



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

MAR 21 2008

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

**VIA CERTIFIED MAIL AND FACSIMILE TO: (205)325-7528**

March 21, 2008

Mr. William Cope  
Vice President, Eastern Pipeline Operations  
Southern Natural Gas Company  
569 Brookwood Village, Room 766  
Birmingham, AL 35209

**Re: CPF No. 2-2007-1004H**

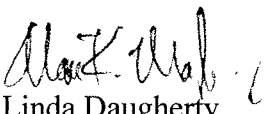
Proposed Amendment No. 1 to the 1/26/07 Corrective Action Order

Dear Mr. Cope:

Enclosed is a Notice of Proposed Amendment No. 1 to the January 26, 2007 Corrective Action Order issued in the above-referenced case. The Notice proposes that you take certain additional corrective actions with respect to your pipeline that failed on March 14, 2008. Service is being made by certified mail and facsimile. Your receipt of this Notice constitutes service of that document under 49 C.F.R. § 190.5.

We look forward to a successful resolution of the safety concerns arising out of this recent pipeline failure. Please direct any questions on this matter to Linda Daugherty, Director, Southern Region, Office of Pipeline Safety, PHMSA, at (404) 832-1140.

Sincerely,

*for:*   
Linda Daugherty  
Director, Southern Region

Enclosures: *Notice of Proposed Amendment No. 1 to the January 26, 2007 CAO*  
*49 C.F.R. § 190.233*

**U. S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
SOUTHERN REGION  
ATLANTA, GA 30303**

\_\_\_\_\_)  
**In the Matter of** )  
 )  
**Southern Natural Gas Company,** )  
 )  
**Respondent** )  
\_\_\_\_\_)

**CPF No. 2-2007-1004H**

**NOTICE OF PROPOSED AMENDMENT NO. 1  
TO THE CORRECTIVE ACTION ORDER**

**Background and Purpose**

On January 26, 2007, under authority of 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a Corrective Action Order (CAO) to Southern Natural Gas Company (Southern or Respondent), finding that the continued operation of a portion of Respondent's 16-inch South Main Line pipeline system, extending approximately 204 miles from York, Alabama, to Smiths, Alabama (16-Inch South Main Line), would be hazardous to life, property, and the environment unless certain corrective actions were taken. PHMSA issued the January 26, 2007 CAO (Original CAO) in response to a full circumferential girth weld failure that occurred on or about January 23, 2007, on the 16-Inch South Main Line. The failure resulted in an estimated release of 100,000 MCF of natural gas in a remote location near Elmore, Alabama (Elmore Failure). The gas ignited, causing a fire that was eventually extinguished upon depressurization, including total separation of pipe and fire.

The Original CAO set forth preliminary findings based upon PHMSA's initial investigation of the Elmore Failure and required, among other actions, that Southern use information gained from the metallurgical analyses and girth weld testing, in-line inspection (ILI) data review, hydrostatic testing of the affected segment, company knowledge, and construction, operation and leak records, to perform a study to determine if conditions similar to those contributing to the Elmore Failure were likely to exist elsewhere on the 16-Inch South Main Line and also on Respondent's 18-Inch South Main Line, both of which were placed in service in 1951.<sup>1</sup>

<sup>1</sup> Required Corrective Action Item No. 6, Original CAO (CPF No. 2-2007-1004H), dated January 26, 2007.

On March 14, 2008, a failure occurred on Respondent's 18-Inch South Main Line, approximately nine miles south of York, Alabama, resulting in a release of natural gas, as more fully described below. A preliminary investigation indicates that the failure occurred in a crack in or near the top of a girth weld. It is unknown at this time, however, what factors may have contributed to the failure, including identification of any forces that may have exerted stress on the weld. The confirmed cause of the failure has not yet been determined. Pursuant to 49 U.S.C. § 60117, PHMSA initiated and continues an investigation of the incident to determine a confirmed cause of failure.

PHMSA hereby issues this Notice of Proposed Amendment No. 1 to the Original CAO, in accordance with 49 U.S.C., notifying Respondent of the preliminary findings of the agency's investigation and proposing that Respondent take certain corrective measures with respect to the 18-Inch South Main Line in order to protect life, property, and the environment from potential hazards associated with the failure.

