



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

VIA FEDERAL EXPRESS AND FACSIMILE

Mr. Kevin Hostler
President and Chief Executive Officer
Alyeska Pipeline Service Company
900 E. Benson Boulevard
Anchorage, AK 99519

Mr. Doug Suttles
President
BP Exploration (Alaska), Inc.
900 E. Benson Boulevard
Anchorage, AK 99501

Re: CPF No. 5-2008-5016H

Gentlemen:

Enclosed is a Notice of Proposed Corrective Action Order (Notice) issued in the above-referenced case. The Notice proposes that Alyeska Pipeline Service Company and BP Exploration (Alaska), Inc. take certain measures with respect to their respective portions of the crude oil pipeline that connects Skid 50 to Pump Station 1 at Prudhoe Bay. Service is being made by Federal Express and facsimile. Your receipt of this Notice constitutes service of that document under 49 C.F.R. § 190.5.

We look forward to a successful resolution of the potentially hazardous conditions posed by this pipeline. Please direct any questions on this matter to me at (720) 963-3160.

Thank you for your cooperation in this matter.

Sincerely,

Chris Hoidal
Director, Western Region

Enclosures: *Notice of Proposed Corrective Action Order*
49 C.F.R. § 190.233

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WESTERN REGION
LAKEWOOD, CO 80228**

In the Matter of)	
Alyeska Pipeline Service Company)	CPF No. 5-2008-5016H
and)	
BP Exploration (Alaska), Inc.,)	
Respondents.)	

NOTICE OF PROPOSED CORRECTIVE ACTION ORDER

Background and Purpose

This Notice of Proposed Corrective Action Order (“Notice”) is issued in reference to a hazardous liquid pipeline operated in part by BP Exploration (Alaska), Inc. (“BPXA”) and in part by The Alyeska Pipeline Service Company (“Alyeska”), at the Prudhoe Bay Unit oil field in the North Slope Borough, near Deadhorse, Alaska. This short but critical pipeline (“Affected Pipeline”) transports the combined output of crude oil—approximately 400,000 barrels per day—from the Prudhoe Bay Unit Western Operating Area (“WOA”) and the Prudhoe Bay Unit Eastern Operating Area (“EOA”) to the Trans Alaska Pipeline System (“TAPS”). The Affected Pipeline begins at BPXA’s Skid 50 facility and ends at Alyeska’s Pump Station 1 of TAPS. The upstream section is operated by BPXA and the downstream section is operated by Alyeska.

In March and August 2006, two crude oil pipelines located just upstream of Skid 50 and operated by BPXA failed and caused spills of crude oil on the tundra of the North Slope of Alaska. The March failure occurred on the WOA crude oil transit pipeline and resulted in a spill of an estimated 212,252 gallons of oil. The August failures occurred on the EOA crude oil pipeline and resulted in a spill of an estimated 966 gallons of oil. Both lines have similar operational and internal characteristics to the Affected Pipeline.

In response to the 2006 WOA and EOA failures, PHMSA issued a Corrective Action Order and three subsequent Amendments to BPXA in 2006 and 2007 (“BPXA CAO.”)¹ The Pipeline and Hazardous Materials Safety Administration (“PHMSA” or “the agency”) and BPXA agree that internal corrosion was a cause of the 2006 failures and that roughly sixteen (16) miles of WOA and EOA pipeline have ultimately needed replacement in order to effectively address future corrosion risks on those lines. This replacement work is currently underway and is scheduled for completion by the end of 2008.

A purpose of this Notice is to address corrosion risks on the Affected Pipeline to prevent similar failures. Specifically, PHMSA proposes that BPXA and Alyeska be required to undertake measures similar to those imposed by PHMSA in the BPXA CAO to either assess and repair or replace the Affected Pipeline. The Affected Pipeline has never been fully assessed and its condition remains largely unknown.

PHMSA issues this Notice of Proposed Corrective Action Order, in accordance with 49 U.S.C. § 60112, to BPXA and Alyeska (collectively, “Respondents”), notifying them of the agency’s preliminary findings regarding the Affected Pipeline and proposing that Respondents take certain corrective measures with respect to the Affected Pipeline that PHMSA deems necessary to protect life, property, and the environment from potential hazards associated with the Affected Pipeline.

