Mr. Cris E. Campos
Vice President
Operations and Engineering
Praxair, Inc.
Linde Division
P.O. Box 44
Tonawanda, NY 14151-0044

Re: CPF No. 52029

Dear Mr. Campos:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws several of the allegations, makes findings of violation, assesses a civil penalty of $11,000, and requires specific corrective action. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

cc: Peter L. Badanes, Esq.
Praxair, Inc.
Law Department
M-1
39 Old Ridgebury Road
Danbury, CT 06810-5113

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC

In the Matter of	)	
Praxair, Inc.	)	CPF No. 52029
Respondent.	)	

On July 30-31, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Fontana, California. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent by letter dated December 9, 1992, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.13(c), 192.225(a), 192.465(a), 192.465(d), 192.491(b)(2), 192.603(b), 192.614, 192.615(a), 192.705(a), 192.706(b)(1), 192.739 and 199.7 and proposed assessing a civil penalty of $24,000 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

After an extension to reply was granted, Respondent responded to the Notice by letter dated January 26, 1993 (Response). Respondent contested the allegations and submitted information in support of its position. Respondent did not request a hearing and therefore, has waived its right to one.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent had not appropriately modified its plans and procedures in violation of 49 C.F.R. § 192.13(c), which requires an operator to maintain, modify as appropriate, and follow required plans, procedures and programs.

Respondent maintained that it periodically modifies its operating and maintenance manual to incorporate changes in procedures relating to its flammable gas pipelines and that the allegation did not identify which of these modifications were not appropriate. Respondent acknowledged that some of its procedures plagiarize the pipeline safety regulations but said that it was not aware of any prohibition against doing so. Respondent also maintained that because OPS had previously reviewed Respondent's operating manual and found no deficiencies, Respondent was surprised by this allegation.

An operator is not excused from compliance because an OPS review did not result in any allegations of violation. A review does not guarantee that an operator's plan will forever comply with the pipeline safety regulations. A subsequent inspection may find deficiencies missed in the prior inspection because the scope of the inspections may differ. Or new or revised regulations may necessitate an operator's amending procedures that previously were satisfactory.

In addition to having procedures that are up-to-date, an operator's procedures must give employees adequate instructions to accomplish their tasks. The allegation intended to make Respondent aware of its responsibility to customize procedures to its operations by specifying the methods and procedures it uses to meet each regulatory requirement rather than simply restating the regulations. Although this was the intent, I agree that Respondent could not adequately rebut the allegation because it failed to identify which of Respondent's procedures and modifications did not satisfy the regulations or specify how they were inappropriate.

Accordingly, this allegation of violation is withdrawn. Nonetheless, since Respondent is now aware of the intent behind the allegation, Respondent should revise its procedures to better reflect how they pertain to Respondent's particular operations. Respondent's failure to revise its procedures to address these concerns may result in a finding of inadequacy or violation in a subsequent enforcement action.

Item 2 alleged that Respondent's welding procedures did not comply with 49 C.F.R. § 192.225, which requires that welding be performed by a qualified welder in accordance with qualified welding procedures, that the quality of the test welds used to qualify the procedures be determined by destructive testing, and that each welding procedure be recorded in detail.

Respondent maintained that the allegation failed to specify how its welding procedures did not meet the regulatory requirements. Respondent also maintained that § 192.225 could not be violated unless repairs involving welding are made to a pipeline and that since its pipeline was installed, no weld or repair involving welding has been made.

Respondent is incorrect that it need not have a particular procedure until it performs the related operation. Section 192.605(a) requires an operator to include in its operating and maintenance plan instructions for employees covering operating and maintenance procedures during normal operations and repairs. Welding and repair are normal operations for which welding instructions are necessary. Respondent cannot wait until it welds before developing welding procedures.

I agree that the allegation failed to specify how Respondent's welding procedures did not satisfy the requirements. What OPS found, but failed to allege, was that Respondent's welding procedures referenced the ANSI/ASME B31.8 code but that Respondent could not locate this descriptive material. Without this referenced material, Respondent's welding procedures could not demonstrate how a welder and weld completed are qualified to those procedures. Although Respondent's procedures failed to comply with the regulation, the allegation was too vague for Respondent to adequately respond.

Accordingly, the allegation of violation is withdrawn. However, Respondent is again warned that since it is now aware of the basis for the allegation of violation, Respondent should take appropriate action to ensure that all material referenced in its welding procedures is readily available.

Item 3 in the Notice alleged that Respondent had violated 49 C.F.R. § 192.465(a), because it could not locate its cathodic inspection records for 1990. Section 192.465(a) requires that each pipeline under cathodic protection be tested at least once each calendar year, but with intervals not to exceed 15 months, to determine if cathodic protection requirements are being met.

