

October 12, 2021

VIA ELECTRONIC MAIL TO: michael.koby@enbridge.com

Mr. Michael Koby
Vice President, U.S. Operations
Enbridge Inc.
5400 Westheimer Court
Houston, Texas 77056

Re: CPF No. 3-2021-5002

Dear Mr. Koby:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$282,900, and specifies actions that need to be taken by Enbridge Inc., 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, Central Region, this enforcement action will be closed. Service of the Final Order by e-mail is effective upon the date of transmission 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. Gregory A. Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Dave Stafford, Manager, U.S. Pipeline Compliance, Enbridge Inc.,
david.stafford@enbridge.com

CONFIRMATION OF 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 Inc.,	)	CPF No. 3-2021-5002
	)	
Respondent.	)	
	)	

FINAL ORDER

From March 5 to 9, April 2 to 6, May 7 to 11, May 21 to 25, June 11 to 15, and June 25 to 29, 2018, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the records and facilities of several subsidiaries of Enbridge Inc., (Enbridge or Respondent) namely, CCPS Transportation, LLC; Enbridge Storage (Cushing), LLC; Enbridge Storage (Patoka), LLC; and Illinois Extension Pipeline Company in Oklahoma, Kansas, Missouri, and Illinois. These facilities include two tank farms with a total of 89 tanks and approximately 1,338 miles of crude oil pipelines.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated February 10, 2021, 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 committed nine violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$354,100 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice included an additional five warning items pursuant to 49 C.F.R. § 190.205, which required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

Enbridge responded to the Notice by letter dated March 11, 2021 (Response). Enbridge contested some of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced. Enbridge did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.264, which states:

§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.

(a) A means must be provided for containing hazardous liquids in the event of spillage or failure of an above-ground breakout tank.

(b) After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:

(1) For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following sections of NFPA-30 (incorporated by reference, *see* § 195.3);

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

The Notice alleged that Respondent violated 49 C.F.R. § 195.264 by failing to provide a means for containing hazardous liquids in the event of spillage or failure of above-ground breakout tanks built to American Petroleum Institute (API) Specification 12F, API Standard 620 and others (such as API Standard 650 (or its predecessor Standard 12C)), by installing impoundments around certain breakout tanks built after October 2, 2000, at Enbridge's Cushing Tank Farm facility. Specifically, the Notice alleged that Enbridge failed to install impoundments (i.e., intermediate dikes) in accordance with section 22.11.2 of NFPA-30, a standard promulgated by the National Fire Protection Association and incorporated by reference in 49 C.F.R. § 195.3.

Enbridge did not contest this allegation of violation, the proposed civil penalty, or the proposed compliance order associated with this Item. In its Response, Enbridge indicated that it had begun work to remediate impoundment at the location and planned to complete work within six months of the Final Order. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.264 by failing to provide a means for containing hazardous liquids in the event of spillage or failure of above-ground breakout tanks built to American Petroleum Institute (API) Specification 12F, API Standard 620 and others (such as API Standard 650 (or its predecessor Standard 12C)) at the Cushing Tank Farm.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies....

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities. Specifically, the Notice alleged that Enbridge failed to follow its written procedure “09-03-02 *Removing Water / Snow from Tank Roofs*.” Step 5 of the procedure for Removing Water requires operator personnel to “[m]onitor water from bottom drain valve for visible product for at least 10 min checking drain valve every 30 min until draining is complete.” During the 2018 PHMSA field inspection, however, Enbridge representatives stated that the Cushing Tank Farm facility keeps all tank roof drains open at all times, including at night and on weekends. This practice is inconsistent with Enbridge’s procedure for Removing Water, specifically the monitoring required under Step 5. Additionally, the practice of leaving the tank roof drains open at all times, including at night, conflicts with a specific warning in the procedure that states: “Do not leave tank roof drains and firewall drains open...at night.”

On May 31, 2018, in response to OPS’ inquiries about Enbridge’s practice of draining tank roofs at the Cushing Tank Farm facility, Cushing staff stated that the practice of leaving the tank roof drains open had been in place prior to Enbridge acquiring the facility. Cushing staff also stated that the procedure would only apply to instances where the roof drain valve was closed. However, there is no indication in the procedure that it was limited to instances where the roof drain valve was closed.