Because Respondents each operate a portion of the Affected Pipeline, PHMSA encourages Respondents to develop a joint and coordinated plan to accomplish the corrective measures proposed in this Notice.

Preliminary Findings

Failures of Pipelines Similar to the Affected Pipeline

1. PHMSA began an investigation of the 2006 WOA pipeline failure immediately after learning of the incident. On March 15, 2006, PHMSA issued a Corrective Action Order finding that the continued operation of three hazardous liquid pipelines BPXA operates—the WOA, EOA and Lisburne pipelines (“Subject Pipelines”)—would be hazardous to life, property, and the environment, if certain corrective measures were not taken. The CAO set forth preliminary findings based on PHMSA’s initial investigation of the failure and required, among other actions, that BPXA perform certain cleaning pigging and smart pigging of the Subject Pipelines. PHMSA amended the CAO three times based upon its ongoing investigation of the March failure and the subsequent August 2006 failures and PHMSA’s finding that the Subject Pipelines would continue to be hazardous to life, property, and the environment without additional corrective measures.

¹ See *In the Matter of BP Exploration (Alaska), Inc.*, Corrective Action Order, CPF No. 5-2006-5015H, (Pipeline and Hazardous Materials Safety Admin. Mar. 15, 2006) as amended by Amendment No. 1 to Corrective Action Order (July 20, 2006), Amendment No. 2 to Corrective Action Order (Aug. 10, 2006), and Amendment No. 3 to Corrective Action Order (Apr. 27, 2007).

2. In the course of investigating the WOA and EOA failures, PHMSA found that they resulted, in part, from internal corrosion that had reduced the thickness of the pipeline walls. PHMSA also found that certain common operating and internal characteristics were relevant to the failures. These characteristics include, but are not limited to: a lack of routine cleaning pigging; low crude oil flow velocities; the corrosivity of the materials transported (including water and sediments); the tendency of sediments and water to drop out of the low flow velocity crude oil stream onto the bottom inside surface of the pipelines; the presence of accumulated water and sediments inside the pipelines; operation in similar environmental conditions; and ineffective corrosion inhibitor and pipeline assessment programs.
3. The Affected Pipeline shares the common operating and internal characteristics listed above with the EOA and WOA pipelines. However, whereas the WOA and EOA pipelines were cleaned and smart pigged (albeit very infrequently prior to the 2006 failures), the Affected Pipeline has never been cleaned or smart pigged.
4. It is well known that low crude oil flow velocities often cause the accumulation of water and solids inside pipelines. BPXA has reported periodic upset conditions in which water has been released into the WOA and EOA. It is likely that some of this water has entered into and accumulated in the Affected Pipeline. BPXA has also reported that Gama Ray scans of its portion of the Affected Pipeline indicate the presence of accumulated solids in the line. Therefore, it is likely that solids have also accumulated in the Alyeska-operated section of the Affected Pipeline.
5. The accumulation of water and solids in the bottom of the Affected Pipeline increases the risk of internal corrosion and spills of oil, particularly when water and solids are not removed by the use of cleaning pigs. As PHMSA noted in Amendment No. 3 to the CAO, the accumulation of water and solids was a factor in the 2006 WOA and EOA failures.

The Affected Pipeline

6. The Affected Pipeline is approximately 0.4 miles in length and located approximately 12 miles from Deadhorse, Alaska. The upstream section is a 34-inch line operated by BPXA and known as "OT 501." OT 501 originates at Skid 50, runs beneath the Spine Road, and ends at a welded pipe joint in the vicinity of an insulating flange approximately 1,600 feet downstream from Skid 50. The downstream section, a 36-inch line known as the Greater Prudhoe Bay Connecting Pipeline ("GPB CP"), is operated by Alyeska, and originates at the welded pipe joint. The GPB CP runs mostly underground, is partially encased in concrete, and ends at Pump Station 1 approximately 660 feet downstream.
7. During the course of its investigations of the 2006 pipeline failures and the Agency's oversight of the BPXA CAO, PHMSA became concerned about the safety of the Affected Pipeline because of its shared operating and internal characteristics to the failed

WOA and EOA pipelines, as described above, and because the Affected Pipeline had not been cleaned or internally inspected.