Respondent explained that its cathodic protection records are kept at another location. Respondent provided copies of its pipe-to-soil survey records for 1989, 1991, and 1992 but did not submit pipe-to-soil records for 1990. Rather, Respondent submitted a cover memorandum stating that the ground conditions had been dry that year. This memorandum is not sufficient proof to demonstrate that Respondent performed the cathodic protection surveys for 1990. Accordingly, I find that Respondent violated

49 C.F.R. § 192.465(a) by not having the specified records for 1990.

Item 4 alleged that Respondent had violated 49 C.F.R. § 192.465(d), which requires an operator to take prompt remedial action to correct any deficiencies indicated by monitoring. The Notice alleged that, since 1989, Respondent had failed to take prompt remedial action to correct low cathodic protection readings on its pipeline.

Respondent argued that corrective action had not been necessary because the low readings were not indicative of a problem with cathodic protection. Respondent explained that drought conditions had raised the resistivity of the soil so that current could not readily pass from the anode into the soil.

Respondent's 1989, 1991 and 1992 surveys indicated that several locations along its pipeline were below the minimum criterion of -.85 volts for cathodic protection. As discussed above, Respondent could not document that it surveyed in 1990. In spite of continual low readings, Respondent did not take any action to verify that the low readings were the result of dry soil conditions. For example, at the locations with low readings, Respondent did not water down the areas and take subsequent readings and did not make spot checks to ensure that there was no external corrosion or disbondment. Accordingly, I find that Respondent violated 49 C.F.R. § 192.465(d).

Item 5 alleged that Respondent had violated 49 C.F.R. § 192.491(b)(2) because it could not provide records to show that it was conducting external and internal corrosion control monitoring.

Respondent maintained that it was performing the required external corrosion monitoring, as evidenced by copies of its annual cathodic protection survey. As for internal corrosion monitoring, Respondent said that it has not needed to comply with § 192.475(b) because it has never removed pipe from the pipeline since the pipeline was installed in 1966.

Respondent's records demonstrate that it was conducting external corrosion control monitoring. Although OPS maintains that Respondent did not provide records for 1990, the allegation in the Notice did not specify which years Respondent did not keep records, simply that Respondent did not keep records. Respondent has provided records that demonstrate it was performing external corrosion control monitoring.

However, as for internal corrosion monitoring, not having had removed pipe does not excuse Respondent from having to include the required procedures in its operations manual. Procedures must be in place before an operator needs them to perform an operation. Respondent has not demonstrated that it has any procedures or records for the internal inspection of any

pipeline.

Accordingly, the first part of the allegation concerning external corrosion monitoring is withdrawn. However, I find that Respondent violated 49 C.F.R. § 192.491(b)(2) because it did not provide any records showing it was performing internal corrosion monitoring.

Item 6 alleged that Respondent had violated 49 C.F.R. § 192.603(b), requiring an operator to establish written operating and maintenance plans that meet the requirements of Part 192, because Respondent did not have written procedures that addressed prompt remedial action to correct a deficiency indicated by monitoring, electrical isolation, internal corrosion control, tapping pipelines under pressure, and prevention of accidental ignition.

Respondent maintained that its operating plans satisfy the regulatory requirements. Respondent submitted copies of those procedures alleged it did not have, except for procedures addressing external corrosion control, which Respondent admitted it did not have. Respondent said that adequate internal corrosion control is accomplished through its cathodic protection.

Except for internal corrosion control procedures, OPS agrees that Respondent's operating manual contains procedures covering the cited items, but finds that these procedures merely parrot the regulations. The basis for this allegation is similar to that of Item 1. Respondent's procedures parrot the regulations without providing adequate instruction for its employees to carry out functions particular to Respondent's operations.

Nonetheless, although Respondent's procedures are inadequate, this was not alleged. Accordingly, the allegation of violation is withdrawn with respect to all cited items except internal corrosion control. However, Respondent is warned that its failure to revise its procedures to address the concerns expressed by OPS may result in a finding of inadequacy or of violation in a subsequent enforcement action.

With respect to lack of specific written procedures addressing internal corrosion control, the necessity for having procedures before an operation is performed has previously been discussed. Furthermore, cathodic protection procedures do not address internal corrosion control because internal corrosion cannot be determined until a pipeline is opened. Accordingly, I find that Respondent violated 49 C.F.R. § 192.603(b) with respect to lack of this procedure.

Item 7 alleged that Respondent did not have a written damage prevention program in violation of 49 C.F.R. § 192.614. This regulation requires that an operator of a buried pipeline have a

written program to prevent damage to the pipeline by excavation activities, and that the program include specified minimum information.

