



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

Mr. Dan Tutcher
President
Enbridge Pipelines, L.L.C.
1100 Louisiana, Suite 3300
Houston, TX 77002

Re: CPF No. 36523

Dear Mr. Tutcher:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one of the allegations of violation, makes findings of violation, and assesses a civil penalty of \$25,000. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, 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

cc: Mr. Ivan Huntoon
Director, Central Region, OPS

Mr. Mark J. Willoughby
Compliance Manager
Enbridge Pipelines, LLC
119 North 25th Street, East
Superior, WI 54880

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

_____)
In the Matter of)

Enbridge Pipelines, L.L.C.)
 (formerly Lakehead Pipe Line)
 Company, Inc.),)

Respondent.)
 _____)

CPF No. 36523

FINAL ORDER

On the following dates, a representative of the Minnesota Office of Pipeline Safety (MnOPS), as an agent for the Office of Pipeline Safety (OPS) conducted the following investigations and inspections:

Investigation Dates	Investigation Issue	Issue Date	Location
December 14, 15 and 22, 1994; February 5, 1996; and March 8 and 20, 1996	failed weld on a stopple fitting	December 10, 1994	Respondent's 34-inch line 3, at M.P. 920
November 13-15, 1995; February 5 and 14, 1996; and March 20, 1996	reported leak	November 13, 1995	Respondent's 34-inch line 3, at M.P. 856.3
February 8, 14, 21, and 26-28, 1996; and March 8 and 20, 1996	specialized welding inspection related to repairs prompted by the results of a high resolution internal inspection	1995	Respondent's 48-inch Floodwood Loop

As a result of the investigations and inspections, the Director, Central Region, OPS, issued to Respondent, by letter dated December 4, 1996, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$30,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

After requesting and receiving an extension of time to respond, Respondent responded to the Notice by letter dated January 17, 1997 (Response). Respondent contested some of the allegations, presented information in mitigation of the proposed penalty, and requested a hearing. In a letter dated August 16, 2005, Respondent withdrew its request for a hearing.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. §195.214 by failing to follow a qualified welding procedure for performing a fillet weld at M.P. 920 associated with a stopple fitting failure, a fillet weld at M.P. 856.3 during a repair after a reported leak, and a fillet weld during repairs on the 48-inch Floodwood Loop. Respondent's qualified procedure for fillet welds, UF-28, requires fillet weld leg lengths to be a minimum of 1.4 times the carrier wall thickness, plus any gap associated with the fit-up of the sleeve or fittings. In its response, Respondent did not dispute that its personnel had performed fillet welds having leg lengths below the length specified in UF-28 and Respondent acknowledged that its personnel performed a portion of a fillet weld on a downhill pass rather than an uphill pass as specified in its UF-28 procedure. Accordingly, I find that Respondent violated § 195.214 by failing to follow the specified welding procedure.

Item 2 in the Notice alleged that Respondent violated 49 C.F.R. § 195.228(a) by failing to adequately inspect welds to ensure that each weld was performed in accordance with the requirements of Subpart D of Part 195. In its response, Respondent contended that the welds were sound as determined by non-destructive testing and complied with ASME B31.4 guidelines. The requirements of Subpart D, however, include the requirement that welding follow previously qualified procedures. As noted in Item 1 above, the relevant procedure was not followed. Because the inspections performed by Respondent did not detect the fact that the relevant procedure was not followed and allowed the welds to be placed into service, the inspections were inadequate. Accordingly, I find that Respondent violated § 195.228(a) by failing to adequately inspect welds to ensure that each weld was performed in accordance with the applicable requirements.

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

WITHDRAWAL OF ALLEGATION

Item 4 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.402(c)(3) by failing to establish procedures for welding tight-fitting sleeves that included extending adjacent sleeves or installing sleeves over pipe bends. In its response, Respondent submitted information demonstrating that their existing welding procedures were suitable to these tasks. Based on this information demonstrating compliance with the regulation, I am withdrawing this allegation of violation.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122 (2000), Respondent is subject to a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 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.

With respect to Item 1, the Notice proposed a civil penalty of \$16,000 for Respondent's failure to follow its qualified welding procedure for performing fillet welds. Following qualified welding procedures is an important part of pipeline safety because the any inconsistencies in the quality of welds performed on a pipeline can increase the risk of failures. In its response, explained that it believed that the failure to meet the minimum leg lengths resulted in large part from a misinterpretation by its personnel of the relevant illustration in its UF-28 procedure. Respondent also indicated that it has taken corrective action including providing additional guidance on the UF-28 procedure and additional training to its personnel. Respondent, however, presented no information that would warrant a reduction in the penalty amount proposed in the Notice for this item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$16,000 for this violation.

With respect to Item 2, the Notice proposed a civil penalty of \$9,000 for Respondent's failure to adequately inspect welds to ensure that each weld was performed in accordance with the requirements of Subpart D of Part 195. Adequate inspection of each weld is an important part of pipeline safety because welds with inadequate leg length are susceptible to longitudinal stresses and may have insufficient thickness to carry the load. Thorough inspection is critical to ensure that such welds are not placed into service. In its response, Respondent explained that the welds were inspected for many characteristics other than leg length and were non-destructively tested. Respondent, however, presented no information that would warrant a reduction in the penalty amount proposed in the Notice for this item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$9,000 for this violation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$25,000.

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) 954-4719.

Failure to pay the \$25,000 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.

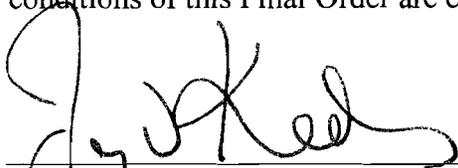
COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Items 1, 2, and 4. 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. The Regional Director has indicated that Respondent addressed its welding procedures and developed and executed a system-wide program to investigate and repair where necessary inadequate fillet welds on sleeves and stopple fittings as specified in the Proposed Compliance Order. Accordingly, since compliance has been achieved with respect to these violations, it is unnecessary to include compliance terms in this Order.

WARNING ITEM

This Order does not assess a civil penalty or include a Compliance Order for Item 3 in the Notice. Therefore, this is considered to be a warning item. The warning was for Respondent's failure to backfill an area upstream of the stopple fitting at Mile Post 920 in a manner that provided firm support under the pipe in accordance with § 195.252. Respondent provided information in its response indicating that it has addressed this item. Respondent is warned that if this item is not fully addressed, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, 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 a 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

 Date Issued