


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

In the matter of the proposed rule of the Department of Public Safety governing the Pipeline Safety Enforcement and Sanctions

STATEMENT OF NEED AND REASONABLENESS

## GENERAL STATEMENT

Pipelines are used to transport large quantities of hazardous liquids, natural and other gases that are highly volatile and toxic substances. These pipelines traverse densely populated areas and environmentally sensitive ecosystems. The potential threat to public safety is immense. The most recent graphic example was the pipeline explosion and fire in July of 1986 in Mounds View, Minnesota that killed two people. The incident served as the catalyst for a Commission on Pipeline Safety, appointed by Governor Perpich, and major pipeline safety legislation in 1987, 1988 and 1989. Many of the Commission recommendations became federal law in November of 1988, and most of the recommendations of the Commission for the State were adopted unanimously through legislation in 1987, 1988 and 1989.

The primary Findings and Recommendations of the Commission, December of 1986, state, in part:

> "The recent proliferation of hazardous liquid pipeline accidents in Minnesota that are not attributable to third party damage demonstrates that Minnesota citizens are not being adequately protected by current inspection efforts."

The enabling legislation for the Office of Pipeline Safety, passed the Legislature in May of 1987, delegated the Office "to seek and accept federal designation of the Office's inspectors as federal agents for the purposes of enforcement of the federal Hazardous Liquid Pipeline Safety Act, the Federal Natural Gas Pipeline Safety Act, and federal rules adopted to implement those acts." Further, the enabling legislation transferred the intrastate pipeline safety inspection program from the Division of the State Fire Marshal to a stand-alone division within the Department of Public Safety to be called the Office of Pipeline Safety.

It must be noted that these rules are required as part of Minnesota's participation in the 105(a) Certification Program of the Federal Department of Transportation for the purpose of inspecting intrastate natural gas, other gases and hazardous liquid (205(a)) pipeline operators. The Minnesota Legislature enabled participation in the federal/state partnership in 1969. The State of Minnesota, under federal law, can serve as the inspection agent for all intrastate pipeline operators. Interstate inspection falls to the Federal Office of Pipeline Safety but there is an "interstate agent program" of which a State can inspect interstate pipelines.

These proposed rules are formatted directly from U.S. Code of Federal Regulations (CFR), Chapter 49, part 190. These federal procedures have been in place since 1970 at the federal level. Operators in Minnesota are fully familiar with federal procedures. The proposed Minnesota rules, based on 49 C.F.R., part 190, provide greater due process for operators than their federal counterparts but meet the need of ensuring safety.

The new division of the Office of Pipeline Safety learned about significant program deficiencies during the creation steps in the fall of 1987. In fact, the Office learned that nearly 70% of the jurisdictional natural gas pipelines were never inspected, that the State of Minnesota never had a qualified inspector and had never completed a comprehensive inspection of any operator. Further, the Office learned that expansion of regulatory jurisdiction (adding propane, hazardous liquids and liquified natural gas (LNG)) must occur before the mandate of becoming an agent of the federal government could be met.

In the past two years, significant progress has been made on all fronts with regard to the pipeline safety inspection program. Promulgating these rules are an essential ingredient in completing our enforcement plan and attaining federal interstate agent status. In fact, the federal government requires that a state agency must have "similar" enforcement and the issuance of civil penalties powers as they have for present jurisdiction. Hence, these rules are framed from the procedures adopted by the Federal Department of Transportation in 49 C.F.R. part 190.

The inspection program of the Office of Pipeline Safety has found through their initial comprehensive inspection that over 6,000 violations of minimum pipeline safety codes have occurred. Furthermore, the Office has documented that a majority of natural gas pipeline operators have woefully inadequate operations and maintenance manuals and inadequate record keeping to substantiate that such gas distribution systems can operate safely in the State. The Office has also investigated over 50 incidents on the natural gas distribution system, including incidents causing serious injuries and violations of minimum pipeline safety codes. These program facts require these rule to be in place so remedial action

may be taken. It may take 7 years to bring these systems into full compliance with minimum safety standards.

Also, the Office has been cooperating with the Federal Office of Pipeline Safety in regards to incidents that have spilled over 1,000,000 gallons of crude oil onto land in Minnesota. The recent oil spill into a river in Missouri, coupled with the accidents causing 9 deaths in Kansas and Missouri natural gas distribution companies graphically reminds us of the danger beneath us.

This rule addresses the problem in a manner required by the Federal government, is consistent with Legislative and Executive intent, and provides due process to operators to ensure fairness and ensure safety as the prime mover of this inspection program.

These rules are necessary to meet minimum certification requirements of the federal government. In "Guidelines for States Participating in the Pipeline Safety Program Manual" specific requirements are outlined. The general guideline requires that each state program must have similar enforcement and sanctions powers as the federal government. The Congressional enabling act requires such. Further, Minnesota cannot be considered an agent of the federal government for the purposes of inspecting pipelines (required per M.S. 299J.) without such rules.

## STATUTORY AUTHORITY

These rules are specifically authorized by Minnesota Statutes, sections 299F.57 and 299J.04. The Commissioner of Public Safety also has general authority to promulgate rules to protect public safety under Minnesota Statutes, section 299J.01, subdivision 6.

## EFFECT OF THE RULE

These rules will have a direct effect on pipeline operators that transport natural and other gas or hazardous liquids and on the office of pipeline safety.

## SMALL BUSINESS CONSIDERATIONS

The parties directly affected by this rule are not small businesses as defined in Minnesota Statutes, section 14.115.

## FEES IMPOSED BY THE RULES

The rule does not fix any fees nor does the statute authorizing promulgation of the rules require that any fees be fixed. Therefore, no approval from the Commissioner of Finance is needed.

## FISCAL IMPACT

Adoption of this rule will not require the expenditure of public money by local bodies.

## ENVIRONMENTAL EFFECTS

Adoption of these rules will have no negative effect on the quality of air or water in the state nor will the rules have a negative effect on the quality and amount of agricultural land. These rules will help the Office of Pipeline Safety protect the quality of air, water, and agricultural land in the state from the effects of pipeline leaks.

## RULE BY RULE ANALYSIS

**7530.0100 DEFINITIONS**

Subpart 1. **Scope.** Some of the terms defined in part .0100 and used in this chapter, like "director" or "office", may be used elsewhere in Minnesota Rules with different meanings. It is necessary, therefore, to explicitly limit the application of these definitions to this chapter to avoid ambiguity in the definitions of these terms when they are used elsewhere.

Subp. 2. **Director.** These rules create responsibilities and authority for the Director of the Office of Pipeline Safety. It is necessary, in the rules, to refer repeatedly to the Director. The definition of "Director" reasonably provides a single term for use in each of these references to avoid the inefficient and tedious repetitions of the Director's entire title. The use of the single term "Director" makes the rule easier to read and understand. It is necessary to provide an explicit definition of "Director" to avoid ambiguity and misunderstanding that would result from the use of the term without a definition.

Subp. 3. **Good cause to believe.** To fulfill the mandate of Minnesota Statutes, sections 299F.57 and 299J.04 it is necessary for the Office of Pipeline Safety to take certain administrative actions. These actions may affect private parties. It is necessary, therefore, to include safeguards in the rule to prevent arbitrary actions or the appearance of arbitrary actions by the Office. The definition of "good cause to believe' contained in Part .0100, subp. 3 of the rule contains objective standards used in the rule to determine when it is necessary for the Office to take administrative action to protect the public.

Subp. 3.A. Information from a person is a reasonable basis for action by the Office. The primary purpose of creating a stand alone Office of Pipeline Safety was to allow the general public access to the regulatory agency enforcing minimum safety standards. As a public agency it is reasonable for the public to expect that

a call from them is good cause to believe a safety violation has or may occur. A caller may not feel free to give his/her name when describing a possible hazardous condition. It can be expected that a professional Office staff can determine if the information submitted by a caller is frivolous.

At this point in time the Office has received 5 private citizen calls regarding safety concerns and 11 "whistle-blowers" from operators. In each case, all 16 times, the Office found that violations of minimum safety codes had occurred. It is reasonable for the public to have direct access to the agency and it is fair to expect a professional agency staff to respond appropriately.

Subp. 3.B. Facts supplied by the pipeline operator form a reasonable basis for action by the Office. It is reasonable to assume that the pipeline operator will not provide the Office with bad faith or frivolous information to its own detriment.

Subp. 3.C. Action based on objective facts is not arbitrary. Therefore, facts known to the Director or the Director's agents form a suitable basis for administrative action.

Subp. 3.D. Minnesota Statutes, section 299F.57 mandates, among other things, the inspection of gas pipeline facilities. There is no reason to inspect unless the information gathered during the inspections can form the basis for additional administrative action. The information gathered in inspections and evidence of possible violations is objective, therefore, action based on that information is not arbitrary.

Subp. 4. These rules create responsibilities and authority for the Office of Pipeline Safety. It is necessary, in the rules, to refer repeatedly to the Office. The definition of "Office" reasonably provides a single term for use in each of these references to avoid the inefficient and tedious repetition of the Office's entire name. The use of the single term "Office" makes the rule easier to read and understand. It is necessary to provide an explicit definition of "Office" to avoid ambiguity and misunderstanding that would result from the use of the term without a definition.

Subp. 5. These rules contain requirements for pipeline operators and sanctions for pipeline operators that violate the law. It is necessary, therefore, to specify which parties are covered by these rules. The definition of "pipeline operator" serves that purpose. The definition is reasonable because it specifies those parties the legislature intended to cover with Minnesota Statutes, section 299F.59, "Compliance with Sanctions" and is required to cover by federal laws as in language in C.F.R. 192.3

7530.0300 INSPECTIONS

**General.** Minnesota Statutes, section 299F.63 gives the agency the authority to conduct inspections. It is necessary to set out standards for those inspections to ensure that pipeline operators have notice of the procedures followed by the agency and to ensure that all pipeline operators are treated in a similar manner.

Subpart 1. **Purpose and Scope.** It is necessary to specify the appropriate purpose for an inspection and the property that will be inspected to notify pipeline operators why they are being inspected and what the Office will be inspecting. Part .0300, subpart 1 sets out these standards. This subpart specifies that inspections will check for compliance with safety standards. This purpose is reasonable because it is the same as the purpose for inspections set out in Minnesota Statutes, section 299F.63, subd. 2 and, therefore, the rule enforces the statutory mandate. The material inspected is set out as records or property in the possession, custody, or control of the pipeline operators. This standard is reasonable because it covers the material the Office needs without being overly broad. In general these definitions match federal language, as required by federal law, in C.F.R. Part 190.0

Subp. 2. **Reasons.** It is necessary to specify when the inspections will take place so there will be no appearance of arbitrariness in the scheduling. It is also necessary so that the Office can cite the authority in the rule when questioned. Part .0300, subp. 2 of the proposed rule sets out these standards. This provision is similar to the federal scheduling standards set out in 49 C.F.R. section 190.203 (b). This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subp. 2.A. Routine scheduling by the Director is a reasonable standard for the scheduling of inspections because it treats all pipeline operators similarly. Routine scheduling may include spot checking of records or property. Routine scheduling will meet minimum requirements of the federal government as outlined in the "Guidelines for States Participating in the Pipeline Safety Program Manual." Since the minimum standard as outlined in the federal guidelines are required, it is reasonable to schedule inspections accordingly. Routine scheduling will provide the Office with a periodic look at all pipeline operators to monitor compliance with safety requirements.

Subp. 2.B. It is necessary for the Office to investigate complaints from the public to adequately monitor compliance with safety standards. It is common for members of the public, including the employees of pipeline operators to report suspected violations of safety standards or unsafe practice to the Office. The Office

must then have the authority to investigate these complaints to determine if there is actually a violation of safety standard or an unsafe practice.

Subp. 2.C. Many times an inspection will uncover a situation that must be monitored over a period of time to determine if safety standards are being complied with. It is necessary, therefore, that the Office have authority to follow up annual inspections with subsequent inspections. Part .0300, subp. 2, item C establishes this standard. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subp. 2.D. Whenever an accident or reportable incident, as defined in 49 C.F.R., section 191.3, or as defined under Minnesota Rules occurs, a safety hazard is present. It is necessary for the Office to have the authority to inspect under these circumstances to determine if safety standards are being complied with and to prevent the recurrence of a similar accident or incident. Part .0300, subpart 2, item D establishes this standard.

Subp. 2.E. Facts may exist that require investigation by the Office but do not fit into one of the four standards set out in Part .0300, subpart 2, items A-D. It is necessary, therefore, to establish a fifth standard for inspection to schedule inspections. The standard established by Part .0300, subpart 2, item E, is reasonable because it incorporates the phrase "good cause to believe" as defined in Part .0200, subp. 3. This insures that the decision to conduct an inspection will be based on objective facts and will not be arbitrary.

