



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

NOTICE OF AMENDMENT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 7, 2011

Mr. Jim Benning, Director
City of Duluth Public Works and Utilities
City Hall
411 West 1st Street
Duluth, Minnesota 55802

CPF 3-2011-1005M

Dear Mr. Benning:

On May 10-12, 2010, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Minnesota Office of Pipeline Safety (MNOPS) pursuant to Chapter 601 of 49 United States Code inspected the Duluth Public Works and Utilities (Duluth) interstate natural gas transmission pipeline in Duluth, Minnesota.

On the basis of the inspection, PHMSA has identified the apparent inadequacies found within Duluth's plans or procedures, as described below:

- 1. §192.13 What general requirements apply to pipelines regulated under this part?
(c) Each operator shall maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this part.**

§192.225 Welding Procedures

(b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

Duluth has welding procedures which are generally qualified in accordance with API 1104. However, a qualified welding procedure could not be produced to cover the 10-inch, .250 wall, X-52 transmission line pipe. The procedure qualification record which the operator thought would cover it was for 20-inch, .626 wall, X-60 pipe, but the diameter range for API 1104 welding procedure qualification is greater than 2-3/4 inches to less than or equal to 12-3/4 inches.

2. §192.605 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least one each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

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

(8) Periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedure when deficiencies are found.

Duluth has not developed adequate procedures to evaluate work performed by personnel in the context of the written procedures established for normal operations and maintenance, and to modify the procedures when deficiencies are identified.

3. §192.605(b) (See Above)

(4) Gathering of data needed for reporting incidents under Part 191 of this chapter in a timely and effective manner.

§191.15 Transmission and gathering systems: Incident report.

(a) Except as provided in paragraph (c) of this section, each operator of a transmission or a gathering pipeline system shall submit Department of Transportation Form RSPA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under §191.5.

Duluth's procedures are inadequate because Procedure 07.02.02 refers only to filing Form 7100:1 for distribution system incident reports. The procedures need to also address filing Form 7100.2 for transmission line incidents.

(b) Where additional related information is obtained after a report is submitted under paragraph (a) of this section, the operator shall make a supplemental report as soon as practicable with a clear reference by date and subject to the original report.

Duluth's procedures are inadequate because the procedures for filing supplemental incident reports do not specify submitting the report as soon as practicable.

4. §192.605(b) (See Above)

(2) Controlling corrosion in accordance with the operations and maintenance requirements of Subpart I of this part.

§192.461 External corrosion control: Protective coating.

(a) Each external protective coating, whether conductive or insulating, applied for the purpose of external corrosion control must-

- (1) Be applied on a properly prepared surface;**
- (2) Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;**
- (3) Be sufficiently ductile to resist cracking;**
- (4) Have sufficient strength to resist damage due to handling and soil stress; and,**
- (5) Have properties compatible with any supplemental cathodic protection.**

Duluth's procedures for external protective coating are inadequate because they are not completely accurate. The overlap for field applied tape coating is specified as ½ inch for spiral wrap, and 1 inch for cigarette style wrap. This is not in accordance with some manufacturer's specifications. There are no written procedures for patch-stick repairs, but they are indicated as an allowable coating repair method. The procedures need to be reviewed and revised as necessary to ensure proper coating application consistent with manufacturer's specifications.

5. §192.605(b) (See Above)

§192.465 External corrosion control: Monitoring.

(b) Each cathodic protection rectifier or other impressed current power source must be inspected six times each calendar year, but with intervals not exceeding 2 1/2 months, to insure that it is operating.

Duluth's rectifier inspection procedures are inadequate because they require inspections at intervals not to exceed 2-1/2 months "or" 6 times per year.

6. §192.605(b) (See Above)

§192.479 Atmospheric corrosion control; General.

(a) Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

Duluth's procedures for atmospheric corrosion control are inadequate because they do not address coating at soil to air interfaces.

7. §192.605(b) (See Above)

§192.481 Atmospheric corrosion control: Monitoring.

