

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

VIA ELECTRONIC MAIL TO: Michael.Koby@enbridge.com; David.Stafford@enbridge.com

September 12, 2023

Michael Koby
Vice President, U.S. Operations
Enbridge Energy, L.P.
5400 Westheimer Court
Houston, TX 77056

CPF 3-2023-011-NOPV

Dear Mr. Koby:

From March 14 through August 12, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), inspected Enbridge Energy, L.P.'s (Enbridge) Lakehead, Toledo, and New York pipelines and facilities in Illinois, Indiana, Michigan, Ohio, and New York.

As a result of the inspection, it is alleged that Enbridge has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. **§ 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. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.**

Enbridge failed to follow its standard operation and maintenance procedures regarding pipeline valve labeling. Specifically, valve labels for Line 78 reference Line 6 in the valve identification string. Line 6B is a retired pipeline that runs parallel to Line 78 and is permanently enjoined from operating per EPA consent decree. Per Appendix J, Section 5.2.2. of Enbridge's Functional Tag Number Standard (FTNS) procedure DS-002 Standard – Liquids Pipelines, Version Number 20.0, dated 2022-04-27, valve identifiers should include the mile post, line number, and the functional tag number. The functional tag number for mainline valve number 709.16-6-V (emphasis added), for example, incorrectly references Line 6 in the identifier rather than Line 78.

2. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a)

(c) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(1)

(7) Starting up and shutting down any part of the pipeline system in a manner designed to assure operation within the limits prescribed by § 195.406, consider the hazardous liquid or carbon dioxide in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices.

Enbridge failed to have sufficient procedures in place to prevent an abnormal operation on its Line 5 after the commissioning of two Emergency Flow Restrictive Devices (EFRD) at MP 1532 and MP 1621. Enbridge experienced multiple overpressure events, the highest being 124% of the maximum operating pressure (MOP), on 12/5/2018 during the restart of Line 5 after the new EFRD valve installations. The EFRD at MP 1621 was frozen and the field crew was still working to thaw it when the pipeline was restarted. The crew was not aware of a change in project scope and the decision to not commission the valve at MP 1621 and to restart the pipeline. During the line restart the field crew began moving the valve to check the valve limits which caused the overpressure events.

Enbridge conducted a follow-up investigation of the incident and issued a CCO High Value Learning Event Report (20236) dated December 2018. The investigation revealed the causes of the incident, to include failing to clearly coordinate or communicate work activity and failure to identify the risk and assess the hazards.

Enbridge implemented several actions because of its investigation, including revisions to its COPAS procedures, providing awareness to the CCO Operators and circulating the High Value Lesson Learned to staff.

3. § 195.573 What must I do to monitor external corrosion control?

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with § 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing

may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

Enbridge failed to conduct tests to ensure cathodic protection meets the applicable criteria on Line 6B and inactive segments on Line 10 at least once each calendar year, but with intervals not exceeding 15 months for calendar years 2020 and 2021. Specifically, annual cathodic protection (CP) survey measurements were discontinued in years 2020 and 2021 as part of a Covid-19 exposure risk reduction plan. Enbridge considers pipeline 6B low risk since it has been purged from Griffith, Indiana, to Stockbridge, Michigan, and is under Consent Decree injunction of permanent enjoinder preventing Enbridge from ever restarting the line. However, the status of these lines is listed as active (unfilled) and, as such, requires operators to comply with all applicable safety requirements, including periodic maintenance, damage prevention programs and public awareness programs. Enbridge believed it could defer the CP surveys and other certain maintenance activities based on PHMSA Bulletin ADB- 2016-05 which mentions deferring certain activities impractical on purged but active pipelines, such as in-line inspection. The performance of an annual cathodic protection survey is essential to ensuring that purged but active pipelines are not corroding. Conducting annual cathodic protection surveys is also not dependent on whether the pipeline is filled or not, hence purging does not excuse timely compliance with § 195.573(a)(1).^a The advisory bulletin does not state cathodic protection surveys are impractical on purged but active pipelines.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$ 18,600 as follows:

^a See Hunt Crude Oil Supply Company, LLC, Final Order, CPF 2-2017-5004-NOPV (Dec. 10, 2018) (available at https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIE_opid_7660.html?nocache=3726#_OuterPanel_tab_2).

Item number
2

PENALTY
\$ 18,600

Proposed Compliance Order

With respect to Item 1 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Enbridge Energy, L.P. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Item

With respect to Item 3, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this Item. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement 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).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 3-2023-011-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: David Stafford, Manager US Pipeline Compliance (David.Stafford@enbridge.com)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Enbridge Energy, L.P., a Compliance Order incorporating the following remedial requirements to ensure the compliance of Enbridge Energy, L.P, with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice pertaining to the identification of Line 78 valves and equipment, Enbridge Energy, L.P, must correct the valve and equipment labels to properly reflect Line No.78 within **180** days of receipt of the Final Order.

- B. It is requested that Enbridge Energy, L.P maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory Ochs, Director, Central 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.