to provide technical justification for the waivers and required the operator to justify not following their pipe manufacturing specifications. In the December 1, 2015 CCPS response to the Final Order, the operator stated that “Enbridge believes that the previously submitted technical justification is adequate”. However, the Final Order had already determined that the operators’ previous responses were inadequate. As a result, CCPS failed to meet the requirements of the Compliance Order.

Proposed Civil Penalty

As of April 27, 2017, under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists up to a maximum of \$2,090,022 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$ 50,100 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$ 50,100

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 **4-2017-5037** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Frank Causey
Acting Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 CFR § 195.202. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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 CFR § 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 § 195.202 (**Item 1**), Respondent must:
 - a. Provide complete technical justification, required by the Final Order for case CPF-4-2014-5005, for the waivers granted for the manufacture of their pipe used to construct the Flanagan South pipeline. Submitting the same information that was determined to be inadequate by the Final Order in case CPF 4-2014-5005 is not acceptable.
 - b. Provide all information that was used by the Enbridge Technical Standards Deviation Request (TSDR) process including but not limited to notes, analysis reports, specifications and standards that were used to evaluate each waiver and a complete explanation how the information was used to conclude that it was not necessary, to manufacture the pipe to the written Enbridge pipe specifications (Submerged-Arc-Welded Steel Pipe Specification Supplementary to API 5L, EE103-(2010)).
 - c. If Enbridge cannot provide PHMSA adequate technical justification as determined by the PHMSA SW Region Director for each waiver, the operator must perform integrity assessments on the pipeline every 3 years using tools and methods appropriate to detect potential integrity issues including but not limited to in-line inspections capable of detecting weld seam defects, cracking in the pipe body and corrosion damage.
 - d. This action for Item 1 should be completed within 30 days of issuance of the Final Order. The integrity assessments must begin no later than 6 months after the Final Order is issued.
 - e. It is requested (not mandated) that CCPS maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Terri Binns, Acting Director, Southwest, 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.