



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

1200 New Jersey Ave., S.E.
Washington, DC 20590

AUG 27 2007

VIA CERTIFIED MAIL AND FACSIMILE TO: (713) 420-1314

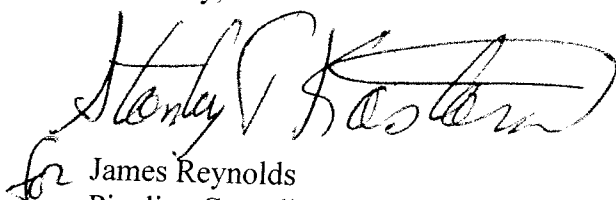
Mr. Dan Martin
Senior Vice President, Operations
Southern Natural Gas Company
El Paso Corporation
1001 Louisiana Street
PO Box 2511
Houston, TX 77002

Re: CPF No. 4-2007-2006H

Dear Mr. Martin:

Enclosed is a Corrective Action Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It requires you to take certain corrective actions with respect to your pipeline system that failed on August 3, 2007. Service of this Corrective Action Order is being made by certified mail and facsimile. Your receipt constitutes service of this document under 49 C.F.R. § 190.5. The terms and conditions of this Corrective Action Order are effective upon receipt.

Sincerely,


for James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosures

cc: R. M. Seeley, Director, Southwest Region, PHMSA

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

| | | |
|--------------------------------------|---|-----------------------------|
| In the Matter of |) | |
| Southern Natural Gas Company, |) | |
| Respondent |) | CPF No. 4-2007-2006H |

CORRECTIVE ACTION ORDER

Purpose and Background

This Corrective Action Order is being issued, under authority of 49 U.S.C. § 60112, to require Southern Natural Gas Company (“Respondent”) to take necessary corrective action to protect the public, property, and the environment from potential hazards associated with a failure involving its natural gas pipeline system.

On August 3, 2007, a failure occurred on Respondent’s Toca Gathering System in Plaquemines Parish, Louisiana, resulting in the release of natural gas, an explosion, and fire. The cause of the failure has not yet been determined. Pursuant to 49 U.S.C. § 60117, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) has initiated an investigation of the accident.

Preliminary Findings

- At approximately 1:50 AM CDT on August 3, 2007, Respondent’s Toca Gathering System experienced a failure in Plaquemines Parish, Louisiana, resulting in the release of natural gas, an explosion, and fire. The failure occurred on Respondent’s 20-inch Loop Pipeline that runs from Gate 6 Platform to Toca Compression Station. The failure occurred on the immediate downstream side of the Gate 6 Platform located approximately at Mile Post (“MP”) 39.4. The area around the failure site is marsh with no population in the immediate vicinity. The nearest town is Pointe A La Hache, Louisiana, which is approximately 6 miles southwest of the failure site.

- The failure resulted in the release of an undetermined amount of natural gas, an explosion, and fire. The explosion caused a 150-foot section of pipe to be severed from the 20-inch Loop Pipeline. Divers employed by Respondent have recovered a substantial portion of the severed section and continue to search for the remaining pieces. The force of the explosion

and fire also damaged adjacent facilities on the platform, including Respondent's 20-inch Main Pass/Franklinton Line, some header piping, a catwalk, and an unregulated pipeline operated by a third party. Respondent has evaluated the damage to its facilities and estimates that repairs to the 20-inch Loop Pipeline will not be completed until mid-October. Respondent estimates that repairs to the adjacent 20-inch Main Pass/Franklinton Line are expected to be completed by mid-September. No injuries, fatalities, or evacuations were reported as a result of the failure.

