U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

DEC 04 2009

Mr. Vern Meier
Vice President, Field Operations
ANR Pipeline Company
TransCanada
717 Texas Avenue
Houston, TX 77002-2761

Re: CPF No. 3-2007-1006

Dear Mr. Meier:

Enclosed is the Final Order issued in the above-referenced case. It makes a finding of violation and specifies actions to be taken by ANR Pipeline Company to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Central Region, this enforcement action will be closed. Your receipt of this Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ivan A. Huntoon
Director, Central Region, OPS

Eugene R. Morabito
Attorney for ANR Pipeline Company
5250 Corporate Drive
Troy, Michigan 48098

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
ANR Pipeline Company,	)	**CPF No. 3-2007-1006**
Respondent.	)	

FINAL ORDER

On June 11-16, July 24-27, September 25-29, and October 9-19, 2006, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of ANR Pipeline Company (ANR or Respondent), a subsidiary of TransCanada. ANR operates a natural gas transmission pipeline system that transports gas from production fields in Louisiana, Oklahoma, Texas, and the Gulf of Mexico to markets in the Midwest. The safety inspection took place at the company's pipeline facilities in Kansas, Missouri, Illinois, Indiana, and Wisconsin.

As a result of the inspection, the Director, OPS Central Region (Director), issued to Respondent, by letter dated February 8, 2007, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed a single violation of the natural gas pipeline safety regulations (49 C.F.R. Part 192) and proposed ordering Respondent to take certain measures to correct the alleged violation. In addition, pursuant to 49 C.F.R. § 190.205, the Notice advised Respondent to take appropriate corrective action to address several warning items or face future potential enforcement action.

Respondent responded to the Notice by letter dated March 13, 2007 (Response), contesting the allegation of violation and requesting a hearing. Respondent supplemented its Response by letter dated November 20, 2007 (Supplemental Response). In accordance with 49 C.F.R. § 190.211, a hearing was held on November 29, 2007, in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent provided additional information by letter dated December 11, 2007 (Brief).

FINDING OF VIOLATION

Item 5 in the Notice alleged Respondent violated 49 C.F.R. § 192.625(b), which states in relevant part:

> **§ 192.625 Odorization of gas.**
>
> (a) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.
>
> (b) After December 31, 1976, a combustible gas in a transmission line in a Class 3 or Class 4 location must comply with the requirements of paragraph (a) of this section unless:
>
> (1) At least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location; [or] . . .
>
> (3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location . . . .

The Notice alleged that Respondent violated § 192.625(b) by failing to odorize combustible gas in certain transmission pipelines in Class 3 locations.[1] The Notice alleged specifically that Respondent failed to odorize seven transmission lateral lines in Class 3 locations, further alleging that the laterals did not qualify for an exception under § 192.625(b)(3) because less than 50 percent of their lengths were in Class 1 or Class 2 locations. The seven laterals were Line Numbers: 360 (Appleton); 266 (N. Appleton); 207 (Jackson); 321 (New Berlin); 355 (Oshkosh); 1-355 (Oshkosh Loop); and 361 (Little Chute). The Notice also alleged that Respondent failed to odorize two additional transmission lines, and that those lines did not qualify for the exception in § 192.625(b)(3) because the pipelines were not lateral lines. The Notice further alleged those two pipelines did not qualify for the exception in § 192.625(b)(1) because at least 50 percent of the length of such lines downstream from the Class 3 locations were not in either Class 1 or Class 2 locations. The two pipelines were Line Numbers 350 (Green Bay) and 201 (Madison).

The issue presented in this matter is whether the ANR pipelines cited in the Notice are lateral lines and whether they meet an exception from odorization. Section 192.625(b) requires that a combustible gas in a transmission line in a Class 3 or Class 4 location must be odorized so that at a certain concentration in air, the gas is readily detectable by a person with a normal sense of smell. Notwithstanding this requirement, the exception in § 192.625(b)(3) provides that in the case of a lateral line transporting gas to a distribution center, the gas is not required to be odorized if at least 50 percent of the length of the lateral line is in a Class 1 or Class 2 location.

