



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

DEC - 7 2004

Mr. Rich Adams
Vice President, Operations
Enbridge Pipelines (AlaTenn) L.L.C.
1100 Louisiana Street, Suite 3300
Houston, Texas 77002

Re: CPF No. 27107, Midcoast Interstate Transmission, Inc.

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, assesses a civil penalty of \$17,000, and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order are completed, as determined by the Director, Southern Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely

James Reynolds
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 Pipelines (AlaTenn) L.L.C.,

Respondent

CPF No. 27107

FINAL ORDER

On April 29 through May 2, 1997, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Alabama-Tennessee Natural Gas Company's (Alabama-Tennessee's) facilities and records in Florence, Alabama. As a result of the inspection, the Director, Southern Region, OPS, issued to the operator, by letter dated May 9, 1997, 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 Alabama-Tennessee had committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$17,000 for the alleged violations. The Notice also proposed that the operator take certain measures to correct the alleged violations.

Alabama-Tennessee initially responded to the Notice by letter dated May 27, 1997. However, Midcoast Interstate Transmission, Inc. (Midcoast) succeeded as operator of Alabama-Tennessee's pipeline facilities in Florence and submitted a formal written response to the Notice by letter dated August 19, 1997 (Response). In the Response, Midcoast contested several of the allegations of violation, offered information in explanation of the allegations, and requested a reduction in the proposed civil penalty. Midcoast also provided information concerning the corrective actions it planned to take. In May 2001, Enbridge Pipelines (AlaTenn) L.L.C. acquired Midcoast and assumed operations of its pipeline facilities in Florence. The three companies are collectively referred to in this order as "Respondent."

FINDINGS OF VIOLATION

This inspection followed an earlier inspection by OPS in 1995. Following the 1995 inspection, OPS issued to Respondent a Notice of Probable Violation that alleged violations of the pipeline safety regulations (1995 Notice or CPF No. 25107). OPS had not issued a Final Order in that case when the present inspection took place in April and May 1997.

The 1997 inspection revealed several conditions on Respondent's system that had also been identified during the 1995 inspection and were the subject of the 1995 Notice. Accordingly, Respondent was again cited for those alleged violations. In its Response, Respondent argued that it had no obligation to correct the conditions identified as violations in the 1995 Notice until a Final Order had been issued.

As operator of a pipeline system, Respondent has an affirmative obligation to comply with the pipeline safety regulations applicable to its pipeline system. Respondent's failure to comply with several applicable regulations is not excused by the absence of a Final Order in the 1995 case. However, because a Final Order had not been issued before the 1997 inspection took place, any continuing violations will not be considered repeat violations.

Item 1 of the Notice alleged that Respondent violated 49 C.F.R. § 192.171(a). This regulation requires that each compressor station have adequate fire protection facilities. Fire extinguishers are an integral part of Respondent's fire protection facilities. The Notice alleged that Respondent failed to inspect fire extinguishers in a timely manner to ensure their proper operation.

In its Response, Respondent contended that it had tested the fire extinguishers and developed a written procedure for fire extinguisher testing. The record does not support Respondent's contention that it had inspected the fire extinguishers prior to the 1997 inspection. The OPS inspector noticed only a small number of fire extinguishers with date marks indicating they had been inspected. Respondent could not produce written documentation to verify the remaining fire extinguishers had been inspected, only claiming that its "employees could verify these actions." Without a written record, there is no way to verify the fire extinguishers had been inspected. Furthermore, the development of a procedure for testing fire extinguishers did not comply with this regulation, since Respondent did not actually follow the procedure. Accordingly, I find that Respondent violated § 192.171(a).

Item 2 of the Notice alleged that Respondent violated 49 C.F.R. §§ 192.465(a) and (d). These provisions require that each pipeline under cathodic protection be tested at least once each calendar year with intervals not exceeding 15 months to determine whether the cathodic protection is adequate. Each operator must also take prompt remedial action to correct any deficiencies indicated during the monitoring. The Notice alleged that Respondent failed to make timely repairs to a number of inoperable cathodic protection test stations. Some test stations had been inoperable for more than three years.

In its Response, Respondent contended that many of the damaged test stations had been repaired, but a significant number of additional stations were being damaged or destroyed each year due to outside forces. Respondent explained that it had been "unable to pinpoint a reasonable, cost effective means of preventing test stations from being damaged or destroyed by outside forces." Respondent also contended that recent cathodic protection surveys and the history of the line indicate that monitoring has been adequate.