**7530.0400 INSPECTION RESULTS**

Subpart 1. **General.** There is no reason to make inspections unless the agency then acts upon the information discovered by the investigation. It is necessary to specify what alternative actions are available to the Office so the Office staff will have notice what alternative actions are available and so the affected pipeline operators will know what can happen. Part .0400 of these rules sets out the possible inspection results. This provision is very similar to the alternatives for regulatory action following inspections set out in 49 C.F.R. sections 190.203, 190.205, and 190.207. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subp. 1. **Requests for specific information.** Sometimes it is necessary for the Office to obtain more information from the pipeline operator to properly interpret inspection results, reportable incidents, accidents, complaints, and/or general information needs. Part .0400, subp. 1, gives the Office authority to require additional information from the pipeline operator as a

follow up to an inspection reportable incidents, accidents, complaints, and/or general information needs. If the inspection and Request for Specific Information are based on an accident or reportable incident, the rule requires a response within five (5) days. This brief response period is reasonable because something hazardous has already occurred and the Office must act promptly to ensure that the hazardous event does not recur. Thirty days is a reasonable time period for pipeline operators to respond to a Request for Specific Information in most situations. Thirty days will give the pipeline operator time to assemble the information requested and /or formulate a response but the response will be prompt enough for the Office to take meaningful action in response to the inspection and subsequent information. Occasionally the volume or type of information needed to determine if further action is necessary is so great that it is not reasonable to require the pipeline operator to respond within 30 days. The proposed rule is reasonable because it contains an exception to the 30 day requirement where the volume or type of information requested is such that 30 days is too short a period to respond to the Request. This provision is similar to the "request for further information" provision contained in 49 C.F.R., section 190.203 (c). This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subp. 2. **Warning letters; response.** When there is a probable violation of safety standards, but there's no immediate threat to public safety, it is necessary for the Office to notify the pipeline operator of the probable violation. Part .0400, subp. 2 provides authority for the office to send Warning Letters to pipeline operators. This procedure is reasonable because it gives the pipeline operator an opportunity to correct the alleged problem before a more serious threat to public safety develops. This provision is similar to the warning letter provision in 49 C.F.R. section 190.205. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subp. 3. **Notice of probable violation; response.** When there is a probable violation of safety standards and the violation is a more serious threat to public safety, it is necessary for the Office to notify the pipeline operator of the probable violation. It is necessary for the Office to have authority to take immediate corrective action to protect the public. Different from a warning letter violation, a notice of probable violation indicates the violation may be a more serious threat to public safety. The authority for such action is contained in Minnesota Statutes, sections 299F.60 and 299F.61. Part .0400, subp. 3, sets out the initial step in this process. This provision is similar to 49 C.F.R. section 190.207 which describes the initial step in a federal pipeline safety enforcement action. This provision is necessary to meet Federal 5(a) Certification (intrastate)

guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11. The provision is reasonable because it sets out, very explicitly, the required contents of the Notice of Probable Violation or Warning Letter. This ensures that the pipeline operator has notice of the pending action by the Office.

A fair amount of time must be given the operator to respond to the notice of probable violation. The proposed rule sets out a maximum of 30 days for an operator to respond to a notice. It is reasonable to set the response period at 30 days because it gives the operator adequate time to review the letter, assess the problems or violations identified in the letter and prepare a response. Likewise, 30 days is a short enough period of time to respond and to begin remedying identified problems so that the public's safety is protected.

Subp. 4. **Contents of warning letter or notice.** It is necessary to specifically identify the contents of a warning letter or notice so that all operators are given the same consideration in determining violations. The rule requires a statement of the statute, regulation, or rule allegedly violated. This is reasonable because it enables the pipeline operator to correct the problem or to specifically rebut the charge.

Subp. 4.A. The rule requires a statement of the evidence on which the violation is made. This is reasonable because it enables the pipeline operator to specifically rebut the evidence or provide additional information not provided at the time of the inspection. Also, it will inform the pipeline operator of facts concerning its own operation which may be a threat to public safety.

Subp. 4.B. The rule requires notice of the response options available to the pipeline operator. It is reasonable to specify response options because the pipeline operator will know how to respond and because the response can then be submitted in the manner most likely to ensure fair treatment and resolution of the problem.

Subp. 4.C. The rule requires a statement of the amount of any proposed civil penalty, the maximum allowable civil penalty, and any proposed compliance order. This is reasonable because the pipeline operator must know the extent of potential liability to determine how to respond most effectively.

Subp. 4.D. In the case of an warning letter or notice being sent that includes a compliance order it is reasonable for the office to include a statement describing what remedial action is required on the part of the operator. By requiring a statement of the remedial action being sought the proposed rule establishes a process whereby the operator will have a clear understanding of how he or she is to comply with the order.

Subp. 5. **Response options.** It is reasonable to set out response options in the rule so the pipeline operators will have notice of the procedures to be followed in responding and so the process will be followed in the manner most likely to bring about a fair and speedy resolution to the problem. This provision is similar to 49 C.F.R. section 190.209, which contains the federal response options. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

The responses laid out in the proposed rule are (1) compliance with the order, (2) a consent order, (3) objection to the order and submission of evidence or argument in support of the objection, and (4) the request of a contested case hearing before the Office of Administrative Hearings.

Subp. 5.A.(1). Pipeline operators may agree that a violation occurred, but disagree with the corrective action proposed, or disagree with the office's interpretation of the performance language of the safety standards in the Notice of Probable Violation or Warning Letter. It is reasonable, therefore, to allow the pipeline operators to propose other solutions to the problem or disagree with the interpretation. The rule provides settlement offers as permissible response options.

Subp. 5.A.(2). Pipeline operators have the same policy objectives as the Office, i.e. the safe, efficient operation of pipelines. It is reasonable to assume, therefore, that the pipeline operators will often agree with the orders of the Office, particularly in the case of compliance/consent orders. The rule provides agreement as one of the permissible response options.

Subp. 5.A.(3). Pipeline operators that disagree with the Notice of Probable Violation or Warning Letter have two options for disputing it under the rule. The pipeline operators can submit evidence and argument to the Office to attempt to change the position of the Office or the pipeline operators can demand a contested case hearing before the Office of Administrative Hearings. The pipeline safety codes are performance based and legitimate difference of interpretation could occur. This provision provides for an opportunity to reevaluate the position of the Office. It is reasonable to provide pipeline operators the opportunity to submit evidence and argument directly to the Office because this will be a less expensive and time consuming process than a more formal adjudication. It is likely that a substantial percentage of disagreements between pipeline operators and the Office over Notices of Probable Violation or Warning Letters will be resolved without resorting to a more formal hearing process.

Subp. 5.A.(4). It is necessary to provide pipeline operators an opportunity to argue disagreements with the Office in an impartial forum. This provision is required by Minnesota Statutes,

section 299F.60, Subd. 5. There will be cases where the pipeline operator and the Office are unable to reach an agreement concerning an alleged violation of safety regulations and an impartial arbitrator is needed.

Subp. 5.B. The responses to a warning letter or notice of probable violation containing proposed civil penalty laid out in the proposed rule are (1) pay the penalty, (2) submit an offer in compromise of the proposed civil penalty, (3) submit materials to answer the allegations or in mitigation of the proposed civil penalty, or (4) request a contested case hearing before the Office of Administrative Hearings. It is reasonable to outline the options for the operator and office personnel.

Subp. 5.B.(1). Pipeline operators have the same policy objectives as the Office, i.e. the safe, efficient operation of pipelines. It is reasonable to assume, therefore, that the pipeline operators will often agree with the proposed civil penalties of the Office, particularly in the case of compliance/consent orders. The rule provides payment as one of the permissible response options.

Subp. 5.B.(2). Pipeline operators may agree that a violation occurred, but disagree with the amount of the proposed civil penalty, or disagree with the office's interpretation of the performance language of the safety standards in the Notice of Probable Violation or Warning Letter. It is reasonable, therefore, to allow the pipeline operators to propose other penalty amounts or solutions to the problem or disagree with the interpretation. The rule provides compromise offers as permissible response options.

Subp. 5.B.(3). Pipeline operators that disagree with the Notice of Probable Violation or Warning Letter have two options for disputing it under the rule. The pipeline operators can submit evidence and argument to the Office to attempt to change the position of the Office or the pipeline operators can demand a contested case hearing before the Office of Administrative Hearings. The pipeline safety codes are performance based and legitimate difference of interpretation could occur. This provision provides for an opportunity to reevaluate the position of the Office. It is reasonable to provide pipeline operators the opportunity to submit evidence and argument directly to the Office because this will be a less expensive and time consuming process than a more formal adjudication. It is likely that a substantial percentage of disagreements between pipeline operators and the Office over Notices of Probable Violation or Warning Letters will be resolved without resorting to a more formal hearing process.

Subp. 5.B.(4). It is necessary to provide pipeline operators an opportunity to argue disagreements with the Office in an impartial forum. This provision is required by Minnesota Statutes, section 299F.60, Subd. 5. There will be cases where the pipeline

operator and the Office are unable to reach an agreement concerning an alleged violation of safety regulations and an impartial arbitrator is needed.

**7530.0500 DIRECTOR REVIEW.**

Part .0500 of the proposed rule sets out the actions taken by the Office if the pipeline operator elects to submit additional evidence or argument in response to a Notice of Probable Violation. It is reasonable to notify the pipeline operator of Office procedures so the pipeline operator can make a more informed decision regarding the response to the Notice of Probable Violation or Warning Letter.

**7530.0800 CONSENT ORDER.**

**General.** Part .0800 describes the consent order in detail. This provision is reasonable because it notifies the pipeline operator what is involved in a Consent Order. This information will aid the pipeline operator in determining what course to take in response to the Notice of Probable Violation or Warning Letter. This provision is very similar to 49 C.F.R. section 190.217. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

A. A Consent Order is intended to be a final settlement of the issues raised by a Notice of Probable Violation or Warning Letter. One possible issue is the facts of the violation and jurisdiction of the Office over the pipeline operator. This issue must be settled in the Consent Order if it is to be a final settlement. For this reason Part .0800 requires that the Consent Order contain an admission of all jurisdictional facts.

B. The Consent Order would not be a final settlement if either party were free to obtain further review. It is reasonable, therefore, to require that the Consent Order contain a waiver of further review.

C. After the issuance of a Consent Order, it is desirable to avoid disagreements over the interpretation of the terms of the Consent Order. It is reasonable, therefore, to require that the Consent Order contain an agreement that the Notice of Probable Violation or Warning Letter will be used to interpret terms of the Consent Order.

D. The basic issue involved in the issuance of a Notice of Probable Violation or Warning Letter is what action by the pipeline operator is necessary to comply with safety regulations. To settle this issue, it is necessary for the Consent Order to specify the action required by the pipeline operator. That is why Part .0800

of the proposed rule requires that the Consent Order contain a description of the actions required of the pipeline operator and a schedule for the performance of those actions.

**7530.1000 CIVIL PENALTIES.**

**General.** Pipeline operators are businesses and it is reasonable that there be financial consequences for their acts. Minnesota Statutes, section 299F.60 authorizes the office to assess fines against pipeline operators for violations of safety regulations. Part .1000 of the proposed rule sets out procedures for determining when a fine should be assessed and setting the amount of the fine. This provision is similar to the civil penalty procedure set out in 49 C.F.R. sections 190.221, 190.223 and 190.225. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subpart 1. **Proceedings.** Initially, the rule requires "good cause to believe" as defined at the beginning of the rule. This provision ensures that the process will not be initiated arbitrarily. The next step set out in the rules would be a Warning Letter or Notice of Probable Violation. Part .1000 will be used to determine when a civil penalty should be assessed and what the amount should be.

Subp. 2. **Assessment considerations.** It is reasonable to set out the considerations on which the penalty will be based so the Office will have guidelines to help in assessing the fine and so affected parties will know that the fine determination is based on objective considerations. The provision is similar to 49 C.F.R. section 190.225. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subp. 2.A. A safety regulation violation cannot be evaluated without considering the context in which it takes place. The purpose of enforcing safety regulations is to protect the public and any violation must be considered in relation to the threat caused to public safety. For these reasons it is reasonable to include the nature, circumstances, and gravity of the violation as a basis for the civil penalty assessment determination.

Subp. 2.B. Violations of safety regulations could occur in a variety of circumstances. They may be caused by negligence, gross negligence, willful recklessness or bad faith acts, or they may result from an innocent, good faith mistake. Safety regulation violations can only be evaluated by considering the culpability of the pipeline operator. It is reasonable, therefore, to include the culpability of the pipeline operator as a basis for the civil penalty assessment determination.

Subp. 2.C. If a pipeline operator has a history of safety regulation violations, it may mean that previous corrective actions by the Office have been ineffective or non-existent. A larger civil penalty may be considered for a pipeline operator with a history of safety regulation violations than for a pipeline operator with just one safety regulation violation. Also, a history of similar violations should be considered when assessing a penalty. It is reasonable, therefore, to include the pipeline operator's history of violations as a basis for the civil penalty assessment determination.

Subp. 2.D. Pipeline operators range widely in business size. A fine that would have a significant impact on one pipeline operator may be incidental to another. It is reasonable, therefore, to include the pipeline operator's ability to pay as one basis for the civil penalty assessment determination. Further, federal intent and Minnesota concerns for small businesses require this consideration.