- The loss of pressure following the 20-inch Loop Pipeline failure caused the activation of automated shut-off valves at the Gate 6 platform, which extinguished the fire. Respondent dispatched personnel from Toca Compressor Station to the Gate 6 platform, where they remained throughout the day to provide site security.
- The 20-inch Loop Pipeline and adjacent 20-inch Main Pass/Franklinton Line, which run from Gate 6 Platform to Toca Compressor Station, remain out of service. The 20-inch Main Pass/Franklinton Line also remains out of service upstream from the Gate 6 Platform to the Gate 7 Platform. Respondent evaluated the integrity of its adjacent 26-inch pipeline that runs from Gate 6 Platform to Toca Compressor Station using ultrasonic tests and visual examinations and placed the 26-inch pipeline back in service on August 15, 2007.
- Respondent's Southern Natural Gas pipeline system consists of approximately 7,650 miles of pipeline. The pipeline system includes gas transmission pipelines in Texas, Louisiana, Mississippi, and Alabama, and a gas gathering system in the Gulf of Mexico. The Toca Gathering System, which experienced the failure on August 3, 2007, includes approximately 310.7 miles of pipeline. The Gate 6 Platform (MP 39.4), site of the pipeline failure and explosion, is located approximately 16.8 miles upstream of Toca Compressor Station (MP 56.2) and approximately 14.1 miles downstream of the Gate 7 Platform (MP 25.3). The failed 20-inch Loop Pipeline is one of three pipelines that run from Gate 6 Platform to Toca Compressor Station. The two other parallel pipelines are the 20-inch Main Pass/Franklinton Line and the 26-inch pipeline. The parallel 20-inch Main Pass/Franklinton Line also extends upstream from the Gate 6 Platform. Toca Compressor Station is located approximately 18 miles southeast of New Orleans in St. Bernard Parish, Louisiana, on Bayou Road. The Toca Gathering System is owned and operated by Respondent, a subsidiary of El Paso Corporation.
- The Toca Gathering System travels through marsh and waterways and crosses public roadways. Respondent has determined that the system is not in a "High Consequence Area" as that term is defined in the pipeline integrity management regulations (49 C.F.R. §§ 192.901–192.951).
- The cause of the failure has not yet been determined. Respondent plans to have the recovered section of failed pipe evaluated by Stress Engineering Services in Houston, Texas. The Southwest Region, PHMSA, has provided Respondent with custody transfer and metallurgical protocol documents.

- Immediately prior to the failure, Respondent had completed a maintenance pigging operation on a segment of the west leg of the Toca Gathering System upstream of Toca Compressor Station. The pigging operation resulted in a significant quantity of natural gas liquids received at the liquids separation facilities at Toca Compressor Station. To manage the quantity of liquids and avoid the release of liquids into the downstream natural gas processing plant and industrial hydrogen plant, Respondent's personnel manually throttled the inlet valves on the liquid separators to avoid allowing too much liquid to collect in the separators. The continuous opening and closing of the separator inlet valves resulted in a gradual pressure increase on the 20-inch Loop Pipeline and 26-inch pipeline upstream of Toca Compressor Station.
- Records from Respondent's Supervisory Control and Data Acquisition ("SCADA") system indicate that pressure on the 20-inch Loop Pipeline and 26-inch pipeline upstream of Toca Compressor Station began increasing at approximately 4:10 PM CDT on August 2, 2007 and continued to steadily increase until the pipeline failure at approximately 1:50 AM CDT on August 3, 2007. The gradual increase in pressure corresponded with Respondent's throttling of the separator inlet valves at the Toca Compressor Station.
- The operational personnel at Toca Compressor Station could not directly observe the increase in operating pressure caused by their throttling of the separator inlet valves. Respondent's Gas Control personnel located at the control room for the Toca Gathering System in Birmingham, Alabama, notified the operations personnel at Toca Compressor Station several times that pressure on the 20-inch Loop Pipeline and 26-inch pipeline was increasing. However, Respondent's Gas Control personnel did not take action to reduce flow rate or otherwise control the increase in operating pressure.
- Flow rate on Respondent's Toca Gathering System upstream from Toca Compressor Station is controlled by third-party producers. Respondent's Gas Control personnel indicated to PHMSA that they do not have contact information for the third-party producers that control flow rate on Respondent's gathering system. Respondent's operations personnel at the Toca Station indicated to PHMSA that they also do not contact upstream producers to make changes to flow rates and that this responsibility is assigned to a separate group of Respondent's personnel responsible for offshore operations. Respondent indicated that any change in the flow rate would have to be accomplished through a meeting between Respondent's various groups of personnel. PHMSA has not been able to determine who in Respondent's organization is ultimately responsible for ordering reductions in the flow rate during normal and abnormal operating conditions.
- Respondent did not have pressure relief devices upstream of the liquid separators at the Toca Station, except for pressure relief devices at the various production sites. Since the pressure relief devices on the liquid separators are downstream of the separator inlet valves, they were ineffective in protecting the pipeline from any type of overpressure occurring upstream of the Toca Compressor Station, such as the overpressure that occurred immediately prior to the August 3, 2007 failure.