8. As a result of these concerns, in the summer of 2006, PHMSA, by way of Item 34 of the BPXA CAO, required BPXA to submit information detailing the results of assessments and testing of the Affected Pipeline, then referred to by BPXA as OT 501, as well as plans for future assessment and testing. On September 8, 2006, BPXA provided responsive information. In its Response, BPXA provided information about OT 501 and the results of external assessments that the company had conducted. BPXA indicated that OT 501 transported oil from Skid 50 to Pump Station 1 but did not indicate that there was another section of the Affected Pipeline that was operated by Alyeska.
9. In the summer of 2006, PHMSA, by way of Items 17 and 23 of the BPXA CAO, also required BPXA to submit information on its plans for the repair or replacement of WOA and EOA. In the fall of 2006, BPXA indicated that it would replace several segments of the Prudhoe Bay Unit pipelines. In January 2007, BPXA provided details regarding the nature and scope of the replacement project, including its plans to replace the entire Affected Pipeline (including the section operated by Alyeska) by the end of 2008. Specifically, BPXA indicated that the Affected Pipeline would be replaced with a new pipeline of a uniform diameter, equipped with facilities to enable the line to be readily assessed with smart pigs and cleaned with cleaning pigs. PHMSA reflected this commitment in Item 35 of the BPXA CAO by requiring BPXA to report monthly on the progress of pipeline replacement and to provide notice of any material changes to the scope, design elements, or schedule of BPXA's plans for replacement.
10. Replacement of the Affected Pipeline with a new, piggable line would likely eliminate many of the corrosion-related risks on the Affected Pipeline. In the alternative, full inspection, repair, maintenance and work to make the existing Affected Pipeline piggable, may eliminate such corrosion-related risks.
11. By letter dated January 29, 2008, BPXA reiterated its desire to replace the Affected Pipeline to ExxonMobil Production Company ("Exxon"), one of the Working Interest Owners ("Owners") of the Prudhoe Bay Unit.² BPXA expressed its belief that "[t]he pipeline between Skid 50 and Pump Station 1 is one of the most important sections of pipeline on the North Slope. The entire flow from the Prudhoe Bay Unit is transported through this pipeline just before it enters the Trans Alaska Pipeline."
12. In the fall and winter of 2007, BPXA indicated to PHMSA that it was working to obtain certain approvals for its plan to replace the Affected Pipeline.
13. On February 10, 2008, however, BPXA notified PHMSA by letter³ that it had suspended plans to replace the Affected Pipeline. BPXA later explained that it was suspending its replacement plans because it had not been able to obtain funding approval from all of the

² The Owners consist of several oil companies who jointly own the Prudhoe Bay Unit facilities. BPXA operates the facilities on behalf of the Owners pursuant to a written agreement.

³ Pursuant to Item 35 of the BPXA CAO.

Owners. Upon receiving this news, PHMSA requested⁴ and received⁵ additional information from Respondents regarding the specifications and condition of their respective sections of the Affected Pipeline.

14. By letter dated, March 28, 2008, BPXA provided PHMSA re-submitted assessment information on several spot locations along OT 501 that it had complied in 2006 using Non-Destructive Evaluation (“NDE”) tools applied to the exterior of the pipeline. The 2006 information included assessment results indicating that OT 501 had two (2) indications of internal corrosion with wall loss up to 40% and eight (8) indications of internal corrosion with wall loss up to 20%. The 2006 information also revealed two (2) indications of external corrosion with wall loss up to 40% and nineteen (19) indications of external corrosion with wall loss up to 20%.
15. BPXA has recently informed PHMSA that the company has performed additional testing on the Affected Pipeline but has neither provided any data to PHMSA nor submitted specific details on the assessment techniques or equipment used. Therefore, the actual condition of the OT 501 section of the Affected Pipeline remains unknown.
16. By letter dated February 4, 2008 to Alyeska, BPXA indicated its intent to develop a joint plan with Alyeska to fully assess the integrity of the Affected Pipeline.
17. By letter dated April 25, 2008, Alyeska indicated it had assessed the GPB CP section of the Affected Pipeline with NDE tools applied to the exterior of the pipeline. The assessments were conducted at two sites along the pipeline at above- and below-ground locations. Alyeska indicated that it discovered external corrosion of up to 24% wall loss and internal corrosion that it characterized as “light density corrosion pitting.” Alyeska reported that the external corrosion indications had been remediated.
18. Except for the two inspection sites, most of the GPB CP section of the Affected Pipeline has not been assessed. Therefore the condition of the section as a whole remains unknown.
19. In its April 25, 2008 letter, Alyeska indicated that, upon learning that BPXA had suspended its plan to replace the entire Affected Pipeline, Alyeska had initiated an engineering design process for replacement of its GPB CP section. The company indicated that it may replace the GPB CP in 2009.
20. By letter dated April 3, 2008, Alyeska indicated that the GPB CP is constructed from 36-inch nominal diameter, 0.375-inch wall thickness, Grade API-5L X60 (consisting of both AT and CT line classes), dual submerged arc welded (“DSAW”) pipe of unknown manufacture or date with a thin film epoxy coating, and an AnodeFlex impressed current cathodic protection system. Alyeska indicated that the date of construction of GPB CP is