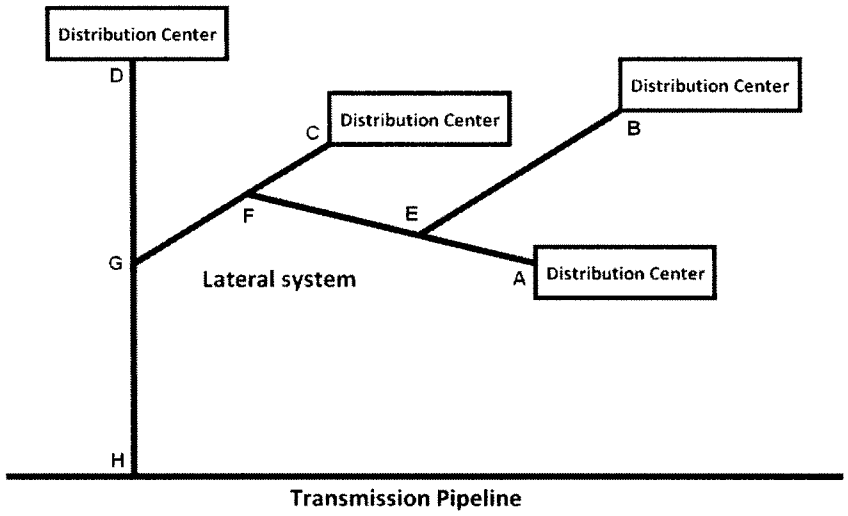
The relevant portion of Respondent's pipeline system consists of an interstate gas transmission line and a subsidiary pipeline system that branches away from the interstate line. This subsidiary system, which may be referred to as ANR's Illinois–Wisconsin lateral system, branches away

---

[1] Class 1 and Class 2 locations are generally rural areas with a lower concentration of population near the pipeline, while Class 3 and Class 4 locations have more population and other sensitive areas near the pipeline. *See* § 192.5.

from the interstate line at the Sandwich compressor station in Illinois (Sandwhich Station) and delivers gas to various distribution facilities in Wisconsin. There are pipes of varying diameters and pressures, branches, and compressor stations throughout the subsidiary lateral system. In some areas of the lateral system, pipelines branch away from other pipelines, which themselves branch from other pipelines. *Figure 1*, below, provides an illustrative example of a lateral system.

Figure 1. Hypothetical lateral system (not to scale).



In its Response and at the hearing, Respondent acknowledged that the pipelines referred to in the Notice are not odorized. ANR argued, however, that PHMSA's application of the term "lateral line" in the Notice was too narrow and that a more common understanding of the term should be employed to properly apply the exception in § 195.625(b)(3). Respondent noted that the natural gas pipeline safety regulations in 49 C.F.R. Part 192 do not define the term "lateral line" and Respondent had therefore utilized a definition from the American Gas Association's (AGA) website, which defines a lateral as "[a] pipe in a gas distribution or transmission system which branches away from the central and primary part of the system."[2]

Parsing the language of the AGA definition, Respondent interpreted the word "the" in the definition to mean that only one part of a pipeline system can be considered "central and primary." Respondent contended that under such a definition, each pipeline that branches away from ANR's single interstate transmission line must be a lateral. More specifically, Respondent contended that for each of the pipelines referenced in the Notice, "the lateral line ends at a distribution center, and for the purposes of this regulation, should be traced back to its point of origin at its primary source of supply . . . at the Sandwich Compressor Station."[3]

---

[2] AGA: Natural Gas Glossary, http://www.aga.org/Kc/aboutnaturalgas/glossary (follow "L" hyperlink to "Lateral") (last visited Sept. 10, 2009).

[3] Response at 2.

Since the entire lateral system in this case begins at Sandwich Station (for example, point "H" in Figure 1), Respondent contended that the length of each lateral must be calculated from its end point at the respective distribution center (for example, point "A") back to Sandwich Station. When ANR measured each line from Sandwich Station to its respective distribution center, the company determined that each one qualifies for the exemption in § 195.625(b)(3) because 50 percent or more of its length is in a Class 1 or Class 2 location.