Subp. 2.E. If a pipeline operator is trying, in good faith, to comply with safety regulations that is a mitigating factor in the determination of a suitable civil penalty for violation. This factor goes to the culpability of the pipeline operator mentioned earlier but is important enough to be mentioned separately.

Subp. 2.F. Pipeline operators perform a vital service to their communities. It would be in no one's interest to force a pipeline operator out of business. It is necessary, therefore, to consider the effect on the pipeline operator's ability to continue in business when determining an appropriate civil penalty assessment.

Subp. 2.G. The material transported in the pipeline is an important factor in evaluating the threat to the public caused by a violation of safety regulations. Some of the materials transported in pipelines are more hazardous than others. Also some of the materials may be more corrosive to certain types of pipes weakening the facility. Therefore, it is reasonable to include the type of product transported as a consideration in the civil penalty assessment determination. Furthermore, consideration of the type of material being transported in the facility is required by Minnesota Statute.

Subp. 3. **Payment procedures.** It is reasonable to specify the fine payment method in the rule so that pipeline operators will know how to pay the fine and to ensure that all pipeline operators will be treated similarly. Part .1000, subp. 3 of the proposed rule sets out the payment method.

**7530.1200 HAZARDOUS FACILITY ORDERS.**

Subpart 1.A. **In General.** Minnesota Statutes, section 299F.57, subd. 4 authorizes the Office to force pipeline operators to take steps necessary to remove hazards to life or property from pipeline facilities. Part .1200 of the proposed rule sets out the procedures to be followed in finding a facility to be hazardous and in ordering corrective measures. This is necessary to avoid arbitrary action or the appearance of arbitrary action by the Office and to ensure that all pipeline operators will be treated similarly. While ensuring fairness and due process for the operator, the Office in determining that a hazardous condition or facility exists plays the preeminent role in issuing such an order. A hazardous condition or facility indicates an imminent danger - loss of life and/or significant property loss. This provision is similar to 49 C.F.R. section 190.233. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

Subp. 1.B. Subpart 1 of Part .1400 specifies that a facility may be hazardous because of present operating conditions or because of the materials or methods used in the construction of the facility. This is necessary because the methods or materials used in construction can cause a pipeline facility to be just as hazardous to life or property as present operating conditions.

Subp. 2. **Determination factors.** It is reasonable to set out the factors used to determine when a facility is hazardous so the Office will have guidelines to help make the determination and so affected parties will know the determination is based on objective factors. part .1200, subp. 2, of the proposed rule sets out the factors used to determine whether a facility is hazardous to life or property.

Subp. 2.A. If the wrong type of pipe or equipment used in constructing the pipeline facility, a hazard to life or property may occur. It is reasonable, therefore, to include the characteristics of the pipe and other equipment involved as factors used in determining whether a hazard to life or property exists.

Subp. 2.B. Some of the materials transported in pipelines are more hazardous than others. Also some of the materials may be more corrosive to certain types of pipes weakening the facility. For these reasons it is reasonable to include the type of material transported as a factor used in determining whether a pipeline facility is hazardous.

Subp. 2.C. Circumstances related to the area in which the facility is located may weaken or damage the facility creating a hazard to life or property. The presence of people or property near the pipeline may also make a facility more hazardous. For these reasons it is reasonable to include the geologic and climatic conditions and the population density, present and projected, as

factors to be used in determining whether a hazardous facility exists.

Subp. 2.D. When there is reason to believe that a situation is hazardous to the safety of the public and, if an operator is unable to produce adequate documentation to prove that a suspected hazardous condition does not exist.

Subp. 3. **Order.** If there is a determination that there is a hazardous facility there must then be a mechanism for the Office to order the pipeline operator to take corrective steps. Part .1200, subp. 3 sets out the Hazardous Facility Order as the method by which this will be accomplished. That is why Part .1200, subp. 3 requires that failure to issue the order would result in the likelihood of serious harm to life or property. This provision also requires that a hearing be afforded as soon as practical. This requirement is another important safeguard of the pipeline operator's rights.

Subp. 4. **Order contents.** The issues involved in a Hazardous Facility Order are very important. The Office must balance the protection of the public from serious harm against the pre-hearing deprivation of property from the pipeline operator. It is necessary that this procedure follow objective guidelines and be similar for each pipeline operator. For these reasons it is reasonable to specify, in some detail, the required contents of the Hazardous Facility Order.

Subp. 4.A. The authority to issue a Hazardous Facility Order arises from a finding that the facility is hazardous to life or property. It is reasonable, therefore, to require that the Hazardous Facility order contain such a finding.

Subp. 4.B. The pipeline operator must have notice of the facts on which the Hazardous Facility Order is based to adequately evaluate the order and decide how to respond. It is reasonable, therefore, to require that the facts on which the finding is based be included in the Hazardous Facility Order.

Subp. 4.C. The pipeline operator must have notice of the legal authority for the Hazardous Facility Order to determine if the Office has authority for the action it is taking. It is reasonable, therefore, to include the legal basis for the order as a requirement for the Hazardous Facility Order.

Subp. 4.D. The purpose of the Hazardous Facility Order is to compel a pipeline operator to take certain actions to correct a hazardous situation. The required actions must be specified to provide the pipeline operator meaningful notice of the impact of the order. For these reasons it is reasonable to require that the hazardous facility order contain the nature and description of the particular corrective action required.

Subp. 4.E. The pipeline operator must receive notice of the schedule for compliance required by the Hazardous Facility Order to have meaningful notice of the requirements of the order. It is reasonable to require that the Hazardous Facility Order contain the date by which the required action must be taken or completed and, where appropriate, the duration of the order.

Subp. 4.F. It is also reasonable to include a statement that a hearing will be arranged as soon as practical so the affected parties will be aware that they will soon have an opportunity to be heard.

**7530.1400 REPORTABLE INCIDENT INVESTIGATION.**

It is reasonable to set out the authority of the Office in conducting an investigation following a reportable incident so pipeline operators will know what to expect, so the Office will have notice of the extent of its authority, and to ensure that all pipeline operators will be treated similarly. The Office is given this authority in Minnesota Statutes, section 299F.63. This provision is necessary to meet Federal 5(a) Certification (intrastate) guidelines and to seek interstate agent status as required by M.S. 299J.04, subd. 2 and 299J.11.

**7530.1500 TESTING AND TEST RESULTS.**

Subpart 1. **Applicability.** If there has been a reportable incident, there has been a serious problem that the pipeline operator has had to remedy before the pipeline can be operated safely. If the remedial action includes the repair or replacement of a portion of pipeline or pipeline facility, the office must ensure that the repaired or replaced equipment meets the performance standards set out in 49 C.F. R. part 192, 193, or 195. Part .1500 of the proposed rule provides the office with procedures to monitor the testing of this new facility. This provision is necessary to meet federal requirements for interstate agent status as required by Minnesota Statutes, sections 299J.04, subd. 2 and 299J.11.

Subp. 2. **Notice.** To observe the test, the Office must be informed of the test in advance. The proposed rule requires the pipeline operator to notify the Office 48 hours in advance of a test. This time period gives the Office time to arrange to have observers present without unduly delaying the reopening of the facility. The proposed rule also requires the pipeline operator to provide the same notice to local governmental units traversed by the portion of the pipeline to be tested. The requirement is necessary so that these local governmental units, which have a vital interest in emergency response, will have an opportunity to observe the test as well and be prepared to respond to public inquiry.

Pipeline operators provide a vital service to the communities they serve. In some cases it is not possible to wait 48 hours before testing a pipeline facility and putting it back in service without endangering life or property with the delay. The proposed rule will allow pipeline operators to test pipeline facilities under these circumstances without providing the required notice. In emergency situations, however, the pipeline operator is still required to notify the Office in advance of the test. The Office can then take emergency action, if necessary, to monitor the test and ensure compliance with pipeline performance standards.

Subp. 3. **Notice contents.** To ensure that the notice accomplishes its intended purpose and to eliminate arguments as to what constitutes adequate notice, it is reasonable to set out the required contents of the notice. Part .1500, subp. 3, sets out the contents of a test notice.

Subp. 2.A. It is necessary to inform the Office and affected local jurisdictions of the purpose of the test so proper plans may be made for the monitoring of the test. The proposed rule requires that the notice state the purpose of the test and include supporting documents.

Subp. 2.B. If the Office or the affected local jurisdiction have additional questions concerning the notice or test, they must be able to contact the pipeline operator. It is necessary, therefore, to require the name, address and telephone number of the pipeline operator as a component of the notice.

Subp. 2.C. It is necessary for the Office or affected local jurisdiction to know the location of the test to know where to go to observe the test and to determine what monitoring steps are necessary to ensure the effectiveness of the test. The proposed rules require that a map showing the location of the pipeline and the location of the test be included in the test notice.

Subp. 2.D. It is necessary for the Office and affected local jurisdictions to know when the test is to take place if they are going to be able to observe it. This information will allow better preparedness by local governments to respond if a test fails. Further, the local unit is able to provide information under the community right to know notion. The proposed rule requires that the time and date of the test be included in the test notice.

Subp. 2.E. To observe and monitor the test, it is necessary for the Office and affected local jurisdictions to know how the test will be performed and what test medium will be used. The proposed rule requires that this information be included in the test notice.

Subp. 2.F. In some cases pipeline operators are required to have test results certified by independent testing firms. It is necessary for the Office or affected local jurisdiction to be able to contact the independent testing firm to fully evaluate the test procedure and results. It is necessary, therefore, to require that the name and telephone number of any such independent testing firm be included in the test notice.

Subp. 4. **Observation.** Part .1500 subp. 4 of the proposed rule authorizes the Office and affected local jurisdictions to observe the test. It is necessary for the Office and affected local jurisdictions to be able to observe the test to ensure that the repaired or replaced equipment meets Federal performance standards.

Subp. 5. **Results reported.** To fully evaluate a test procedure and the performance of repaired or replaced equipment, it is necessary that the Office and affected local jurisdictions be able to review the test results. Part .1500, subp. 5 requires the pipeline operator to submit test results to the Office and to any affected local jurisdictions that the request the results. The proposed rule allows 10 days for the submission of the test results. This time period is reasonable because it is enough time for the pipeline operator to prepare the results and it is close enough to the test date so the office will be able to take steps to correct a faulty test procedure or to require further tests before the equipment is in service for a substantial period of time.

For the Office or an affected local jurisdiction to determine which test the test results refer to is necessary that the report contain some identifying data. The proposed rule requires that the test results report contain:

Subp. 5.A. the date of the test,

Subp. 5.B. the location of the test, and

Subp. 5.C. the test results.

Department of Public Safety

Office of Pipeline Safety

Adopted Permanent Rules Relating to Pipeline Safety Enforcement and Sanctions

Rules as Adopted

7530.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Director.** "Director" means the director of the office of pipeline safety.

Subp. 3. **Good cause to believe.** "Good cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that are based on at least one of the following sources:

A. information from a person;

B. facts supplied by the pipeline operator;

C. facts of which the director or an agent of the director has personal knowledge; or

D. information obtained by the office during an inspection.

Subp. 4. **Office.** "Office" means the Minnesota office of pipeline safety, a division of the Minnesota department of public safety.

Subp. 5. **Pipeline operator.** "Pipeline operator" means a person who engages in the transportation of gas or hazardous liquid or who owns or operates pipeline facilities.

7530.0300 INSPECTIONS.

Subpart 1. **Purpose and scope.** For determining and enforcing compliance with safety standards, the office shall conduct periodic inspections and spot checks of records and property in the possession, custody, or control of pipeline operators to determine compliance with applicable pipeline safety standards under Minnesota Statutes, section 299F.57.



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This chapter does not apply to interstate gas or liquid pipeline facilities subject to the enforcement jurisdiction of the federal Office of Pipeline Safety under the federal Natural Gas Pipeline Safety Act or the federal Hazardous Liquids Pipeline Safety Act.

Subp. 2. **Reasons.** Inspections will be conducted pursuant to item A, B, C, D, or E:

A. routine scheduling by the director;

B. a complaint received from a member of the public;

C. information obtained from a previous inspection;

D. an accident or reportable incident; or

E. when there is good cause to believe that a threat to public safety may exist.

7530.0400 INSPECTION RESULTS.

Subpart 1. **Requests for specific information.** After a complaint, report, or inspection, the office shall send the pipeline operator a request for specific information (1) if further information is necessary to determine appropriate action, (2) when further information is necessary to determine if the office has jurisdiction to act, or (3) when necessary to determine compliance with applicable pipeline safety standards. The pipeline operator has five days to respond to a request for information that is necessary to determine if a reportable incident has taken place or that arises from a reportable incident. The pipeline operator has 30 days to respond to all other requests for specific information. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety.