⁴ PHMSA sent information requests to BPXA by letters dated Feb. 7 and Mar. 18, 2008, and to Alyeska by letters dated Mar. 27 and Apr. 11, 2008.

⁵ PHMSA received responses to its information requests from BPXA by letters dated Feb. 15 and Mar. 18, 2008, and from Alyeska by letters dated Apr. 3, 25 and June 2, 2008.

unknown. The established maximum operating pressure of the GPB CP is 275 psi for the AT line class pipe and 720 psi for the CT line class pipe, established by original design criteria.

21. According to BPXA's September 8, 2006 letter, as resent on March 28, 2008, the OT 501 was constructed in 1977 from uncoated 34-inch nominal diameter, 0.375-inch wall thickness, Grade API-5L X52 DSAW pipe that the company believes was manufactured by Sumitomo. According to BPXA, the established maximum operating pressure of OT 501 is 500 psi (de-rated from 720 psi in 1999). BPXA indicated its belief that the maximum operating pressure was established by hydrostatic test.
22. Respondents indicate that they operate the Affected Pipeline at approximately 100 psi.
23. The Affected Pipeline traverses an ecological Unusually Sensitive Area ("USA") and is in close proximity to a drinking water USA. The OT 501 section crosses under the Spine Road, a heavily travelled access road for the Prudhoe Bay Unit. Area population includes workers and others at Pump Station 1 and those travelling the Spine Road.
24. The Affected Pipeline operates at less than 20% of the specified maximum yield strength ("SMYS") and is therefore defined as a low-stress pipeline under 49 C.F.R. § 195.2. Federal hazardous liquid pipeline safety regulations (49 C.F.R. Part 195) currently do not apply to the Affected Pipeline under the exemption in 49 C.F.R. § 195.1 for onshore low-stress pipelines located in rural areas, outside waterways currently used for commercial navigation which do not transport highly volatile liquids. However, this exemption will soon be narrowed as a result of recent changes to Part 195.⁶

Allegation of Hazardous Condition and Right to Hearing

Section 60112 of Title 49, United States Code, provides for the issuance of a corrective action order, after reasonable notice and the opportunity for a hearing, requiring corrective action, which may include the suspended or restricted use of a pipeline facility, physical inspection, testing, repair, replacement, or other action, as appropriate. The basis for making the determination that a pipeline facility is or would be hazardous, requiring corrective action, is set forth both in the above-referenced statute and 49 C.F.R. § 190.233, a copy of which is enclosed.

After evaluating the foregoing preliminary findings of fact, I find that the Affected Pipeline operated by Respondents is a "pipeline facility," as defined in 49 U.S.C. § 60101 *et seq.*, notwithstanding the current inapplicability of the pipeline safety regulations at 49 C.F.R. Part 195.⁷ It is a "pipeline facility" because it is used in the transportation of hazardous liquid by

⁶ Effective July 3, 2008, the Affected Pipeline will become subject to 49 C.F.R. Part 195 pursuant to the adoption of a final rule eliminating the exemption for certain low-stress pipelines. *See* Protecting Unusually Sensitive Areas From Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines, 73 Fed. Reg. 31,634 (June 3, 2008) (to be codified at 49 C.F.R. Part 195). The requirements of this Notice are in addition to and do not replace any requirements that may apply to the Affected Pipeline as a result of the final rule.