(c) If atmospheric corrosion is found during an inspection, the operator must provide protection against the corrosion as required by Sec. 192.479.

Duluth's procedures for monitoring atmospheric corrosion are inadequate because the documentation requirements do not include inspecting pipe supports and soil to air interfaces, and they do not specify that corrective action will be taken in accordance with Department procedures, or specify the timeline for completion of corrective actions.

8. §192.605(b) (See Above)

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and Subpart M of this part.

§192.617 Investigation of failures.

Each operator shall establish procedures for analyzing accidents and failures, including the selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence.

Duluth's procedures for investigation of failures are inadequate because they do not address protection and preservation of physical evidence and do not include procedures for documenting chain of custody for material evidence associated with a failure.

9. §192.605(b) (See Above)

§192.705 Transmission lines: Patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

Duluth's procedures for transmission line patrolling are inadequate because they do not include provisions for follow-up and documentation of follow-up, when conditions requiring further action are identified. The form for documenting transmission line patrols does not clearly indicate the entire transmission line is patrolled once per calendar year, at intervals not exceeding 15 months.

10. §192.605(b) (See Above)

§192.707 Line markers for mains and transmission lines.

(a) Buried pipelines. Except as provided in paragraph (b) of this section, a line marker must be placed and maintained as close as practical over each buried main and transmission line:

- (1) At each crossing of a public road and railroad; and**
- (2) Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.**

Duluth's procedures for line markers are inadequate because they do not specify that markers will be placed and maintained at highway and railroad crossings.

(c) Pipelines above ground. Line markers must be placed and maintained along each section of a main and transmission line that is located above ground in an area accessible to the public.

Duluth's procedures for line markers of above ground pipelines are inadequate because they do not specify the markers will be maintained.

11. §192.605(b) (See Above)

§192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission line for the periods specified:

- (a) The date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for as long as the pipe remains in service.**
- (b) The date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least 5 years. However, repairs generated by patrols, surveys, inspections, or tests required by subparts L and M of this part must be retained in accordance with paragraph (c) of this section.**

Duluth's procedures for transmission line record keeping are inadequate because the record retention table in Section 37.02, which specifies the requirements for maintaining records, does not specifically identify repairs to the transmission line as required elements. This needs to be clarified, either through specific requirements for documentation of transmission line repairs, or through specific line items in the table.

12. §192.605(b) (See Above)

§192.727 Abandonment or deactivation of facilities.

(b) Each pipeline abandoned in place must be disconnected from all sources and supplies of gas; purged of gas; in the case of offshore pipelines, filled with water or inert materials; and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is no potential hazard.

Duluth's abandonment procedures in Section 20/21 are inadequate because they have not been developed with full consideration of the transmission line, and are therefore inaccurate. According to Duluth's representatives, if it were necessary to abandon any portion of the transmission line, a specific procedure would be developed. Reference to this approach should be included in the O&M.

13. §192.605(b) (See Above)

§192.745 Valve maintenance: Transmission lines.

(a) Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

Duluth's procedures for transmission line valve inspections are inadequate because they do not reflect the details of the actual inspections that are performed.

Response to this Notice

This Notice is provided pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237. 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.

If, after opportunity for a hearing, your plans or procedures are found inadequate as alleged in this Notice, you may be ordered to amend your plans or procedures to correct the inadequacies (49 C.F.R. § 190.237). If you are not contesting this Notice, we propose that you submit your amended procedures to my office within 30 days of receipt of this Notice. This period may be extended by written request for good cause. Once the inadequacies identified herein have been addressed in your amended procedures, this enforcement action will be closed.

In correspondence concerning this matter, please refer to **CPF 3-2011-1005M** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

A handwritten signature in black ink, appearing to read "D. A. Barrett". The signature is stylized with a large initial "D" and a cursive "A" and "Barrett".

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Pipeline Operators in Compliance Proceedings*

cc: Ms. Elizabeth Skalnek, Minnesota Office of Pipeline Safety

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.

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