



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

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

**TRANSMITTED VIA EMAIL & CERTIFIED MAIL - RETURN RECEIPT
REQUESTED**

January 25, 2016

Mr. James Runyan
President
Wyoming Pipeline Company
1600 Broadway Street, Suite 2300
Denver, Colorado 80202

CPF #: 5-2015-6006S

Dear Mr. Runyan:

Enclosed is a Notice of Proposed Safety Order (Notice) issued in the above-referenced case. The Notice proposes that the Wyoming Pipeline Company take certain measures with respect to the Wyoming Crude System in Niobrara and Weston Counties, Wyoming. Your options for responding are set forth in the Notice. Your receipt of the Notice constitutes service of that document under 49 C.F.R. § 190.5.

We look forward to a successful resolution to ensure pipeline safety. Please direct any questions on this matter to me at 720-963-3160.

Sincerely,

 Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: Notice of Proposed Safety Order
49 C.F.R. § 190.239

cc: Mr. Claude Allen, General Engineer, Western Region, OPS
Mr. Huy Nguyen, Operations Supervisor, Western Region, OPS

195.450. The Crude System also crosses the Cheyenne River, Oil Creek, Bobcat Creek, and several small streams.

- The Crude System has two idle segments consisting of 6 inch, 8 inch, and 10 inch low-stress crude oil transmission lines in Niobrara County and Weston County, Wyoming (the Affected Segments). They have been idle since 2012.²
- The first idle segment is the Lance Creek to Buck Creek Station segment, approximately 19 miles long. The second idle segment is the Buck Creek Station to Mush Creek Station segment, approximately 48 miles long. The Affected Segments are located in semi-arid, rural ranch land with a low population density and little likelihood of population growth. These locations also have right-of-ways (ROWS) traversing streams.
- On October 22, 2012, PHMSA representatives inspected the facilities and records of the WPC in Newcastle, Wyoming. At the time of inspection, WPC had failed to develop written procedures to accomplish the requirements of 49 C.F.R. § 195.5.³
- On March 26, 2014, PHMSA issued a Final Order in CPF No 5-2013-6003. Under this Final Order WPC was to complete a conversion to service under 49 CFR § 195.5 for the Crude System, which included the Affected Segments.⁴ On December 23, 2015 WPC informed PHMSA that it had completed all the Items in the Compliance Order except for Items 1(b), 1(c) and 1(e) due to scheduling delays. An extension to complete Items 1(b), 1(c) and 1(e) was granted until December 31, 2016. The remaining items in the Compliance Order (Items 1(a), 1(d), 1(f), 1(g), 1(h), and 1(i)) were deemed fulfilled and closed.
- On August 24, 2015, at approximately 3:00 pm M.S.T., a contractor working for WPC noticed a leak on a portion of the Affected Segments located approximately 0.5 miles northwest of where the Affected Segments cross Morrissey Road (Leak Site). At the Leak Site, the contractor noted approximately two to three barrels of crude oil had been released.
- On the evening of August 24, 2015, WPC sent representatives to the Leak Site to assess and repair the leak. They used an 8-inch steel clamp and 3-inch diameter rubber hole plug to temporarily repair the portion of the Affected Segments at the Leak Site. According to the

² The pumps were stopped and the valves were closed. Therefore, there is no pump head pressure, only elevation head pressure.

³ WPC's pipeline system became subject to Part 195, and therefore had to comply with the requirements of 49 C.F.R. § 195.5 by October 1, 2012 to qualify for service. Specifically, WPC operates approximately 148 miles of category 3, rural, low-stress pipeline and pipe facilities per § 195.12 (c) (3) that became effective on October 1, 2011. Per the requirements of 195.12(c) (3) (A) (iii), an operator must "comply with all safety requirements of this Part, except the requirements in §195.452, Subpart B, and the requirements in Subpart H, before October 1, 2012. Comply with Subpart H of this Part before October 1, 2014." Further, because WPC operated a 1.86 mile segment of non-rural low-stress pipeline, and because this non-rural segment could affect an "Other Populated Area (OPA)," it should have also been in compliance with all the applicable requirements of Part 195.

⁴ In order to qualify for service, the WPC pipeline had to review the design, construction, operation and maintenance history of the pipeline, perform a visual inspection and select underground segments for physical defects and operating conditions that could impair the strength or tightness of the pipeline, correct all known unsafe defects, and test the pipeline to substantiate the maximum operating pressure permitted by 49 CFR § 195.406.

repair technician, the small hole was due to internal corrosion. Following the leak, WPC did not return the Affected Segments to service, and they remained idle.