⁷ *See Id.*

pipeline in or affecting interstate commerce and is not used to move hazardous liquid through gathering lines in a rural area; onshore production, refining, or manufacturing facilities; or storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities.

Additionally, considering the age of the pipe involved, the hazardous nature of the product transported; the mostly unknown condition the pipeline; known indications of internal and external corrosion; the corrosive effects of the materials transported (including sediments and water); low crude oil flow velocities; the tendency of sediments and water to drop out of low flow velocity crude oil; the known presence of accumulated sediments and the likely presence of accumulated water; the fact that the pipeline has never been cleaned or internally inspected since it was constructed roughly thirty (30) years ago; the fact that the pipeline does not currently have the capability to be pigged; the design and operational similarities of the pipeline to nearby BPXA pipelines that have failed, in part, due to corrosion; the location of the pipeline in an ecological unusually sensitive area; the close proximity of the pipeline to workers and others at Pump Station 1 and the heavily travelled Spine Road, an unusually sensitive drinking water area, and other environmentally sensitive areas; it appears that the continued operation of the Affected Pipeline without corrective measures would be hazardous to life, property, and the environment.

Accordingly, PHMSA issues this Notice of Proposed Corrective Action Order to notify Respondents of the agency's intent to issue a corrective action order and to propose that Respondents take measures specified herein to protect life, property, and the environment.

Response to this Notice

Either Respondent may request a hearing on this Notice, to be held as soon as practicable, by notifying the Director, Western Region, PHMSA, 12300 West Dakota Avenue, Suite 110, Lakewood, CO 80228 ("Director") in writing within ten (10) days of service of this notice. Failure to submit such written notification waives the opportunity for a hearing and allows the Associate Administrator for Pipeline Safety ("Associate Administrator") to proceed to determine whether or not a corrective action order is required in accordance with 49 C.F.R. § 190.233. If a hearing is requested by either Respondent, it will be held in Lakewood, Colorado or Washington, D.C., on a date that is mutually convenient for both of the Respondents and for PHMSA.

As soon as practicable after the conclusion of a hearing, or if no hearing is requested, the Associate Administrator will determine whether or not a corrective action order is required. If he decides that the pipeline facility is or would be hazardous to life, property, or the environment, the Associate Administrator shall issue a corrective action order in accordance with 49 C.F.R. § 190.233. If he does not decide that the pipeline facility is or would be hazardous to life, property, or the environment, then he shall withdraw the allegation of the existence of a hazardous condition contained in this Notice and promptly notify the Respondents in writing.

Proposed Corrective Action

Pursuant to 49 U.S.C. § 60112 and 49 C.F.R. § 190.233, PHMSA proposes to issue to Alyeska and BPXA a corrective action order incorporating the following remedial requirements with respect to the Affected Pipeline. The order shall require that Respondents must -

I. Plan for Safe Transportation

Within **thirty (30)** days after the CAO is issued, determine to either fully assess, repair, and conduct other work on the Affected Pipeline (“Option A”), or to replace the Affected Pipeline (“Option B”), as detailed more fully below, and submit a written notification to the Director indicating which Option has been selected. Perform the requirements of the selected Option, as detailed more fully below.

