



EPA Perspective

**Information-Gathering Meeting
July 27, 2022**

**Committee on Criteria for Installing Automatic and Remote-Controlled
Shutoff Valves on Existing Gas and Hazardous Liquid Transmission
Pipelines**

Outline



- I. Penalties for discharge to navigable waters
 - I. Administrative cases
 - II. Civil actions / judicial cases
- II. Remotely controlled valves
 - I. Enbridge consent decree
 - II. Environmental criteria
- III. Q & A

Discharge of oil to navigable water is prohibited



- Section 311(b)(3) of the CWA prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States.
 - <https://www.law.cornell.edu/uscode/text/33/1321>
 - <https://www.govinfo.gov/app/details/USCODE-2011-title33/USCODE-2011-title33-chap26-subchapIII-sec1321>

Penalty for administrative cases



- Under Section 311(b)(6) of the CWA, each violation is subject to a Class I or Class II penalty
 - Class I penalty is capped at \$51,796 *(w/inflation adjustment)*
 - Class II penalty is capped at \$259,978 *(w/inflation adjustment)*

Penalty for civil actions/judicial cases



- Under Section 311(b)(7)(A) of the CWA, each violation of Section 311(b)(3) is subject to a civil penalty in an amount up to \$59,973 per day or \$2,072 per barrel of oil discharged *(w/inflation adjustment)*
- Under Section 311(b)(7)(D) of the CWA, any oil spill which is the result of gross negligence or willful misconduct is subject to a penalty of \$6,215 per barrel *(w/inflation adjustment)*

Penalty Calculation



- 1998 EPA Civil Penalty Policy
 - <https://www.epa.gov/sites/default/files/documents/311pen.pdf>
- Economic Benefit + Gravity-Based Penalty
- The severity of the gravity penalty is based on four factors:
 - Seriousness: quantity and potential environmental impact
 - Degree of culpability
 - Nature, extent, degree of success of any efforts to minimize or mitigate the effects of the discharge
 - History of prior violations
- Inflation adjustment
 - https://www.epa.gov/system/files/documents/2022-01/2022amendmentstopenaltypoliciesforinflation_0.pdf
- Adjustments to gravity
 - Other matters as justice may require
- Litigation considerations

Statutory Factors



- To determine an appropriate civil penalty, the Court would consider:
 - The seriousness of the violation or violations
 - The economic benefit to the violator, if any, resulting from the violation
 - The degree of culpability involved, and any other penalty for the same incident
 - Any history of prior violations,
 - The nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge
 - The economic impact of the penalty on the violator
 - Any other matters as justice may require
- 33 U.S.C. § 1321(b)(8)

Remotely Controlled Valves



- Very important disclaimers
 - I am an attorney and not an engineer and CERTAINLY NOT a pipeline engineer
 - My knowledge/experience is through EPA/DOJ CD and not via PHMSA regulations



Manual

vs.



Automated

Enbridge Consent Decree



- In May 2017, the Court entered a Consent Decree (CD) to resolve US government claims resulting from July 2010 spill of at least 20,082 barrels of oil into the Kalamazoo River (MI) and September 2010 leak of oil near Romeoville (IL)
 - https://www.epa.gov/sites/default/files/2017-06/documents/enbridge_consent_decree.pdf
- Enbridge response (7/2010)
 - <https://www.epa.gov/enbridge-spill-michigan/enbridge-spill-response-timeline>
- Romeoville response (9/2010)
 - <https://response.epa.gov/EnbridgeRomeoville>



Key provisions of the Consent Decree



- Payment of \$62M in civil penalty for both spills
- Replacement of **Line 3** →
- A robust in-line inspection program
- Measures to prevent spills in the **Straits of Mackinac** ↘
- Data integration
- Leak detection and control room requirements
- Spill response and preparedness measures
- **Installation of 14 new remotely controlled valves**
 - **Section I CD starting at p. 124**



Line 3



Line 5 crossing Straits

14 new remotely controlled valves

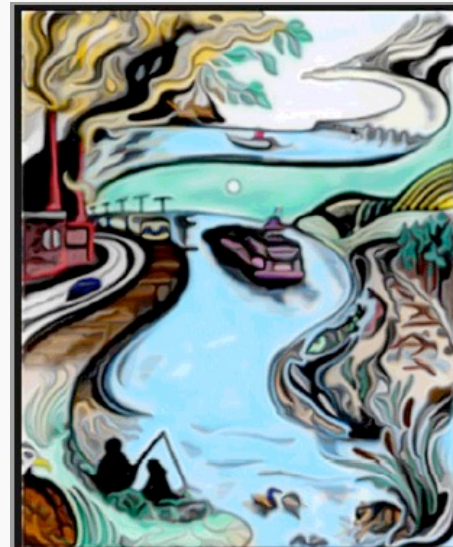


- US wanted additional valves as among additional protections to mitigate the amount of oil spilled in the event of a leak or rupture
- Remotely controlled valves superior to manual valves due to time needed to shut them
- EPA required the valves placed to protect:
 - Environmentally sensitive areas
 - Endangered species
 - Tribal lands
 - Sensitive water bodies
 - Highly populated areas

