



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 23, 2008

Mr. Richard Olsen
Senior Vice President
Operations and Technical Services
Magellan Pipeline Company, L.L.C.
One Williams Center
Tulsa, OK 74172

CPF 3-2008-5007

Dear Mr. Olsen:

On May 23, 2005, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code investigated the accident on Magellan Pipeline Company's #4-8" Line at milepost 9.46 in the Fairfax Industrial District of Kansas City, Kansas. This May 23, 2005 pipeline failure occurred at approximately 00:51 hours and resulted in the release of 2936 barrels of unleaded gasoline from the pipeline, a portion of which flowed into the Missouri River. The release also caused closing of a railroad line, shutdown of a utility power plant and closing of businesses.

As a result of the investigation, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items investigated and the probable violation(s) are:

1. **Subpart F - Operations and Maintenance**

§ 195.401 **General requirements.**

(b) Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it shall correct it within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.

Magellan Pipeline Company, L.L.C. (Magellan) failed to maintain pressure instrumentation within a reasonable time which contributed to the failure. The pressure monitors at Milepost 156 on Magellan's #6-10" were not functioning properly for approximately twelve (12) days prior to the failure. Servicing of the units was not successful during this period resulting in eleven (11) hi-hi alarms within five hours prior to the release at 00:51 on May 23. Hi-hi alarms from the monitors were being ignored by controllers while they were still operating the line. At 00:39 a high pressure alarm at the Kansas City Terminal (not at milepost 156) was received by the controller and cleared without investigation. When the "A/D Fail" alarm at Kansas City Terminal indicating that the transmitter had gone out of range was received at 00:48, the alarm was simply acknowledged without further reaction or recognition that pressures above normal conditions had occurred. The failure to correct the instrumentation problem causing the false hi-hi pressure alarm indications from Milepost 156 instrumentation in a timely manner contributed to inappropriate reaction by the controller on May 23rd and was a contributory factor to the pipeline failure.

2. § 195.402 **Procedural manual for operations, maintenance, and emergencies.**

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Magellan failed to follow its written procedures manuals (RPOC-ADM-002 Section 1.2.1) for conducting normal operations pertaining to start-up of a pipeline. Operations and monitoring of the El Dorado to Kansas City Terminal #6-10"/#4-8" pipeline was performed by two SCADA controllers. Controller #1 on Console 4 performed startup and shutdown functions and monitoring of the line from El Dorado to Milepost 156 while Controller #2 on Console 2 monitored alarms for Milepost 156 through the Kansas City Terminal. Controller #1 did not follow written procedures manual RPOC-ADM-002 Section 1.2.1 "Startup of a Pipeline Segment with No units in Current Operation" by not opening all mainline valves to deliver the product stream. The last sentence of Section 1.2.1 states, "The Controller will remotely open all mainline valves to deliver the product stream and either start or have the appropriate field personnel start the unit." Controller #1 failed to open the Kansas City Terminal mainline valve (550 Valve 6S) until 26 minutes after starting the line. Failure to open this valve per the procedures allowed abnormally high pressure on the line resulting in the #4-8" line's rupture.

3. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Magellan failed to follow its written procedures manuals (RPOC-ADM-002 Sections 1.2.2 and 1.2.3) for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Operations and monitoring of the El Dorado to Kansas City Terminal #6-10"/#4-8" pipeline was performed by two SCADA controllers. Controller #1 on Console 4 performed startup and shutdown functions and monitoring of the line from El Dorado to Milepost 156 while Controller #2 on Console 2 monitored alarms for Milepost 156 through the Kansas City Terminal. Controllers #1 and #2 did not follow written procedures manual RPOC-ADM-002 Sections 1.2.2 and 1.2.3 "Startup of a Pipeline Segment with No units in Current Operation" by not appropriately monitoring for abnormal conditions and taking actions to prevent further development of the abnormal operating condition. Conditions of high pressure and low flow occurred as a result of pumping against a closed valve at the Kansas City Terminal. Section 1.2.2 states, "Upon unit startup, the Controller will monitor the segment of the pipeline affected via the SCADA system (including pressure and flow rates). The Controller will watch for signs of pending abnormal conditions and take appropriate actions to prevent further development." Section 1.2.3 states, "The Controller should observe the affected segment with heightened awareness until stable operating conditions are achieved." Section 3.3.1.3.2 is also associated with the controllers' actions which states, "While the general auto parameters are deactivated. Controllers need to heighten their awareness for abnormal operating conditions." Upon the startup of the El Dorado Pump Station and the #6-10"/#4-8" lines' operations, these procedures were not followed in regard to the following factors:

1. Parameter alarms were deactivated while the El Dorado to Kansas City line was in an unsteady state during start-up.
2. Controller #1 received 28 alarms not on the line which ruptured which averted his attention from the start-up of the El Dorado – Kansas City line.
3. Controller #1 did not actively monitor and react to pressure and flow on the line while the line was in an unstable condition. Controller #1 reported that efforts to monitor the #6-10"/#4-8 line segments were hampered by display changes occurring as the result of problems on other pipelines.
4. The line went to an abnormal state of high pressure and low flow with no corrective reaction by controllers.

Failure to appropriately monitor the pipeline during start-up per these procedures allowed abnormally high pressure on the line which was a contributing factor to the #4-8" line's rupture.

4. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

Magellan failed to follow its written procedures manuals (RPOC-ADM-002 Sections 1.3.1) for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. Operations and monitoring of the El Dorado to Kansas City Terminal #6-10"/#4-8" pipeline was performed by two SCADA controllers. Controller #1 on Console 4 performed startup and shutdown functions and monitoring of the line from El Dorado to Milepost 156 while Controller #2 on Console 2 monitored alarms for Milepost 156 through the Kansas City Terminal. Controller #1 did not appropriately follow written procedures manual RPOC-ADM-002 Section 1.3.1 "Startup of an Intermediate Pumping Unit on a Currently Operating Pipeline" by starting an additional pumping unit when it was not required. Section 1.3.1 states, "When operating conditions require additional pumping units to be placed in service on a pipeline segment that is currently in operation, the Controller shall decide what unit or units to start. The Controller will observe the conditions on the pipeline segment to be affected prior to starting a unit." The controller was not cognizant of the abnormal pipeline conditions of the pressure at Kansas City being over 1000 psig with the flow near zero prior to the rupture, nor the other abnormal flow and pressure conditions along the line from El Dorado to Emporia, to Topeka and on to Kansas City that existed prior to the rupture. Controller #1 issued a command at 00:55 to start Topeka pump station at MP 103.82 without properly monitoring and evaluating the pipeline operation. The pump station start was initiated after the rupture occurred at 00:51.

5. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

(d) Abnormal operation. The manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded;

(1) Responding to, investigating, and correcting the cause of;

(v) Any other malfunction of a component, deviation from normal operation, or personnel error which could cause a hazard to persons or property.

(3) Correcting variations from normal operation of pressure and flow equipment and controls.

Magellan recognizes § 195.402(d)(3) as a requirement by stating the rule in its abnormal operations manual RPOC-ADM-003 Section 1.2.3.3, but failed to follow its written procedures manuals (RPOC-ADM-003 Section 1.2.1) addressing this abnormal operation. A pipeline controller did not take immediate action to correct an abnormal operating condition on the El Dorado-Kansas City Terminal pipeline.