### **Preliminary Findings**

1. At approximately 11:57 a.m. CDT on March 14, 2008, Respondent's 18-inch South Main Line between Gwinville Compressor Station (MP 0.000) and Bass Junction (MP 378.939) failed near the town of York, Alabama (York Failure). The failure occurred at mile post (MP) 104.8. The incident was reported to the National Response Center (NRC Report No. 865074), as well as reported to PHMSA Southern Region.
2. Respondent reported to PHMSA that the York Failure resulted in the release of approximately 38.12 MCF of natural gas. No fires, injuries, fatalities, or evacuations were reported in connection with the incident. The release did not appear to result in any environmental damage other than the temporary soil excavation and backfilling necessary to remove and replace the failed section of pipe.
3. A contractor working in the area for Alabama Power Company notified Respondent of the leak. Respondent closed block valves upstream and downstream of the failure site (valves at MP 102.845 and MP 105.387), isolating approximately 2.5 miles of pipeline (York Affected Segment). Respondent depressured and evacuated the isolated section of product and removed 79 feet 9 inches of pipe, including the point of failure (an eight-foot piece with the failed weld and two four-foot pieces containing the upstream welds) and is now in the process of replacing the failed section of pipe. Respondent has sent the removed section of pipe to an independent metallurgical lab for analysis, including nondestructive and destructive testing. The name of this independent laboratory approved by the PHMSA Southern Region is Stress Engineering Services, Inc. Respondent has not returned the failed section of pipe to service.
4. The cause of the York Failure has not yet been determined. Preliminary investigation revealed a crack in the girth weld. Respondent conducted a visual and magnetic particle inspection indicating that the failure was at an approximately 4 3/8-inch external crack, beginning at the toe of the girth weld cap in the 1 o'clock position. Respondent's contractor also conducted a radiographic examination indicating that the crack extended 7 1/4-inch on the inside wall of the pipe and centered at the external crack.

5. As noted earlier, on January 23, 2007, a similar girth weld failure occurred on the 16-Inch South Main Line near Elmore, Alabama. The York Failure is the second girth weld failure to occur on Respondent's South Main Line system within the past 14 months. Girth weld failures in the field are typically related to construction issues involving a combination of weld defects and externally applied forces. Similarities exist between the York Failure and the Elmore Failure.
6. According to Respondent, the pipe that failed is 18-inch nominal diameter, 0.312-inch wall thickness, Grade X-52, flash welded pipe with coal tar enamel coating, manufactured by A.O. Smith and constructed in 1951. At the time of construction, the York Affected Segment was pressure tested with natural gas, which was 1280 psig; however, it has never been hydrostatically tested. The pipeline is cathodically protected.
7. The failure analysis performed by Kiefner & Associates on the pipe involved in the Elmore Failure concluded that a combination of factors led to that failure. Specifically, Kiefner indicated that: "(1) The girth weld failed due to excessive axial tensile loading on the pipeline; however, the source of these loads could not be identified. (2) The failure originated at a group of volumetric defects (two burnthrough defects, porosity and slag) near the top of the pipe. These flaws were located in the bottom button, or 6 o'clock pipe position as welded, but were located in the 12 o'clock pipe position as installed in the pipeline. (3) The girthweld may have undermatched the pipe, e.g., it was not as strong as the mating pipe, which would have concentrated any axial pipeline strain in the girthweld. (4) The origin area may have been subjected to a condition of restrained plasticity due to the combined effect of its weaker strength and weld defects at the origin. (5) The combined effect of undermatching, weld defects, and restrained plasticity would have combined to increase the sensitivity of the weld to applied axial stresses."
8. The Affected Pipeline contains pipeline segments totaling 367.239 miles in length<sup>2</sup> and consists of both 16-inch and 18-inch South Main Line pipe that was placed in service in 1951 and extends from Gwinville, Mississippi (MP 0.187) to Bass Junction near Macon, Georgia (MP 378.939). Most of this pipe is located in rural areas with various road crossings and other miscellaneous special areas.<sup>3</sup> Approximately, six miles of pipe are located in high consequence areas (HCAs).<sup>4</sup> The York Affected Segment is between the York Compressor Station (MP 102.845) and MLV Gate 13 (MP 105.387).
9. According to maps and a PHMSA engineer's on-the-ground observation, the York Affected Segment is not routed near any heavily populated areas, state or local highways, or unusually sensitive environmental areas.<sup>5</sup> The York Failure occurred in a remote, class 1 location, non-HCA.

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<sup>2</sup> Three hundred seventy-nine miles of 16-inch and 18-inch pipe on Respondent's South Main Line system were placed in service in 1951. Of this total mileage, 367.239 miles constitute the Affected Pipeline; the remaining pipe has been replaced since originally being placed in service. The 2.5 miles that is out of service is part of this mileage.