In its Response, Enbridge acknowledged that the Cushing Tank Farm failed to comply with the procedure but asserted that the descriptive language in the Notice was incorrect because the Cushing Tank Farm operation is now in alignment with other locations and no longer leaves tank roof drains open, and at no time are both the roof drains and dike drains open at the same time. For this reason, Enbridge requested that this Item be reduced to a warning item with no civil penalty.

Having considered the Response, I find the record confirms that Enbridge failed to follow the procedure. Although Enbridge has since discontinued its practice of leaving tank roof drains open at the Cushing Tank Farm, this was the practice at the location at the time of PHMSA’s inspection in 2018. Therefore, there is no basis to withdraw this item or otherwise reduce it to a warning. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities.

Specifically, Enbridge failed to follow its procedure “03-07-03 Pressure Relief / Safety Valves,” when testing pressure safety valves (PSVs). Procedure 03-07-03 sets forth a 14-step process for inspecting and testing PSVs that PHMSA inspectors witnessed Enbridge’s technicians not properly following.

Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a), which states:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies

The Notice alleged that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities. Specifically, Enbridge failed to follow its procedure “03-07-03 Pressure Relief / Safety Valves” when checking pressure relief set points. Step 10 of the procedure for inspecting and testing pressure relief/safety valves sets forth measures for checking pressure relief set points for the valves, which includes recording the current pressure-relief setting as “Task” on the work order and then creating a follow-up work order to document the adjustments being made. However, Enbridge did not complete these specific measures under Step 10 of the procedure by failing to document the current “as found” relief pressures in the follow-up work orders.

Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.402(a) by failing to follow its own manual of written procedures for conducting normal operations and maintenance activities.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b), which states:

§ 195.420 Valve maintenance.

(a)

(b) Each operator shall, at intervals not exceeding 7 ½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.

The Notice alleged that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect each mainline valve at least twice each calendar year, at intervals not exceeding 7 ½ months. Specifically, the Notice alleged that Enbridge’s valve maintenance records demonstrated that seven valves had not been inspected at least twice each calendar year.

In its Response, Enbridge acknowledged that the required inspection interval was not met for five of the seven valves listed in the Notice. Enbridge stated “[v]alves meeting the definition of mainline valves and requiring semi-annual inspection are shaded orange on Exhibit NOPV-6, attached to this response. However, as shown in the exhibit, the two highlighted valves (TP-63-BV-1 and TP-63-CSV-12) are not shaded orange, and the required inspection frequency is three years.” For these reasons, Enbridge requested that PHMSA amend the descriptive language for this Item and reduce the civil penalty accordingly.

Based on the additional information provided in the Response, and the Regional Director’s written evaluation of the response material submitted pursuant to § 190.209(b)(7), I agree that there were five, rather than seven missing mainline valve inspections, to be completed at intervals not exceeding 7 ½ months, but at least twice each calendar year, as required by § 195.420(b).

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.420(b) by failing to inspect five mainline valves at least twice each calendar year, at intervals not exceeding 7 ½ months. I withdraw the allegation that there were an additional two missed valve inspections.

Item 7: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipeline used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect each non-highly volatile liquid (HVL) overpressure safety device at intervals not exceeding 15 months, but at least once each calendar year. Specifically, Enbridge failed to conduct 12 inspections of overpressure safety devices on its system in 2016 and 2017.

Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to inspect each non-HVL overpressure safety device at intervals not exceeding 15 months, but at least once each calendar year.

Item 8: The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a), which states:

§ 195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipeline used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

The Notice alleged that Respondent violated 49 C.F.R. § 195.428(a) by failing to determine, over a period of three years, whether 53 pressure-control devices on its non-HVL pipeline were adequate from the standpoint of capacity and reliability of operations for the service in which they were used, at intervals not exceeding 15 months, but at least once each calendar year.¹ Specifically, the Notice alleged that Enbridge had missed a total of 159 inspections and tests of its overpressure safety devices to determine if they were adequate from the standpoint of capacity, and Enbridge was not able to produce any records demonstrating that it had completed such determinations.

Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.428(a) by failing to determine, over a period of three years, whether 53 pressure-control devices on its non-HVL pipeline were adequate from the standpoint of capacity and reliability of operations for the service in which they were used, at intervals not exceeding 15 months, but at least once each calendar year.

Item 12: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c), which states:

§ 195.573 What must I do to monitor external corrosion control?

(a)

(c) *Rectifiers and other devices.* You must electrically check for proper performance each device in the first column at the frequency stated in the second column.

