



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

Mr. Richard D. Kinder
Chairman and CEO
Kinder Morgan Energy Partners, L.P.
500 Dallas Street, Suite 1000
Houston, TX 77002

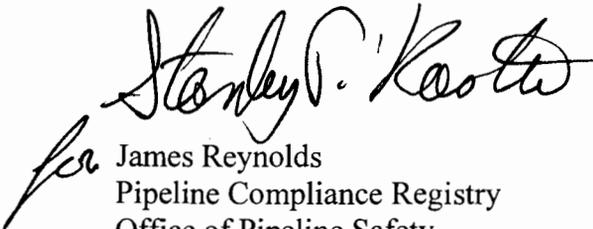
AUG 24 2005

Re: CPF No. 5-2005-5025H

Dear Mr. Kinder:

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 Pacific Operations unit of hazardous liquid pipeline systems. Service is being made by certified mail and facsimile. Your receipt of this Corrective Action Order constitutes service of that 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

Enclosure

cc: Thomas Bannigan, President, Products Pipelines
Paul Geier, Assistant General Counsel for Litigation, U.S. D.O.T.
Bruce Gelber, Chief, Environmental Enforcement Section, ENRD, U.S. D.O.J.
Ron McClain, Vice-President, Operations and Engineering, Products Pipelines

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND FACSIMILE

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

_____))
In the Matter of))
))
Kinder Morgan Energy Partners, L.P.,)) CPF No. 5-2005-5025H
))
Respondent))
_____)

CORRECTIVE ACTION ORDER

Background and Findings

This Corrective Action Order is being issued, under authority of 49 U.S.C. § 60112, to require Kinder Morgan Energy Partners, L.P. (Respondent) to take necessary corrective action to protect the public, property, and the environment from potential hazards associated with Respondent's 3,900-mile Pacific Operations unit of hazardous liquid pipeline systems located in Arizona, California, Nevada, New Mexico, Oregon, and western Texas.

Respondent's Pacific Operations unit, which includes the CALNEV and Sante Fe Pacific Pipelines (SFPP) systems and associated bulk terminals, has experienced at least 44 accidents since January 1, 2003 for which Respondent was required to file a written report under 49 C.F.R. § 195.54. Of these 44 accidents, at least 14 resulted in releases of more than five barrels of refined petroleum products into the surrounding environment. At least eight known accidents resulting in releases into the surrounding environment have occurred since April 27, 2004. All eight of these accidents occurred in or near high consequence areas (as defined in 49 C.F.R. § 195.450) and/or major transportation corridors and include:

1. A failure on line LS-25 resulting in the release of diesel fuel into the Suisun Marsh near Fairfield, California around April 27, 2004.
2. A failure on a line between breakout tanks resulting in the release of gasoline into surrounding soil in a high population area in Carson, California around August 3, 2004.
3. A failure on line LS-47 resulting in the release of jet fuel into a highly-populated environmentally sensitive area in Martinez, California around November 7, 2004.

4. A failure on line LS-16 resulting in the release of gasoline that killed five workers in Walnut Creek, California around November 9, 2004.
5. A failure on the CALNEV line resulting in the release of gasoline close to an environmentally sensitive area near San Bernardino, California around November 22, 2004.
6. A failure on line LS-42 resulting in the release of jet fuel into the waters of the Oakland Estuary in Oakland, California around February 7, 2005.
7. A failure on line LS-12 resulting in the release of gasoline and diesel fuel into Summit Creek, which is connected to Donner Lake, near a ski resort area around Truckee, California that was reported by a skier on April 1, 2005.
8. A failure on line LS-17 resulting in the release of gasoline near highways in Fort Bliss Military Reservation in El Paso, Texas on May 28, 2005.

Investigators from the Office of Pipeline Safety (OPS) or a certified state partner agency responded to each of these eight accidents. At the time that investigators responded, it was not always possible to ascertain the cause of the accident. OPS or its state partner agencies have since investigated and/or directed Respondent to investigate the cause of failure in each of these eight accidents.

Of these eight accidents, five are attributed to outside force damage (e.g., third-party damage caused by an excavator or other source, caused during construction of the pipeline, etc.). At least three instances of latent outside force damage went unaddressed by Respondent for an indeterminate period despite internal inspection tool runs conducted by Respondent on the pipelines previous to the accidents. These accidents attributed to outside force damage include the failures on lines LS-47, LS-16, LS-42, LS-12 and the CALNEV line. Approximately 50 percent of Respondent's reported hazardous liquid pipeline accidents between 1998 and 2003 were caused by outside force damage. In calendar year 2004, that figure rose to approximately 60 percent.