Subp. 2. **Warning letters; response.** The office shall issue a warning letter when (1) the office has good cause to believe a violation of the federal Natural Gas Pipeline Safety Act; the federal Hazardous Liquid Pipeline Safety Act; Minnesota Statutes, sections 299F.56 to 299F.641 and 299J.01 to 299J.09; or a rule, regulation, or order issued under any of these laws,



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has occurred and (2) the office determines that no immediate threat to public safety exists but that a threat to public safety will develop if the violation is not corrected within a reasonable time. The letter must indicate the nature of the probable violation and advise that the pipeline operator must correct the violation or be subject to further enforcement action by the office.

The pipeline operator has 30 days to respond to the warning letter. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety. If more than 30 days is required to respond, the operator must request a time extension in writing to the office.

Subp. 3. **Notice of probable violation; response.** The office shall issue a notice of probable violation when (1) the office has good cause to believe a violation of the federal Natural Gas Pipeline Safety Act; the federal Hazardous Liquid Pipeline Safety Act; Minnesota Statutes, sections 299F.56 to 299F.641 and 299J.01 to 299J.09; or a rule, regulation, or order issued under any of these laws, has occurred and (2) the office determines that a warning letter issued under subpart 2 will not be effective or will not adequately address public safety issues. The notice must contain a proposed compliance order or proposed civil penalty.

The pipeline operator has 30 days to respond to the notice of probable violation. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety. If more than 30 days is required to respond, the operator must request a time extension in writing to the office.

Subp. 4. **Contents of warning letter or notice.** A warning letter or notice of probable violation must include:

A. a statement of the statute, regulation, or rule allegedly violated by the pipeline operator and a description of the evidence on which the allegation is based;



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B. notice of response options available to the pipeline operator;

C. if a civil penalty is proposed, the amount of the proposed civil penalty and the maximum civil penalty applicable under law; and

D. if a compliance order is proposed, a statement of the remedial action being sought in the form of a proposed compliance order.

Subp. 5. **Response options.** The pipeline operator shall respond to the warning letter or notice of probable violation in the following way:

A. When the warning letter or notice of probable violation contains a proposed compliance order, the pipeline operator shall:

(1) agree to the proposed compliance order;

(2) request the execution of a consent order;

(3) object to the proposed compliance order and submit written explanations, information, or other materials in answer to the allegations in the notice; or

(4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

B. When the warning letter or notice of probable violation contains a proposed civil penalty, the pipeline operator shall:

(1) pay the penalty and close the case;

(2) submit an offer in compromise of the proposed civil penalty;

(3) submit a written explanation, information, or other material in answer to the allegations or in mitigation of the proposed civil penalty; or

(4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

7530.0500 DIRECTOR REVIEW.

If the pipeline operator objects to the proposed compliance order or civil penalty and submits written explanations,



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information, or other materials in response to a warning letter or notice of probable violation, the director shall review the submissions and determine whether to negotiate further, modify, or withdraw the warning letter or notice of probable violation, or initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

7530.0800 CONSENT ORDER.

An executed consent order must contain:

A. admission by the pipeline operator of all jurisdictional facts;

B. waiver of further procedural steps and of all right to seek judicial or administrative review or otherwise challenge or contest the validity of the consent order;

C. agreement that the warning letter or notice of probable violation may be used to construe the terms of the consent order; and

D. a description of the actions required of the pipeline operator and the time by which the actions must be accomplished.

7530.1000 CIVIL PENALTIES.

Subpart 1. **Proceedings.** When the office has good cause to believe that a pipeline operator is engaging or has engaged in conduct that involves a violation of minimum pipeline safety requirements, the office shall conduct proceedings under parts 7530.0100 to 7530.1100 to determine the nature and extent of the violation and assess and, if appropriate, negotiate a civil penalty under Minnesota Statutes, section 299F.60.

Subp. 2. **Assessment considerations.** In assessing a civil penalty under this part, the office shall consider the following factors:

A. the nature, circumstances, and gravity of the violation;

B. the degree of the pipeline operator's culpability;

C. the pipeline operator's history of previous offenses;



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D. the pipeline operator's ability to pay;

E. good faith on the part of the pipeline operator in attempting to achieve compliance;

F. the effect of the penalty on the pipeline operator's ability to continue in business; and

G. whether the pipeline is a hazardous liquid pipeline or a gas or other pipeline.

Subp. 3. **Payment procedures.** The pipeline operator shall pay a civil penalty that has been proposed, assessed, or compromised by submitting to the office a certified check or money order in the correct amount, payable to the commissioner of public safety.

7530.1200 HAZARDOUS FACILITY ORDERS.

Subpart 1. **In general.** After an inspection, report, or complaint, the office shall find a particular facility to be hazardous to life or property under Minnesota Statutes, section 299F.57, subdivision 4, if under the facts and circumstances:

A. the office determines the particular facility is hazardous to life or property; or

B. the pipeline facility, or a component, has been constructed with equipment, material, or technique that is hazardous to life or property, unless the pipeline operator demonstrates that the equipment, material, or technique is not hazardous to life or property.

Subp. 2. **Determination factors.** In considering whether a facility will be determined to be hazardous to life or property, the office shall consider:

A. the characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties, resistance to corrosion and deterioration, and methods of manufacture, construction, and assembly;

B. the nature of the materials transported by the facility, including their corrosive and deteriorative qualities, and the sequence in which the materials are transported;



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C. the area in which the pipeline facility is located, the climatic and geologic conditions associated with the area, and the population, population density, and growth patterns of the area; and

D. the adequacy of the pipeline operator's records to show the absence of hazardous conditions.

Subp. 3. **Order.** If the office finds a particular pipeline facility to be hazardous to life or property, the director shall issue a hazardous facility order if failure to do so would result in the likelihood of serious harm to life or property. The hazardous facility order shall provide an opportunity for a contested case hearing as soon as practical.

Subp. 4. **Order contents.** The order must contain:

A. a finding that the pipeline facility is hazardous to life or property;

B. the facts on which the finding is based;

C. the legal basis of the order;

D. the nature and description of the particular corrective action required of the respondent;

E. the date by which the required action must be taken or completed and, when appropriate, the duration of the order; and

F. if a hearing has been waived under this part, a statement that an opportunity for a hearing is provided as soon as practical.

7530.1400 REPORTABLE INCIDENT INVESTIGATION.

After a reportable incident, the office may interview personnel, view failed equipment or pipe, issue a subpoena for failed equipment or pipe relating to the incident, for independent preservation, order independent laboratory tests of failed pipe or equipment, view related documents, and take other investigatory measures as needed to complete a comprehensive independent investigation.

7530.1500 TESTING AND TEST RESULTS.

Subpart 1. **Applicability.** This part applies to tests



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following reportable incidents in preparation to returning the pipeline to service. For purposes of this part, pipeline has the meaning given it in Minnesota Statutes, section 299J.02, subdivision 11.

Subp. 2. **Notice.** At least 48 hours before conducting pressure testing, including hydrostatic, air, nitrogen, or other test medium, the pipeline operator shall give notice of the test to the office and to the local governmental units traversed by the portion of pipeline to be tested, unless the operator determines that an emergency exists requiring immediate testing of the pipeline.

For an emergency requiring immediate testing, the pipeline operator shall notify the office before initiating the test.

Subp. 3. **Notice contents.** The notice of the test must include:

A. a statement of the purpose of the test with supporting documents;

B. the name, address, and telephone number of the pipeline operator;

C. the specific location of the pipeline or pipeline section to be tested, including a suitable map of the route of the pipeline and the location of the test;

D. the date and time the test is to be conducted;

E. the method by which the test will be accomplished and the type of test medium to be used; and

F. the name and telephone number of an independent testing firm or other person responsible for certification of results.

Subp. 4. **Observation.** Authorized representatives of the director and affected local governmental units may observe the test.

Subp. 5. **Results reported.** The results of a hydrostatic test conducted by the pipeline operator or by an independent testing company must be sent to the office and if requested, every local governmental unit traversed by the tested portion of the pipeline within ten days of the completion of the test. The



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test results must include:

A. the date of the test;

B. the specific location of the pipeline or pipeline section to be tested, including a suitable map of the route of the pipeline; and

C. the results of the test.



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by Revisor _____

8:30 AM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN - 6 1990
Joan Anderson Growe
Secretary of State

APPROVED AS TO LEGALITY
June 4, 1990
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Charlene H. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

Ar 1501 DPS Pipeline Safety Enforcement CH

[redacted]

RULE REVIEW CHECKLIST

File No. 1706 Docket No. 05 0009 0709

DATE RECEIVED 5-23-90 ADOPTED W/O HEARING X

REVIEW DATE 6-1-90 EMERGENCY RULE

DUE DATE 6-6-90 To Revisor 5-22-90

REVISOR APPROVED

APPROVED 6-4-90 REVISOR DISAPPROVED

DISAPPROVED FILED W/SEC. OF STATE 6-6-90

WITHDRAWN RETURNED TO AGENCY 6-6-90

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4 Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- Oct 9, 1989 Date published in State Register
- NA Comments

~~Petition for Adoption of a Rule (if applicable)~~

~~Board's Authorizing Resolution~~
- ~~Date adopted~~

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 299F.57 and 299J.04 Statutory Authority
- NA Small Business Statement
- NA Expenditure of public money statement
- Feb 2, 1990 Signature

✓ Statement of Need and Reasonableness (if applicable)
- NA Small Business Statement
- Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Feb 22, 1990 Date 30/25 days before adoption
- mailing list Notice attached
- Copy of rule or summary attached

✓ Publication in State Register
- Feb 20, 1990 Date 30/25 days before adoption

✓ 180-day deadline from:
- + Effective date of law requiring rule (14.12) (both rules) — see notes
- ✓ end of comment period (§ 14.26) (rules without hearing)
- effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~
- ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
- May 18, 1990 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
- Jeff Wrasse Name of SAAG representing agency

~~Notice of Submission to Atty. Gen. (if applicable)~~

Aff. ~~of~~ Mailing Notice to Atty. Gen. (if applicable)

F

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

# Office Memorandum

DATE : June 6, 1990

TO : KATHERINE BURKE MOORE
Rules Coordinator
Department of Public Safety

FROM : CHARLENE HATCHER CH
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Pipeline Safety Enforcement and Sanctions

The above-referenced rule has been approved as to its legality by the Attorney General on June 4, 1990.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard please contact me.

CH/rlb
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Jeff Lebowski " "

Stat. Authority

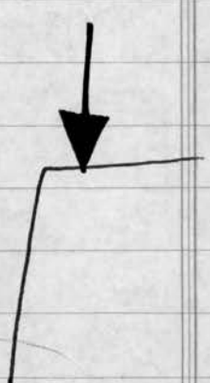
299F. 57

The commissioner may by rule establish additional or more stringent safety standards for the transportation of gas and gas pipeline facilities.

299J. 04

The commissioner shall adopt rules to implement sections 299J.01 to 299J. 17

end of comment period listed in Notice of Intend is march 28, 1990 = 30 days



changes were made - don't seem major

* 180 days

14.12 - 180 days after effective date of law requiring rules must publish a notice of intent

299F.57 - 1 cite indicates may not mandatory

~~299J.04~~ other cite shall mandatory

299J.04 is in the 1989 supplement

- approved May 23, 1989

May 23 1589 – Feb 2, 1990 = 275 days

all new material

did not meet 180 day deadline

no letters to the ~~governor~~ governor or appropriate committees notifying them of the failure

**STATE OF MINNESOTA**
**DEPARTMENT OF PUBLIC SAFETY**
**OFFICE OF PIPELINE SAFETY**

| | |
|---|---|
| In the Matter of the Proposed Rule of the State Department of Public Safety Governing Pipeline Safety Enforcement and Sanctions | NOTICE OF INTENT TO ADOPT A RULE WITHOUT PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING |

(1) NOTICE IS HEREBY GIVEN that the State Department of Public Safety proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, sections 299F.57 and 299J.04.

(2) Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 25, 1990, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF PUBLIC SAFETY. To verify whether a hearing will be held, please call the Office of Pipeline Safety between 8:00 a.m.and 4:30 p.m. at (612)296-9636.

Public Safety

FEB 07 1990

Commissioner's Office

(3) People who want to submit comments or a written request for a public hearing must submit such comments or requests to:

Office of Pipeline Safety
Suite 130 MarketHouse
289 E. 5th Street
St. Paul, MN 55101
(612) 296-9636

Comments or requests for a public hearing must be received by the Office by 4:30 p.m. on March 28, 1990.

(8) The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

(11) A free copy of this rule is available on request for your review from the Office of Pipeline Safety at the address or telephone number listed above.

(11) The proposed rule provides the enforcement mechanism and procedures for implementing the inspection compliance program for all natural gas, other gas and hazardous liquid pipeline operators for minimum pipeline safety standards. This rule will have a direct effect on pipeline operators that transport natural and other gas or hazardous liquids and on the office of pipeline safety.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied on to support the proposed rule has been prepared and is available from the Office of Pipeline Safety on request.

(14) This rule will have no direct impact on small business as the parties directly affected by this rule are not small businesses as defined in Minnesota Statutes, section 14.115.

(13) Adoption of this rule will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

(9) If no hearing is required on adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the

submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the Office of Pipeline Safety.