Device	Check frequency
Rectifier	At least six times each calendar year, but with intervals not exceeding 2 ½ months.
Reverse current switch	
Diode	
Interference bond whose failure would jeopardize structural protection	

¹ These 53 devices were different from the ones cited in Item 7. Unlike the devices cited in Item 7 where Respondent primarily missed a single inspection in either 2016 or 2017, the 53 devices cited in Item 8 all had missed capacity determinations and they were missing for consecutive years from 2016 to 2018.

Other interference bond	At least once each calendar year, but with intervals not exceeding 15 months.
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The Notice alleged that Respondent violated 49 C.F.R. § 195.573(c) by failing to electrically check for proper performance of rectifiers and critical bonds at least six times each calendar year, but with intervals not exceeding 2 ½ months. The Notice alleged that as identified during the PHMSA inspection of Enbridge's corrosion control records, 11 checks were not completed on four rectifiers and 13 checks were not completed on three critical bonds.

In its Response, Enbridge accepted the violation in part, and contested the violation in part, while noting that there were mitigating factors. Additionally, Enbridge questioned the amount of the proposed civil penalty in relation to penalties to other operators for the same alleged violation. Arguments in the Response for this Item were separately addressed for "Rectifiers" and "Critical Bonds."

Rectifiers

Enbridge contested a portion of Item 12, which alleged that it failed to electrically check for proper performance of rectifiers at least six times each calendar year, but with intervals not exceeding 2 ½ months. The Notice alleged that 11 checks were not completed on four rectifiers.

Enbridge agreed that three of the 11 checks were not completed as alleged in the Notice, and contested eight of the missing rectifier inspections by noting in its Response:

The subject rectifiers all have remote monitoring units installed on them for recording automated measurements. When the remote monitoring unit is not functioning properly, a technician is sent to the rectifier to repair the unit and obtain any voltage and amperage measurements required by the CFR. That data is then manually entered into the cathodic protection database called PCS. In this case, when the remote monitoring units were not operating properly a technician did visit the location and recorded the measurements in the logbook located at the rectifier. However, those measurements were not recorded in PCS.

Having considered the information submitted, I find the information does not demonstrate that Respondent was in compliance with § 195.573(c) at the time the violations were alleged to have occurred. During PHMSA's inspection in 2018, records collected indicated gaps between required checks on each of the four rectifiers. In particular, Exhibit M of the Violation Report contains the Enbridge Energy Rectifier Inspection Report showing the following gaps that do not comply with the 2 ½-month interval in § 195.573(c): (1) L63 MP 71.62 from December 15, 2016 to May 9, 2017; (2) Patoka MP 120 from December 30, 2016 to July 13, 2017; (3) Patoka MP 5347 from January 1, 2017 to June 28, 2017; and (4) Patoka MP 5354 from June 21, 2016 to April 19, 2017.

Despite this evidence of noncompliance, Respondent contended that checks were performed at

requisite intervals during those gaps. For several reasons, I find Respondent has not rebutted the evidence of noncompliance. First, Respondent's contention conflicts with its own records. The Enbridge Energy Rectifier Inspection Report demonstrates that no readings were taken during these gaps. PHMSA's inspection occurred over a year after the checks were missed and at that time Respondent's records still reflected that no check had been performed. There is no evidence in the record that checks took place during the gaps besides Respondent's own assertion. Respondent provided a table of measurements purported to be from a logbook but provided no copy of the logbook and no contemporaneous records of the checks. The table provided was not contemporarily signed, dated, and does not otherwise provide any proof that the measurements were recorded at the time these checks were performed. Moreover, Respondent provided this information more than three years after PHMSA brought the noncompliance to Respondent's attention during the inspection.

Finally, as Respondent explained in its Response, its process of performing checks when a remote monitoring unit is not functioning properly, as it was in the case of all four rectifiers, involves a technician repairing the unit, taking readings, and entering the data into the cathodic protection database. Despite Respondent's assertion that checks were performed at intervals of 2 ½ months, the evidence demonstrates Respondent never entered any data into the cathodic protection database at that time or even by the time PHMSA conducted an inspection a year later. Therefore, Respondent did not follow its process for performing checks.

For these reasons, the information Enbridge provided in their Response is not sufficient to show that they performed the required checks under § 195.573.