ANR further argued that the company had never previously been found in violation of this regulation in the past, despite inspections performed by OPS in 1995, 2002, and 2006. Respondent also could not find an enforcement case brought by PHMSA against another operator for the same violation nor any public statements by the agency interpreting the term "lateral line." Therefore, Respondent inferred that its practices and interpretation of § 192.625(b)(3) were acceptable.

ANR further contended that if PHMSA were to adopt the application of § 192.625(b)(3) proposed in the Notice, the agency would have to change its policy and longstanding interpretation of the lateral line exception, a process that should more properly be undertaken through the rulemaking process.[4]

At the hearing, OPS representatives opposed ANR's methodology of calculating the length of the company's lateral lines back to Sandwich Station, arguing the operator had not correctly applied the concept of a "lateral line." They acknowledged Part 192 does not define the term "lateral line," but insisted the term generally refers to any transmission line that branches off from another transmission line and terminates at a distribution center. OPS explained that a lateral may branch off from another lateral, and, based upon the size of a pipeline system, there may be multiple transmission lines from which laterals branch off. OPS argued at the hearing that the length of a transmission line for the purpose of calculating the percentage of pipeline mileage in Class 1 and Class 2 locations under § 192.625(b)(3) cannot be traced back through multiple branches to the beginning of the entire lateral system, but must be calculated individually for each pipe segment. OPS further argued that Lines 201 and 350 were not laterals due to their larger size and throughput volume.[5]

In its Brief, ANR contested the agency's interpretation of the term "lateral line," arguing there is no basis in the regulatory text or history to support the position that a lateral is measured as a "segment" of pipe. ANR argued further that "no specific criteria were provided concerning the parameters that would, from a PHMSA outlook, prevent [L]ine 201 or any other lateral from otherwise being eligible to use the section 192.625(b)(3) exemption for lateral lines."[6]

---

[4] Supplemental Response at 2.

[5] After prompting by OPS at the hearing, ANR acknowledged the company had never requested an interpretation or other assistance from OPS with respect to these issues as provided for by 49 C.F.R. § 190.11.

[6] Brief at 2.

Lines 201 and 350

As an initial matter with respect to Lines 201 and 350, I agree with Respondent that neither the regulation nor any public statements by PHMSA appear to establish any size or throughput requirements for a pipeline to be deemed a "lateral line." At the hearing, when Respondent asked OPS what such size and throughput requirements would be, the agency representatives were unable to provide a clear and articulable answer. Since the record does not contain sufficient evidence to support the allegation in Item 5 that Lines 350 and 201 did not qualify for the lateral line exception, I dismiss this portion of the allegation without prejudice.

Methodologies for calculating the length of a lateral line under § 192.625(b)(3)

Section 192.625(b) provides that combustible gas in a transmission line in a Class 3 or Class 4 location must be odorized so that at a certain concentration in the air, the gas is detectable by a person with a normal sense of smell. Respondent acknowledged, for purposes of this case, that the pipelines at issue are transmission lines. In addition, Respondent acknowledged that portions of the lateral system are in Class 3 locations. Therefore, those portions in Class 3 locations must be odorized pursuant to § 192.625(b) unless one of the enumerated exceptions applies.

The exception in § 192.625(b)(3) provides that in the case of a lateral line transporting gas to a distribution center, a pipeline need not be odorized in a Class 3 or Class 4 location if "at least 50 percent of the length of that line is in a Class 1 or Class 2 location."

A "lateral line" is generally understood to be a pipeline that transports gas from a transmission line to a particular end point. For example, PHMSA's stakeholder website for educating the public about pipeline transportation includes a glossary that defines a "lateral" line as "a segment of a pipeline that branches off of the main or transmission line to transport the product to a termination point, such as a tank farm or a metering station."[7] I find no significant inconsistency between this definition and the various other industry definitions cited by Respondent.[8] The central question that must be decided, however, is how an operator must calculate the length of a lateral line that terminates at a distribution center for purposes of applying the exception from odorization in § 192.625(b)(3). Both parties acknowledge Part 192 does not explicitly define the length of a lateral line for purposes of § 192.625(b)(3), other than by specifying its end point is a distribution center.