The OPS inspector identified many cathodic protection test stations that were inoperable. Some test stations had been inoperable for more than three years. Nothing in the record supports Respondent's claim that these damaged or missing tests stations had been remedied. Respondent's inability to identify a cost effective means of complying with this regulation does not excuse its failure to comply. Furthermore, the surveys and the history of the line do not demonstrate compliance, since Respondent was unable to determine the adequacy of cathodic protection at locations where cathodic protection test stations were inoperable. Accordingly, I find that Respondent violated §§ 192.465(a) and (d).

Item 3 of the Notice alleged that Respondent violated 49 C.F.R. § 192.225. This regulation requires that all welding be performed by a qualified welder in accordance with welding procedures that are qualified to produce welds meeting the requirements of subpart E of Part 192. Each welding procedure must be recorded in detail, retained, and followed whenever the procedure is used. The Notice alleged that Respondent failed to have procedures to ensure that welding of steel and aluminum pipe is performed pursuant to these requirements. Respondent did not contest this allegation. Accordingly, I find that Respondent violated § 192.225.

Item 4 of the Notice alleged that Respondent violated 49 C.F.R. § 192.743. This regulation requires that each pressure relief device be tested at least once each calendar year with intervals not exceeding 15 months to verify the device has enough capacity to properly limit pressure. If a test is not feasible, Respondent must review and calculate the capacity of each relieving device at least once each calendar year, with intervals not exceeding 15 months. If the relief device is of insufficient capacity, a new or additional device must be installed to provide the capacity required. The Notice alleged that Respondent failed to review and calculate relief capacities at the intervals required. The Notice also alleged that Respondent failed to correct several relief capacities that had been insufficient for many years.

In its Response, Respondent explained that it had operated on the erroneous assumption that the original capacity calculations were accurate. Based on that assumption, Respondent only reviewed operating parameters for changes. When no changes were found, Respondent assumed relief capacities remained adequate. After Respondent received the 1995 Notice identifying this matter, calculations were performed on approximately 80 percent of the relief devices requiring calculations. Respondent admitted that it should not have assumed that original capacities were accurate. Respondent also admitted that it failed to diligently verify all necessary relief capacities and to remedy each capacity found inadequate. Accordingly, since Respondent failed to review and calculate capacities at the intervals required, and remedy each insufficient relief capacity, I find that Respondent violated § 192.743.

Item 5 of the Notice alleged that Respondent violated 49 C.F.R. § 192.711(a). This regulation requires that each operator make permanent repairs as soon as possible after taking temporary measures to repair a leak when a permanent repair is not feasible at the time of discovery. The Notice alleged that Respondent placed a temporary clamp on a pipeline leak in 1952, and replaced that temporary clamp with another temporary clamp in April 1997. The Notice alleged that

Respondent never made a permanent repair to the leak. Respondent did not contest this allegation. Accordingly, I find that Respondent violated § 192.711(a).

Item 6 of the Notice alleged that Respondent violated 49 C.F.R. § 199.101(a)(1).¹ This regulation requires that each operator have a written anti-drug plan that contains methods and procedures for compliance with the drug and alcohol requirements of Part 199. The Notice alleged that Respondent's anti-drug plan failed to describe the circumstances under which an employee might not be tested after an accident. The Notice also alleged that Respondent's plan did not describe how random testing would be conducted. Respondent did not contest these allegations. Accordingly, I find that Respondent violated § 199.101(a)(1).

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. The Notice proposed a total civil penalty of \$17,000 for Items 1, 2, 3 and 4 in the Notice.

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.

Respondent requested that the total civil penalty be reduced based on Respondent's belief that it had until the Final Order was issued in CPF No. 25107 to remedy the conditions identified during the 1995 inspection. I acknowledge that Respondent had not been ordered to take corrective action. However, Respondent is under an affirmative obligation to comply with pipeline safety regulations applicable to its pipeline system. Corrective action taken to comply with applicable regulations does not justify mitigation of the civil penalty. Because the Final Order for the 1995 inspection had not been issued when Respondent was cited in 1997 for several identical violations, the 1997 violations will not be considered repeat violations.

Item 1 proposed a civil penalty of \$500 for failing to inspect fire extinguishers in a timely manner to ensure that each device was properly charged and capable of operating. In its Response, Respondent contended that it demonstrated good faith by testing the fire extinguishers and by preparing a written procedure for testing.