At the time of the inspection, § 192.614(c) excepted pipelines in a class 2 location from the damage prevention program requirements. Respondent has demonstrated that the line at issue is in a class 2 location. However, since September 1995, Respondent has been required to have a damage prevention program for its pipelines in class 1 and class 2 locations. Accordingly, this allegation of violation is withdrawn but Respondent is warned about its responsibility to establish a written damage prevention program for this pipeline.

Item 8 alleged that Respondent's written procedures to minimize the hazards resulting from a gas pipeline emergency did not satisfy the requirements of 49 C.F.R. § 192.615.

Respondent maintained that it thought its plan complied with the regulations because of OPS's previous review. As previously explained, an operator is responsible for ensuring that it is in compliance; an operator is not excused from compliance because of its reliance on an OPS review that did not result in any allegations of violation. A review does not guarantee that an operator's plan will forever comply with the pipeline safety regulations. Subsequent review may find deficiencies missed in the prior review because the scope of the inspections may differ. Previously satisfactory procedures may have to be amended to conform to new or revised regulations.

Respondent's emergency plan failed to provide for the following - prompt and effective response to a notice of each type of emergency; notifying appropriate fire, police, and other public officials of gas pipeline emergencies and coordinating with them responses during an emergency; furnishing supervisors who are responsible for emergency action a copy of the latest edition of the operator's emergency procedures; establishing and maintaining liaison with appropriate fire, police, and other public officials; establishing a continuing education program to enable customers, the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a gas pipeline emergency.

Accordingly, I find that Respondent violated 49 C.F.R. § 192.615. Respondent is also warned that since the inspection, the emergency procedure requirements have been revised and that Respondent should ensure its procedures comply with the amended requirements.

Item 9 alleged that Respondent violated 49 C.F.R. § 192.705 because it did not patrol its pipeline quarterly during 1990 and

1991.

Respondent explained that because the pipeline is in a class 2 location, the regulations require that it conduct the patrols at intervals of 7 1/2 months, but at least twice each calendar year. Respondent submitted its inspection logs for 1990 and 1991 demonstrating that it had conducted the patrols within the required intervals. Accordingly, this allegation of violation is withdrawn.

Item 10 alleged that Respondent violated 49 C.F.R. § 192.706(b)(1) because it had not performed a leakage survey twice each calendar year. Section 192.706(b)(1)(1992 ed.) required that leakage surveys be conducted in Class 3 locations at intervals not exceeding 7 1/2 months, but at least twice each calendar year.

Respondent argued that OPS failed to allege which calendar years it did not perform the leakage surveys. Respondent further pointed out that because the pipeline at issue is in a Class 2 location, it was required to conduct leakage surveys at intervals not exceeding 15 months, but at least once each calendar year. Respondent submitted information showing that it had checked casing vents on the pipeline for leakage with a flammable gas analyzer.

I agree that without indicating which years Respondent failed to conduct the surveys, it is difficult for Respondent to rebut the allegation. Respondent has demonstrated that it performed leakage surveys. Without a specific time frame alleged, I cannot ascertain when Respondent may have missed a survey. Accordingly, the allegation of violation is withdrawn. Nonetheless, Respondent is warned that it is responsible for conducting the required surveys within the specified time frames, and for documenting that it has done so.

Item 11 alleged that Respondent failed to inspect each pressure limiting station, relief device, and pressure regulating station and its equipment, in violation of 49 C.F.R. § 192.739, which requires an operator to inspect such devices and equipment at intervals not exceeding 15 months, but at least once each calendar year.

Respondent maintained that the allegation failed to specify which calendar years it had failed to perform the inspections. Respondent also submitted records that Respondent said showed it had performed all inspections.

I agree that the allegation did not specify which calendar years Respondent failed to perform the required inspections. Respondent has provided evidence that it had performed these inspections. Without more specificity I cannot ascertain which inspections were missed. Accordingly, this allegation of violation is withdrawn but Respondent must ensure that it

performs these inspections within the required intervals and maintains the necessary documentation.

Item 12 alleged that Respondent's May 8, 1992 revision to its substance detection program does not meet the requirements of Parts 40 and 199, in violation of 49 C.F.R. § 199.7.

Respondent submitted a copy of its anti-drug plan, including the 1992 revision, and argued that except for the omission of the addresses of the testing laboratory and the medical review officer, the plan satisfies the regulatory requirements.

Respondent's anti-drug plan, including the amendment, lacked the medical review officer's name, the name and address of the laboratory that does the analysis, as well as procedures for notifying employees of the coverage and provisions of the plan, for specimen collection and testing preparation, and for laboratory analysis and quality assurance and control. Accordingly, I find that Respondent violated 49 C.F.R. § 199.7.

