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

901 Locust Street, Suite 480
Kansas City, MO 64106

NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER

VIA ELECTRONIC MAIL TO: kevin.ruffatto@enbridge.com; eric.anderson@enbridge.com

October 25, 2024

Mr. Kevin Ruffatto
Vice President of US Operations
Express Holdings (USA), LLC
915 N Eldridge Parkway, Suite 1100
Houston Texas 77079

CPF 3-2024-056-NOPV

Dear Mr. Ruffatto:

From February 13 to July 27, 2023, 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 Express Holdings (USA), LLC's (Express Holdings)[1] operations and maintenance records and operating qualification procedures in Duluth, Minnesota and Buffalo, Montana.

As a result of the inspection, it is alleged that Express Holdings 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. **§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.**

[1] Express Holdings (USA), LLC, is a subsidiary of Enbridge, Inc. *See* Enbridge, Inc., SEC Form 10-K (filed 02/09/24), https://www.enbridge.com/investment-center/reports-and-sec-filings/sec-filings/sec-filing-details?docId=265082.

(a) . . . .
(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;

Express Holdings failed to satisfy the requirements of section 22.11.2 of NFPA-30 (2012 edition) (incorporated by reference) regarding impoundment around breakout tanks. Section 22.11.2.6 of NFPA-30 (2012 edition) requires that "[e]ach diked area containing two or more tanks shall be subdivided, preferably by drainage channels or at least by intermediate dikes, in order to prevent minor spills from a tank from endangering adjacent tanks within the diked area."[2]

During PHMSA's field inspection of Express Holdings tanks 208, 209, and 210 at the Buffalo Tank Farm facility in Buffalo, Montana, PHMSA found that Express Holdings failed to subdivide the tanks' impoundment, and failed to have drainage channels or intermediate dikes installed between the tanks in accordance with the referenced standard and the regulation. Express Holdings tanks 208, 209, and 210 were built to API Standard 650 after October 2, 2000. Thus, Express Holdings failed to provide adequate impoundment around breakout tanks, per the requirements of § 195.264(b).

2. § 195.505 Qualification program.
Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) Identify covered tasks;

Express Holdings failed to identify the covered task of performing a shutdown of a liquid pipeline in the field, as required by § 195.505(a). Per § 195.501(b), a covered task, for the purpose of Subpart G, "is an activity, identified by the operator, that: (1) [i]s performed on a pipeline facility; (2) [i]s an operations or maintenance task; (3) [i]s performed as a requirement of this part; and (4) [a]ffects the operation or integrity of the pipeline." PHMSA's OQ Enforcement Guidance[3] identifies shutting down a pipeline system as a covered task.

Enbridge's "Communications Failure – Terminal" Procedure for operation of the pipeline, used by Express Holdings, includes shutting down boosters or units, closing valves after confirming pumps are off and/or monitoring pressures, and reporting back to the Controllers as a part of manual operation/shutdown of the pipeline. This activity is performed on a pipeline facility, is an

[2] NFPA 30 Flammable and Combustible Liquids Code (2012 edition), at 30-81, Section 22.11.2.6.
[3] PHMSA, Operator Qualification Enforcement Guidance, (revised Aug. 25, 2016), https://www.phmsa.dot.gov/pipeline/enforcement/operator-qualification-enforcement-guidance.

operations or maintenance task, is performed as a requirement of Part 195, and affects the operation or integrity of the pipeline; therefore, it is a covered task.

However, Appendix C of Enbridge Liquids Pipelines Operator Qualification Plan, “Enbridge Covered Tasks C.01, Enbridge LP Employee Covered Task List,”[4] did not list performing shutdown of a liquid pipeline (field) as a covered task. Express Holding’s covered task lists in Appendix C only included one task for shutting down the pipeline, which was “Control Center: Shutdown of a Liquid Pipeline.” Operators cannot solely rely on controllers and the SCADA system to shutdown/operate a pipeline. If the Control Center suffers loss of communications or SCADA and cannot remotely control the pipeline (including shutdown of pumps and closing valves) field personnel must be trained and qualified to provide adequate means of manual operation of the pipeline safely as required by § 195.446(c)(3). Thus, Express Holdings failed to identify a covered a task for manual shut down of its pipeline for operating a pipeline, and thus is in violation of § 195.505(a).

3. § 195.563 Which pipelines must have cathodic protection?

(a) Each buried or submerged pipeline that is constructed, relocated, replaced, or otherwise changed after the applicable date in § 195.401(c) must have cathodic protection. The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.

Express Holdings failed to ensure each buried pipeline that was constructed, relocated, replaced, or otherwise changed after the applicable date in § 195.401(c) had cathodic protection, per § 195.563(a). Specifically, Express Holdings failed to ensure that the steel pipeline segments that flow from pump station piping to the fiber glass overflow sump tanks at the Faulkners, Lost Cabin, Warren, Fish Creek, and Banjo pump stations were catholically protected. The pump stations were constructed in 1996 and in 2005 and thus meet the applicable date specified in § 195.401(c).[5] On November 22, 2023, Express Holdings stated in response to PHMSA’s 90-day report, “The line between the fiberglass sump tanks was identified as being a fiberglass line. Upon further review it was determined that the line is coated steel and a magnesium anode is scheduled for installation to provide cathodic protection. The line information has been updated accordingly in the corrosion database.” Thus, Express failed to ensure each applicable s buried pipeline had cathodic protection, per § 195.563(a).

4. § 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.

[4] Express Holdings utilizes Enbridge Inc’s procedures.
[5] I.e., [after March 31, 1970 from 195.401(c)(1)-(5)].

