



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**

August 20, 2009

Mr. Victor Gaglio  
Senior Vice President, Operations  
NiSource Gas Transmission and Storage  
1700 MacCorkle Ave. SE  
Charleston, WV 25301

**CPF 3-2009-1018**

Dear Mr. Gaglio:

On July 17-21, 2006 and August 1-3, 2006, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Ohio Public Utilities Commission, New York Department of Public Service, and the West Virginia Public Service Commission pursuant to Chapter 601 of 49 United States Code inspected the NiSource Gas Transmission and Storage (NiSource) integrity management plan and procedures in Charleston, West Virginia. The integrity management (IM) plan and procedures are applicable to the Columbia Gas Transmission, Columbia Gulf Transmission, Crossroads Pipeline and Granite State Gas Transmission operations.

As a result of the inspection, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

**§192.911 What are the elements of an integrity management program?**

**An operator's initial integrity management program begins with a framework (see §192.907) and evolves into a more detailed and comprehensive integrity management program, as information is gained and incorporated into the program. An operator must make continual improvements to its program. The initial program framework and subsequent program must, at minimum, contain the following elements. (When indicated, refer to ASME/ANSI B31.8S (ibr, see §192.7) for more detailed information on the listed element.)**

- 1. §192.911(a) An identification of all high consequence areas, in accordance with §192.905.**

**§192.905(b)(1) Identified sites. An operator must identify an identified site, for purposes of this subpart, from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.**

**(2) If a public official with safety or emergency response or planning responsibilities informs an operator that it does not have the information to identify an identified site, the operator must use one of the following sources, as appropriate, to identify these sites.**

- (i) Visible marking (e.g., a sign); or**
- (ii) The site is licensed or registered by a Federal, State, or local government agency; or**
- (iii) The site is on a list (including a list on an internet web site) or map maintained by or available from a Federal, State, or local government agency and available to the general public.**

**Item 1A. §192.907(a) General. No later than December 17, 2004, an operator of a covered pipeline segment must develop and follow a written integrity management program that contains all the elements described in §192.911 and that addresses the risks on each covered transmission pipeline segment. The initial integrity management program must consist, at a minimum, of a framework that describes the process for implementing each program element, how relevant decisions will be made and by whom, a time line for completing the work to implement the program element, and how information gained from experience will be continuously incorporated into the program. The framework will evolve into a more detailed and comprehensive program. An operator must make continual improvements to the program.**

NiSource did not identify all the high consequence area (HCA) locations along its pipeline system as required. HCA identification was not completed for the 12-inch UM10 (Ashland, KY) pipeline by the 12/17/2004 deadline. Identified sites are located in close proximity to the pipeline, yet an evaluation using the potential impact radius (PIR) to identify HCAs was not completed for these locations. Between the two weeks of the inspection, NiSource measured the distances between the pipeline and the identified sites and defined 3 new HCAs (about 0.3 miles total of new covered segments, risk-ranked in the bottom 50%) on this pipeline.

**2. §192.911(b) A baseline assessment plan meeting the requirements of §192.919 and §192.921.**

**Item 2A. §192.921(a) *Assessment methods.* An operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods depending on the threats to which the covered segment is susceptible. An operator must select the method or methods best suited to address the threats identified to the covered segment (See §192.917).**

NiSource did not utilize appropriate assessment methods to address the threats identified. Several covered segments (e.g., WBS6-15:545620, VBS2-50:207265) were identified that meet the B31.8S criteria for stress corrosion cracking (SCC). The baseline assessment plan does not include assessment methods that address SCC for any of these segments. An assessment on at least one segment that meets the SCC criteria (Columbia Gulf ML 200-27:36220) was reportedly completed, but the in-line inspection methods employed did not address SCC. The rule requires that integrity assessment methods assess all threats identified for a covered segment.