Feb 2, 1990
date

Paul J. Tschida, Commissioner
Department of Public Safety

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Safety Governing Pipeline Safety Enforcement and Sanctions

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Conference Room D, 5th Floor of the Veterans Services Building, 20 West 12th Street, St. Paul, MN, on April 25, 1990, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF PUBLIC SAFETY. To verify whether a hearing will be held, please call the Office of Pipeline Safety between 8:00 a.m. and 4:30 p.m. at (612)296-9636.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to the Administrative Law Judge,

Steve Mihalchick
Office of Administrative Hearings
5th Floor, Flour Exchange Bldg.
310 4th Avenue South
Minneapolis, MN 55415
(612) 341-7600

either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. Comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 to 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The proposed rule provides for the enforcement mechanism and procedures for implementing the inspection compliance program for all natural gas, other gas and hazardous liquid pipeline operator for minimum pipeline safety standards. This rule will have a direct effect on pipeline operators that transport natural and other gas or hazardous liquids and on the office of pipeline safety.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 299F.57 and 299J.04.

Adoption of this rule will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11.

This rule will have no direct impact on small business as the parties directly affected by this rule are not small businesses as defined in Minnesota Statutes, section 14.115.

Copies of the proposed rules are now available and one free copy may be obtained by writing to: Office of Pipeline Safety, Suite 130 MarketHouse, 289 East 5th Street, St. Paul, MN 55101.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact William Barbeau, Director, Office of Pipeline Safety, at (612) 296-9636.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the Secretary of State.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the Office of Pipeline Safety and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Office of Pipeline Safety or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612)296-5148.

Feb 2, 1990
date

Paul J. Tschida
Paul J. Tschida, Commissioner
Department of Public Safety

# Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

# Department of Public Safety

## Office of Pipeline Safety

## Proposed Permanent Rules Relating to Pipeline Safety Enforcement and Sanctions

### Notice of Intent to Adopt a Rule without Public Hearing and Notice of Intent to Adopt a Rule with a Public Hearing if Twenty-Five or More Persons Request a Hearing

**NOTICE IS HEREBY GIVEN** that the State Department of Public Safety proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, sections 299F.57 and 299J.04.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, section 14.131 to 14.20. **PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 25, 1990, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF PUBLIC SAFETY.** To verify whether a hearing will be held, please call the Office of Pipeline Safety between 8:00 a.m. and 4:30 p.m. at (612) 296-9636.

People who want to submit comments or a written request for a public hearing must submit such comments or requests to:

Office of Pipeline Safety
Suite 130 MarketHouse
289 E. 5th Street
St. Paul, MN 55101
(612) 296-9636

Comments or requests for a public hearing must be received by the Office by 4:30 p.m. on March 28, 1990.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available on request for your review from the Office of Pipeline Safety at the address or telephone number listed above.

The proposed rule provides the enforcement mechanism and procedures for implementing the inspection compliance program for all natural gas, other gas and hazardous liquid pipeline operators for minimum pipeline safety standards. This rule will have a direct effect on pipeline operators that transport natural and other gas or hazardous liquids and on the office of pipeline safety.

**A STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied on to support the proposed rule has been prepared and is available from the Office of Pipeline Safety on request.

This rule will have no direct impact on small business as the parties directly affected by this rule are not small businesses as defined in *Minnesota Statutes*, section 14.115.

Adoption of this rule will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

If no hearing is required on adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the Office of Pipeline Safety.

Dated: 2 February 1990

Paul J. Tschida, Commissioner
Department of Public Safety

## Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules without a Public Hearing

**NOTICE IS HEREBY GIVEN** that a public hearing on the above-entitled matter will be held in Conference Room D, 5th Floor of the Veterans Services Building, 20 West 12th Street, St. Paul, MN, on April 25, 1990, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

**PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF PUBLIC SAFETY.** To verify whether a hearing will be held, please call the Office of Pipeline Safety between 8:00 a.m. and 4:30 p.m. at (612) 296-9636.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to the Administrative Law Judge,

Steve Mihalchick
Office of Administrative Hearings
5th Floor, Flour Exchange Bldg.
310 4th Avenue South
Minneapolis, MN 55415
(612) 341-7600

either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. Comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, sections 14.15 to 14.50. The rule hearing is governed by *Minnesota Statutes*, sections 14.14 to 14.20 and by *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The proposed rule provides for the enforcement mechanism and procedures for implementing the inspection compliance program for all natural gas, other gas and hazardous liquid pipeline operator for minimum pipeline safety standards. This rule will have a direct effect on pipeline operators that transport natural or other gas or hazardous liquids and on the office of pipeline safety.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes*, sections 299F.57 and 299J.04.

Adoption of this rule will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

This rule will have no direct impact on small business as the parties directly affected by this rule are not small businesses as defined in *Minnesota Statutes*, section 14.115.

Copies of the proposed rules are now available and one free copy may be obtained by writing to: Office of Pipeline Safety, Suite 130 MarketHouse, 289 East 5th Street, St. Paul, MN 55101.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact William Barbeau, Director, Office of Pipeline Safety, at (612) 296-9636.

**NOTICE:** Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the Secretary of State.

**NOTICE IS HEREBY GIVEN** that a Statement of Need and Reasonableness is now available for review at the Office of Pipeline Safety and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Office of Pipeline Safety or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

*Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes*, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Dated: 2 February 1990

Paul J. Tschida, Commissioner
Department of Public Safety

## Rules as Proposed (all new material)

**7530.0100 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Director.** "Director" means the director of the office of pipeline safety.

Subp. 3. **Good cause to believe.** "Good cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that are based on at least one of the following sources:

A. information from a person;

B. facts supplied by the pipeline operator;

C. facts of which the director or an agent of the director has personal knowledge; or

D. information obtained by the office during an inspection.

Subp. 4. **Office.** "Office" means the Minnesota office of pipeline safety, a division of the Minnesota department of public safety.

Subp. 5. **Pipeline operator.** "Pipeline operator" means a person who engages in the transportation of gas or hazardous liquid or who owns or operates pipeline facilities.

**7530.0300 INSPECTIONS.**

Subpart 1. **Purpose and scope.** For determining and enforcing compliance with safety standards, the office shall conduct periodic

inspections and spot checks of records and property in the possession, custody, or control of pipeline operators to determine compliance with applicable pipeline safety standards under *Minnesota Statutes*, section 299F.57. This chapter does not apply to interstate gas pipeline facilities subject to the enforcement jurisdiction of the federal Office of Pipeline Safety under the federal Natural Gas Pipeline Safety Act.

Subp. 2. **Reasons.** Inspections will be conducted pursuant to item A, B, C, D, or E:

A. routine scheduling by the director;

B. a complaint received from a member of the public;

C. information obtained from a previous inspection;

D. an accident or reportable incident; or

E. when there is good cause to believe that a threat to public safety may exist.

**7530.0400 INSPECTION RESULTS.**

Subpart 1. **Requests for specific information.** After a complaint, report, or inspection, the office shall send the pipeline operator a request for specific information (1) if further information is necessary to determine appropriate action, (2) when further information is necessary to determine if the office has jurisdiction to act, or (3) when necessary to determine compliance with applicable pipeline safety standards. The pipeline operator has five days to respond to a request for information that is necessary to determine if a reportable incident has taken place or that arises from a reportable incident. The pipeline operator has 30 days to respond to all other requests for specific information. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety.

Subp. 2. **Warning letters; response.** The office shall issue a warning letter when (1) the office has good cause to believe a violation of the federal Natural Gas Pipeline Safety Act; the federal Hazardous Liquid Pipeline Safety Act; *Minnesota Statutes*, sections 299F.56 to 299F.641 and 299J.01 to 299J.09; or a rule, regulation, or order issued under any of these laws, has occurred and (2) the office determines that no immediate threat to public safety exists but that a threat to public safety will develop if the violation is not corrected within a reasonable time. The letter must indicate the nature of the probable violation and advise that the pipeline operator must correct the violation or be subject to further enforcement action by the office.

The pipeline operator has 30 days to respond to the warning letter. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety. If more than 30 days is required to respond, the operator must request a time extension in writing to the office.

Subp. 3. **Notice of probable violation; response.** The office shall issue a notice of probable violation when (1) the office has good cause to believe a violation of the federal Natural Gas Pipeline Safety Act; the federal Hazardous Liquid Pipeline Safety Act; *Minnesota Statutes*, sections 299F.56 to 299F.641 and 299J.01 to 299J.09; or a rule, regulation, or order issued under any of these laws, has occurred and (2) the office determines that a warning letter issued under subpart 2 will not be effective or will not adequately address public safety issues. The notice must contain a proposed compliance order or proposed civil penalty.

The pipeline operator has 30 days to respond to the notice of probable violation. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety. If more than 30 days is required to respond, the operator must request a time extension in writing to the office.

Subp. 4. **Contents of warning letter or notice.** A warning letter or notice of probable violation must include:

A. a statement of the statute, regulation, or rule allegedly violated by the pipeline operator and a description of the evidence on which the allegation is based;

B. notice of response options available to the pipeline operator;

C. if a civil penalty is proposed, the amount of the proposed civil penalty and the maximum civil penalty applicable under law; and

D. if a compliance order is proposed, a statement of the remedial action being sought in the form of a proposed compliance order.

Subp. 5. **Response options.** The pipeline operator shall respond to the warning letter or notice of probable violation in the following way:

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

A. When the warning letter or notice of probable violation contains a proposed compliance order, the pipeline operator shall:

(1) agree to the proposed compliance order;

(2) request the execution of a consent order;

(3) object to the proposed compliance order and submit written explanations, information, or other materials in answer to the allegations in the notice; or

(4) request the office to initiate a hearing under *Minnesota Statutes*, sections 14.50 to 14.69.

B. When the warning letter or notice of probable violation contains a proposed civil penalty, the pipeline operator shall:

(1) pay the penalty and close the case;

(2) submit an offer in compromise of the proposed civil penalty;

(3) submit a written explanation, information, or other material in answer to the allegations or in mitigation of the proposed civil penalty; or

(4) request the office to initiate a hearing under *Minnesota Statutes*, sections 14.50 to 14.69.

**7530.0500 DIRECTOR REVIEW.**

If the pipeline operator objects to the proposed compliance order or civil penalty and submits written explanations, information, or other materials in response to a warning letter or notice of probable violation, the director shall review the submissions and determine whether to negotiate further, modify, or withdraw the warning letter or notice of probable violation, or initiate a hearing under *Minnesota Statutes*, sections 14.50 to 14.69.

**7530.0800 CONSENT ORDER.**

An executed consent order must contain:

A. admission by the pipeline operator of all jurisdictional facts;

B. waiver of further procedural steps and of all right to seek judicial or administrative review or otherwise challenge or contest the validity of the consent order;

C. agreement that the warning letter or notice of probable violation may be used to construe the terms of the consent order; and

D. a description of the actions required of the pipeline operator and the time by which the actions must be accomplished.

**7530.1000 CIVIL PENALTIES.**

Subpart 1. **Proceedings.** When the office has good cause to believe that a pipeline operator is engaging or has engaged in conduct that involves a violation of minimum pipeline safety requirements, the office shall conduct proceedings under parts 7530.0100 to 7530.1100 to determine the nature and extent of the violation and assess and, if appropriate, negotiate a civil penalty under *Minnesota Statutes*, section 299F.60.

Subp. 2. **Assessment considerations.** In assessing a civil penalty under this part, the office shall consider the following factors:

A. the nature, circumstances, and gravity of the violation;

B. the degree of the pipeline operator's culpability;

C. the pipeline operator's history of previous offenses;

D. the pipeline operator's ability to pay;

E. good faith on the part of the pipeline operator in attempting to achieve compliance;

F. the effect of the penalty on the pipeline operator's ability to continue in business; and

G. whether the pipeline is a hazardous liquid pipeline or a gas or other pipeline.

Subp. 3. **Payment procedures.** The pipeline operator shall pay a civil penalty that has been proposed, assessed, or compromised by submitting to the office a certified check or money order in the correct amount, payable to the commissioner of public safety.

**7530.1200 HAZARDOUS FACILITY ORDERS.**

Subpart 1. **In general.** After an inspection, report, or complaint, the office shall find a particular facility to be hazardous to life or property under *Minnesota Statutes*, section 299F.57, subdivision 4, if under the facts and circumstances:

A. the office determines the particular facility is hazardous to life or property; or

B. the pipeline facility, or a component, has been constructed with equipment, material, or technique that is hazardous to life or property, unless the pipeline operator demonstrates that the equipment, material, or technique is not hazardous to life or property.

Subp. 2. **Determination factors.** In considering whether a facility will be determined to be hazardous to life or property, the office shall consider:

A. the characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties, resistance to corrosion and deterioration, and methods of manufacture, construction, and assembly;

B. the nature of the materials transported by the facility, including their corrosive and deteriorative qualities, and the sequence in which the materials are transported;

C. the area in which the pipeline facility is located, the climatic and geologic conditions associated with the area, and the population, population density, and growth patterns of the area; and

D. the adequacy of the pipeline operator's records to show the absence of hazardous conditions.

Subp. 3. **Order.** If the office finds a particular pipeline facility to be hazardous to life or property, the director shall issue a hazardous facility order if failure to do so would result in the likelihood of serious harm to life or property. The hazardous facility order shall provide an opportunity for a contested case hearing as soon as practical.