The methodology advocated by ANR for calculating the length of a lateral line measures the line from its end point at the distribution facility to the beginning of the entire lateral system where the system connects to the main interstate transmission line. In this case, that single connection point is at Sandwich Station. The noteworthy aspect of ANR's methodology, when applied to its lateral system, is that since multiple "laterals" are measured from different distribution centers to

---

[7] PHMSA Stakeholder Communications: Glossary, http://primis.phmsa.dot.gov/comm/glossary (follow "Lateral" hyperlink) (last visited Sept. 10, 2009). There is no indication this definition was developed with the intent to aid in the interpretation of any regulations. Nevertheless, I find it illustrative of the common meaning of the term.

[8] In addition to the AGA definition mentioned above, Respondent also cited other definitions of "lateral," including one from an Environmental Impact Statement issued by the Federal Energy Regulatory Commission, in which OPS was a participating agency, and a "draft" definition prepared by the American National Standards Institute.

the same beginning point, their calculated lengths include the same upstream portions, i.e., those portions of the lateral system closer to the main interstate pipeline. Accordingly, those portions are "double-counted" each time they are factored into the length of a different lateral line. For example, in Figure 1, ANR would calculate the length of each lateral for purposes of applying § 192.625(b)(3) as follows: A to H; B to H; C to H; and D to H. Using this methodology, the average length of the seven laterals identified in the Notice is approximately 172 miles, with roughly nine percent of each line located in Class 3 areas.

The methodology advocated by OPS, on the other hand, calculates the length of a lateral from its end point at the distribution facility to the line's first upstream connection with another transmission pipeline, regardless of whether or not that transmission line is another lateral. For example, in Figure 1, OPS would calculate the length of the laterals for purposes of applying § 192.625(b)(3) as follows: A to E; B to E; C to F; and D to G. Using this methodology, the average length of the seven pipelines identified as laterals in the Notice is approximately two miles, with roughly 76 percent in Class 3 areas.

To determine the proper method of calculating the length of a lateral line for purposes of applying the odorization requirement, it is important to be guided by the text of the regulation and the intent and purpose of the rule. As noted above, it is not readily apparent from the text of the regulation where the beginning of a lateral is for purposes of calculating its length, particularly when a lateral system has one beginning point but numerous branches leading to various distribution centers.

The regulatory history of the rule provides helpful information in this regard. The intent and purpose of the gas odorization rule was to establish "odorization requirements . . . for transmission lines in populated areas."[9] Odorizing gas "allows the early detection of leaks in open air by the public," which is particularly important in populated areas because of the heightened risk of a pipeline incident.[10] Persons in the vicinity of a gas leak will generally be able to smell the gas if it is odorized, which increases the opportunity for early detection and abatement of risk. To address this concern, PHMSA established "a general requirement for odorization of gas in transmission lines in Class 3 and Class 4 locations."[11] Accordingly, PHMSA and pipeline operators must begin with the presumption that combustible gas in a transmission line in a Class 3 or Class 4 location must be odorized unless one of the enumerated exceptions applies.

The intent and purpose of the § 192.625(b)(3) exception is likewise discussed in the regulatory history. The exception is intended to address certain lateral transmission lines situated predominantly in a Class 1 or Class 2 location and which serve a distribution center from an interstate transmission line. OPS found that since "in most cases the segment of [the lateral] line to be odorized is short," the costs of installing and operating odorizers would exceed the safety benefit if the line were predominantly in a Class 1 or Class 2 location.[12] Accordingly, the

---

[9] Odorization of Gas in Transmission Lines, 40 Fed. Reg. 20,279, 20,280 (May 9, 1975).

[10] *Id.*

[11] Gas in Transmission Lines: Odorization Requirements, 38 Fed. Reg. 22,044 (Aug. 15, 1973).

[12] 40 Fed. Reg. at 20,281.

purpose of the exception is to permit a generally short lateral line situated predominantly in a Class 1 or Class 2 location to be non-odorized despite the fact that it may cross or terminate in a Class 3 or Class 4 location. Given the safety importance of the general odorization requirement articulated above, I believe PHMSA must construe this exception narrowly.

