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

1200 New Jersey Avenue, SE
Washington, DC 20590

December 19, 2022

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. 3-2022-022-NOPV

Dear Mr. Koby:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of $44,800 against North Dakota Pipeline Company, LLC, a subsidiary of Enbridge Inc. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.12.09 10:23:01 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory 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	
North Dakota Pipeline Company, LLC, a subsidiary of Enbridge Inc.,	**CPF No. 3-2022-022-NOPV**
Respondent.	

FINAL ORDER

From March 16 through October 6, 2020, 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 North Dakota Pipeline Company, LLC's, a subsidiary of Enbridge Inc.[1] (Enbridge or Respondent), North Dakota, Southern Lights, and Express systems located in North Dakota, Wisconsin, Minnesota, Montana, and Wyoming.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 12, 2022, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed two violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of $44,800 for the alleged violations.

Enbridge responded to the Notice by letter dated May 12, 2022 (Response). Respondent did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Enbridge did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which states in relevant part:

[1] U.S. SEC Form 10-K, Enbridge Inc., *available at* https://www.enbridge.com/investment-center/reports-and-sec-filings/sec-filings/sec-filing-details?docId=264778 (last accessed November 29, 2022)

> **§ 195.406 Maximum operating pressure.**
> (a) …
> (b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure in the pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established pursuant to 49 C.F.R. § 195.406(a). Specifically, the Notice alleged that on September 21, 2018, the line blockage protection for Line 81 failed to activate, resulting in a line pressure of 114.01 percent of the operating pressure limit.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(b) by permitting the pressure in the pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b), which states in relevant part:

> **§ 195.505 Qualification program.**
> Each operator shall have and follow a written qualification program. The program shall include provisions to:
> (a) …
> (b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks are qualified. Specifically, the Notice alleged that in July of 2019, the records do not indicate that the individual performing OQ Task 83, overfill protection inspections, in Berthold, North Dakota on tanks 9800, 9801, 9802, 9803, 9804, and 9805 was qualified to perform the task.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.505(b) by failing to ensure through evaluation that individuals performing covered tasks are qualified.

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 $44,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $22,400 for Respondent's violation of 49 C.F.R. § 195.406(b), for permitting the pressure in the pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit. In their Response, Enbridge contends that the proposed civil penalty should be reduced based on its good faith throughout the inspection process, its promptness coming into compliance, and its efforts to take corrective action above the minimum required. Specifically, Enbridge lists three corrective measures it instituted post-inspection including reviewing operating procedures with control room staff and modifying the logic in North Dakota Region Programable Logic Controllers. Respondent also argues that it did not receive an economic benefit by failing to comply with regulations and that their culpability is low.

First, Respondent did not have a reasonable justification for its non-compliance, so no credit is warranted based on good faith. Next, while PHMSA appreciates Respondent's swift corrective measures to comply with pipeline safety regulations, such actions taken after an inspection are not a basis to reduce a civil penalty.[3] Additionally, actions taken to strengthen Respondent's programs beyond the minimum safety regulations are encouraged but are not the basis for credits in the penalty calculation. Further, OPS did not allege Respondent received an economic benefit from the noncompliance, so reduction on that basis is not warranted. Finally, in terms of culpability, I find there is no basis to reduce the penalty because Respondent did not take action to address the noncompliance prior to PHMSA learning of the violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $22,400 for the violation of 49 C.F.R. § 195.406(b).

Item 2: The Notice proposed a civil penalty of $22,400 for Respondent's violation of 49 C.F.R. § 195.505(b), for failing to ensure through evaluation that individuals performing covered tasks are qualified. Like Item 1, Enbridge asserts in its Response that the proposed civil penalty should be reduced based on its good faith throughout the inspection process, its promptness coming into compliance, and its efforts to take corrective action above the minimum required, including completing a "communication campaign" to enhance the knowledge of its personnel and changes to

---

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

[3] *See In the Matter of Oasis Midstream Partners LP, a General Partner of Oasis Petroleum Inc.,* Final Order 3-2019-5020, 2020 WL 6870720 at 7 (August 19, 2020) ("While Oasis is to be commended for improving its internal processes to ensure compliance with the pipeline safety regulations, such post-inspection activities do not warrant the withdrawal of, or a reduction in, a proposed civil penalty.")

its OQ records and job planning and assignment systems. Respondent also argues that it did not receive an economic benefit by failing to comply with regulations and that its culpability is low.

For the same reasons discussed in Item 1, I find there is no basis to reduce the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $22,400 for the violation of 49 C.F.R. § 195.505(b).

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 **$44,800**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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.

Failure to pay the 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.

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. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must 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. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.12.09 09:57:14 -05'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

December 19, 2022
Date Issued