



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

**AUG 17 2009**

Ms. Susan K. Duffy  
Executive Director  
State Corporation Commission  
of the State of Kansas  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027

Dear Ms. Duffy:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) reviewed your letter of June 8, 2009, notifying us that the State Corporation Commission of the State of Kansas (Commission) has granted the City of Louisburg, Kansas (Louisburg) a waiver of 49 CFR § 192.59(a)(1), as adopted by Kansas Administrative Regulations 82-11-4. Louisburg requested a waiver of § 192.59(a)(1) to allow for the use of Polyethylene (PE) pipe that is not in compliance with ASTM D2513-99, which is listed in Appendix B to Part 192. Paragraph A1.5.7 of ASTM D2513-99 specifies that PE pipe stored outdoors and unprotected for longer than two years from date of manufacture must meet certain testing requirements prior to use. Louisburg wants to use PE pipe that has been stored outside for approximately two-and-a-half years without subjecting the pipe to the complete series of testing prescribed by ASTM D2513-99.

The waiver granted by the Commission is partially based on information that the ASTM F-17 Committee on Plastic Piping Systems responsible for updating ASTM D2513 recently voted to revise paragraph A1.5.7. The Committee voted to extend the period allowed for outdoor storage to three years without further testing. In addition, the Commission also considered the fact that the manufacturer of the pipe in question, Performance Pipe Company, has tested this type of pipe to demonstrate its characteristics are not damaged after outdoor exposure of up to four years.


While PHMSA is aware of the latest efforts to update ASTM D2513, at this time ASTM D2513-99 is the version incorporated by reference. PHMSA also notes that even if the latest changes to ASTM D2513-99 are taken into consideration, the pipe in question is nearing the three-year outdoor storage limit and may potentially exceed that limit before the pipe is installed and put into service. Finally, PHMSA has reviewed the test data provided by Performance Pipe and recommends additional testing to increase the level of confidence of the long-term performance of the pipe in service.

Taking these items into account, PHMSA objects to the waiver unless the Commission requires Louisburg to meet the following conditions:

- Prior to installing and putting the pipe in service, Louisburg should work with the manufacturer (and PHMSA if needed) to identify and have performed an appropriate peel test (or equivalent) of samples of the PE pipe in question. The tests should include removing and examining sufficient layers to confirm oxidation is not present over 5-10 mils deep. This data should be provided to the Commission for review prior to installation.
- If sidewall or electrofusion methods are intended, Louisburg should work with the manufacturer (and PHMSA if needed) to identify and have performed appropriate “knock-off” or equivalent tests with fittings, where the fittings are fused on samples of the pipe in the areas exposed to direct sunlight and force is applied to the fitting to the point of failure. Generally, if the oxidized layers haven’t been sufficiently removed, the failure will occur at the fitting. If oxidized layers have been sufficiently removed, failure will occur at the pipe.
- Louisburg should work with the manufacturer (and PHMSA if needed) to develop appropriate surface preparation procedures that call for removal of 5-10 mils from the surface of the pipe, using an appropriate tool prior to joining with fittings or other appurtenances.
- Louisburg should work with the manufacturer (and PHMSA if needed) to identify sufficient tracking and traceability procedures to record locations where the pipe is installed and also where each joint or appurtenance is located. This information should be available to the Commission upon request.
- Procedures for all of the above requirements must be developed and submitted to the Commission prior to usage by Louisburg.

If you wish to discuss this or any other pipeline safety matter, my staff would be pleased to assist you. Under 49 U.S.C. § 60118 (d), you may also request a hearing on this matter. Please call John Gale, Director of Regulations at 202-366-4046 for regulatory matters or Alan Mayberry, Director of Engineering and Emergency Support at 202-366-5124 for technical matters. If you wish to discuss with personnel from our Central Region, please contact Ivan Huntoon, Director of the PHMSA Central Region at 816-329-3829.

Sincerely,

  
*For*

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

**JUN 17 2009**

Before Commissioners:                    Thomas E. Wright, Chairman  
                                                 Michael C. Moffet  
                                                 Joseph F. Harkins

In the Matter of the City of Louisburg,                    )  
Kansas , Requesting Waiver of Pipeline                    )  
Safety Regulation Title 49 C.F.R. Part                    )                    Docket No. 09-LSBP-920-MIS  
192.59(a)(1), as Adopted by K.A.R. 82-                    )  
11-4, Pertaining to Time Limits for                    )  
Outdoor Storage of Polyethylene Pipe.                    )

**ORDER**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

**I. BACKGROUND**

1. In December 2006, the City of Louisburg's Public Works Department (Louisburg) purchased a quantity of polyethylene (PE) pipe in anticipation of extending its gas system for a new housing subdivision. The main project was delayed, resulting in 4800 feet of 2-inch pipe and 2800 feet of 6-inch pipe being stored in outdoor storage since December 2006.