PHMSA's interpretation of § 192.625(b)(3)

With these principles in mind, I find the methodology utilized by ANR for calculating the length of a lateral line is not valid. Respondent's methodology of tracing the length of a lateral from its end point at a distribution facility back to the common origin of the entire lateral system is not consistent with the intent and purpose of the odorization rule. By calculating the length of each lateral in this manner (from different end points to the same point of origin), ANR's method involves duplicative counting of the common mileage closer to the beginning of the system—mileage generally located in rural Class 1 and Class 2 areas. Duplicative counting of such mileage "overweights" areas in Class 1 and Class 2 locations, with the potential to skew the results in favor of determining that pipelines have more than 50 percent of their length in a Class 1 and Class 2 location and thus artificially inflating the number of lines meeting the exception for odorization.

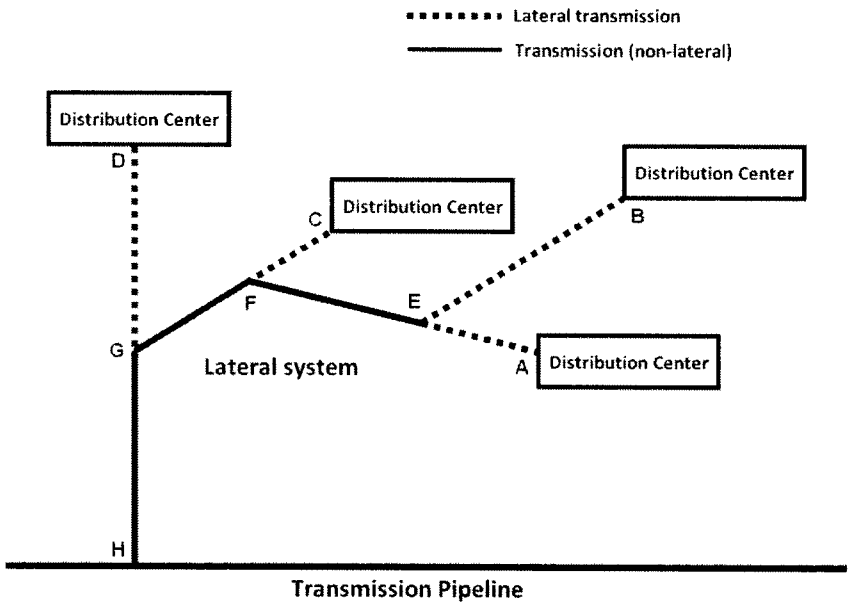
In addition, ANR's method of calculating the length of laterals through various branches, sometimes over hundreds of miles, is not consistent with the intent of the lateral exception to exclude generally "short" segments of pipeline. The average length of ANR's laterals using Respondent's methodology is approximately 172 miles, resulting in approximately 100 miles of pipeline in Class 3 areas (including any duplicatively-counted mileage) where combustible gas is being transported in high-population areas without odorization. The lateral exception was not meant to exempt entire pipeline systems on the ground that their *aggregate mileage* is predominately in rural areas. Moreover, ANR's methodology has the potential to result in more non-odorized Class 3 locations than even a simple aggregate of total system mileage because Respondent duplicatively counts upstream mileage in Class 1 and Class 2 areas.[13] This methodology frustrates the safety goal of the odorization rule.

The correct and proper methodology for calculating the length of a lateral line must be consistent not only with the text of the regulation but also with its underlying safety purpose. Therefore, after careful review, I find, for purposes of § 192.625(b)(3), that a lateral line terminating at a distribution center originates at the first upstream connection with another transmission line. An operator shall calculate the length of a lateral line from its terminus at a distribution facility to the line's first upstream connection with another transmission pipeline, whether that connection is with another lateral transmission line or with a transmission line that is not a lateral. *See* Figure 2 as an example of the proper application.

