



US Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh St. S.W.  
Washington, D.C. 20590

OCT 30 2003

Rich Adams  
Vice President, Operations and Technology  
Enbridge Energy Company, Inc.  
1100 Louisiana  
Suite 3300  
Houston, Texas 77002

Re: CPF No. 2-2003-1009

Dear Mr. Adams:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$2,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill  
Pipeline Compliance Registry  
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590

In the Matter of )  
 )  
Enbridge Energy Company, Inc. )  
 )  
Respondent. )  
 )

CPF No. 2-2003-1009

FINAL ORDER

On May 12 - 15, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities in Mississippi, Tennessee and Alabama, and records in Alabama. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated June 10, 2003, 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 violated 49 C.F.R. §§ 192.463 and 192.465 and proposed assessing a civil penalty of \$2,500 for the alleged violations. The Notice also warned Respondent to take appropriate corrective action.

Respondent responded to the Notice by letter dated July 7, 2003 (Response). Respondent did not contest the allegations of violation but provided information concerning the corrective actions it has taken. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 192, as more fully described in the Notice:

49 C.F.R. § 192.463 – failing to provide a proper level of cathodic protection for two short sections of unprotected buried piping;

49 C.F.R. § 192.465 – failing to take prompt remedial action to correct low pipe-to-soil potential readings for three consecutive years;

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 a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed a total civil penalty of \$2,500 for the violations. With respect to Item 1, Respondent did not dispute the findings. It provided information regarding how it cleared the short and is currently providing adequate cathodic protection. However, Respondent did not provide any mitigating factors. Therefore, having reviewed the record and considered the assessment criteria, I assess a civil penalty of \$1,000.

With respect to Item 2, although Respondent did not dispute the findings, Respondent attempted to assert that it addressed the low pipe-to-soil potentials prior to the OPS inspection. While this assertion may be correct, it does not negate the violation which alleged that Respondent failed to address low pipe to soil potentials for 3 consecutive years. The date of the last low reading was April 2002, well before the May 2003 OPS inspection. Accordingly, having reviewed the record and considered the assessment criteria, I assess a civil penalty of \$1,500.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), ATTN: Jacqueline Murphy, P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this 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 (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$2,500 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 United States District Court.

**WARNING ITEMS**

The Notice did not propose a civil penalty or corrective action for three items listed in the Notice; therefore, these are considered warning items. Respondent presented information in its Response showing that it is addressing the cited items. Respondent is again warned that if OPS finds a violation for any of these items in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for 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 on receipt.



Stacey Gerard

Associate Administrator  
for Pipeline Safety

OCT 30 2000

Date Issued