Subp. 4. **Order contents.** The order must contain:

A. a finding that the pipeline facility is hazardous to life or property;

B. the facts on which the finding is based;

C. the legal basis of the order;

D. the nature and description of the particular corrective action required of the respondent;

E. the date by which the required action must be taken or completed and, when appropriate, the duration of the order; and

F. if a hearing has been waived under this part, a statement that an opportunity for a hearing is provided as soon as practical.

**7530.1400 REPORTABLE INCIDENT INVESTIGATION.**

After a reportable incident, the office may interview personnel, view failed equipment or pipe, issue a subpoena for failed equipment or pipe relating to the incident, for independent preservation, order independent laboratory tests of failed pipe or equipment, view related documents, and take other investigatory measures as needed to complete a comprehensive independent investigation.

**7530.1500 TESTING AND TEST RESULTS.**

Subpart 1. **Applicability.** This part applies to tests following reportable incidents in preparation to returning the pipeline to service.

Subp. 2. **Notice.** At least 48 hours before conducting pressure testing, including hydrostatic, air, nitrogen, or other test medium, the pipeline operator shall give notice of the test to the office and to the local governmental units traversed by the portion of pipeline to be tested, unless the operator determines that an emergency exists requiring immediate testing of the pipeline.

For an emergency requiring immediate testing, the pipeline operator shall notify the office before initiating the test.

Subp. 3. **Notice contents.** The notice of the test must include:

A. a statement of the purpose of the test with supporting documents;

B. the name, address, and telephone number of the pipeline operator;

C. the specific location of the pipeline or pipeline section to be tested, including a suitable map of the route of the pipeline and the location of the test;

D. the date and time the test is to be conducted;

E. the method by which the test will be accomplished and the type of test medium to be used; and

F. the name and telephone number of an independent testing firm or other person responsible for certification of results.

Subp. 4. **Observation.** Authorized representatives of the director and affected local governmental units may observe the test.

Subp. 5. **Results reported.** The results of a hydrostatic test conducted by the pipeline operator or by an independent testing company must be sent to the office and if requested, every local governmental unit traversed by the tested portion of the pipeline within ten days of the completion of the test. The test results must include:

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

A. the date of the test;

B. the specific location of the pipeline or pipeline section to be tested, including a suitable map of the route of the pipeline; and

C. the results of the test.

# State Board of Vocational Technical Education

## Proposed Permanent Rules Relating to License for Financial Aid Administrator

### Notice of Intent to Adopt a Rule without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the State Board of Vocational Technical Education intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, Section 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* 136C.04, Subdivision 9.

All persons have 30 days until 4:30 p.m., 23nd day of March, 1990, in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to either:

Jeanette Daines, Supervisor
Minnesota Technical College System
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: 612-296-0679

Georgia Pomroy, License Revision Specialist
Minnesota Technical College System
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: 612-296-0680

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

**A STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Jeanette Daines or Georgia Pomroy at the above address and phone, upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or wish to receive a copy of the adopted rule must submit the written request to either:

Jeanette Daines, Supervisor
Minnesota Technical College System
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: 612-296-0679

Georgia Pomroy, License Revision Specialist
Minnesota Technical College System
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: 612-296-0680

Helen Henrie, Interim State Director
Minnesota Technical College System

### Rules as Proposed (all new material)

**3700.1100 FINANCIAL AID ADMINISTRATOR.**

Subpart 1. **License required.** A person must be licensed as a financial aid administrator under this part if the person is responsible for any of the activities listed in this subpart:

OFFICE OF THE COMMISSIONER
211 Transportation Building
Telephone: 297-5755

# STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

SAINT PAUL 55155

May 21, 1990

Ms Patricia Nolte, Legal Assistant
Public Finance Division
Office of the Attorney General
404 Capital Office Building
525 Park Street
St. Paul, MN 55155

Re: In the Matter of Proposed Rules Governing Pipeline Safety Enforcement and Sanctions, Minnesota Rules Parts 7530.0100 to 7530.1500.

Dear Ms. Nolte:

On May 18, 1990, the Minnesota Department of Public Safety adopted the above-captioned rules governing Pipeline Safety Enforcement and Sanctions. Enclosed for your review are the following:

1. A copy of the Notice of Solicitation of Outside Opinion as published in the October 9, 1989, State Register,

2. A copy of the proposed rule certified for publication,

3. A copy of the Notice of Intent to Adopt the Rule Without a Public Hearing as mailed,

4. A copy of the Notice of Intent to Adopt the Rule Without a Public Hearing and as published in the February 20, 1990, State Register,

5. A copy of the Statement of Need and Reasonableness,

6. The Affidavit of Mailing the Notice of Intent to Adopt the Rule Without a Public Hearing,

7. Certification of the Mailing List,

8. Four copies of the Rule as adopted,

9. A copy of the Findings of Fact, Conclusions of Law, and Order adopting the rule,

10. Copies of all the written requests, submissions, and comments received by the agency excluding requests solely for copies of the rule or statement of need and reasonableness, and

11. The Declaration of Counsel.

As you will notice, the Notice of Intent to Adopt was published in the February 20, 1990, State Register, yet the notice to the persons on the department mailing list was not mailed until February 22, 1990. This was due to an minor error by the State Register. Though we requested publication in the February 26th issue, the notice was published one week earlier. This did not affect the comment period which remained open to all through March 28, 1990.

Thank you for your attention to this matter.

Respectfully,

Katherine Burke Moore

Katherine Burke Moore
Rules Coordinator

Enc. 11

cc: William Barbeau, Director
Office of Pipeline Safety

Paul J. Tschida, Commissioner
Dept. of Public Safety

**STATE OF MINNESOTA**
**DEPARTMENT OF PUBLIC SAFETY**
**OFFICE OF PIPELINE SAFETY**

| | |
|---|---|
| In the Matter of the Proposed Adoption of the Rule of the State Department of Public Safety Governing Pipeline Safety Enforcement and Sanctions | FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING |

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on February 20, 1990 and was deposited in the United States mail addressed to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 22, 1990. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register. The statement of need and reasonableness was available to the public upon request.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (3) No requests for a public hearing on the rule were received by the agency.

(5) The agency received comments on the rule from four pipeline operators. No requests for notice of submission to the attorney general were received by the agency.

(6) Based on the comments and evidence in the record before the agency, I find the following:

A minor change has been made in subpart 1 of part 7503.0300 of the proposed rule. Additional language is indicated by underlining in the paragraph below.

7530.0300 INSPECTIONS

Subpart 1. Purpose and scope. For determining and enforcing compliance with safety standards, the office shall conduct periodic inspections and spot checks of records and property in the possession, custody, or control of pipeline operators to determine compliance with applicable pipeline safety standards under Minnesota Statutes, section 299F.57.
This chapter does not apply to interstate gas <u>or liquid</u> pipeline facilities subject to the enforcement jurisdiction of the federal Office of Pipeline Safety under the federal Natural Gas Pipeline Safety Act <u>or the federal Hazardous Liquids Pipeline Safety Act</u>.

The additional language does not constitute a substantial change in the rule as proposed, but only clarifies the scope of the rule to mirror the scope of the authorizing statutes. This change does not affect a class of persons who could not reasonably have been expected to comment on the proposed rule as originally noticed. In fact, this

change was recommended by pipeline operators who recognized the broad scope of the rule as proposed. This change neither introduces new subject matter into this rulemaking proceeding, nor invites reaction different from that of the proposed rule.

Another modification will be found in part 7503.1500, subpart 1. Additional language is added as follows:

7503.1500 TESTING AND TEST RESULTS

Subpart 1. **Applicability.** This part applies to tests following reportable incidents in preparation to returning the pipeline to service. <u>For the purposes of this part a pipeline has the meaning given it in Minnesota Statutes, section 299J.02, subdivision 11.</u>

The additional language is not a substantial change in the rule as proposed, but spells out clearly the scope of the testing portion of this rule. The Office of Pipeline Safety has been given jurisdiction over pipelines in M.S. section 299F.57 and 299J.03. The grant of authority under the former section is much broader as it pertains to gas pipeline facilities as defined in M.S. section 299F.56. The testing authority referred to in part 7503.1500 pertains only to pipelines as defined in Chapter 266J. Without this additional language, it may be interpreted that the Office of Pipeline Safety has unreasonably expanded its jurisdiction over pipeline operators. This was not the intention of the legislature nor the office. This change neither introduces new subject matter into this rulemaking proceeding, invites reaction different from that of the proposed rule, nor affects a class of persons who could not reasonably have been expected to comment on the proposed rule as originally noticed.

(8) The above captioned rule is needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as Pipeline Safety Enforcement and Sanctions, parts 7530.0100 to 7530.1500 (as modified) is adopted this 18th day of May, 1990, pursuant to authority vested in me by Minnesota Statutes, section 299J.04, subdivision 1.

Paul J. Tschida

Paul J. Tschida, Commissioner
Department of Public Safety

# Department of Public Safety

## Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing One Call Notification System, Reporting Requirements, Enforcement and Sanctions, Drug Testing, and Training Requirements

**NOTICE IS HEREBY GIVEN** that the State Department of Public Safety, Office of Pipeline Safety, is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the one call notification system, reporting requirements, enforcement and sanctions, drug testing, and training requirements. The adoption of the rule is authorized by *Minnesota Statutes*, chapters 229F.56 to 299F.641, 299J and 216D.

The State Department of Public Safety requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

William Barbeau, Director
Office of Pipeline Safety
130 Market House
289 East Fifth Street
St. Paul, MN 55101

Oral statments will be received during regular business hours over the telephone at (612) 296-9636 and in person at the above address.

Any written material received by the Statement Department of Public Safety shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Paul J. Tschida, Commissioner
Department of Public Safety

# Department of Public Service

## Energy Division

## Correction of Notice of Extension of Deadline

The deadline of October 1, 1989, by the Department of Public Service to seek opinions and information on proposed amendment to *Minnesota Rules* Chapter 7670 [formerly designated as *Minnesota Rules* 4215] governing energy matters within the State Building Code was established by publication June 19, 1989 [not June 27, 1989]. The deadline has been extended to December 21, 1989.

# Department of Public Service

## Energy Division

## Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Residential Thermal Insulation Standards

**NOTICE IS HEREBY GIVEN** that the State Department of Public Service is seeking information or opinions from sources outside the agency in preparing to propose the amendment of *Minnesota Rules* Chapter 7640 governing Residential Thermal Insulation Standards. The adoption of the rule is authorized by *Minnesota Statutes*, section 325F.20 subdivision 1 and 325F.21 subdivisions 1 and 2, which requires the agency to establish standards for the product quality, safety, installation, and labeling of thermal insulation products, and to establish test programs and procedures to ensure that standards established by this chapter are met.

The State Department of Public Service requests information and opinions concerning the subject matter of the rule, including: revised ASTM standards, spray applied cellulose, standards for other insulation products and test standards and application requirements for insulation intended for exterior foundation wall installation. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Bruce Nelson, Senior Engineer
Department of Public Service, Energy Division,
900 American Center Building, 150 East Kellogg Boulevard,
St. Paul, Minnesota 55101
(612) 297-2313

**STATE OF MINNESOTA**
**DEPARTMENT OF PUBLIC SAFETY**
**OFFICE OF PIPELINE SAFETY**

In the Matter of the Proposed Adoption of the Rules of the State Department of Public Safety Safety Governing Pipeline Safety Enforcement and Sanctions.

AFFIDAVIT OF MAILING THE NOTICE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA

COUNTY OF RAMSEY

William Barbeau, being sworn says:

I hereby certify that I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing on the 22nd day of February, 1990, by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the agency mailing list, to all persons and associations that have expressed, to the agency, interest in the captioned rulemaking procedure, and to persons and associations as practical to improve the notification of all parties that might be interested in the captioned rulemaking procedure.

Subscribed and sworn to before me this 25 day of February, 1990.

William Barbeau

Robert E. Bendel
Notary Public

ROBERT E. BENDEL
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 26, 1994

**STATE OF MINNESOTA**
**DEPARTMENT OF PUBLIC SAFETY**
**OFFICE OF PIPELINE SAFETY**

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Safety Governing Pipeline Safety Enforcement and Sanctions

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY )

Katherine Burke Moore, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Public Safety rulemaking mailing list was accurate, complete, and current as of the 22nd day of February, 1990, at the City of St. Paul, State of Minnesota.

Katherine Burke Moore

Subscribed and sworn to before me this 2 day of MAY, 1990.

Robert E. Bendel
Notary Public

ROBERT E. BENDEL
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 26, 1994

Department of Public Safety

Office of Pipeline Safety

Proposed Permanent Rules Relating to Pipeline Safety Enforcement and Sanctions

Rules as Proposed (all new material)

7530.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Director.** "Director" means the director of the office of pipeline safety.