- The Leak Site encompasses rural ranch property. It impacted no waterways, had minimal environmental damage related to soil contamination, and no harm to persons or property. The leak cost approximately \$2,000.00 in damage and repairs.
- WPC estimates anywhere from 1600 to 1800 barrels remain in the Affected Segments. WPC claims that the pressure required to purge the Affected Segments would result in ruptures to the Crude System. However, WPC stated that it could tap into the line at two low spots and vacuum the line, thus removing the majority of crude remaining in the line.
- On August 25, 2015, WPC notified PHMSA of the August 24, 2015 leak by filing a PHMSA Accident Report, Hazardous Liquid Pipeline Systems # 20150302 – 20688. At this time, PHMSA became aware of numerous other past leaks in the system. Specifically, according to WPC, there were 33 releases on the Buck Creek Station segment of the Crude System from January 2009 to August 2015. The volumes ranged from five gallons to 180 bbls. While most had a relatively low impact to the environment, several releases affected small streams. The majority of these releases were caused by internal or external corrosion. Additionally, thermal expansion was a presumed factor in some releases. Although 49 C.F.R. § 195.54 requires operators to file accident reports with PHMSA after an accident, WPC did not file any accident reports for these leaks.

Proposed Issuance of Safety Order

Section 60117(l) of Title 49, United States Code, provides for the issuance of a safety order, after reasonable notice and the opportunity for a hearing, requiring corrective measures, which may include physical inspection, testing, repair, or other action, as appropriate. The basis for making the determination that a pipeline facility has a condition or conditions that pose a pipeline integrity risk to public safety, property, or the environment is set forth both in the above-referenced statute and 49 C.F.R. § 190.239, a copy of which is enclosed.

After evaluating the foregoing preliminary findings of fact and considering WPC's failure to comply with PHMSA regulations including but not limited to the failure to file accident reports for leaks occurring on the Affected Segments from January 2009 through August 2015, WPC's failure to follow a PHMSA Final Order regarding the Crude System, WPC's failure to maintain adequate cathodic protection on the Crude System, and the lack of knowledge regarding the pipeline, it appears that the continued operation of the affected pipeline facility without corrective measures would pose a pipeline integrity risk to public safety, property, or the environment.

Accordingly, PHMSA issues this Notice of Proposed Safety Order to notify Respondent of the proposed issuance of a safety order and to propose that Respondent take measures specified herein to address the potential risk.

Response to this Notice

In accordance with § 190.239, you have 30 days following receipt of this Notice to submit a written response to the official who issued the Notice. If you do not respond within 30 days, this constitutes a waiver of your right to contest 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 Safety Order. In your response, you may notify that official that you intend to comply with the terms of the Notice as proposed, or you may request that an informal consultation be scheduled. Informal consultation provides you with the opportunity to explain the circumstances associated with the risk conditions alleged in the notice and, as appropriate, to present a proposal for a work plan or other remedial measures, without prejudice to your position in any subsequent hearing.

If you and PHMSA agree within 30 days of informal consultation on a plan and schedule for you to address each identified risk condition, we may enter into a written consent agreement (PHMSA would then issue an administrative consent order incorporating the terms of the agreement). If a consent agreement is not reached, or if you have elected not to request informal consultation, you may request an administrative hearing in writing within 30 days following receipt of the Notice or within 10 days following the conclusion of an informal consultation that did not result in a consent agreement, as applicable. Following a hearing, if the Associate Administrator finds the facility to have a condition that poses a pipeline integrity risk to the public, property, or the environment in accordance with § 190.239, the Associate Administrator may issue a safety order.

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).

In your correspondence on this matter, please refer to **CPF # 5-2015-6006S** and for each document you submit, please provide a copy in electronic format whenever possible.

Proposed Corrective Measures

Pursuant to 49 U.S.C. § 60117(l) and 49 C.F.R. § 190.239, PHMSA proposes to issue a safety order to WPC to propose the following:

1. Within 30 days of receipt of this notice, WPC should develop a plan and schedule to purge the Affected Segments of all crude oil, and send this plan to the Director, Western Region, OPS (Director). Upon notice of approval, WPC must implement this plan.
2. Within 60 days of completing the proposed corrective measures stated in Item 1, WPC must submit a report to the Director showing the completion of these corrective measures.
3. The Director may grant an extension of time for compliance with any of the terms of the safety order upon a written request timely submitted demonstrating good cause for an extension.

4. Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator shall be final.
5. PHMSA requests that WPC maintain documentation of the safety improvement costs associated with fulfilling this Safety Order and submit the total to the Director. It is requested that these costs 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.

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

After receiving and analyzing additional data in the course of this proceeding and implementation of the work plan, PHMSA may identify other safety measures that need to be taken. In that event, Respondent will be notified of any proposed additional measures and, if necessary, amendments to the work plan or safety order.



 Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

25 JAN 16
Date issued

cc: PHP-60 Compliance Registry
PHP-500 C. Allen (#151022)

General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

[70 FR 11139, Mar. 8, 2005]

§ 190.237 [Reserved]

§ 190.239 Safety orders.

(a) *When may PHMSA issue a safety order?* If the Associate Administrator finds, after notice and an opportunity for hearing under paragraph (b) of this section, that a particular pipeline facility has a condition or conditions that pose a pipeline integrity risk to public safety, property, or the environment, the Associate Administrator may issue an order requiring the operator of the facility to take necessary corrective action. Such action may include physical inspection, testing, repair or other appropriate action to remedy the identified risk condition.

(b) *How is an operator notified of the proposed issuance of a safety order and what are its response options?* (1) *Notice of proposed safety order.* PHMSA will serve written notice of a proposed safety order under §190.5 to an operator of the pipeline facility. The notice will allege the existence of a condition that poses a pipeline integrity risk to public safety, property, or the environment, and state the facts and circumstances that support issuing a safety order for the specified pipeline or portion thereof. The notice will also specify proposed testing, evaluations, integrity assessment, or other actions to be taken by the operator and may propose that the operator submit a work plan and schedule to address the conditions identified in the notice. The notice will also provide the operator with its response options, including procedures for requesting informal consultation and a hearing. An operator receiving a notice will have 30 days to respond to the PHMSA official who issued the notice.

(2) *Informal consultation.* Upon timely request by the operator, PHMSA will provide an opportunity for informal consultation concerning the proposed

safety order. Such informal consultation shall commence within 30 days, provided that PHMSA may extend this time by request or otherwise for good cause. Informal consultation provides an opportunity for the respondent to explain the circumstances associated with the risk condition(s) identified in the notice and, where appropriate, to present a proposal for corrective action, without prejudice to the operator's position in any subsequent hearing. If the respondent and Regional Director agree within 30 days of the informal consultation on a plan for the operator to address each risk condition, they may enter into a written consent agreement and the Associate Administrator may issue a consent order incorporating the terms of the agreement. If a consent agreement is reached, no further hearing will be provided in the matter and any pending hearing request will be considered withdrawn. If a consent agreement is not reached within 30 days of the informal consultation (or if informal consultation is not requested), the Associate Administrator may proceed under paragraphs (b)(3) through (5) of this section. If PHMSA subsequently determines that an operator has failed to comply with the terms of a consent order, PHMSA may obtain any administrative or judicial remedies available under 49 U.S.C. 60101 *et seq.* and this part. If a consent agreement is not reached, any admissions made by the operator during the informal consultation shall be excluded from the record in any subsequent hearing. Nothing in this paragraph (b) precludes PHMSA from terminating the informal consultation process if it has reason to believe that the operator is not engaging in good faith discussions or otherwise concludes that further consultation would not be productive or in the public interest.

(3) *Hearing.* An operator receiving a notice of proposed safety order may contest the notice, or any portion thereof, by filing a written request for a hearing within 30 days following receipt of the notice or within 10 days following the conclusion of informal consultation that did not result in a consent agreement, as applicable. In the absence of a timely request for a hearing, the Associate Administrator

may issue a safety order in the form of the proposed order in accordance with paragraphs (c) through (g) of this section.

(4) *Conduct of hearing.* An attorney from the Office of Chief Counsel, will serve as the Presiding Official in a hearing under this section. The hearing will be conducted informally, without strict adherence to formal rules of evidence in accordance with §190.211. The respondent may submit any relevant information or materials, call witnesses, and present arguments on the issue of whether a safety order should be issued to address the alleged presence of a condition that poses a pipeline integrity risk to public safety, property, or the environment.