Option A—Assessment, Repair and Other Work on Affected Pipeline

1. **Full Assessment:** Within **sixty (60)** days after the CAO is issued, develop and submit for approval, in accordance with Item 2 of the Other Requirements and Terms listed below (“Approval Procedure”), a written plan for assessment of the Affected Pipeline for internal and external corrosion and any other anomalies that could affect the integrity of the line. The plan shall provide for the completion of assessment of 100% of the length and circumference of the Affected Pipeline within **six (6)** months after the CAO is issued. The plan shall propose and describe the specific assessment tools that Respondents seek to use. The proposed assessment tools shall be capable of detecting internal and external corrosion features and other damage, and determining, at a minimum, the percentage metal loss, areal extent, and geometry of any corrosion features or other damage. The plan shall include provisions to ensure that such assessment is performed, verified, and recorded in accordance with established industry practices and shall provide for submission of assessment results to the Director within **ten (10)** days of receipt of such assessment results by Respondents. Implement the plan upon approval.
2. **Initial Repairs:** Document and repair all defects and other conditions on the Affected Pipeline defined under 49 C.F.R. § 195.452(h)(4)(i) through (iv), on a schedule that at a minimum, comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4), and in a manner consistent with ASME B-31.4, but make all repairs within **twelve (12)** months after the CAO is issued. Make all repairs in compliance with 49 C.F.R. § 195.422. Extract, record and provide to the Director dimensional data of all anomalies found, including data on distances from upstream and downstream girth welds, position, minimum and maximum remaining wall thickness, and remedial actions taken. As repairs are made, submit monthly reports to the Director documenting each repair made with respect to each anomaly.
3. **Make Line Piggable:** Within **sixty (60)** days after the CAO is issued, develop and submit for approval, in accordance with the Approval Procedure, a written plan for

making the Affected Pipeline piggable, such that cleaning and smart pigs may be used on the Affected Pipeline on a routine basis. The plan shall provide for the installation and operational status of pig launcher(s) and receiver(s) on the Affected Pipeline within **twelve (12)** months after the CAO is issued. Implement the plan upon approval.

4. **Cleaning Piggig:** Within **sixty (60)** days after the CAO is issued, develop and submit for approval, in accordance with the Approval Procedure, a written plan for running cleaning pigs on the Affected Pipeline at regular intervals not to exceed **three (3)** months. Implement such plan upon approval, after making the Affected Pipeline piggable as required by Item 3 above.
5. **Internal Assessment:** Within **sixty (60)** days after the CAO is issued, develop and submit for approval, in accordance with the Approval Procedure, a written plan for internal assessment of the Affected Pipeline, using calibrated smart pigs, within **three (3)** months after making the Affected Pipeline piggable as required by Item 3, and subsequently at regular intervals not to exceed **three (3)** years. As part of the plan, record the differences between inline inspection data and actual “as found” data for all anomalies and integrate such data in future analyses, mapping corrosion growth, and confirming data gathered by inline inspection tools. Implement the plan upon approval.
6. **Future Repair:** Document and repair all defects and other conditions, discovered from the regular inline inspection required by Item 5, defined under 49 C.F.R. § 195.452(h)(4)(i) through (iv) on a schedule that at a minimum, comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4) and in a manner consistent with ASME B-31.4.
7. **Patrols:** Perform **daily** patrols of the Affected Pipeline with survey equipment capable of detecting hydrocarbons until the repair requirements of Item 2 are completed.
8. **Fluid Testing:** Within **thirty (30) days** after the CAO is issued, conduct all necessary tests to determine the corrosivity of the fluid exiting the Affected Pipeline, record the results of such tests, and make operational and any other necessary changes to mitigate fluid corrosivity and make effective the corrosion inhibitor mix at mitigating the corrosion growth. Changes may include, but not be limited to, increasing or changing corrosion inhibitor concentrations or types. Within thirty (30) days of conducting the fluid tests, submit to the Director the testing results and a report describing any changes made as a result of the required tests. Notify the Director of any subsequent operational or other changes made to mitigate fluid corrosivity and verify the effectiveness of the corrosion inhibitor mix at mitigating corrosion growth.