- The 20-inch Loop Pipeline on which the failure occurred is 0.344-inch wall thickness, 20-inch nominal diameter, Grade X-52, flash-welded pipe manufactured by A.O. Smith and constructed in 1959. It has coal tar enamel with concrete coating and is cathodically protected. The 20-inch Main Pass/Franklinton Line is also constructed of the same pipe. Vintage pipe manufactured by A.O. Smith has historically been susceptible to seam failure.
- The established maximum allowable operating pressure (“MAOP”) of the 20-inch Loop Pipeline on which the failure occurred is 1072 pounds per square inch gauge (“psig”). The pipeline was constructed prior to the establishment of the Federal pipeline safety regulations (49 C.F.R. Part 192), but was gas tested in October 1959 to a pressure of 1260 psig. Data from Respondent’s SCADA system indicate that at the time of the failure, the pressure on the 20-inch Loop Pipeline was approximately 1088 psig, which is in excess of MAOP. Records indicate that the pressure on the parallel 26-inch pipeline was approximately 1089 psig and the pressure on the adjacent 20-inch Main Pass/Franklinton Line was approximately 808 psig at the time of the failure.
- Respondent indicated that the pipeline that failed has never been internally inspected using an intelligent inline inspection tool.

Determination of Necessity for Corrective Action Order and Right to Hearing

Section 60112 of Title 49, United States Code, provides for the issuance of a Corrective Action Order, after reasonable notice and the opportunity for a hearing, requiring corrective action, which may include the suspended or restricted use of a pipeline facility, physical inspection, testing, repair, replacement, or other action, as appropriate. The basis for making the determination that a pipeline facility is hazardous, requiring corrective action, is set forth both in the above-referenced statute and 49 C.F.R. § 190.233, a copy of which is enclosed.

Section 60112 of Title 49, and the regulations promulgated thereunder, provide for the issuance of a Corrective Action Order without prior opportunity for notice and hearing upon a finding that failure to issue the Order expeditiously will likely result in serious harm to life, property, or the environment. In such cases, an opportunity for a hearing will be provided as soon as practicable after the issuance of the Order.

After evaluating the foregoing preliminary findings of fact, I find that the continued operation of Respondent’s Toca Gathering System from the Gate 7 Platform (MP 25.3) to Toca Compressor Station (MP 56.2), including the Gate 6 Platform (MP 39.4), without corrective measures would be hazardous to life, property, and the environment. Additionally, after considering the type of pipe involved, the proximity of the pipeline system to waterways and public roadways, the hazardous nature of the product transported, the absence of internal inspection data, and the ongoing investigation to determine the cause of the failure and the extent of damage to Respondent’s pipeline system from the explosion and fire, I find that a failure to expeditiously issue this Order requiring immediate corrective action would likely result in serious harm to life, property, or the environment.

Accordingly, this Corrective Action Order mandating immediate corrective action is issued without prior notice and opportunity for a hearing. The terms and conditions of this Order are effective upon receipt.

Within 10 days of receipt of this Order, Respondent may request a hearing, to be held as soon as practicable, by notifying the Associate Administrator for Pipeline Safety in writing, delivered personally, by mail, or by facsimile, and by delivering a courtesy copy to the Director, Southwest Region, PHMSA. If a hearing is requested, it will be held telephonically or in-person in Houston, Texas, or Washington, D.C., on a date that is mutually convenient to PHMSA and Respondent.

After receiving and analyzing additional data in the course of this investigation, PHMSA may identify other corrective measures that need to be taken. In that event, Respondent will be notified of any additional measures required and amendment of this Order will be considered. To the extent consistent with safety, Respondent will be afforded notice and an opportunity for a hearing prior to the imposition of any additional corrective measures.