Operations and monitoring of the El Dorado to Kansas City #6-10"/#4-8" pipeline was performed by two SCADA controllers. Controller #1 on Console 4 performed startup and shutdown functions and monitoring of the line from El Dorado to Milepost 156 while Controller #2 on Console 2 monitored alarms for Milepost 156 through the Kansas City Terminal. Controller #2 did not appropriately follow written procedures manual RPOC-ADM-003 Section 1.2.1 states, "The Controller, upon learning of an abnormal situation, will proceed to immediately correct it or have field personnel correct it." Controller #2 received a high pressure alarm at 00:39 at the Kansas City Terminal. According to the Event Summary, Controller #2 received an "A/D - Fail" alarm at 00:48 which indicated a pressure transmitter for the Kansas City Terminal was out of range. Controller #2 did not alert Controller #1 to the occurrence of the two alarms indicative of high pressure at Kansas City Terminal. Controller #2 cleared the pressure alarm at 00:49. No further action on the #6-10"/#4-8" was taken by either Controller until after the line ruptured at 00:51. Magellan's internal accident report interviews of Controllers indicate that Controller #2 cleared the high pressure alarm at Kansas City Terminal and did not recognize this alarm as an abnormal operating condition. Also this report indicates that several minutes passed before Controller #1 notified Controller #2 that a release had occurred. Controller 2 then reviewed the trend at Kansas City Terminal and verified that a release had occurred. The delayed actions of Controller #2 clearing an alarm at 00:49 on the #4-8" and not notifying Controller #1 of the two alarms indicative of high pressure at the Kansas City Terminal caused abnormal conditions to continue which contributed to the pipeline failure.

6. **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
 - (a) **General.** Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.
 - (e) **Emergencies.** The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs:
 - (4) **Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of hazardous liquid or carbon dioxide that is released from any section of a pipeline system in the event of a failure.**

Magellan failed to follow its written procedures (RPOC-ADM-004 Sections 3.2.1.5) for conducting normal operations and maintenance activities and handling abnormal operations and emergencies to minimize the amount of hazardous liquid at the failure site. Tulsa Controllers did not appropriately follow written procedure manual RPOC-ADM-004 Section

3.2.1.5 to determine the need to open or close the KC mainline valve at the Kansas City Terminal following the failure of the #4-8" line. Section 3.2.1.5 states that the controller is to, "Review pipeline alignment sheet to become familiar with the elevation characteristics in the vicinity of the leak and to determine the location of mainline valves and the proximity of the leak to Company facilities. In conjunction with the field personnel, utilize the information gathered from the alignment sheets to determine the need to open or close remote or manual mainline block valves in order to alleviate pressure and to minimize product at the leak site as required." Failure to properly evaluate factors to successfully alleviate pressure and minimize product at the leak site resulted in backflow to the leak site from the Kansas City Terminal.

Hydraulic factors to consider on the #4-8" line feeding into the Kansas City Terminal which could cause backflow were 1) tank elevations and liquid level to which it was flowing and/or 2) any pressured lines in the Kansas City Terminal to which the #4-8" would be connected. The #4-8" was aligned through valves and piping to a manifold pressurized to approximately 60 psig by Tank 1242's booster pump. This manifold also connected the Des Moines 6N-12" which would receive product from the tank and/or the #4-8" line. The leak site elevation was approximately 760 feet compared to the Kansas City Terminal elevation of 742 feet above sea level, without considering the tank liquid level. Also because the manifold was pressurized to 60 psig (equivalent to approximately 189 feet of static head pressure of unleaded gasoline), the 18 feet elevation difference would be overcome and flow reversed if pumping ceased on the #4-8" line.

The approximate leak site in regard to the Kansas City Terminal was known by 01:52 on May 23, yet closure of the Terminal valve, the Kansas City mainline valve, was not initiated until approximately 02:45-02:47 by the Kansas City Station operator, not the Tulsa Controllers. Upon actuating the valve, a low pressure alarm was received at 02:46:41 on the #4-8" line, confirming that isolation of the failed pipe segment was occurring and backflow from the terminal had taken place. Tulsa Controllers had closed the mainline valve V6 at MP 156 which was 12.97 miles upstream of the leak at approximately 01:02:57. No other downstream mainline SCADA motor-operated valves existed on the line from MP 156 V6 until the Kansas City Station Terminal valve. This Kansas City mainline valve was located approximately 3.0 miles downstream from the leak site. Magellan's controllers failed to follow in a timely manner its procedures to determine, in conjunction with the field personnel, backflow influences on the #4-8" line which would necessitate valve closure to minimize product released at the leak site. Failure to close the Kansas City mainline valve contributed 2200 barrels of the 2936 barrels to the gasoline spill volume.