---

[13] In its Brief, ANR argued that a statement in the rule's preamble demonstrates long segments of pipe may also fall under the exemption. Brief at 2. The reference to a hypothetical pipeline that "could traverse a major metropolitan area . . . for perhaps 150 miles" was a minority view statement by a member of the Technical Pipeline Safety Standards Committee, not a statement by PHMSA. 40 Fed. Reg. at 20,282. Nevertheless, PHMSA recognizes there may be situations where a lateral meets the exception in § 192.625(b)(3) even though it is not "short." But in the present case, PHMSA must reject the manner in which Respondent artificially increased the calculated length of the laterals as it is inconsistent with the general intent of the exemption to apply to short segments of pipe.

Figure 2: Identification of laterals for purposes of § 192.625(b)(3) (not to scale).



This interpretation is consistent with the text of the regulation, as well as the intent and purpose of the rule because it furthers the safety purpose of the requirement that combustible gas transported by pipeline in a Class 3 or Class 4 location be odorized, except for short lateral segments to which the exception in § 192.625(b)(3) was intended to apply.

Interpretation by adjudication

Respondent contended in its Response and at the hearing that if PHMSA were to adopt this interpretation of § 192.625(b)(3), it would constitute a change in administrative policy which should instead be made by rulemaking.[14] I find Respondent's contention unpersuasive for several reasons.

First, there is no evidence in the record to suggest there is a settled administrative policy upset by the present interpretation. Respondent has not cited any agency statement or practice that established another method for calculating the length of a lateral line under § 192.625(b)(3). While ANR did allege that several PHMSA regional offices "have accepted an AGA-type understanding" of lateral lines, there is no evidentiary support for this assertion other than perhaps an absence of enforcement cases against operators for similar violations.[15] The absence of prior enforcement cases does not equate to an affirmative statement of administrative policy. If anything, the lack of public statements on this issue demonstrates PHMSA has never issued a formal decision about how an operator must calculate the length of pipelines in a lateral system for purposes of applying § 192.625(b)(3).

---

[14] Supplemental Response at 2.

[15] ANR hearing handout at slide 25.

Second, PHMSA is not required to undertake a rulemaking in order to formulate a new interpretation of § 192.625(b)(3). Agencies have discretion to set forth regulatory interpretations by rulemaking or by adjudication.[16]

After reviewing all of the evidence presented in light of the interpretation of § 192.625(b)(3) set forth in this decision, I find Respondent operates the following transmission pipelines: Line 360 (Appleton) is a lateral of 0.86 miles in length with 100 percent of its length in a Class 3 location; Line 266 (N. Appleton) is a lateral of 0.99 miles in length with 95 percent of its length in a Class 3 location; Line 207 (Jackson) is a lateral of 0.25 miles in length with 100 percent of its length in a Class 3 location; Line 321 (New Berlin) is a lateral of 4.01 miles in length with 66 percent in a Class 3 location; Line 355 (Oshkosh) is a lateral of 1.66 miles in length with 58 percent in a Class 3 location; Line 1-355 (Oshkosh Loop) is a lateral of 1.67 miles in length with 56 percent in a Class 3 location; and Line 361 (Little Chute) is a lateral of 3.15 miles in length with 55.6 percent in a class 3 location.[17]

Each of the above transmission pipelines is a lateral line that transports gas to a distribution center. More than 50 percent of the length of each lateral line is in a Class 3 location. Accordingly, pursuant to § 192.625(b), Respondent must ensure that the combustible gas in each of these pipelines is odorized. Respondent has acknowledged that each of the seven pipelines is not odorized. Therefore, I find that Respondent violated 49 C.F.R. § 192.625(b) by failing to odorize combustible gas in transmission lines in Class 3 locations.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 5 in the Notice for violations of § 192.625(b). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas by pipeline or who owns or operates a gas 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 ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must—

---

[16] *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 292–94 (1974) (finding that prior case law dictates that the agency is "not precluded from announcing new principles in an adjudicative proceeding and that the choice between rulemaking and adjudication lies in the first instance within the [agency's] discretion") (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947) and *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969)).

[17] As stated above, the allegation of violation with respect to Line Numbers 350 and 201 has been dismissed without prejudice for lack of evidence.