Express Holdings failed to conduct tests on protected pipelines each calendar year in intervals that did not exceed 15 months, per the requirements of § 195.573(a)(1). Specifically, PHMSA reviewed Express Holding's cathodic protection monitoring records for the test points on the following pipeline right of way segments for the calendar years 2021, and 2022 that exceeded the regulatory testing interval:

Right of Way Code	Number of Test Points	Violation Day Ranges
L0040 02 QD-QB	65	5-30
L0040 04 QX-QK	42	2-78
EQ	20	14
ZK	21	38
ZT	11	12-14
FH	12	50
GV	21	49-50
KP	20	13
QX	43	33-34
VY	14	6
ZV	14	49
ZX	7	6
BFL	41	43-44
BFL-40A-201-TK	13	41-42
BFL-40A-202-TK	14	41-42
BFL-40A-205-TK	4	43
BFL-40A-206-TK	4	43
BFL-40A-207-TK	4	43
BFL-40A-208-TK	4	43
BFL-40A-209-TK	4	43
BFL-40A-210-TK	4	43

In summary, there were 382 instances of tests that were not performed in the 15 month interval for the calendar years 2021 and 2022.

Additionally, PHMSA found that breakout Tank 203 24" Inlet Pipe did not have a test conducted in calendar year 2021 to determine whether cathodic protection required by § 195.573(a)(1) complied with § 195.571. For calendar year 2020, three test points on Line 40 (Mile Posts 593.9980, 594.0131, and 645.1131) could not be physically located by the surveyor and were not tested. Thus, in these three ways, Express Holdings failed to conduct tests at the required intervals, in violation of § 195.573(a)(1).

5. **§ 195.573 What must I do to monitor external corrosion control?**

> **(a) . . . .**
> **(e) Corrective action. You must correct any identified deficiency in corrosion control as required by § 195.401(b). However, if the deficiency involves a pipeline in an integrity management program under § 195.452, you must correct the deficiency as required by § 195.452(h).**

Express Holdings failed to correct identified deficiencies in corrosion control as required by § 195.401(b). Specifically, PHMSA's records inspection determined that Express Holdings did not correct deficiencies within a reasonable time defined by the operator. According to its Enbridge procedure "External Corrosion Prevention Management Process, Table 1," once discovered, deficiencies should be corrected within 15 months from the date of discovery for polarized structure to electrolyte potentials less negative than -850 Millivolts (mV) does not meet the 100 mV criterion.[6] Express Holdings found deficiencies at the following seven mileposts, however, they were not corrected within the required time frame.

ROWCode	ROWName	Milepost
L0040 04 QX-QK	EDGAR - CASPER PIPELINE	622.5999
L0040 04 QX-QK	EDGAR - CASPER PIPELINE	713.1145
L0040 04 QX-QK	EDGAR - CASPER PIPELINE	749.123
L0040 04 QX-QK	EDGAR - CASPER PIPELINE	784.1562
L0040 04 QX-QK	EDGAR - CASPER PIPELINE	784.1862
KP	Kirby Creek Station	18
ZX	Lost Cabin Station	3

Therefore, at these seven mileposts, Express Holdings failed to correct identified deficiencies in corrosion control at the 15-month interval, per § 195.401(b).

<u>Proposed Civil Penalty</u>

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed $266,015 per violation per day the violation persists, up to a maximum of $2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before

[6] Express Holdings utilizes Enbridge Inc's procedures.

December 28, 2023, the maximum penalty may not 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.

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 $ 114,600, as follows:

Item number	PENALTY
1	$ 37,200
4	$ 41,700
5	$ 35,700

Proposed Compliance Order

With respect to Items 1, 2, and 3, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Express Holdings. 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 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 3-2024-056-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

GREGORY ALAN OCHS Digitally signed by GREGORY ALAN OCHS
Date: 2024.10.25 08:54:25 -05'00'

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

cc: Eric Anderson, Sr. Compliance Advisor, Audits and Inspections, US Pipeline Compliance, eric.anderson@enbridge.com

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

PROPOSED COMPLIANCE ORDER

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

A. In regard to Item 1 of the Notice, pertaining to Express Holdings' failure to satisfy the requirements of section 22.11.2 of NFPA-30 (2012 edition) regarding the impoundment around breakout tanks, Express Holdings must:
   (i) Subdivide the tanks' impoundment areas by constructing either drainage channels or intermediate dikes, in accordance with NFPA 30, at the Buffalo, Montana, facility within **12** months of receipt of the Final Order.
   (ii) Submit to the Director, Central Region, evidence of remediated locations to demonstrate compliance with NFPA 30 within **12** months of the receipt of the Final Order.
   (iii) Send an update to the Gregory Ochs, Director, Central Region, PHMSA every 90 days of receipt the Final Order regarding the progress of the impoundment construction.

B. In regard to Item 2 of the Notice, pertaining to Express Holdings' failure to identify the covered task for performing a manual shutdown of a liquid pipeline, Express Holdings must:
   (i) Modify the operator qualification procedures to include the covered task of performing a shutdown of a liquid pipeline during manual operation within 30 days of the receipt of the Final Order.
   (ii) Train personnel on the new covered task and submit to the Director, Central Region, procedures and training records to demonstrate compliance with § 195.505(a) within 90 days of receipt of the Final Order.

C. In regard to Item 3 of the Notice, pertaining to Express Holdings' failure to ensure each buried pipeline had cathodic protection, Express Holdings must:
   (i) Design and install cathodic protection at the steel pipelines that connect to the fiberglass sump tanks at the Faulkners, Lost Cabin, Warren, Fish Creek, and Banjo and pump stations within **30** days of receipt of the Final Order.
   (ii) Submit to the Director, Central Region, evidence of remediated locations to demonstrate compliance with § 195.563(a), within **30** days of the receipt of the Final Order.

D. It is requested that Express Holdings maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A. 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.