U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

AUG 17 2010

1200 New Jersey Ave., SE
Washington, DC 20590

Mr. Terry McGill
President
Enbridge Pipelines (Ozark), L.L.C.
1100 Louisiana Street, Suite 3300
Houston, TX 77002

Re: CPF No. 4-2010-5008

Dear Mr. McGill:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of $28,800, and specifies actions that need to be taken by Enbridge Pipelines (Ozark), L.L.C., to comply with the pipeline safety regulations. This is to acknowledge receipt of payment of the full penalty amount by wire transfer, dated April 12, 2010. When the terms of the compliance order have been completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. R. M. Seeley, Director, Southwest Region, PHMSA

Mr. Shaun Kavajecz, Manager, Pipeline Safety Compliance, Enbridge Energy, 119 North 25th Street East, Superior, WI 54880

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2643]

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
Enbridge Pipelines (Ozark), L.L.C.,	)	**CPF No. 4-2010-5008**
Respondent.	)	

FINAL ORDER

On September 21-24 and December 7-11, 2009, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Enbridge Pipelines (Ozark), L.L.C. (Enbridge or Respondent), at its Cushing Terminal facility in Cushing, Oklahoma. Enbridge, a subsidiary of Enbridge Energy Partners, L.P., operates approximately 100 crude-oil breakout tanks and approximately 485 miles of crude-oil pipelines in Oklahoma, Illinois, Missouri, and Kansas.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated March 8, 2010, 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 Enbridge had committed violations of 49 C.F.R. § 195.432 and proposed assessing a civil penalty of $28,800. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations.

Enbridge responded to the Notice by letters dated April 12 and April 30, 2010 (collectively, Response). The company did not contest the allegations of violation, paid the proposed civil penalty of $28,800, as provided in 49 C.F.R. § 190.227, and provided information concerning the corrective actions it planned to take. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Enbridge did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.432, which states in relevant part:

§ 195.432 Inspection of in-service breakout tanks.

(a) . . . .

(b) Each operator shall inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to section 4 of API Standard 653. However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under § 195.402(c)(3) . . . .

(d) The intervals of inspection specified by documents referenced in paragraphs (b) and (c) of this section begin on May 3, 1999, or on the operator's last recorded date of the inspection, whichever is earlier.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432 by failing to conduct external visual inspections of 20 in-service aboveground breakout tanks with the frequency that API Standard 653 requires. API Standard 653 requires operators to inspect such tanks at least every five years. The Notice alleged that Enbridge inspected 20 tanks at intervals greater than five years. Respondent did not contest this allegation of violation and explained that it had revised its procedures to require a more definitive five-year or "five periods of 365 days" inspection cycle. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432 by failing to conduct aboveground tank inspections according to the requirements of API Standard 653.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.432, as quoted above, by failing to conduct internal inspections of 23 breakout tanks with the frequency that API Standard 653 requires.

49 C.F.R. § 195.432 requires that internal inspections of breakout tanks be carried out according to section 4 of API Standard 653, which describes the method by which internal inspection intervals are to be calculated and establishes maximum inspection intervals. The standard provides for a 10-year maximum inspection interval for tanks for which corrosion rates are unknown, unless the operator uses specific procedures to estimate corrosion. The Notice alleged that Respondent did not know, and could not estimate, the corrosion rates of four newly constructed tanks, and that the company violated § 195.432 by exceeding the consequent 10-year maximum inspection interval. The Notice alleged further that Respondent did have adequate information to determine the appropriate corrosion rate for 19 other existing tanks, and that Respondent violated § 195.432 by exceeding the consequent 10-year maximum inspection interval.

Respondent did not contest this allegation of violation and explained that the company lacked sufficient records to demonstrate compliance due, in part, to its recent acquisition of the facility in 2004 and the previous owner's records. In its Response, Enbridge proposed a schedule for corrective actions it planned to take. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.432 by failing to inspect 23 tanks with the frequency required by API 653.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to **Item 2** in the Notice for a violation of 49 C.F.R. § 195.432. 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:

1. Respondent must prepare a schedule for inspecting the 23 tanks that were not properly inspected. Upon the Director's written approval of the schedule, Respondent must carry out the inspections and any necessary repairs as set forth in the schedule.

2. Respondent must provide quarterly updates to the Director on the progress of the tank inspections referenced above until the inspections are completed. The updates must identify the inspection schedule, inspection results, recommended repairs, a repair schedule, and the results of repairs for these tanks. The first quarterly report is due 30 days from Respondent's receipt of this Final Order, and then every three months thereafter.

3. Respondent must maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. Costs shall 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.

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

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed $100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

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 sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA

will accept petitions received no later than 20 days after receipt of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. Unless the Associate Administrator, upon request, grants a stay, the terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

3/11/10
Date Issued