**3. §192.911(e) Provisions meeting the requirements of §192.933 for remediating conditions found during an integrity assessment.**

**§192.933(a) What actions must be taken to address integrity issues? *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. If an operator is unable to respond within the time limits for certain conditions specified in this section, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. If the pressure is reduced, an operator must determine the temporary reduction in operating pressure using ASME/ANSI B31G (ibr, see §192.7) or AGA Pipeline Research Committee Project PR-3-805 ("RSTRENG"; ibr, see §192.7)...**

**§192.933(b) *Discovery of condition.*** Discovery of a condition occurs when an operator has adequate information about a condition to determine that the condition presents a potential threat to the integrity of the pipeline. A condition that presents a potential threat includes, but is not limited to, those conditions that require remediation or monitoring listed under paragraphs (d)(1) through (d)(3) of this section. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable.

- **Item 3A: §192.933(a)**

The operating pressure was not lowered promptly as required by the rule in at least two instances:

Two immediate repair conditions, both reportedly dents with metal loss, were discovered on the VB Loop in HCAs 50:384482 and 50:390977 on November 19, 2004. The operating pressure in the pipeline was not reduced upon discovery. Emails indicate that repairs were scheduled to commence on November 29 and that if it took longer than December 6, 2004 to complete the repairs, then the operating pressure would have to be reduced. The necessary repairs were completed as scheduled so the operating pressure was never reduced. The rule requires that a pressure reduction be taken to ensure public safety if immediate repair conditions can not be repaired immediately.

Documentation for VM-107 dig 7 indicates that the preliminary report was received on October 8, 2004; at which time the safe reduced operating pressure was established utilizing RSTRENG. The operating pressure, however, was not actually reduced until October 14, 2004.

- **Item 3B: §192.933(b)**

Discovery of a condition did not occur when adequate information about the condition was available to determine that it was a potential threat to the integrity of the pipeline. Immediate repair conditions from a June 29, 2004 internal inspection of the VB LOOP line were not “discovered” until November 19, 2004, even though the final vendor report, which was received on August 8, contained sufficient information to identify the conditions. The rule requires repair conditions to be discovered when adequate information is available to determine whether the conditions present a threat to pipeline integrity.

4. **§192.911(j) Record keeping provisions meeting the requirements of §192.947.**

**Item 4A. § 192.947 What records must an operator keep?**

**An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At minimum, an operator must maintain the following records for review during an inspection.**

**§192.947(d) Documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements;**

Records specified in 192.947 were not adequately maintained for the useful life of the pipeline as required. The dig/repair reports for two immediate repair conditions that were reported to have been addressed in November 2004 could not be located.

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 violations and has recommended that you be preliminarily assessed a civil penalty of \$120,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1A	\$ 37,900
2A	\$ 23,200
3A	\$ 23,200
3B	\$ 23,200
4A	\$ 12,500

Proposed Compliance Order

With respect to item 2A pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to NiSource. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

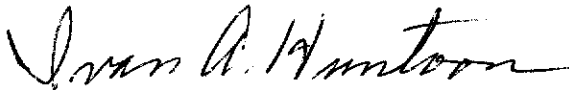
Response to this Notice

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 3-2009-1018** 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 NiSource a Compliance Order incorporating the following remedial requirements to ensure the compliance of NiSource with the pipeline safety regulations:

1. In regard to Item Number 2A of the Notice, NiSource must provide this office documentation that substantiates that the Baseline Assessment Plan includes appropriate assessment methods to address stress corrosion cracking (SCC) and a schedule for completion of the integrity assessments for all pipeline segments that meet the B31.8S criteria for SCC.
2. Submit the results of the Proposed Compliance Order items above to the Region Director, Central Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Suite 462, Kansas City, MO 64106. This is to be accomplished within 30 days following receipt of the Final Order.
3. NiSource shall maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Ivan A. 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).

### **I. 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 issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will 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. 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;
  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; 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](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 269039  
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.

February 2009