Critical Bonds

The Notice alleged that Enbridge failed to electrically check for the proper performance of critical interference bonds at least six times each calendar year, but with intervals not exceeding 2 ½ months. As identified during PHMSA's inspection of Enbridge's corrosion control records, 13 checks were allegedly not completed on three critical bonds. Enbridge contested all 13 missing critical bond inspections by noting in its Response:

Bond current measurements at MP 423.5056, MP 423.5056A and 423.5056B were incorrectly identified as "Critical" bonds in the PCS database where Enbridge records cathodic protection data. These three locations should have been identified as "Informational" bonds as they are not interference bonds between Enbridge and Magellan, but are bonds tied into a common bus bar with Magellan. These three locations are current measurements between the three Magellan structures and read for informational purposes only.

Based on a review of the Response, and the Regional Director's written evaluation of the response material submitted pursuant to § 190.209(b)(7), I find that these bonds were not critical bonds under § 195.573(c). Therefore, I withdraw from this item the 13 alleged instances of violation for a failure to check the proper performance of critical interference bonds.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(c) in 11 instances by failing to electrically check for proper performance of four rectifiers at least six times each calendar year, but with intervals not exceeding 2 ½ months. Further, I withdraw the 13 alleged instances of violation for a failure to check critical interference bonds.

Item 14: The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a), which states:

§ 195.581 Which pipelines must I protect against atmospheric corrosion and what coating material may I use?

(a) You must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.581(a) by failing to provide protection against atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere. Specifically, during the field inspection of Enbridge's Concordia Station, the Notice alleged that PHMSA observed that the coating had disbonded and/or flaked at the pipe-to-soil transitions on both unit sump drain lines.

Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.581(a) by failing to provide protection against atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.²

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$354,100 for the violations cited above.

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

Item 2: The Notice proposed a civil penalty of \$29,700 for Respondent's violation of 49 C.F.R. § 195.264, for failing to provide a means for containing hazardous liquids in the event of spillage or failure of above-ground breakout tanks built to API Specification 12F, API Standard 620 and others (such as API Standard 650 (or its predecessor Standard 12C)), by installing impoundments around certain breakout tanks built after October 2, 2000, at Respondent's Cushing Tank Farm. Enbridge did not contest the violation or the proposed civil penalty. Based upon the foregoing, I assess Respondent a civil penalty of \$29,700 for violation of 49 C.F.R. § 195.264.

Item 3: The Notice proposed a civil penalty of \$19,000 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its own manual of written procedures for conducting normal operations and maintenance activities. Enbridge requested the alleged violation be reduced to a warning, but for the reasons stated above, I rejected this request. Respondent did not otherwise provide information to mitigate the civil penalty. Based upon the foregoing, I assess Respondent a civil penalty of \$19,000 for violation of 49 C.F.R. § 195.402(a).

Item 4: The Notice proposed a civil penalty of \$19,600 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its own manual of written procedures for conducting normal operations and maintenance activities, by failing to properly follow the 14-step process in its procedure "*03-07-03 Pressure Relief / Safety Valves*." Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Based upon the foregoing, I assess Respondent a civil penalty of \$19,600 for violation of 49 C.F.R. § 195.402(a).

Item 5: The Notice proposed a civil penalty of \$16,500 for Respondent's violation of 49 C.F.R. § 195.402(a), for failing to follow its own manual of written procedures for conducting normal operations and maintenance activities, for failing to complete Step 10 of its procedure "*03-07-03 Pressure Relief / Safety Valves*." Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Based upon the foregoing, I assess Respondent a civil penalty of \$16,500 for violation of 49 C.F.R. § 195.402(a).

Item 6: The Notice proposed a civil penalty of \$21,000 for Respondent's violation of 49 C.F.R. § 195.420(b), for failing to inspect each mainline valve at least twice each calendar year, at intervals not exceeding 7 ½ months. As discussed in more detail above, Respondent provided additional information in its Response indicating that there were five, rather than seven missing mainline inspections, to be completed at intervals not exceeding 7 ½ months, but at least twice each calendar year, therefore reducing the instances of violation from seven to five. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$20,300 for violation of 49 C.F.R. § 195.420(b).

Item 7: The Notice proposed a civil penalty of \$22,800 for Respondent's violation of 49 C.F.R. § 195.428(a), for failing to inspect each non-HVL overpressure safety device at least once each calendar year at intervals not exceeding 15 months. Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Based upon the foregoing, I assess Respondent a civil penalty of \$22,800 for violation of 49 C.F.R. § 195.428(a).