1. Develop and submit procedures for conducting an evaluation of the entire ANR pipeline system for the purpose of identifying each pipeline, or portion thereof, including lateral lines, that must be odorized in accordance with § 192.625(b). The procedures shall also provide for the ongoing review and determination of which pipelines must be odorized. Submit the procedures for conducting the evaluation within 30 days of receipt of this Final Order.

2. Conduct an evaluation of the entire ANR pipeline system pursuant to the procedures developed in accordance with Paragraph 1 of this Compliance Order and identify each pipeline, or portion thereof, including lateral lines, that must be odorized in accordance with § 192.625(b). Complete the evaluation and submit the results to the Director within 60 days of receipt of this Final Order.

3. For each pipeline that is required to be odorized in accordance with § 192.625(b) but which is not presently so odorized, develop a schedule for performing corrective action to ensure proper odorization in accordance with § 192.625(b). Corrective action must be completed so that Respondent is in full compliance with § 192.625(b) within one (1) year of receipt of this Final Order.

4. Submit ANR's written procedures for the installation, operation, and maintenance of odorizers on the ANR pipeline system within 30 days of receipt of the Final Order.

5. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and report the total cost as follows: (a) total cost associated with preparation and revision of plans and procedures, and performance of studies and analyses; and (b) total cost associated with physical changes, if any, to the pipeline infrastructure, including replacements and additions.

6. Complete each of the above items and submit documentation of compliance to the Director, Central Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Suite 462, Kansas City, MO 64106-2641.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed $100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 1, 2, 3, and 4, the Notice alleged probable violations of Part 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 192.201(a)(2) (Notice Item 1) – Respondent's alleged failure to set each pressure relief station to ensure that pressure does not exceed the maximum allowable operating pressure (MAOP), plus permitted build-up. Certain relief valves were allegedly set such that the system might exceed MAOP, plus allowable build-up, at the following operating areas: St. John, Lagrange, Alden, Greensburg, Meade, New Windsor, and Bonduel.[18]

49 C.F.R. § 192.203(b)(9) (Notice Item 2) – Respondent's alleged failure to install each control line to prevent damage to any one control line from making both the regulatory and the over-pressure protective device inoperative. Fuel gas regulator stations at the following locations were allegedly installed such that the control lines for the operator and monitor were on the same pressure sensing tap: Maitland, Enterprise, Mead, Woodstock, and Kewaskum. A single failure at the tap could result in the loss of both the operator and monitor causing an over-pressure situation.

49 C.F.R. § 192.465(a) (Notice Item 3) – Respondent's alleged failure to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463. In the St. John area, between 2003 and 2004, the inspection of 34 test points at foreign line crossings allegedly exceeded the 15-month interval.

49 C.F.R. §§ 192.603(b) and 192.605(c)(4) (Notice Item 4A) – Respondent's alleged failure to keep records necessary to administer the procedures established under § 192.605(c)(4). Respondent allegedly failed to document the periodic review of responses to abnormal operations to determine the effectiveness of response procedures in the St. John and Sandwich operating areas.

49 C.F.R. §§ 192.603(b), 192.605(e) and 192.615(b)(3) (Notice Item 4B) – Respondent's alleged failure to keep records necessary to administer the procedures established under §§ 192.605(e) and 192.615(b)(3). Respondent allegedly failed to document the evaluation of employee response to training drills to determine whether emergency procedures were effectively followed.

Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of 49 C.F.R. §§ 192.201(a)(2) (Notice Item 1), 192.203(b)(9) (Notice Item 2), 192.465(a) (Notice Item 3), 192.603(b) and 192.605(c)(4) (Notice Item 4A), and 192.603(b), 192.605(e) and 192.615(b)(3) (Notice Item 4B) have occurred and Respondent is hereby advised to correct such conditions. In the event that OPS finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

[18] In its Response, ANR requested confirmation that its schedule for re-setting the devices is acceptable. If this request has not already been answered, the Director can provide guidance to the company in this regard.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a 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). The terms of this Final Order shall remain in full force and effect notwithstanding a petition, unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

DEC 04 2009
Date Issued