These findings of violation (Items 3, 4, 5, 12) will be considered prior offenses in any subsequent enforcement action taken against Respondent.

PENALTY ASSESSMENT

At the time the Notice was issued, under 49 U.S.C § 60122, Respondent was subject to a civil penalty not to exceed $10,000 per violation for each day of the violation up to a maximum of $500,000 for any related series of violations. The Notice proposed a penalty of $24,000 for Items 2-4 and 9-12.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

As previously discussed, the allegations concerning 49 C.F.R. §§ 192.225, 192.705(a), 192.706(b)(1) and 192.739 (Items 2, 9, 10,11) are withdrawn and no penalties will be assessed.

Two of the remaining violations concerned the maintenance of adequate cathodic protection.

Respondent violated § 192.465(a) (Item 3) for missing its 1990 annual cathodic protection survey. An annual survey is an important tool in detecting if cathodic protection is adequate.

Failing to monitor the adequacy of the cathodic protection within the required intervals increases the risk that developing corrosion will not be detected and will remain untreated until the next scheduled survey. Corrosion can ultimately jeopardize the safe operation of a pipeline system.

Respondent's violation of § 192.465(d) (Item 4) was for failure to take prompt remedial action to correct deficiencies indicated by monitoring. Corrosion can result from inadequate cathodic protection where prompt remedial action is not taken. Consistent low cathodic protection readings at numerous locations along a pipeline for two, three and four consecutive years indicate that an adequate level of cathodic protection has not been provided and corrosion may have occurred. Respondent's explanation that it assumed that drought conditions were the cause of the low readings, without verifying that this was the cause, does not warrant mitigation.

The violation of § 199.7 (Item 12) was for having an anti-drug plan that did not meet the regulatory requirements because it lacked essential required information. This information is necessary for employees to know their rights and to know how the drug testing program is to be carried out. Respondent's assertion that it is now modifying its plan does not warrant mitigation.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $11,000. I have determined that Respondent has the ability to pay this penalty amount without adversely affecting its ability to continue in business.

Payment of the civil penalty **must be made within 20 days of service**. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this **payment be made by wire transfer**, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. **Detailed instructions are contained in the enclosure**. After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the $11,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in an United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, 5-8, and 12. As previously discussed, the allegations concerning §§ 192.13(c), 192.225, 192.603(b) and 192.614 (Items 1, 2, 6 and 7) have been withdrawn; no compliance action will be required with respect to these items. Nonetheless, Respondent has been advised that although the allegations were withdrawn, Respondent should take corrective action in these areas.

As for the other cited items (Items 5, 6, 8 and 12) Respondent has not yet demonstrated that it has internal corrosion control monitoring, emergency plan and anti-drug plan procedures that satisfy the regulatory requirements.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is hereby ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations.

1. Establish written procedures for internal corrosion control meeting the requirements of 49 C.F.R. § 192.475. These procedures must include that whenever pipe is removed from a pipeline for any reason, the internal surface must be inspected for evidence of corrosion. Also, maintain records meeting the requirements of § 192.491(b)(2) demonstrating the adequacy of internal corrosion control measures.

2. Prepare a written emergency plan meeting the requirements of 49 C.F.R. § 192.615.

This plan must include written procedures to minimize the hazard resulting from a gas pipeline emergency that provide for -

Prompt and effective response to a notice of each type of emergency;

Notifying appropriate fire, police, and other public officials of gas pipeline emergencies and coordinating with them responses during an emergency;

This plan must also include written procedures that provide for-

Furnishing supervisors who are responsible for emergency action a copy of the latest edition of emergency procedures;

Establishing and maintaining liaison with appropriate fire, police, and other public officials;

Establishing a continuing educational program to enable specified persons to recognize and report a gas pipeline emergency.

3. Amend the written anti-drug plan to ensure it meets the requirements of 49 C.F.R. Parts 199 and 40. This plan must provide for -

The name and address of each laboratory that analyzes the specimens collected for drug testing;

The name and address of the operator's medical review officer;

Notifying employees of the coverage and provisions of the plan;

Preparation for testing requirements;

Specimen collection procedures;

Laboratory personnel requirements;

Laboratory analysis procedures;

Quality assurance & quality control requirements.

4. Complete the above items within 60 days following receipt of this Final Order. Submit a copy of each completed procedure to the Director, Western Region, OPS.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). In accordance with 49 C.F.R. § 190.215(d), filing the petition does not stay the effectiveness of this Final Order. However, in the petition Respondent may request, with explanation, that the Final Order be stayed. The terms and conditions of this Final Order are effective upon receipt.

Richard B. Felder
Associate Administrator
for Pipeline Safety