2. On March 8, 2009, Louisburg requested a waiver of the requirements of paragraph A1.5.7 of the American Society for Testing Materials (ASTM) standard D2513. The standard is adopted by reference in Title 49 C.F.R. §192.59(a)(1), defined as a listed specification in Section I of Appendix B to Title 49 C.F.R. Part 192, and adopted by K.A.R. 82-11-4.

3. Paragraph A1.5.7 requires PE pipe stored outdoors for more than two years undergo the complete series of tests prescribed by ASTM D2513 for new pipe before it can be installed for gas service.

4. On June 1, 2009, Commission Staff (Staff) submitted a memorandum recommending the Commission approve Louisburg's request for a waiver of Title 49 C.F.R. §192.59(a)(1) as adopted by K.A.R. 82-11-4. In support of its position, Staff indicated that the ASTM committee responsible for updating the D2513 specification voted in May 2009 to delete paragraph A1.5.7 from the standard and extend the period allowed for outdoor storage to three years. While Staff noted that the new standard has yet to be published by ASTM or adopted by the United States Department of Transportation (USDOT), it also noted that the two year limitation under the previous standard is a conservative estimate of the time PE pipe is resistant to ultraviolet (UV) radiation exposure. Further Staff stated that although the pipe purchased by Louisburg has not been tested as prescribed by ASTM D2513, Performance Pipe, the manufacturer of the Louisburg pipe has tested this type of pipe to demonstrate its characteristics are not damaged after outdoor exposure of up to four years. Despite the fact that Performance Pipe did not perform all of the tests called for in the D2513 standard, the testing regimen that was performed is considered to test for all properties of the plastic that could be affected by UV degradation. Ultimately, Staff asserted that granting the waiver is consistent with the intent of pipeline safety requirements, and the recently approved D2513 standard, because the pipe has been stored outdoors only since December 2006.

## II. Discussion

5. K.S.A. 66-1,150 authorizes the Commission to adopt such rules and regulations as may be necessary to be in conformance with the Natural Gas Pipeline Act of 1968, as amended, 49 U.S.C.A. 1671 *et seq.*

6. This request seeks a waiver of the requirements of a pipeline safety standard adopted by reference in Title 49 C.F.R. §192.59(a)(1) which is adopted by K.A.R. 82-11-4.

7. K.A.R. 82-11-9(b) provides the Commission may grant waivers of gas pipeline safety regulations adopted in K.A.R. 82-11-1 *et seq.*, after notice and opportunity for hearing, if the Commission determines that notice and hearing are necessary, and that the waiver is consistent with pipeline safety.

8. Additionally, pursuant to K.A.R. 82-1-202(a) the Commission has the power to waive any of its regulations, and can waive the requirement of notice and opportunity for hearing if the Commission determines that a waiver of the requirement contained in the regulation is in the public interest.

9. In the current matter, the ASTM committee recently voted to extend the outdoor storage period for PE pipe to three years. The Louisburg pipe has been stored outdoors for 2 ½ years. Because the Louisburg pipe is within the parameters under the recently adopted standard, requiring Louisburg to expend funds on notice and a hearing would result in unwarranted expenses that will ultimately be passed on to the residents of Louisburg. Therefore, the Commission concludes the notice and hearing provision of K.A.R. 82-11-9(b) is unnecessary.

10. Further, the Commission agrees with Staff's analysis regarding the waiver. Considering the pipe in question has been stored outdoors for a time period less than allowable under the newly adopted D2513 standard, coupled with the fact that the pipe's manufacturer

demonstrated that similar PE pipe maintains integrity when stored outdoors for a period up to four years, the requested waiver appears reasonable and not to be in conflict with the intent of pipeline safety. Therefore, the Commission finds and concludes that granting the waiver is in the public interest and consistent with pipeline safety.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED:**

A. The City of Louisburg, Kansas' request for waiver of Title 49 C.F.R. § 192-59(a)(1) as adopted by K.A.R. 82-11-4 is granted as it applies to the 4800 feet of 2-inch pipe and 2800 feet of 6-inch pipe currently in Louisburg's inventory.

B. Because this waiver constitutes a modification of federal pipeline safety requirements contained in Title 49 C.F.R. §192.59(a)(1) this waiver is contingent upon approval from the U.S. Department of Transportation.

C. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2008 Supp. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Wright, Chr.; Moffet, Com.; Harkins, Com.

Dated: JUN 08 2009

**ORDERED MAILED**

JUN 09 2009

 EXECUTIVE  
DIRECTOR

Susan K. Duffy  
Executive Director

TJP: acc