Item 8: The Notice proposed a civil penalty of \$36,200 for Respondent's violation of 49 C.F.R.

§ 195.428(a), for failing to determine, over a period of three years, whether 53 pressure-control devices on its non-HVL pipeline were adequate from the standpoint of capacity and reliability of operation for the service in which they were used, at intervals not exceeding 15 months, but at least once each calendar year. Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Based upon the foregoing, I assess Respondent a civil penalty of \$36,200 for violation of 49 C.F.R. § 195.428(a).

Item 12: The Notice proposed a civil penalty of \$170,000³ for Respondent's violation of 49 C.F.R. § 195.573(c), for failing to electrically check for proper performance of rectifiers and critical interference bonds at least six times each calendar year, but with intervals not exceeding 2 ½ months. For the reasons stated above, the penalty assessment is reduced based on the withdrawal of 13 instances, resulting in a reduction of instances of violation from 23 to 10. Respondent also noted in its Response that "the proposed penalty amount for violating this standard is not in line with penalties issued to other operators for alleged violations of the same standard, which also warrants a reduction in the penalty." PHMSA calculates the penalty amount for the individual circumstances based on multiple factors. With regard to the nature of the violation, Item 12 was an activities violation for a failure to complete proper performance checks. With regard to circumstances, the violation was discovered by PHMSA. With regard to gravity, there were 10 instances of the violation, and the violation occurred within a high consequence area (HCA) or "could affect" HCA. With regard to culpability, Enbridge failed to comply with an applicable requirement. Lastly, there were no aggravating or mitigating factors considered for Item 12. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$99,500 for violation of 49 C.F.R. § 195.573(c).

Item 14: The Notice proposed a civil penalty of \$19,300 for Respondent's violation of 49 C.F.R. § 195.581(a), for failing to provide protection against atmospheric corrosion by cleaning and coating each pipeline or portion of pipeline that is exposed to the atmosphere. Enbridge did not contest this allegation of violation or the proposed civil penalty associated with this Item. Based upon the foregoing, I assess Respondent a civil penalty of \$19,300 for violation of 49 C.F.R. § 195.581(a).

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 **\$282,900**.

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, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

³ While the Notice alleged a total of 24 instances of violation, the proposed civil penalty for Item 12 was calculated based on only 23 instances of violation. The 13 instances of violation for an alleged failure to check the proper performance of critical interference bonds has been subtracted from the 23 alleged instances of violation, resulting in 10 remaining instances of violation for Item 12.

Failure to pay the \$282,900 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 2 in the Notice for a violation of 49 C.F.R. § 195.264. 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 § 195.264 (**Item 2**), Respondent must install intermediate berms in accordance with NFPA-30 for the containment areas in the Cushing Tank Farm facility identified in Item 2 of the Notice.
2. Respondent must correct these inadequacies and supply evidence of drawings and photos to the Director, Central Region, OPS, Pipeline and Hazardous Materials Safety Administration, within six months of issuance of the Final Order.

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.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), 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.

WARNING ITEMS

With respect to Items 1, 9, 10, 11 and 13, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.52(a) **(Item 1)** — Respondent's alleged failure to give notice at the earliest practicable moment, but no later than one hour after confirmed discovery, to the National Response Center following the release of approximately 10 barrels of crude oil and the shutdown of Enbridge's Line 63, which Enbridge reported 2 hours and 10 minutes after confirmed discovery;

49 C.F.R. § 195.430(a) **(Item 9)** — Respondent's alleged failure to perform an annual inspection of firefighting equipment at the Patoka facility in 2016, as specified by its procedures, to ensure the equipment was in proper operating condition at all times;

49 C.F.R. § 195.505(b) **(Item 10)** — Respondent's alleged failure to follow its own written qualification program for ensuring through evaluation that individuals performing covered tasks were qualified when two individuals performed a covered task without being qualified;

49 C.F.R. § 195.567(c) **(Item 11)** — Respondent's alleged failure to maintain seven test lead wires in a condition that would enable the operator to obtain electrical measurements to determine whether cathodic protection on the pipeline complied with § 195.571;

49 C.F.R. §§ 195.573(e) **(Item 13)** — Respondent's alleged failure to correct deficiencies in corrosion control at seven test point locations on certain non-HCA pipeline segments, as required by § 195.401(b)(1).

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a 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. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

October 12, 2021

Alan K. Mayberry
Associate Administrator

Date Issued

for Pipeline Safety