7. **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(5) Analyzing pipeline accidents to determine their causes.

(6) Minimizing the potential for hazards identified under paragraph (c)(4) of this section and the possibility of recurrence of accidents analyzed under paragraph (c)(5) of this section.

Magellan did not have a written procedure established to perform analyses necessary to minimize the possibility of recurrence of an accident. After metallurgical analysis reported microbiologically influenced corrosion (MIC) as the cause of the #4-8" line metal loss at the May 23, 2005 rupture site, Magellan did not have a written procedure for testing for it at seven dig sites evaluated in the Kansas City Fairfax Corridor. Magellan failed to have a MIC testing procedure and test for its presence in a timely manner so as to determine if those seven sites were also at risk to this factor.

Magellan received the Kiefner and Associates Metallurgical Report regarding the ruptured #4-8" pipe segment on or about September 12, 2005, which stated in the Conclusion on page 2, "The failure was the result of microbiologically influenced corrosion" (MIC). Magellan conducted anomaly digs in the Fairfax District pipeline corridor from September through mid-December without a procedure to check for microbiological bacteria in the soil. Magellan provided the documented procedure "KC Corridor Bacteria Sampling Protocol" dated 12/14/05. Seven dig sites were performed during the period from September 12, 2005 to mid-December without MIC testing or a metallurgical analysis for MIC. Only water samples of encased pipelines were taken and evaluated for pH and smell as this was Magellan's usual standard procedure which did not include analyzing for MIC.

After receiving knowledge of the threat of MIC, Magellan delayed 3 months in producing a protocol to address the sampling for MIC while Magellan continued to perform field excavations of their pipelines in the suspect area. Magellan failed to adequately analyze seven dig sites for MIC and minimize the possibility of recurrence at these sites as required by § 195.402 (c)(6).

8. § 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

(5) Analyzing pipeline accidents to determine their causes.

Magellan did not follow its procedures (7.02-ADM-002) nor were the procedures adequate regarding marking, removal and preparation of pipe segments involved in accidents to be sent for metallurgical analysis. On May 25, 2005 a PHMSA inspector witnessed Magellan's

personnel preparing the failed segment of the #4-8" line and casing for removal and transportation for metallurgical evaluation. Magellan's personnel did not have its Pipe Specimen Cut-Out Protocol 7.02-ADM-002 at the failure site and were unclear as to what markings should be applied. Additionally, the procedures were not specific regarding pipe marking practices for removal of pipe that is involved in a failure. The PHMSA inspector directed Magellan's personnel to properly mark the pipe segment prior to cutout and again prior to shipment, as the initial markings had not been transferred to the pipes which had been shortened for transportation. Protocol 2.1.7 regarding marking the pipe specimen was later added to the Magellan Pipe Specimen Cut-Out Protocol on 01/01/06.

9. § 195.402 Procedural manual for operations, maintenance, and emergencies.

e) *Emergencies.* The manual required by paragraph (a) of this section must include procedures for the following to provide safety when an emergency condition occurs;

(9) Providing for a post accident review of employee activities to determine whether the procedures were effective in each emergency and taking corrective action where deficiencies are found.

Magellan did not follow its written procedure (RPOC-ADM-004 Section 1.5.1) regarding post accident review. RPOC-ADM-004 Section 1.5.1 states, "For actual emergencies, the Manager of Operations Control will ensure that the Incident Investigation for that incident includes a review of the effectiveness of these emergency operations procedures, and will take corrective action as needed." Magellan did not take sufficient corrective actions to address the findings in the post accident review. Magellan's operating personnel both in the SCADA Control Center and Kansas City Terminal failed to close the Kansas City Terminal mainline block valve resulting in an additional 2,200 barrels of gasoline back flowing from the terminal and spilling at the rupture site. The post accident review stated individuals' recommendations that emergency operation procedures for the Kansas City Terminal be line specific for this location instead of global company wide. Also, the post accident review and follow-up studies did not adequately consider pipeline system modifications, such as backflow prevention devices, as corrective actions to minimize additional hazardous liquid flowing from the Kansas City Terminal and being released in the event of a failure.