Subp. 3. **Good cause to believe.** "Good cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that are based on at least one of the following sources:

A. information from a person;

B. facts supplied by the pipeline operator;

C. facts of which the director or an agent of the director has personal knowledge; or

D. information obtained by the office during an inspection.

Subp. 4. **Office.** "Office" means the Minnesota office of pipeline safety, a division of the Minnesota department of public safety.

Subp. 5. **Pipeline operator.** "Pipeline operator" means a person who engages in the transportation of gas or hazardous liquid or who owns or operates pipeline facilities.

7530.0300 INSPECTIONS.

Subpart 1. **Purpose and scope.** For determining and enforcing compliance with safety standards, the office shall conduct periodic inspections and spot checks of records and property in the possession, custody, or control of pipeline operators to determine compliance with applicable pipeline safety standards under Minnesota Statutes, section 299F.57.



Approved by Revisor

This chapter does not apply to interstate gas pipeline facilities subject to the enforcement jurisdiction of the federal Office of Pipeline Safety under the federal Natural Gas Pipeline Safety Act.

Subp. 2. **Reasons.** Inspections will be conducted pursuant to item A, B, C, D, or E:

A. routine scheduling by the director;

B. a complaint received from a member of the public;

C. information obtained from a previous inspection;

D. an accident or reportable incident; or

E. when there is good cause to believe that a threat to public safety may exist.

7530.0400 INSPECTION RESULTS.

Subpart 1. **Requests for specific information.** After a complaint, report, or inspection, the office shall send the pipeline operator a request for specific information (1) if further information is necessary to determine appropriate action, (2) when further information is necessary to determine if the office has jurisdiction to act, or (3) when necessary to determine compliance with applicable pipeline safety standards. The pipeline operator has five days to respond to a request for information that is necessary to determine if a reportable incident has taken place or that arises from a reportable incident. The pipeline operator has 30 days to respond to all other requests for specific information. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety.

Subp. 2. **Warning letters; response.** The office shall issue a warning letter when (1) the office has good cause to believe a violation of the federal Natural Gas Pipeline Safety Act; the federal Hazardous Liquid Pipeline Safety Act; Minnesota Statutes, sections 299F.56 to 299F.641 and 299J.01 to 299J.09; or a rule, regulation, or order issued under any of these laws, has occurred and (2) the office determines that no immediate



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threat to public safety exists but that a threat to public safety will develop if the violation is not corrected within a reasonable time. The letter must indicate the nature of the probable violation and advise that the pipeline operator must correct the violation or be subject to further enforcement action by the office.

The pipeline operator has 30 days to respond to the warning letter. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety. If more than 30 days is required to respond, the operator must request a time extension in writing to the office.

Subp. 3. **Notice of probable violation; response.** The office shall issue a notice of probable violation when (1) the office has good cause to believe a violation of the federal Natural Gas Pipeline Safety Act; the federal Hazardous Liquid Pipeline Safety Act; Minnesota Statutes, sections 299F.56 to 299F.641 and 299J.01 to 299J.09; or a rule, regulation, or order issued under any of these laws, has occurred and (2) the office determines that a warning letter issued under subpart 2 will not be effective or will not adequately address public safety issues. The notice must contain a proposed compliance order or proposed civil penalty.

The pipeline operator has 30 days to respond to the notice of probable violation. The office may allow more than 30 days to respond based on the quantity of information requested, the difficulty in obtaining the requested information, and the potential hazard to public safety. If more than 30 days is required to respond, the operator must request a time extension in writing to the office.

Subp. 4. **Contents of warning letter or notice.** A warning letter or notice of probable violation must include:

A. a statement of the statute, regulation, or rule allegedly violated by the pipeline operator and a description of the evidence on which the allegation is based;

B. notice of response options available to the



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pipeline operator;

C. if a civil penalty is proposed, the amount of the proposed civil penalty and the maximum civil penalty applicable under law; and

D. if a compliance order is proposed, a statement of the remedial action being sought in the form of a proposed compliance order.

Subp. 5. **Response options.** The pipeline operator shall respond to the warning letter or notice of probable violation in the following way:

A. When the warning letter or notice of probable violation contains a proposed compliance order, the pipeline operator shall:

(1) agree to the proposed compliance order;

(2) request the execution of a consent order;

(3) object to the proposed compliance order and submit written explanations, information, or other materials in answer to the allegations in the notice; or

(4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

B. When the warning letter or notice of probable violation contains a proposed civil penalty, the pipeline operator shall:

(1) pay the penalty and close the case;

(2) submit an offer in compromise of the proposed civil penalty;

(3) submit a written explanation, information, or other material in answer to the allegations or in mitigation of the proposed civil penalty; or

(4) request the office to initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

7530.0500 DIRECTOR REVIEW.

If the pipeline operator objects to the proposed compliance order or civil penalty and submits written explanations, information, or other materials in response to a warning letter



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or notice of probable violation, the director shall review the submissions and determine whether to negotiate further, modify, or withdraw the warning letter or notice of probable violation, or initiate a hearing under Minnesota Statutes, sections 14.50 to 14.69.

7530.0800 CONSENT ORDER.

An executed consent order must contain:

A. admission by the pipeline operator of all jurisdictional facts;

B. waiver of further procedural steps and of all right to seek judicial or administrative review or otherwise challenge or contest the validity of the consent order;

C. agreement that the warning letter or notice of probable violation may be used to construe the terms of the consent order; and

D. a description of the actions required of the pipeline operator and the time by which the actions must be accomplished.

7530.1000 CIVIL PENALTIES.

Subpart 1. **Proceedings.** When the office has good cause to believe that a pipeline operator is engaging or has engaged in conduct that involves a violation of minimum pipeline safety requirements, the office shall conduct proceedings under parts 7530.0100 to 7530.1100 to determine the nature and extent of the violation and assess and, if appropriate, negotiate a civil penalty under Minnesota Statutes, section 299F.60.

Subp. 2. **Assessment considerations.** In assessing a civil penalty under this part, the office shall consider the following factors:

A. the nature, circumstances, and gravity of the violation;

B. the degree of the pipeline operator's culpability;

C. the pipeline operator's history of previous offenses;

D. the pipeline operator's ability to pay;



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E. good faith on the part of the pipeline operator in attempting to achieve compliance;

F. the effect of the penalty on the pipeline operator's ability to continue in business; and

G. whether the pipeline is a hazardous liquid pipeline or a gas or other pipeline.

Subp. 3. **Payment procedures.** The pipeline operator shall pay a civil penalty that has been proposed, assessed, or compromised by submitting to the office a certified check or money order in the correct amount, payable to the commissioner of public safety.

7530.1200 HAZARDOUS FACILITY ORDERS.

Subpart 1. **In general.** After an inspection, report, or complaint, the office shall find a particular facility to be hazardous to life or property under Minnesota Statutes, section 299F.57, subdivision 4, if under the facts and circumstances:

A. the office determines the particular facility is hazardous to life or property; or

B. the pipeline facility, or a component, has been constructed with equipment, material, or technique that is hazardous to life or property, unless the pipeline operator demonstrates that the equipment, material, or technique is not hazardous to life or property.

Subp. 2. **Determination factors.** In considering whether a facility will be determined to be hazardous to life or property, the office shall consider:

A. the characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties, resistance to corrosion and deterioration, and methods of manufacture, construction, and assembly;

B. the nature of the materials transported by the facility, including their corrosive and deteriorative qualities, and the sequence in which the materials are transported;

C. the area in which the pipeline facility is



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located, the climatic and geologic conditions associated with the area, and the population, population density, and growth patterns of the area; and

D. the adequacy of the pipeline operator's records to show the absence of hazardous conditions.

Subp. 3. **Order.** If the office finds a particular pipeline facility to be hazardous to life or property, the director shall issue a hazardous facility order if failure to do so would result in the likelihood of serious harm to life or property. The hazardous facility order shall provide an opportunity for a contested case hearing as soon as practical.

Subp. 4. **Order contents.** The order must contain:

A. a finding that the pipeline facility is hazardous to life or property;

B. the facts on which the finding is based;

C. the legal basis of the order;

D. the nature and description of the particular corrective action required of the respondent;

E. the date by which the required action must be taken or completed and, when appropriate, the duration of the order; and

F. if a hearing has been waived under this part, a statement that an opportunity for a hearing is provided as soon as practical.

7530.1400 REPORTABLE INCIDENT INVESTIGATION.

After a reportable incident, the office may interview personnel, view failed equipment or pipe, issue a subpoena for failed equipment or pipe relating to the incident, for independent preservation, order independent laboratory tests of failed pipe or equipment, view related documents, and take other investigatory measures as needed to complete a comprehensive independent investigation.

7530.1500 TESTING AND TEST RESULTS.

Subpart 1. **Applicability.** This part applies to tests following reportable incidents in preparation to returning the



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pipeline to service.

Subp. 2. **Notice.** At least 48 hours before conducting pressure testing, including hydrostatic, air, nitrogen, or other test medium, the pipeline operator shall give notice of the test to the office and to the local governmental units traversed by the portion of pipeline to be tested, unless the operator determines that an emergency exists requiring immediate testing of the pipeline.

For an emergency requiring immediate testing, the pipeline operator shall notify the office before initiating the test.

Subp. 3. **Notice contents.** The notice of the test must include:

A. a statement of the purpose of the test with supporting documents;

B. the name, address, and telephone number of the pipeline operator;

C. the specific location of the pipeline or pipeline section to be tested, including a suitable map of the route of the pipeline and the location of the test;

D. the date and time the test is to be conducted;

E. the method by which the test will be accomplished and the type of test medium to be used; and

F. the name and telephone number of an independent testing firm or other person responsible for certification of results.

Subp. 4. **Observation.** Authorized representatives of the director and affected local governmental units may observe the test.

Subp. 5. **Results reported.** The results of a hydrostatic test conducted by the pipeline operator or by an independent testing company must be sent to the office and if requested, every local governmental unit traversed by the tested portion of the pipeline within ten days of the completion of the test. The test results must include:

A. the date of the test;

B. the specific location of the pipeline or pipeline



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section to be tested, including a suitable map of the route of the pipeline; and

C. the results of the test.



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# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to Pipeline Safety Enforcement and Sanctions

**AGENCY:** Department of Public Safety

**MINNESOTA RULES:** Chapter 7530

The attached rules are approved for publication in the State Register

Ron Ray

Ron Ray
Assistant Revisor

**STATE OF MINNESOTA**
**DEPARTMENT OF PUBLIC SAFETY**
**OFFICE OF PIPELINE SAFETY**

In the Matter of the Adoption of the Rule of the State Department of Public Safety Governing Pipeline Safety Enforcement and Sanctions

DECLARATION OF COUNSEL

I, Jeff Lebowski, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General Billing purposes, the four-digit docket client code is .0709.

Special Assistant
Attorney General

Public Safety
APR 06 1990
Commissioner's Office

Comment + Respon

**Amoco Pipeline Company**
One Mid-America Plaza
Oakbrook Terrace, Illinois 60181

March 28, 1990




Office of Pipeline Safety
Suite 130, Market House
289 East Fifth Street
St. Paul, MN 55101

**Amoco Pipeline Comments; Proposed Permanent Rules**
**Relating to Pipeline Safety Enforcement Sanctions**

Dear Sirs:

Amoco Pipeline Company would like to submit the following comments on the proposal titled above.

Under "Section 7530.0300 Inspections", a statement is made as follows: "This chapter does not apply to interstate gas pipeline facilities subject to the enforcement jurisdiction of the Federal Office of Pipeline Safety under the Federal Natural Gas Pipeline Safety Act."

Amoco would like to suggest the inclusion of the following sentence:

"This chapter additionally does not apply to interstate hazardous liquid pipeline facilities subject to the enforcement jurisdiction of the Federal Office of Pipeline Safety under the Federal Hazardous Liquid Pipeline Safety Act of 1979."

Amoco believes inclusion of this statement would make these proposed rules consistent with Minnesota statutes 1988, Section 1161.01 that created the Minnesota Office of Pipeline Safety. As this statute does not regulate interstate hazardous liquid pipelines, neither should the proposed permanent rules.

If there are any questions, please don't hesitate to call me at 708-990-6107.

Sincerely,

A. H. Senge
Coordinator, Regulations

AHS:ad

J. L. Williams, Dome Pipe Line

**OFFICE OF PIPELINE SAFETY**
MARKET HOUSE
289 EAST FIFTH STREET ROOM 130
ST. PAUL, MINNESOTA 55101
TELEPHONE: (612) 296-9636

# STATE OF MINNESOTA
## DEPARTMENT OF PUBLIC SAFETY

April 6, 1990

Mr. A. H. Senge
Amoco Pipeline Company
One Mid-America Plaza
Oakbrook Terrace, Illinois 60181

Dear Mr. Senge:

The Office is in receipt of your March 28, 1990 letter regarding inclusion of language that ensures that the rules apply only to intrastate facilities. It was always the intent of the Office to clarify that the rules apply only to intrastate pipelines. The Office will add language submitted by Williams Pipe Line to clarify your concern.