Option B—Replacement of the Affected Pipeline

1. **Replacement Plan:** Within **sixty (60)** days after the CAO is issued, develop and submit for approval, in accordance with the Approval Procedure, a written plan for replacement of the Affected Pipeline. The plan shall include milestones for the completion of critical construction elements and for the beginning of operations. The plan shall provide for replacement of the Affected Pipeline, within **twelve (12)** months after the CAO is issued, with an operational pipeline that includes functional launcher(s) and receiver(s) (“Replacement Pipeline”) such that the pipeline can be routinely cleaned with cleaning pigs and internally inspected with smart pigs. Provide monthly updates of the progress of replacement. Implement the plan upon approval.
2. **Cleaning Pigging:** Within **sixty (60)** days after the CAO is issued, develop and submit for approval, in accordance the Approval Procedure, a written plan for running cleaning pigs on the Replacement Pipeline at regular intervals, not to exceed **three (3)** months. Implement the plan upon approval.
3. **Continuing Internal Assessment:** Within **sixty (60)** days after the CAO is issued, develop and submit for approval, in accordance with the Approval Procedure, a written plan for the use of calibrated smart pigs to conduct internal inspections of the Replacement Pipeline beginning within **one (1)** year of commencing operation of the Replacement Pipeline, and continuing at regular intervals of not more than **three (3)** years. Implement the plan upon approval.
4. **Patrols:** Perform **daily** patrols of the Affected Pipeline with survey equipment capable of detecting hydrocarbons until the repair requirements of Item 1 are completed.
5. **Fluid Testing:** Within **thirty (30) days** after the CAO is issued, conduct all necessary tests to determine the corrosivity of the fluid exiting the Affected Pipeline, record the results of such tests, and make operational and any other necessary changes to mitigate fluid corrosivity and make effective the corrosion inhibitor mix at mitigating the corrosion growth. Changes may include, but not be limited to, increasing or changing corrosion inhibitor concentrations or types. Within thirty (30) days of conducting the fluid tests, submit to the Director the testing results and a report describing any changes made as a result of the required tests. Notify the Director of any subsequent operational or other changes made to mitigate fluid corrosivity and verify the effectiveness of the corrosion inhibitor mix at mitigating corrosion growth.
6. **De-Oiling:** Within **three (3) months** of the shut-down of the Affected Pipeline in preparation for replacement activities, complete de-oiling and render safe the Affected Pipeline in accordance with the provisions for abandonment set forth in 49 C.F.R. § 195.402(c)(10), and remove any remaining hydrocarbons, sludge, and other solids from the pipelines. After the shut-down of the Affected Pipeline in preparation for replacement activities, submit **monthly** written status reports describing the progress in complying with this Item.

II. Other Requirements and Terms

1. **Documentation of Costs:** Maintain documentation of the costs associated with implementation of the CAO 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 other analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.
2. **Approval Procedure:** With respect to each submission that under the CAO requires the approval of the Director, the Director may: (a) approve, in whole or part, the submission; (b) approve the submission on specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. In the event of approval, approval upon conditions, or modification by the Director, Respondents shall proceed to take all action required by the submission as approved or modified by the Director. In the event that the Director disapproves all or any portion of the submission, Respondents shall correct all deficiencies within the time specified by the Director, and resubmit it for approval. In the event that a resubmitted item is disapproved in whole or in part, the Director may again require Respondents to correct the deficiencies in accordance with the foregoing procedure, and/or the Director may otherwise proceed to enforce the terms of an Order.
3. Respondents may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator shall be final.
4. The Director may grant an extension of time for compliance with any of the terms of the CAO upon a written request timely submitted demonstrating good cause for an extension.

The actions proposed by this Notice of Proposed Corrective Action Order are in addition to and do not waive any requirements that apply, or will apply, to either of Respondents' pipeline systems under 49 C.F.R. Parts 190 through 199, under any other order issued to either Respondent under authority of 49 U.S.C. § 60101 *et seq.*, or under any other provision of Federal or state law.

If a CAO is issued, failure to comply with such CAO may result in the assessment of administrative civil penalties of not more than \$100,000 per violation per day pursuant to 49 U.S.C. § 60122 and 49 C.F.R. § 190.223, or in referral to the Attorney General of the United States for appropriate relief, including the imposition of civil judicial penalties, in a United States District Court pursuant to 49 U.S.C. § 60120.

After receiving and analyzing additional data in the course of this investigation, PHMSA may identify other corrective measures that need to be taken. In that event, Respondents will be notified of any additional measures required and amendment of the corrective action order will

be considered. To the extent consistent with safety, Respondents will be afforded notice and an opportunity for a hearing prior to the imposition of any additional corrective measures.



Chris Hoidal
Director
Western Region, PHMSA

06/20/08
Date Issued

(2) Subsequently damages a pipeline facility and knows or has reason to know of the damage but fails to promptly report the damage to the operator and to the appropriate authorities; or

(3) Subsequently damages a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product; shall, upon conviction, be subject for each offense to a fine of not more than \$5,000, imprisonment for a term not to exceed 5 years, or both.