Required Corrective Action

Pursuant to 49 U.S.C. § 60112, I hereby order Southern Natural Gas Company to immediately take the following corrective actions with respect to its Toca Gathering System from the Gate 7 Platform (MP 25.3) to Toca Compressor Station (MP 56.2), which includes the Gate 6 Platform (MP 39.4):

1. Prior to resuming operation of the 20-inch Loop Pipeline from the Gate 6 Platform to Toca Compressor Station and the adjacent 20-inch Main Pass/Franklinton Line from the Gate 7 Platform to Toca Compressor Station (hereafter "the affected pipeline system"), develop and submit written start-up procedures for prior approval by the Director, Southwest Region, PHMSA ("Director"). The procedures must provide for sufficient pressure monitoring, leak patrolling, and surveillance to ensure that no leaks are present when operation of the affected pipeline system, or portion thereof, is resumed. When the Director provides written approval for restart, operations of the affected pipeline system may be resumed only in accordance with the start-up procedures approved by the Director.
2. Once the affected pipeline system, or portion thereof, is restarted in accordance with Item 1, the operating pressure on the restarted pipeline is not to exceed 80 percent of either the established MAOP or the actual operating pressure in effect immediately prior to the August 3, 2007 failure, whichever is lower. Specifically, the pressure on the 20-inch Loop Pipeline between Gate 6 Platform and Toca Compressor Station shall not exceed 857.6 psig, and pressure on the adjacent 20-inch Main Pass/Franklinton Line between Gate 7 Platform and Toca Compressor Station shall not exceed 646.4 psig.
3. The pressure restriction set forth in Item 2 will remain in effect until written approval to increase the pressure or return the affected pipeline system to its pre-failure operating pressure is obtained from the Director as set forth in Item 11. If the results of any action undertaken pursuant to this Order dictate a reduction in the allowable operating pressure

below that imposed by this Order, Respondent must further reduce the allowable operating pressure accordingly.

4. Within 30 days of receipt of this Order, complete mechanical and metallurgical testing and failure analysis of the failed pipe. The testing and analysis shall be completed as follows:
 - (A) When handling and transporting the failed pipe section and other evidence from the failure site, document the chain-of-custody using the chain-of-custody forms provided by the Southwest Region, PHMSA;
 - (B) Obtain the Director's prior approval of the mechanical and metallurgical testing protocols, including approval of the testing laboratory;
 - (C) Prior to commencing the mechanical and metallurgical testing, provide the Director with the scheduled date, time, and location of the testing to allow a PHMSA representative to witness the testing; and
 - (D) Ensure that the testing laboratory distributes all resulting reports, whether draft or final, to the Director at the same time as they are made available to Respondent.

5. Within 45 days of receipt of this Order, develop and submit to the Director for prior approval a plan for obtaining an independent third-party review of the adequacy of Respondent's:
 - (A) Equipment and procedures for liquid separation at the Toca Compressor Station, including pipe configurations;
 - (B) Overpressure protection equipment on the Toca Gathering System;
 - (C) Monitoring of pressure and flow rate information by field operations personnel at Toca Compressor Station, particularly during operational changes;
 - (D) Procedures for initiating operational changes on the Toca Gathering System by the Gas Control and/or operations personnel, particularly with respect to the coordination and responsibilities of different operations groups during normal and abnormal operating conditions;
 - (E) Maintenance pigging program, including the intervals at which maintenance pigs are run on the Toca Gathering System; and
 - (F) Operational procedures at Toca Compressor Station and the training of operations personnel.

The independent third-party reviewer must be approved by the Director. All resulting reports and recommendations, whether draft or final, shall be submitted directly to OPS by the reviewer at the same time they are made available to Respondent. Implement the

recommendations of the independent third-party, as necessary to ensure pipeline safety, within 120 days of receipt of this Order.