(5) *Post-hearing action.* Following a hearing under this section, the Presiding Official will submit a recommendation to the Associate Administrator concerning issuance of a final safety order. Upon receipt of the recommendation, the Associate Administrator may proceed under paragraphs (c) through (g) of this section. If the Associate Administrator finds the facility to have a condition that poses a pipeline integrity risk to public safety, property, or the environment, the Associate Administrator will issue a safety order under this section. If the Associate Administrator does not find that the facility has such a condition, or concludes that a safety order is otherwise not warranted, the Associate Administrator will withdraw the notice and promptly notify the operator in writing by service as prescribed in §190.5. Nothing in this subsection precludes PHMSA and the operator from entering into a consent agreement at any time before a safety order is issued.

(6) *Termination of safety order.* Once all remedial actions set forth in the safety order and associated work plans are completed, as determined by PHMSA, the Associate Administrator will notify the operator that the safety order has been lifted. The Associate Administrator shall suspend or terminate a safety order whenever the Associate Administrator determines that the pipeline facility no longer has a condition or conditions that pose a

pipeline integrity risk to public safety, property, or the environment.

(c) *How is the determination made that a pipeline facility has a condition that poses an integrity risk?* The Associate Administrator may find a pipeline facility to have a condition that poses a pipeline integrity risk to public safety, property, or the environment under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator determines the particular facility has such a condition; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique with a history of being susceptible to failure when used in pipeline service, unless the operator involved demonstrates that such equipment, material, or technique is not susceptible to failure given the manner it is being used for a particular facility.

(d) *What factors must PHMSA consider in making a determination that a risk condition is present?* In making a determination under paragraph (c) of this section, the Associate Administrator shall consider, if relevant:

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

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

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

(4) For hazardous liquid pipelines, the proximity of the pipeline to an unusually sensitive area;

(5) The population density and growth patterns of the area in which the pipeline facility is located;

(6) Any relevant recommendation of the National Transportation Safety

Board issued in connection with any investigation conducted by the Board;

(7) The likelihood that the condition will impair the serviceability of the pipeline;

(8) The likelihood that the condition will worsen over time; and

(9) The likelihood that the condition is present or could develop on other areas of the pipeline.

(e) *What information will be included in a safety order?* A safety order shall contain the following:

(1) A finding that the pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment;

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

(3) The legal basis for the order;

(4) The nature and description of any particular corrective actions to be required of the operator; and

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

(f) *Can PHMSA take other enforcement actions on the affected facilities?* Nothing in this section precludes PHMSA from issuing a Notice of Probable Violation under §190.207 or taking other enforcement action if noncompliance is identified at the facilities that are the subject of a safety order proceeding.

(g) *May I petition for reconsideration of a safety order?* Yes, a petition for reconsideration may be submitted in accordance with §190.243.

[73 FR 16567, Mar. 28, 2008, as amended at 74 FR 2893, Jan. 16, 2009; Amdt. 190-16, 78 FR 58913, Sept. 25, 2013]

§ 190.241 Finality.

Except as otherwise provided by §190.243, an order directing amendment issued under §190.206, a final order issued under §190.213, a corrective action order issued under §190.233, or a safety order issued under §190.239 is considered final administrative action on that enforcement proceeding.

[Amdt. 190-16, 78 FR 58913, Sept. 25, 2013]

§ 190.243 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator for reconsideration of an order directing amend-

ment of plans or procedures issued under §190.206, a final order issued under §190.213, or a safety order issued under §190.239. The written petition must be received no later than 20 days after receipt of the order by the respondent. A copy of the petition must be provided to the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration, East Building, 2nd Floor, Mail Stop E26-105, 1200 New Jersey Ave. SE., Washington, DC 20590 or by email to phmsachiefcounsel@dot.gov. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the order should be reconsidered.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons why they were not presented prior to issuance of the final order.

(c) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator otherwise provides, the order, including any required corrective action, is not stayed.

(d) The Associate Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. If the Associate Administrator reconsiders an order under this section, a final decision on reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator, as deemed appropriate.

(e) It is the policy of the Associate Administrator to expeditiously issue notice of the action taken on a petition for reconsideration. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

(f) If the Associate Administrator reconsiders an order under this section, the decision on reconsideration is the final administrative action on that enforcement proceeding.

(g) Any application for judicial review must be filed no later than 89 days