<sup>3</sup> Class location information:

Class 1: 312.013 miles

Class 2: 44.817 miles

Class 3: 10.409 miles (0.761 miles are to be replaced in 2008)

<sup>4</sup> Of the six miles that are located in HCAs, 0.31 miles are to be replaced in 2008

<sup>5</sup> This does not apply to the entire 379 miles from Gwinville, Mississippi to Bass Junction.

10. The release of natural gas during depressurization escaped into the air. The environmental impact has not yet been determined.
11. According to Respondent, the established maximum allowable operating pressure of the pipe that failed is 1200 psig, as determined by 49 C.F.R. § 192.619(c), which allows certain pre-code pipelines to be operated at the highest actual operating pressure to which the segment was subjected during the five years preceding July 1, 1970. Respondent reported that the actual operating pressure at the York Failure site immediately prior to the failure was 1075 psig, based upon the discharge pressures at the York Compressor Station.
12. With respect to Item No. 6 in the Original CAO, Respondent requested its In-Line Inspection (ILI) contractor to review its inspection data for the York Failure site on the Affected Pipeline after the York Failure. In so doing, the contractor identified a 3-inch indication that was then reported to Respondent, who subsequently reported to PHMSA the following:
  - a. Respondent has smart-pigged 460 miles of its entire 504-mile South Main Line system. The Affected Pipeline, which is the subject of this Notice, was pigged in 2005.
  - b. Prior to the York Failure, Respondent had evaluated the 2005 ILI run data to determine if there were girth weld indications in the pipe segments that included the failure location. No weld indications were noted in the failure area; the nearest upstream (of the failure) anomaly indicated was at MP 100.32 and the nearest downstream (of the failure) indication was at MP 105.92.
  - c. On March 17, 2008, Respondent's ILI contractor reviewed the 2005 ILI data on 145 girth welds in the area of the recent girth weld failure. The contractor identified one possible girth weld anomaly in this area, extending for a length of approximately 5700 feet. Using this information about weld seam orientations, joint lengths, and other information obtained from lab and field personnel regarding the location of the York Failure, it appears likely that the girth weld anomaly identified in the March 17 review was the one where the York Failure occurred. The March 17 analysis identified a 3.0" circumferential girth weld anomaly centered at the 12:51 o'clock position.

### **Allegation of Hazardous Condition and Right to Hearing**

Section 60112 of Title 49, United States Code, provides for the issuance of a Corrective Action Order, including amendments, after reasonable notice and the opportunity for a hearing, that may require the Respondent to take certain corrective actions. These 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 a determination that a pipeline facility is or would be 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.

After evaluating the foregoing preliminary findings of fact and considering that the York Failure is the second girth weld failure to occur on the 1951 in-service South Main Line System within the past 14 months, the age of the pipe involved, the manufacturer, the hazardous nature of the product transported, the pressure required for transporting such product, and the ongoing investigation to determine the cause of the failure, it appears that the continued operation of the Affected Pipeline without corrective measures would be hazardous to life, property, and the environment because an analysis to root cause has not been established and current actions to maintain and monitor the pipeline have not mitigated the threat of future weld failures.

Accordingly, PHMSA issues this Notice of Proposed Amendment No. 1 to the Original CAO to notify Respondent of the agency's intent to issue said Amendment No. 1 and to propose that Respondent take the measures specified herein to protect life, property, and the environment. This proposed Amendment No. 1 shall not suspend, eliminate, or alter the requirements of the Original CAO, unless otherwise specifically provided herein.

### **Response to this Notice**

Respondent may request a hearing on this Notice, to be held as soon as practicable, by notifying the Director, Southern Region, PHMSA, 233 Peachtree Street, Suite 600, Atlanta, GA 30303 (Director) in writing within 10 days of service of this Notice. Failure to submit such written notification waives the opportunity for a hearing and allows the Associate Administrator for Pipeline Safety to proceed to determine whether or not a CAO (or amendment) is required in accordance with 49 C.F.R. § 190.233. If a hearing is requested, it will be held telephonically or in-person on a date and in a location mutually acceptable to Respondent and PHMSA.

As soon as practicable after the conclusion of a hearing, or if no hearing is requested, the Associate Administrator for Pipeline Safety will determine whether or not an amendment to the Original CAO is required. If the Associate Administrator finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator shall issue a CAO in accordance with 49 C.F.R. § 190.233. If the Associate Administrator 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 condition contained in this Notice and promptly notify Respondent in writing.