Inland Sensitivity Atlas Environmental Sensitive Areas



- EPA's Inland Sensitivity Atlas identifies areas in Region 5
 - Geographic Information System (GIS) application providing contingency planners and emergency responders with accurate and relevant information for spill preparedness and response
 - Contains environmental, oil, and Geographic Response Plan (GRP) information to support planning and response operations within the USEPA Region 5 jurisdictional area
 - <https://response.epa.gov/ISA>



Inland Sensitivity Atlas Environmentally Sensitive Areas



• Environmentally Sensitive Areas

▪ Natural Resource Areas

- Managed Lands
- Special Designated Areas
- Tribal Lands
- Other Environmentally Sensitive Areas

▪ Sensitive Species

- Aquatic/Riparian
- Terrestrial
- Multiple Species

• Other Sensitive Resources

- Surface Water Intakes
- Marinas
- Navigation Locks and Dams

• Oil Storage, Transportation & Hazardous Materials

- Fixed Oil Storage Facility
- Marine Transfer Facility
- Oil, Oil Product Pipeline
- Hazardous Materials

• Response Considerations

- Boat Access
- Non-navigational Dams
- Historic/Archeological Sites






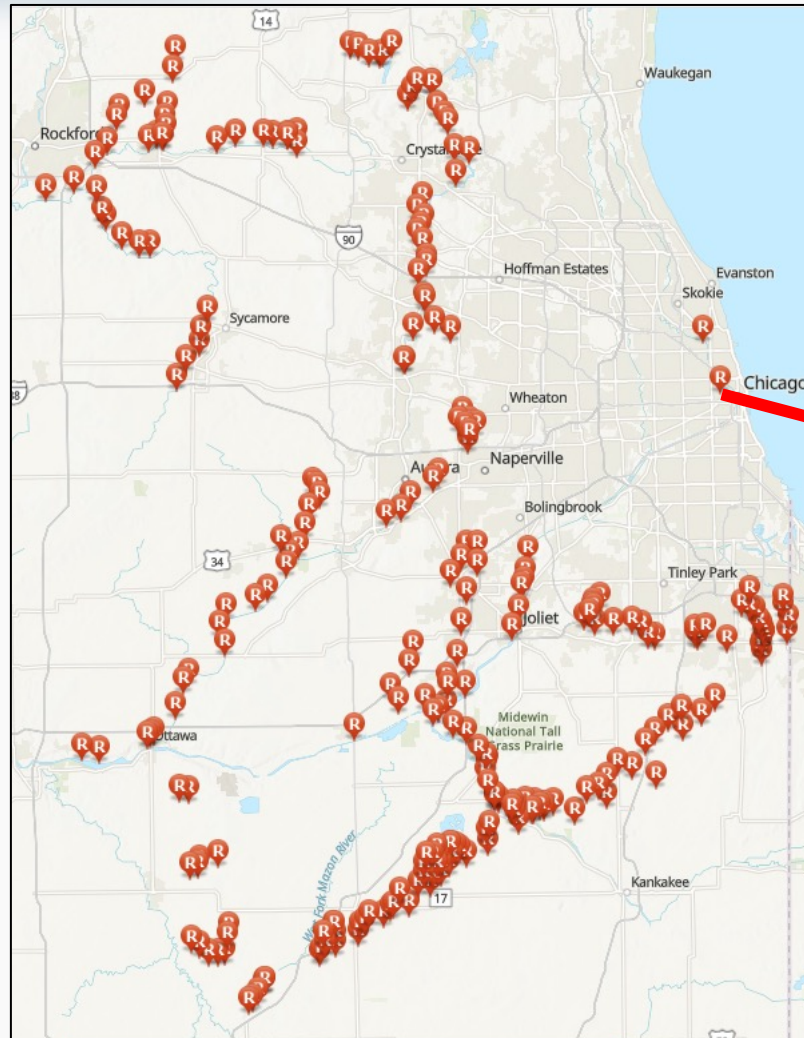
Inland Sensitivity Atlas Geographic Response Plans



Legend

GRP Response Strategy Survey

-  Response Data Sheet
-  Staging Area Only Data Sheet
-  Monitoring Data Sheet



- Access
- Containment / Diversion
- Tactics



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RIVER VIEW



Questions ?



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