¹ The requirements that were cited in the Notice at § 199.7(a)(1) can now be found at § 199.101(a)(1).

Failing to regularly inspect fire extinguishers increases the risk that a fire extinguisher may not operate properly during an emergency, which endangers the safety of operating personnel, first responders, and the public. Inspections must be clearly documented so that OPS inspectors, as well as first responders and Respondent's personnel can be assured that accessible devices will function properly during an emergency. Subsequent testing of fire extinguishers does not justify reducing the civil penalty, because Respondent is obligated to test its fire extinguishers. The development of a testing procedure did not improve safety, because Respondent did not implement the procedure. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$500 for the violation of § 192.171(a).

Item 2 proposed a civil penalty of \$1,000 for failing to promptly repair a number of inoperable cathodic protection test stations. Some test stations identified during the inspection had been inoperable for more than three years. Respondent contended that it had demonstrated good faith by repairing or replacing many test stations following the earlier inspection by OPS in 1995. Respondent also contended that its cathodic protection surveys and the history of the line justifying reducing the penalty.

Failure to repair inoperable test stations prevents proper testing of the cathodic protection system. Inadequate cathodic protection may lead to corrosion on the pipe and the release of hazardous gas through a leak or rupture in the line. The actions taken by Respondent to comply with the pipeline safety regulations do not justify reducing the civil penalty, because Respondent has an affirmative obligation to comply with the regulations applicable to its pipeline system. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$1,000 for the violation of §§ 192.465(a) and (d).

Item 3 proposed a civil penalty of \$500 for failing to have procedures to ensure that welding performed on steel and aluminum pipe meets the requirements of subpart E of Part 192. Respondent did not contest the proposed civil penalty for this violation. Failing to ensure that welding meets approved standards may lead to inferior welds that cannot withstand the pressure demands of the pipeline system. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$500 for the violation of § 192.225.

Item 4 proposed a civil penalty of \$15,000 for failing to review and calculate pressure relief device capacities annually to verify that they have enough capacity to properly limit pressure. Respondent also failed to correct many relief capacities that had been insufficient for years. In its Response, Respondent explained that following the inspection by OPS in 1995, Respondent took corrective action to perform calculations on approximately 80 percent of the required relief devices.

I do not find these actions justify a reduction in the proposed civil penalty. Respondent incorrectly assumed that relief capacities were accurate, failed to review relief capacities at the required time intervals, and did not remedy relief capacities that had been insufficient for several years. Respondent's failure to ensure that relief capacities were adequate posed a significant risk to public safety. An increase in pipeline pressure that is not safely controlled may cause damage to the

pipeline system, leading to a leak or rupture in the system and the hazardous release of gas. This was a continuing violation that occurred over a number of years. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,000 for the violation of § 192.743.

Having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$17,000. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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) 954-8893.

Failure to pay the \$17,000 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.

COMPLIANCE ORDER

The Notice proposed a compliance order for Items 1, 2, 3, 4, 5 and 6 in the Notice. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas 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 to the extent Respondent has not already achieved compliance. Respondent must –

1. Prepare procedures for following the best industry practices for inspecting and maintaining fire extinguishers and documenting appropriate inspection and maintenance activities. Verify that each fire extinguisher has been properly inspected and maintained according to the procedures prepared.
2. Identify each cathodic protection test station that is not fully operational and complete the necessary repairs or replacement activities.
3. Prepare procedures for welding steel and aluminum pipe meeting the requirements of Part 192, subpart E.

4. Determine the operating pressure ranges upstream and downstream of each regulator. Verify that the pressure relieving capacity of each relief valve, including build-up during relieving, will not exceed the maximum allowable operating pressure. If two cuts are used, verify the second regulator will not be over-pressured if the first regulator fails.
5. Make a permanent repair of the leak temporarily repaired in 1952 and April 1997.
6. Amend the written drug and alcohol testing plan to describe circumstances under which an employee might not be tested after an accident and describe how random testing will be conducted.
7. Complete each of the above items within thirty (30) days from the date of this order and submit confirming documentation to the Director, Southern Region, Office of Pipeline Safety, Research and Special Programs Administration, 233 Peachtree Street, Suite 600, Atlanta, Georgia 30303.

The Regional Director may grant an extension of time to comply with any of the required items upon a written request by the Respondent demonstrating good cause for an extension.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

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. All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.



for

Stacey Gerard
Associate Administrator
for Pipeline Safety

DEC - 7 2004

Date Issued