### **Amendments to Required Corrective Action**

Pursuant to 49 U.S.C. § 60112 and 49 C.F.R. § 190.233, PHMSA proposes to issue to Respondent this proposed Amendment No. 1 to the Original CAO, incorporating the following remedial requirements with respect to the Affected Pipeline. The Respondent shall:

**Item 10. Out-of-service status of the York Affected Segment.** Maintain the out-of-service status of the York Affected Segment. This will remain in effect until the Director has granted written approval for a return to service upon hydrostatic testing of such segment and completion of the following requirements:

- (A) Confirm the integrity and strength of the girth welds in the York Affected Segment by hydrostatically testing the same to a minimum of 90% SMYS of the pipe (0.9 x 1803 = 1622 psig) for a period of no less than 8 hours.
- (B) Provide the results of all reviews of the 2005 Geometry and ILI data conducted for indication of an anomaly at the York Failure location to the Director in hard copy/electronic format.

**Item 11. Mechanical and metallurgical testing and failure analysis.** Within 30 days after issuance of the proposed Amendment, complete mechanical and metallurgical testing and failure analysis of the failed pipe to determine the cause and contributing factors of the failure. The analysis on the failed girth weld and two upstream girth welds should 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;
- (B) Obtain the Director's prior approval of the mechanical and metallurgical testing protocols, including approval of the independent 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.

**Item 12. Aerial instrument or ground instrumented leak survey and remedy.** Within 30 days after the proposed Amendment No. 1 is issued, perform an aerial instrument or ground instrumented leak survey of the Affected Pipeline. Investigate all leak indications and remedy all leaks found.

**Item 13. Root cause analysis.** Within 60 days after the proposed Amendment No. 1 is issued, with respect to the York Failure:

- (A) Perform a root cause analysis to determine the cause of the failure, including a study and analysis of environmental and other factors that may have caused stresses on the pipe contributing to the failure; and
- (B) Provide a report on the root cause analysis to the Director.

**Item 14. Plan of action and schedule.** Within 90 days after the proposed Amendment No. 1 is issued, develop and submit to the Director for approval a plan of action to investigate, evaluate, and remediate girth weld indications on the Affected Pipeline pipe and girth welds placed in service in 1951.

- (A) The plan will include, at a minimum, the following actions:

- (1) Evaluate girth welds on the Affected Pipeline identified as having the potential to fail and remediate as necessary;
- (2) Of those girth welds identified as having a potential to fail, focus on areas where there is a potential threat to life, property or the environment. Consider and incorporate the findings of Items 10-13 above;
- (3) Incorporate the findings of the actions Respondent is performing as required of Item 6 of the Original CAO to determine if conditions similar to those contributing to the Elmore Failure and the York Failure are likely to exist elsewhere on the Affected Pipeline;
- (4) Perform an evaluation of the Affected Pipeline girth welds, based on the findings of the study performed as required of Item 6 of the Original CAO and the proposed Amendment No. 1; and
- (5) Identify girth welds with characteristics similar to the contributing factors identified for the Elmore and York Failures; and
- (6) Provide a proposed schedule for completion of the actions required by paragraphs (1) through (5) of this Item.

**Item 15. Revisions.** Revise the plan as necessary to incorporate new information obtained during the failure investigation and associated remedial activities. Submit any such plan revisions to the Director for approval. The Director may approve plan elements incrementally. The plan shall become incorporated into the proposed Amendment No 1.

**Item 16. Implementation.** Implement the work plan as it is approved by the Director, including any revisions to the plan.

**Item 17. Monthly progress submissions.** Submit monthly report to the Director that: (1) include available data and results of the testing and evaluations required by the proposed Amendment; and (2) describe the progress of the execution of the plans, repair, and other remedial actions being undertaken.

The actions proposed by this Notice of Proposed Amendment No. 1 to the Original CAO are in addition to and do not waive any requirements that apply to Respondent's pipeline system under 49 C.F.R. Parts 190 through 199, under any other Order issued to Respondent under authority of 49 U.S.C. § 60101 et seq., or under any other provision of Federal or state law.

In addition to any other actions specifically proposed under the terms of this Notice, the following, as previously set forth in the Original CAO, would also apply to the remedial requirements set forth above under the proposed Amendment:

**Implementation costs.** Maintain documentation of the costs associated with implementation of the proposed Amendment. Include in each monthly required report submitted pursuant to Item 17, 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.

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

**Submissions.** 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 the Director approves, modifies or conditionally approves any submission, Respondent shall proceed to take all actions required by the Director. If 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. If 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 the proposed Amendment.

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

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 the corrective action 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.

*William A. Gorte*  
*For*

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Jeffrey D. Wiese  
 Associate Administrator  
 for Pipeline Safety

MAR 21 2008

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Date Issued

**§ 190.231**

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(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

(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 § 190.237.

(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

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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. 190-8, 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.