



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

MAY 17 2004

Mr. Daniel C. Tutcher
President
Enbridge Energy Company, Inc.
Suite 2950
1100 Louisiana
Houston, TX 77002-7002

Re: CPF No. 3-2002-5015

Dear Mr. Tutcher:

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 \$5,000, 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 completed, as determined by the Director, Central 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

cc: Mr. John Sobojinski, Manager, U.S. Compliance and Risk Management

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. 3-2002-5015 |

FINAL ORDER

On May 7 - 18, June 11 - 22, and August 27, 2001, 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 and records throughout the states of Michigan, Indiana, Illinois, Minnesota, and Wisconsin. As a result of the inspection, the Director, Central Region, OPS, issued to Respondent, by letter dated June 5, 2002, 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 that Respondent had violated 49 C.F.R. §§ 195.310(b)(9), 195.432(a), and 195.401(b) and proposed assessing a civil penalty of \$10,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct an alleged violation.

Respondent responded to the Notice by letter dated June 27, 2002 (Response). Respondent did not contest the allegations of violation but provided information concerning the corrective actions it has taken and requested that the proposed civil penalty be reduced or eliminated. Respondent provided further information on corrective actions it has taken by letter dated September 26, 2002. 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 195, as more fully described in the Notice:

49 C.F.R. § 195.310(b)(9) -- failing to maintain pressure testing records for Line #17 that show the elevation and test sites over the length of Line #17 (due to elevation differences exceeding 100 feet along the length of Line #17);

49 C.F.R. § 195.432(a) -- failing to inspect in-service breakout tanks at intervals not exceeding 15 months, but at least once each calendar year; and

49 C.F.R. § 195.401(b) -- failing to address, within a reasonable time, the adverse condition that was the obstruction of numerous portions of the right-of-way from aerial view.

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 \$10,000 for violation of 49 C.F.R. §§ 195.310(b)(9) and 195.432(a).

I have determined that Respondent has no financial circumstances that would prevent it from paying on the assessed amounts and that Respondent's ability to continue in business will not be significantly affected.

OPS inspectors stated that Respondent demonstrated good faith in responding to the violations alleged in the Notice, and that Respondent quickly initiated action to correct items identified in the Notice and in this Final Order. OPS staff have taken Respondent's good faith into account when proposing civil penalties in the Notice, as well as in post-Response recommendations.

Item 1 in the Notice proposed a \$5,000 penalty for violation of § 195.310(b)(9). Elevation difference is a critical factor in determining if target test pressures are being maintained at all points along the pipeline. This is necessary to assess internal stress levels on the pipe so that pipeline integrity can be assured. Failure to account for elevation differences, and thus stress, may increase the risk for a rupture or release. However, immediately after the inspection, Respondent took action to address the violation by beginning preparation of profile drawings. In light of Respondent's action to comply with § 195.310(b)(9) before receiving the official Notice, I issue a reduced civil penalty of \$2,500.

Item 2 in the Notice proposed a \$5000 penalty for violation of § 195.432(a). Ensuring the integrity of breakout tanks is critical to reducing the risk of release of hazardous liquids from the tanks. However, tanks 80 and 81 at the Stockbridge, Michigan station had undergone integrity inspections prior to being put into service in 1999. Further, Respondent began inspecting breakout tanks within

three weeks after the inspection, before the Notice was sent. In light of Respondent's earlier inspection activities and its action to comply with § 195.432(a) before receiving the official Notice, I issue a reduced civil penalty of \$2,500.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000.

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), 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 \$5,000 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 with respect to Item 3 in the Notice for violation of 49 C.F.R. § 195.401(b). Pilots must have unobstructed views of areas directly above and adjacent to the pipeline during aerial patrolling of the right-of-way. Obstruction of the pilot's view could lead to missed identification of a release or of activities on or near the right-of-way that could affect the integrity of the pipeline.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids 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 applicable to its operations. Respondent must:

1. Develop a plan and corresponding schedule for the clearing of obstructions hindering the view of the pipeline right-of-way. Submit the plan and schedule to the Director, Central Region for approval within 90 days of receipt of this Final Order.


2. After commencing clearing of obstructions hindering the view of the pipeline right-of-way, submit quarterly progress reports to the Director, Central Region until such time as the entire pipeline right-of-way is visible from aerial patrol. When clearing is complete, submit all schedules of dates clearing activities occurred along with a notice of completed action to the Director, Central Region.

The Director, Central Region has indicated, and this Order recognizes, that Respondent may have taken action to address some or all of the required actions. Information already submitted as evidence of compliance with the proposed required actions in the Notice will be considered by the Director, Central Region in determining compliance with this Order.

The Director, Central Region may extend the period for complying with any of the required items if the Respondent requests an extension and adequately justifies the reasons for the 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 issues. 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.


Stacey Gerard
Associate Administrator
for Pipeline Safety

MAY 17 2004

Date Issued