

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)	
)	
Enbridge Energy, LP,)	CPF No. 3-2012-5017H
)	
Respondent)	
)	

CONSENT AGREEMENT AND ORDER

On July 30, 2012, under authority of 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Corrective Action Order, which as later amended (collectively, CAO) to Enbridge Energy Partners, LP (Enbridge or Respondent), finding that continued operation of Line 14 of Respondent’s Lakehead Pipeline System that runs from Superior, Wisconsin, to Mokena, Illinois, without corrective action would be hazardous to life, property, or the environment and requiring Respondent to take immediate corrective action to ensure the safe operation of the pipeline. PHMSA issued the July 30, 2012 CAO (Original CAO) ¹ in response to a failure on Line 14 near Grand Marsh, Wisconsin, that was reported by Enbridge on July 27, 2012 (Failure). The Failure resulted in an estimated release of 1,200 barrels of crude oil. PHMSA initiated an investigation of the Failure, which investigation is ongoing.

Line 14 is a part of Respondent’s 1,900 mile-long Lakehead Pipeline System, which transports hazardous liquid from Neche, North Dakota, to Chicago, Illinois, with an extension to Buffalo, New York.²

The preliminary findings in the Original CAO noted that the history of failures on Respondent’s Lakehead Pipeline System, the defects originally discovered during

¹ *In the Matter of Enbridge Energy Partners, L.P.*, Corrective Action Order (CPF No. 3-2012-5017H) dated July 30, 2012.

² See <http://www.enbridgeus.com/Delivering-Energy/Pipeline-Systems/Liquids-Pipelines/> (last accessed August 1, 2012). The Lakehead System includes Lines 1, 2, 3, 4, 5, 6A, 6B, 10, 14, and 64, and associated facilities.

construction of Line 14, a 2007 failure on Line 14, and the July 2010 failure on Line 6B in Marshall, Michigan, and additional failures throughout all parts of the Lakehead Pipeline System indicate that Respondent's safety and integrity management programs appear to be inadequate.

On August 1, 2012, PHMSA issued an Amendment to the Corrective Action Order. The Amendment concluded that given the nature, circumstances, and gravity of this pattern of accidents, additional system-wide corrective measures are warranted and added a new Item 13 to the Original CAO as follows:

13. Before the Director, Central Region, OPS, approves the restart of Line 14, Enbridge must (1) submit, for review and approval, a comprehensive written plan, including timelines for specific actions to improve the safety record of Respondent's Lakehead Pipeline System and (2) hire an independent third party pipeline expert to review and assess the written plan, which the third party will submit to PHMSA and to Respondent concurrently. Further, the third party expert must oversee the creation, execution and implementation of the actions identified in the plan, and must provide monitoring summaries to PHMSA and Respondent concurrently. Respondent must commit to address any deficiencies or risks identified in the third party's assessment, including repair and replacement of high-risk infrastructure.

The plan must be sufficiently detailed with specific tasks, milestones and completion dates. At a minimum, the plan must address:

- a. Organizational issues, including the promotion of a safety culture and creation of a safety management system;
- b. Facilities response plan;
- c. Control room management;
- d. Priorities for pipe replacement;
- e. Training;
- f. In-line inspection result interpretation;
- g. Current engineering and probability of failure modeling;
- h. Leak detection systems;
- i. Sensor and flow measuring and valve replacement;
- j. Integrity verification;
- k. Quality management system; and
- l. Any other risk, task, issue or item that is necessary to promote and sustain the safety of its pipeline system.

On August 4, 2012, Respondent submitted the plan required by Item 13 of the CAO, as amended (the Lakehead Plan or the Plan). The Plan includes specific tasks, milestones, and completion dates for specific actions to improve the safety of the Lakehead Pipeline System. The Plan also provides for an independent third-party pipeline expert to review

and assess the written Plan and oversee the creation, execution and implementation of the actions identified in the Plan. Respondent and PHMSA engaged in good faith settlement discussions resulting in this Consent Agreement and Order.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement and Order is the most appropriate means of resolving the Corrective Action Order, as amended, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA (“the Parties”), the following is agreed upon and Ordered:

I. General Provisions

1. Respondent acknowledges that as operator of the Lakehead Pipeline System, Respondent and its pipeline system are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101 *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Consent Agreement and Order, Respondent acknowledges that it received proper notice of PHMSA’s action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101 *et seq.* and the regulations and orders issued thereunder.

2. Respondent agrees to the findings in the Corrective Action Order, as amended, and agrees to complete the actions specified in Section II of this agreement (“Work to be Performed”). These actions, including any work plans and schedules, shall automatically be incorporated into this Consent Agreement and Order. This Consent Agreement and Order does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Consent Agreement and Order.

3. Respondent consents to the issuance of this Consent Agreement and Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, the Corrective Action Order, as amended, or the validity of the Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.

4. This Consent Agreement and Order shall apply to and be binding upon PHMSA, and upon Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Consent Agreement and Order, and any incorporated work plans and schedules, to all of Respondent’s officers, employees, and agents whose duties might reasonably include compliance with this Consent Agreement and Order.

5. For all transfers of ownership or operating responsibility of Respondent's Pipeline System, Respondent shall provide a copy of this Consent Agreement and Order to the prospective transferee at least 30 business days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Official who signs this Consent Agreement and Order.

6. This Consent Agreement and Order constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Agreement and Order, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Agreement and Order, except that the terms of this Consent Agreement and Order may be construed by reference to the Corrective Action Order, as amended.

7. Nothing in this Consent Agreement and Order affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101 *et seq.*, and the regulations and orders issued thereunder. Nothing in this Consent Agreement and Order alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

8. This Consent Agreement and Order does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Consent Agreement and Order is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Consent Agreement and Order does not create rights in, or grant any cause of action to, any third party not party to this Consent Agreement and Order. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Consent Agreement and Order. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out the work required by this Consent Agreement and Order.