(f) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under §190.217, §190.219 or §190.229 if both violations are based on the same act.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-2, 54 FR 32344, Aug. 7, 1989; Amdt. 190-4, 56 FR 63770, Dec. 5, 1991; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996; 70 FR 11138, Mar. 8, 2005]

§ 190.231 Referral for prosecution.

If an employee of the Pipeline and Hazardous Materials Safety Administration becomes aware of any actual or possible activity subject to criminal penalties under §190.229, the employee reports it to the Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[Amdt. 190-6, 61 FR 18515, Apr. 26, 1996, as amended at 70 FR 11137, Mar. 8, 2005]

SPECIFIC RELIEF

§ 190.233 Corrective action orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section and §190.211(a), a particular pipeline facility to be hazardous to life, property, or the environment, the Associate Administrator, OPS shall issue an order pursuant to this section re-

quiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(b) The Associate Administrator, OPS may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. However, the Associate Administrator, OPS shall provide an opportunity for a hearing as soon as is practicable after the issuance of a compliance order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise its opportunity for a hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether a compliance order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) Notice and hearing:

(1) Written notice that OPS intends to issue an order under this section shall be served upon the owner or operator of an alleged hazardous facility in accordance with §190.5. The notice shall allege the existence of a hazardous facility and state the facts and circumstances supporting the issuance of a corrective action order. The notice shall also provide the owner or operator with the opportunity for a hearing and shall identify a time and location where a hearing may be held.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section, or under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to issue a corrective action order in accordance with paragraphs (d) through (h) of this section.

(3) A hearing under this section shall be presided over by an attorney from the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, acting as Presiding Official, and conducted without strict adherence to formal rules of evidence. The Presiding Official presents the allegations contained in the notice issued under this section. The owner or operator of the alleged hazardous facility may submit any relevant information or materials, call witnesses, and present arguments on the issue of whether or not a corrective action order should be issued.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a corrective action order is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator, OPS shall issue a corrective action order in accordance with this section. If the Associate Administrator, OPS does not find the facility is or would be hazardous to life, property, or the environment, the Associate Administrator shall withdraw the allegation of the existence of a hazardous facility contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in §190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator, OPS determines the particular facility is hazardous to life, property, or the environment; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life, property, or the environment, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that,

under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

(1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(3) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

(f) A corrective action order shall contain the following information:

(1) A finding that the pipeline facility is hazardous to life, property, or the environment.

(2) The relevant facts which form the basis of that finding.

(3) The legal basis for the order.

(4) The nature and description of any particular corrective action required of the respondent.

(5) The date by which the required corrective action must be taken or completed and, where appropriate, the duration of the order.

(6) If the opportunity for a hearing was waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing will be available at a particular time and location after issuance of the order.

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(g) The Associate Administrator, OPS shall rescind or suspend a corrective action order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life, property, or the environment. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under § 190.207.

(h) At any time after a corrective action order issued under this section has become effective, the Associate Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.

(i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction to enforce orders issued under this section by appropriate means.

[70 FR 11138, Mar. 8, 2005]

§ 190.235 Civil actions generally.

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.*, or any regulations issued thereunder, the Administrator, PHMSA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

[70 FR 11139, Mar. 8, 2005]

§ 190.237 Amendment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under § 190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice

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shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Associate Administrator, OPS shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator, OPS shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;

(3) The reasonableness of the plans or procedures; and

(4) The extent to which the plans or procedures contribute to public safety.

(b) The amendment of an operator's plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this subpart.

[Amdt. 190-3, 56 FR 31090, July 9, 1991, as amended by Amdt. 190-6, 61 FR 18516, Apr. 26, 1996]

Subpart C—Procedures for Adoption of Rules

SOURCE: Amdt. 190-8, 61 FR 50909, Sept. 27, 1996, unless otherwise noted.

§ 190.301 Scope.

This subpart prescribes general rule-making procedures for the issue, amendment, and repeal of Pipeline Safety Program regulations of the Pipeline and Hazardous Materials Safety Administration of the Department of Transportation.

[Amdt. 190-8, 61 FR 50909, Sept. 27, 1996, as amended at 70 FR 11137, Mar. 8, 2005]

§ 190.303 Delegations.

For the purposes of this subpart, *Administrator* means the Administrator,