6. Within 60 days of receipt of this Order, develop and submit to the Director for prior approval a written Remediation Plan that includes corrective measures. The Remediation Plan must fully address all known or suspected factors that caused or contributed to the August 3, 2007, failure and must include, as applicable:
 - (A) The integration of the information developed from the actions required by Item 4 with any relevant pipeline system information, including: previous failure investigations, leak history, repair records, corrosion control/cathodic protection records, internal inspections, hydrostatic testing, changes in pressure cycling, operating procedures, and other relevant operating data for the purpose of performing a comprehensive analysis of the available information associated with the factors that caused or contributed to the failure;
 - (B) The performance of field testing, inspections, and evaluations to determine whether and to what extent the conditions associated with the failure, or any other integrity-threatening conditions, including damage resulting from the explosion and fire, are present elsewhere on the affected pipeline system. If seam failure is determined to have caused or contributed to the pipeline failure, field testing must include: (1) hydrostatic testing, including a "spike" test and detailed metallurgical testing of any hydrostatic test failures that occur; or (2) testing by an alternative technology with prior approval of the Director. Include a detailed description of the criteria to be used for the evaluation and prioritization of any integrity threats/anomalies that are identified. Make the results of the inspections, field excavations, and evaluations available to PHMSA or its representative;
 - (C) The performance of repairs or other corrective measures that fully remediate the conditions associated with the pipeline failure, the resulting explosion, and any other integrity-threatening condition everywhere along the affected pipeline system where such conditions are identified by the evaluation process. Include a detailed description of the repair criteria and method(s) to be used in undertaking any repairs or other remedial actions; and
 - (D) A proposed schedule for completion of the actions required by paragraphs (A) through (C) of this Item.
7. The Remediation Plan shall be submitted to the Director, Southwest Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 8701 South Gessner, Suite 1110, Houston, TX 77074, within 60 days of receipt of this Order. The plan shall be revised as necessary to incorporate new information obtained during the failure investigation, actions required by Item 5, and remedial activities undertaken pursuant to this Order. Submit any such plan revisions to the Director for prior approval. The Director may approve plan elements incrementally.

8. Implement the Remediation Plan as it is approved by the Director, including any revisions to the plan.
9. Submit quarterly reports to the Director that: (1) include available data and results of the testing and evaluations required by this Order; and (2) describe the progress of the repairs and other remedial actions being undertaken. The first quarterly report shall be due October 1, 2007.
10. Maintain documentation of the costs associated with implementation of this Corrective Action Order. Include in each quarterly report submitted pursuant to Item 9, the to-date total costs associated with: (1) preparation and revision of procedures, studies and analyses; (2) physical changes to pipeline infrastructure, including repairs, replacements and other modifications; and (3) environmental remediation, if applicable.
11. The Director may allow the removal or modification of the pressure restriction set forth in Item 2 upon a written request from Respondent demonstrating that the hazard has been abated and that restoring the affected pipeline system, or portion thereof, to its pre-failure operating pressure is justified based on a reliable engineering analysis showing that the pressure increase is safe considering all known defects, anomalies, and operating parameters of the pipeline.

The Director may grant an extension of time for compliance with any of the terms of this Order upon a written request timely submitted demonstrating good cause for an extension.

With respect to each submission that under this Order requires the approval of the Director, the Director may: (a) approve, in whole or part, the submission; (b) approve the submission on specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove in whole or in part, the submission, directing that Respondent modify the submission, or (e) any combination of the above. In the event of approval, approval upon conditions, or modification by the Director, Respondent shall proceed to take all action required by the submission as approved or modified by the Director. In the event that the Director disapproves all or any portion of the submission, Respondent shall correct all deficiencies within the time specified by the Director, and resubmit it for approval. In the event that a resubmitted item is disapproved in whole or in part, the Director may again require Respondent to correct the deficiencies in accordance with the foregoing procedure, and/or the Director may otherwise proceed to enforce the terms of this Order.

Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator shall be final.

The actions required by this Corrective Action Order are in addition to and do not waive any requirements that apply to Respondent's pipeline system under 49 C.F.R. Part 192, under any other order issued to Respondent under authority of 49 U.S.C. § 60101 *et seq.*, or under any other provision of Federal or state law.

Failure to comply with this Order may result in the assessment of administrative civil penalties of up to \$100,000 per violation per day pursuant to 49 U.S.C. § 60122, and in referral to the Attorney General for imposition of civil judicial penalties or other appropriate relief in United States District Court pursuant to 49 U.S.C. § 60120.

The terms and conditions of this Corrective Action Order are effective upon receipt.

William H. Giese

for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

8/27/07

Date Issued

§ 190.231

49 CFR Ch. I (10-1-06 Edition)

(2) Subsequently damages a pipeline facility and knows or has reason to know of the damage but fails to promptly report the damage to the operator and to the appropriate authorities; or

(3) Subsequently damages a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product; shall, upon conviction, be subject for each offense to a fine of not more than \$5,000, imprisonment for a term not to exceed 5 years, or both.