10. § 199.225 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.* (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to

administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2)(i) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by paragraph (a) is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Magellan did not comply with the alcohol testing requirement that covered employees be tested and that they be tested within the allotted 2 hour time frame or document why testing was not promptly administered. Two controllers were operating and monitoring the pipeline at the time of its failure. One controller was tested 3 hours and 29 minutes after the accident, and Magellan had no records stating the reason for not promptly administering the alcohol test. A second controller was not tested for alcohol. Magellan's Drug and Alcohol Policy does state in Section 1 Subsection B that it has adopted PHMSA Alcohol Misuse Prevention Plan and its policy is intended to comply with the requirements of 49 CFR Parts 199 and 40.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$784,000 as follows:

<u>Item number</u>	<u>Penalty</u>
1	\$200,000
2	\$100,000
3	\$100,000
4	\$100,000
5	\$100,000
6	\$100,000
7	\$ 43,000
10	\$ 41,000

Warning

We have reviewed the circumstances and supporting documents involved in item 8, and have decided not to conduct additional enforcement action or penalty assessment proceedings at this

time. We advise you to correct item 8 identified in this letter. Failure to do so will result in Magellan Pipeline Company, L.L.C. being subject to additional enforcement action. No reply to this item is required.

Proposed Compliance Order

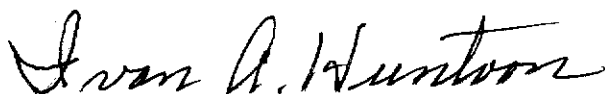
With respect to item 9 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Magellan Pipeline Company, L.L.C. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 3-2008-5007** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



Ivan A. Huntoon
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Magellan Pipeline Company, L.L.C., a Compliance Order incorporating the following remedial requirements to ensure the compliance of Magellan Pipeline Company, L.L.C. with the pipeline safety regulations:

1. In regard to Item 9 of the Notice pertaining to taking corrective actions based on the deficiencies found during the post accident review, Magellan is to establish specific written emergency procedures to minimize the volume of hazardous liquid released in the Fairfax Industrial District in the event of a failure of incoming and outgoing pipelines at its Kansas City Terminal. The written emergency procedures shall be based on an analysis of Magellan's incoming and outgoing pipeline systems at the Kansas City Terminal, including but not limited to: piping configuration, pumps, tanks, valves, pipe and tank elevations, mode of pipeline operation (steady state, static, transient) and pipeline control mechanisms.
2. In regard to Item 9 of the Notice pertaining to taking corrective actions based on the deficiencies found during the post accident review, Magellan must install check valves to prevent backflow of hazardous liquid from the Kansas City Terminal to incoming pipelines in the event of a failure. A check valve means a valve that permits fluid to flow freely in one direction and contains a mechanism to automatically prevent flow in the other direction.
3. In regard to Item Number 1 of the Proposed Compliance Order, Magellan shall train its personnel at the SCADA Control Center and the Kansas City Terminal on these revised procedures and provide documentation of the training to the Director, Central Region, within 90 days of a receipt of a Final Order.
4. In regard to Item 2 of the Proposed Compliance Order, Magellan shall submit a plan and schedule to the Director, Central Region, for approval within 90 days of receipt of a Final Order.
5. Magellan shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Ivan Huntoon, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. 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.

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

1. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to make findings and to close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;

2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a **WARNING ITEM** --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. **Procedures for Responding to a NOTICE OF AMENDMENT*--**

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;
- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or

d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you

wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 25082
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "**BNF=/ALC-69-14-0001**". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "**AC-payment for PHMSA Case # /** To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

May 2008