Thank you for your comments.

Best Regards in Safety,

Bill Barbeau

WILLIAM BARBEAU, Director

cc: Ms. Kathy Burke Moore, Rules Coordinator

Comment + Response

**WILLIAMS PIPE LINE COMPANY**
ONE OF THE WILLIAMS COMPANIES, INC.

March 26, 1990




William Barbeau
Director
Minnesota Office of Pipeline Safety
Market House
289 East Fifth Street Room 130
St. Paul, Minnesota 55101

Subject: Final Enforcement and Sanction Rules
State Register, 2-20-90, pgs. 2044-2050

Dear Mr. Barbeau:

As you and I discussed today, it is apparent that these final rules only apply to intrastate pipeline facilities. As you pointed out, a statement was previously added to Part 7530.0300 to specifically exempt interstate pipelines from the requirements of this Chapter. With that in mind, it would seem appropriate to further clarify this statement by modifying the wording in the last sentence of Part 7530.0300 as follows:

Insert "or liquid" after "interstate gas"

Insert "or the federal Hazardous Liquids Pipeline Safety Act." after "Gas Pipeline Safety Act."

I appreciate the opportunity to discuss these issues with you.

Sincerely,

Jason Huso
Supervisor of Facility Safety

JTH/jth

P. O. BOX 3448 • TULSA, OKLAHOMA 74101

**OFFICE OF PIPELINE SAFETY**
MARKET HOUSE
289 EAST FIFTH STREET ROOM 130
ST. PAUL, MINNESOTA 55101
TELEPHONE: (612) 296-9636

# STATE OF MINNESOTA
## DEPARTMENT OF PUBLIC SAFETY

April 6, 1990

Mr. Jason Huso
William Pipe Line Company
Box 3448
Tulsa, Oklahoma 74101

Dear Mr. Huso:

The Office is in receipt of your March 26, 1990 letter regarding inclusion of language that ensures that the rules apply only to intrastate facilities. It is the intent of the Office to submit your language change through the rulemaking process. It was always the intent of the Office to clarify that the rules apply only to intrastate pipelines.

Thank you for your comments.

Best Regards in Safety,

Bill Barbeau

WILLIAM BARBEAU, Director

cc: Ms. Kathy Burke Moore, Rules Coordinator
Mr. Martin Weinstein
Mr. Kent Myers

Comment + Response

Minnegasco
A Company of Diversified Energies, Inc.

**Miggie E. Cramblit**
Corporate Secretary and
Senior Attorney




April 3, 1990

**HAND DELIVERED**

Office of Pipeline Safety
Suite 130 MarketHouse
289 East Fifth Street
St. Paul, Minnesota 55101

RE: In Re Permanent Rules Relating to Pipeline Safety Enforcement and Sanctions

Dear Sir/Madam:

Enclosed please find Minnegasco, Inc.'s Comments in the above-entitled matter.

Very truly yours,

Miggie E. Cramblit

201 South Seventh Street
Minneapolis, MN 55402

In Re Permanent Rules
Relating to Pipeline Safety
Enforcement and Sanctions




# COMMENTS OF

# MINNEGASCO, INC.

April 3, 1990

# COMMENTS OF MINNEGASCO, INC.

The Department of Public Safety published proposed rules governing pipeline safety enforcement and sanctions on February 20, 1989 seeking input. Comments were due March 28, 1990. Minnegasco respectfully requests these comments be accepted and considered.

Minnegasco has comments on proposed rules 7530.1000, 7530.1400 and 7530.1500 as follows.

**Proposed Rule 7530.1000**

Minnegasco supports consideration of the factors listed in Subpart 2 to determine whether a civil penalty should be imposed and the amount of it. In making this determination, Minnegasco believes that the nature, circumstance and gravity of the violation in terms of the customer's safety should be considered a more significant factor than the others listed.

The current regulation of pipeline safety is stated in terms of performance criteria. Reasonable difference as to <u>how</u> to design, construct and maintain pipeline to meet the applicable criteria may exist among various operators and between the Office of Pipeline Safety and an individual operator. An operator should not be fined for these differences of opinion absent a clear, objective and significant threat to the customer's safety.

Minnegasco proposes that the rule be supplemented with the following language at the end of Subpart 2. "The office will give primary consideration to A, above."

**Proposed Rule 7530.1400**

As this rule is proposed, the Office of Pipeline Safety has discretion to initiate its own investigation of an incident. Minnegasco believes that the primary responsibility for investigating an incident is with the pipeline operator. Minnegasco encourages the Office of Pipeline Safety to initiate its own investigation only when the pipeline operator fails to conduct a thorough and objective investigation of the matter.

**Proposed Rule 7530.1500**

Minnegasco believes this rule may have greater applicability when a liquid pipeline is involved as opposed to a natural gas pipeline. Therefore, Minnegasco requests that this rule be modified to exclude natural gas pipelines.

In the alternative, Minnegasco seeks the following changes to proposed rule 7530.1500.

Minnegasco believes that the 48 hour prenotification required by this rule is unworkable absent a broad definition of emergency. When pressure testing is required as a result of returning a pipeline to service following an unplanned outage, Minnegasco conducts any necessary testing as soon as possible to restore service to its customers in the most expeditious manner it can. Minnegasco does not believe that restoration of service should be hampered or compromised by the notification process. Therefore, Minnegasco suggests that in place of "emergency" in subpart 2, that the Office of Pipeline Safety substitute the following. "In the case of any unplanned outage, the operator will use its best efforts to notify the office prior to the testing, but in any event the operator will notify the office as soon as practicable."

Minnegasco suggests that the rules be supplemented to provide that the operator may give notice orally or via facsimile.

Minnegasco believes the requirement to notify every community of pressure testing is unnecessary as it applies to the natural gas operators. Such a requirement would be unduly burdensome to administer. Moreover, the communities do not have sufficient expertise or interest to evaluate the testing procedures. This function is best left with the office.

Finally, this rule should be amended to note that it is limited to requiring notice and does not in itself mandate pressure testing.

**Comments of Minnegasco, Inc.**

This concludes Minnegasco's comments.

Respectfully submitted,

MINNEGASCO, INC.

By Miggie E. Cramblit

Miggie E. Cramblit
Senior Attorney
201 South Seventh Street
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**OFFICE OF PIPELINE SAFETY**
MARKET HOUSE
289 EAST FIFTH STREET ROOM 130
ST. PAUL, MINNESOTA 55101
TELEPHONE: (612) 296-9636

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

April 6, 1990

Ms. Miggie Cramblit
Senior Attorney
Minnegasco
201 S. 7th St.
Minneapolis, MN 55402

Dear Ms. Cramblit:

I am in receipt of Minnegasco's comments regarding permanent rules relating to pipeline safety enforcement and sanctions. I am glad that you took the time to review the document for comments.

As you know, Minnegasco has reviewed these proposed rules for the past 18 months. In fact, nine drafts of the proposed rules were sent to Minnegasco through the operations division of your company in the past 20 months. Also, Mr. James Anderson, formerly of Minnegasco, serves on the Pipeline Advisory Council and was directly involved throughout the rulemaking process. I mention this because I am surprised by some of the comments presented. I find a few positions inconsistent with past positions by your company. Also, it is a surprise to the Office to learn your position against the hydrostatic test provision. Your new position runs counter to the Office's understanding of your company's public position during legislative hearings.

Let me address your comments with the following considerations by the Office:

Proposed Rule 7530.1000

The Office considered your comments and doesn't see the direct relationship of your comments to your proposed change. The Office will continue with present language and will consider all assessments in varying degrees. It is true that the language is performance and any civil penalty should be issued after full consideration of all assessment factors and weighing each according to the specific violation.

Also, these rules are directly found in C.F.R. 190. The federal government has enforced minimum safety codes on all transmission and distribution companies for 20 years with these rules and no

challenge has been made to them in that time. The Office must have "similar" rules to the federal government to function as the inspector for intrastate pipelines and to become an agent of the federal government for interstate pipelines.

Proposed Rule 7530.1400

The Office accepts your encouragement of the Office to initiate its own investigation only when the pipeline operator fails to conduct a thorough and objective investigation of the matter. The Office knows that minimum safety codes require the operator to investigate all accidents.

But, it is clear in legislative mandate that the State wants to ensure that an independent and thorough investigation of accidents occurs. The Mounds View accident is the basis of the 1987 Pipeline Safety Act. It is clear that the community right to know is a top priority of the Legislature. In Mounds View there was a total breakdown in communication and a lack of trust between parties. Given this example, the Office must have the ability to run an independent investigation.

Finally, the Office has found Minnegasco's operation and maintenance procedures regarding failure investigation to be inadequate. The Office will support the right of operators to complete investigations but will require such operators to have a procedure that ensures such.

Proposed Rule 7530.1500

Your opposition to this section of the rule surprises the Office and is inconsistent with the public position taken by the company through the 1988 legislative session. The 1988 Pipeline Safety Act deleted language in statute requiring such hydrostatic testing but it was understood and expressly stated, to the Legislature that such provision would be required in rule.

Further, this type of provision was included in the 1988 Federal Pipeline Reauthorization Act through action taken by Minnesota's Congressional Delegation. The issue is community right to know. It is clear from Mounds View incident that the Governor's Commission on Pipeline Safety, the original 1987 Minnesota Pipeline Safety Act and federal law want communities to learn of incidents or problems that may affect their constituents. This provision is in direct response to the failure at Mounds View, and Minnegasco supported all provisions of the original act that required the information in the rule.

The rule requires reporting only reportable incidents - which are serious in nature, i.e. loss of life and significant property loss. It is reasonable to expect that the communities should be aware of bringing the system back on line.
The Office will closely monitor this provision and possible revisions could be made after a year or so of compliance. Your suggestions regarding oral notification, facsimile and clearly not mandating pressure testing are reasonable. Your language regarding the lack of expertise by local communities would run counter to the position of the Commission on Pipeline Safety and most legislators who care about the community right-to-know concept.

Thank you for your comments and I would hope that all future rules will be reviewed by your division in Minnegasco. To address the late response of your comments, particularly since your company was fully aware of the rules for more than 20 months (and 20 years as applied at the federal level), it would help to obtain your involvement in the beginning of the process.

Best Regards in Safety,

Bill Barbeau

WILLIAM BARBEAU, Director

cc: Mr. David Henningsgard, Minnegasco
Ms. Kathy Burke Moore, Rules Coordinator DPS
Mr. Jim Anderson

Comment + Response

OWATONNA PUBLIC UTILITIES
208 S. Walnut P.O. Box 800 Owatonna, MN 55060 (507) 451-2480 Fax (507) 451-4940

March 7, 1990

Minnesota Office of Pipeline Safety
Market House
289 E. Fifth Street Room 130
St. Paul, MN 55101

Attention: Mr. William Barbeau

SUBJECT: Proposed Permanent Rules Relating to Pipeline Safety Enforcement and Sanctions

Dear Mr. Barbeau,

In the matter of the above proposed rules, Owatonna Public Utilities submits the following comment:

Subpart 5. Response Options provides for an operator to respond to a warning letter or notice of probable violation by "(1) agreeing to the proposed compliance order" or "(2) requesting the execution of a consent order".

The Minnesota Office of Pipeline Safety, during 1989, sent out a letter explaining the difference between a compliance order and a consent order. Subsequent conversations and a comment in training material for the TSI Enforcement Class leave some question in our mind as to the correct interpretation of these terms. The particular TSI comment indicated the difference to be related to the length of time involved, but did not go into any further detail.

This Operator therefore suggests and requests that the proposed rules include a definition of "compliance order" and "consent order" so that an operator can make an intelligent response with full knowledge of the ramifications of such a response.

Yours truly,

David M. Martin
General Manager

DMM/tss

MAR 1990
Minn. Dept. of Public Safety
Pipeline Safety

**OFFICE OF PIPELINE SAFETY**
MARKET HOUSE
289 EAST FIFTH STREET ROOM 130
ST. PAUL, MINNESOTA 55101
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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

April 6, 1990

Mr. David Martin
General Manager
Owatonna Public Utilities
208 S. Walnut
Box 800
Owatonna, MN 55060

Dear Mr. Martin:

The Office is in receipt of Owatonna's request for clarification of consent and compliance order.

The Offices letter explaining the difference between a compliance and consent order remains as is. In conversation with the Federal Office of Pipeline Safety it is the Office's understanding that a consent order is granted to an operator instead of issuing a violation found through compliance or a hazardous facility order. The federal government, as well as the Office, considers a consent order to represent less of a negative violation of minimum safety codes.

The Office does not believe that adding language to define the terms is necessary. It is the policy of the Office, consistent with federal interpretation, to view a consent order as a positive option the operator has when a notice of probable violation is issued.

Thank you for your comments.

Best Regards in Safety,

Bill Barbeau

WILLIAM BARBEAU, Director

cc: Ms. Kathy Burke Moore, Rules Coordinator