(f) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under § 190.217, § 190.219 or § 190.229 if both violations are based on the same act.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-2, 54 FR 32344, Aug. 7, 1989; Amdt. 190-4, 56 FR 63770, Dec. 5, 1991; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996; 70 FR 11138, Mar. 8, 2005]

§ 190.231 Referral for prosecution.

If an employee of the Pipeline and Hazardous Materials Safety Administration becomes aware of any actual or possible activity subject to criminal penalties under § 190.229, the employee reports it to the Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[Amdt. 190-6, 61 FR 18515, Apr. 26, 1996, as amended at 70 FR 11137, Mar. 8, 2005]

SPECIFIC RELIEF

§ 190.233 Corrective action orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section and § 190.211(a), a particular pipeline facility to be hazardous to life, property, or the environment, the Associate Administrator, OPS shall issue an order pursuant to this section re-

quiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(b) The Associate Administrator, OPS may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. However, the Associate Administrator, OPS shall provide an opportunity for a hearing as soon as is practicable after the issuance of a compliance order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise its opportunity for a hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether a compliance order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) Notice and hearing:

(1) Written notice that OPS intends to issue an order under this section shall be served upon the owner or operator of an alleged hazardous facility in accordance with § 190.5. The notice shall allege the existence of a hazardous facility and state the facts and circumstances supporting the issuance of a corrective action order. The notice shall also provide the owner or operator with the opportunity for a hearing and shall identify a time and location where a hearing may be held.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section, or under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to issue a corrective action order in accordance with paragraphs (d) through (h) of this section.

(3) A hearing under this section shall be presided over by an attorney from the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, acting as Presiding Official, and conducted without strict adherence to formal rules of evidence. The Presiding Official presents the allegations contained in the notice issued under this section. The owner or operator of the alleged hazardous facility may submit any relevant information or materials, call witnesses, and present arguments on the issue of whether or not a corrective action order should be issued.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a corrective action order is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator, OPS shall issue a corrective action order in accordance with this section. If the Associate Administrator, OPS does not find the facility is or would be hazardous to life, property, or the environment, the Associate Administrator shall withdraw the allegation of the existence of a hazardous facility contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in § 190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator, OPS determines the particular facility is hazardous to life, property, or the environment; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life, property, or the environment, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that,

under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

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

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

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

(4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

(f) A corrective action order shall contain the following information:

(1) A finding that the pipeline facility is hazardous to life, property, or the environment.

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

(3) The legal basis for the order.

(4) The nature and description of any particular corrective action required of the respondent.

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

(6) If the opportunity for a hearing was waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing will be available at a particular time and location after issuance of the order.

§ 190.235

49 CFR Ch. I (10-1-06 Edition)

(g) The Associate Administrator, OPS shall rescind or suspend a corrective action order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life, property, or the environment. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under § 190.207.

(h) At any time after a corrective action order issued under this section has become effective, the Associate Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.

(i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction to enforce orders issued under this section by appropriate means.

[70 FR 11138, Mar. 8, 2005]

§ 190.235 Civil actions generally.

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.*, or any regulations issued thereunder, the Administrator, PHMSA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, civil penalties, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

[70 FR 11139, Mar. 8, 2005]

§ 190.237 Amendment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under § 190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice

shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Associate Administrator, OPS shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator, OPS shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;

(3) The reasonableness of the plans or procedures; and

(4) The extent to which the plans or procedures contribute to public safety.

(b) The amendment of an operator's plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this subpart.

[Amdt. 190-3, 56 FR 31090, July 9, 1991, as amended by Amdt. 190-6, 61 FR 18516, Apr. 26, 1996]

Subpart C—Procedures for Adoption of Rules

SOURCE: Amdt. 190-8, 61 FR 50909, Sept. 27, 1996, unless otherwise noted.

§ 190.301 Scope.

This subpart prescribes general rule-making procedures for the issue, amendment, and repeal of Pipeline Safety Program regulations of the Pipeline and Hazardous Materials Safety Administration of the Department of Transportation.

[Amdt. 190-8, 61 FR 50909, Sept. 27, 1996, as amended at 70 FR 11137, Mar. 8, 2005]

§ 190.303 Delegations.

For the purposes of this subpart, *Administrator* means the Administrator,