II. Work to be Performed

10. Respondent agrees to perform all actions set forth in the Corrective Action Order, as amended, including all actions set forth in the restart plan, testing and root cause analysis requirements, the integrity verification and remedial work plan, and any other

work plans or schedules developed under the CAO, as amended or otherwise directed by the Director, Central Region, PHMSA (Regional Director).

11. Respondent agrees to perform all actions set forth in the addendum to this Consent Agreement and Order entitled the Lakehead Plan in Appendix A, which is hereby incorporated into this Consent Agreement and Order as are any additional or modified plans and schedules developed under the Lakehead Plan. The Plan shall be revised as necessary to incorporate new information obtained during the evaluations and remedial activities performed under the Plan. Respondent must submit any such Plan revisions to the Regional Director for acceptance. The Regional Director may accept Plan elements incrementally. The Regional Director may direct Respondent to revise or modify the Plan as necessary.

12. Respondent agrees that it will implement the findings and recommendations of the third-party expert pursuant to the Scope of Work in Appendix B which is hereby incorporated into this Consent Agreement and Order including but not limited to risk mitigation measures and recommended repair and replacement of pipeline facilities and any additional recommendations of the third-party expert.

13. Respondent agrees to submit monthly reports to the Regional Director that: (1) include all available data and results of the work performed under this Consent Agreement and Order. The first monthly report for the period from August 1 through August 31, 2012 will be due by September 7, 2012.

14. Respondent agrees to maintain documentation of the costs associated with implementation of this Consent Agreement and Order. Include in each monthly report submitted, the to-date total costs associated with: (1) testing, evaluations and information analysis; (2) revisions of procedures and additional monitoring and inspections; and (3) physical changes to pipeline infrastructure, including repairs, replacements and other modifications.

15. The Regional Director may grant an extension of time for completion of any of the work to be performed hereunder upon a timely, written request that demonstrates both good cause for an extension and sufficient detail to evaluate Respondent's good cause request.

III. Review and Approval Process

16. With respect to any submission under Section II of this Consent Agreement and Order that requires the acceptance of the Regional Director, the Regional Director may: (a) accept, in whole or in part, the submission, (b) accept the submission on specified conditions, (c) not accept, in whole or in part, the submission, or (d) any combination of the foregoing. In the event of acceptance in whole, in part, or upon conditions, Respondent will proceed to take all actions required by the submission as accepted by the

Regional Director, subject to Respondent's right to invoke the dispute resolution procedures in Section IV with respect to any conditions identified by the Regional Director. In the event that the Director does not accept all or any portion of the submission, the Regional Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Regional Director and resubmit it for acceptance.

IV. Dispute Resolution

17. The Regional Director and Respondent will informally attempt to resolve any disputes arising under this Consent Agreement and Order. If Respondent and the Regional Director are unable to informally resolve the dispute within 15 business days, Respondent, providing all information that Respondent believes is relevant to the dispute, may request in writing, within 10 business days, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety. If the request is submitted as provided herein, the Associate Administrator will issue a written determination that shall be final. The existence of a dispute and PHMSA's consideration of matters placed in dispute shall not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Regional Director or the Associate Administrator in writing.

V. Enforcement of Agreement and Order

18. This Consent Agreement and Order, including all plans and schedules incorporated by reference, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101 *et seq.* and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C § 60122 of up to \$200,000 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not proceeding in accordance with terms of the Consent Agreement and Order, in accordance with determinations made by the Regional Director, or if appealed, in accordance with decisions of the Associate Administrator. The Lakehead Plan, and all other work plans and associated schedules developed under Section II, shall be automatically incorporated into this Consent Agreement and Order and are enforceable in the same manner.

VI. Record Keeping and Information Disclosure

19. Respondent agrees to maintain records demonstrating compliance with all requirements of this Consent Agreement and Order for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Consent Agreement and Order, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the

information required to be submitted to PHMSA pursuant to this agreement in accordance with 49 C.F.R. Part 7. The claim of confidentiality shall be marked in writing on each page, and shall include a statement specifying the grounds for each claim of confidentiality. PHMSA shall determine release of any information submitted pursuant to this Consent Agreement and Order in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and/or PHMSA policies, and other applicable regulations and Executive Orders.

VII. Effective Date

20. The “Effective Date” as used herein is the date on which this Consent Agreement and Order has been signed by both Respondent and PHMSA. Unless specified to the contrary, all deadlines for actions required by this Consent Agreement and Order run from the Effective Date of this Consent Agreement and Order.

VIII. Modification

21. The terms of this Consent Agreement and Order may be modified by mutual agreement of the parties. Such modifications shall be in writing and shall be signed by both parties.

IX. Termination

22. This Consent Agreement and Order shall terminate upon the completion of all terms set forth in Section II (Work to Be Performed). Respondent may request written confirmation from PHMSA when this Consent Agreement and Order is terminated. To the extent ongoing monitoring is required, PHMSA may terminate this Consent Agreement and Order with respect to all other requirements with the exception of such monitoring. Nothing in this Consent Agreement and Order prevents Respondent from completing any of the obligations earlier than the deadlines provided for herein.

X. Ratification

23. The Parties undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and Order and to execute and legally bind such party to this document.

24. The Parties hereby agree to all conditions and terms of this Consent Agreement and Order:

For Respondent:

Mr. Richard Adams
Vice President, US Operations
Enbridge Energy, LP

Date

For PHMSA:

Respondent is hereby ordered to comply with the terms of this Consent Agreement and Order, effective immediately.

Mr. Jeffrey D. Wiese
Associate Administrator for Pipeline Safety
PHMSA

Date