In addition to outside force damage, corrosion (e.g., generalized corrosion, stress corrosion cracking, corrosion in wrinkle bends caused during field bending, etc.) contributed to or was the probable cause of failure in multiple accidents. In one instance, an unaddressed patch of corrosion stretching almost 14 feet in length resulted in the April 27, 2004 release into the Suisun Marsh. This patch of corrosion, as with anomalies that were causal factors in at least four other of the eight recent significant releases, was not identified by Respondent as requiring repair.

Respondent's recent accidents indicate a widespread failure to adequately detect and address the effects of outside force damage and corrosion. This failure has systemically affected the integrity of the Pacific Operations unit.

In addition to the foregoing information, OPS investigations have determined the following:

- Respondent has performed internal inspections utilizing geometry tools and magnetic flux leakage (MFL) tools, including: geometry and MFL inspections of line LS-25 in 2001 and 2003, geometry and MFL inspections of the CALNEV line in 2004, geometry and MFL inspections of line LS-42 in 2003, and geometry and MFL inspections of line LS-12 in 1997.
- The internal inspection geometry tools employed by Respondent are generally insufficient (based on tool specifications and post-accident metallurgical examinations) to identify deformation and longitudinally-oriented wall loss defects that typically result from outside mechanical force damage to pipelines. The aforementioned internal inspections conducted on the CALNEV line, line LS-42, and line LS-12 did not detect the defects from outside force damage that resulted in line failure.
- Although general corrosion spread significantly in the area of the April 27, 2004 failure on line LS-25 between the 2001 and 2003 MFL inspections, the algorithm used to analyze the 2003 inspection was incapable of identifying the widespread corrosion growth and risk of failure.
- Respondent bases its pipeline repair and rehabilitation activities on internal inspection reports but does not integrate those reports with other data relevant to the integrity of the pipeline. Respondent's current organizational structure places responsibility on personnel in multiple departments to identify specific threats to pipeline integrity. However, the responsible personnel often may not have access to integrity data developed by personnel in other departments.
- Respondent's contract with its internal inspection tool vendor relies upon the vendor's standard analysis and reporting criteria to notify Respondent of critical anomalies on its Pacific Operations unit. Respondent does not consider unique threats to Respondent's system, such as high occurrence of outside force damage, when selecting inspection tools or establishing measurement thresholds and accuracies for analysis and reporting.
- Respondent's procedures require that, when internal inspection tool data does not correlate with non-destructive field testing data, the non-correlation must be reported to the internal inspection tool vendor. To examine Respondent's application of its procedures, OPS investigators sampled nine different sites that Respondent had internally inspected then excavated and non-destructively tested. OPS inspectors determined that none of the nine sampled site results demonstrated proper correlation between the internal inspection data and the non-destructive test data. However, Respondent accepted all nine results as valid and did not report them to the tool vendor as non-correlations.
- Respondent does not have a procedure for its field personnel to excavate sites that internal inspections identify as containing integrity-threatening anomalies, to non-destructively test those sites, and to document the findings from the non-destructive tests. Respondent has not established procedures for personnel to gather and relay information from non-destructive testing, to correlate the information with data from internal inspection tools, or to integrate the non-destructive testing information with other pipeline integrity data.

- The contract between Respondent and its internal inspection tool vendor requires the tool vendor to immediately notify Respondent if a critical threat to pipeline integrity is revealed by the internal inspection tool. However, OPS investigators found that neither the contract nor other documentation between Respondent and the tool vendor contain any provisions discerning what constitutes a critical threat and thus should be immediately reported to Respondent.
- Certain portions of Respondent's Pacific Operations unit are currently subject to Corrective Actions Orders addressing threats associated with failures on those portions, including: CPF #5-2004-5018H pertaining to line LS-25, CPF # 5-2004-5037H pertaining to the CALNEV line, CPF #5-2005-5020H pertaining to line LS-12, and CPF #4-2005-5021H pertaining to line LS-17.

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, 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 a 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.

As evidenced by the eight accidents identified above in or near high consequence areas or major transportation corridors, the Pacific Operations unit poses a special risk to surrounding life, property, and the environment. The majority of the unit passes through or near a high consequence area (HCA) and/or a major transportation corridor. Of the 2,504 miles of Pacific Operations system piping that the Western Region, OPS or its certified state partner regularly inspects, over 1,666 miles of piping could affect an HCA in the event of a release.

Based on the recent history of significant releases and the foregoing findings of fact, I find that the continued operation of Respondent's Pacific Operations unit of hazardous liquid pipeline systems without corrective measures will be hazardous to life, property, and the environment.

Due to the number and frequency of recent accidents throughout the Pacific Operations unit, the repeated environmental consequences of the accidents, the trend of outside force damage and corrosion, the repeated failure of Respondent through the use of internal inspection tools to identify potential threats that have resulted in accidents, and the proximity of the majority of the Pacific Operations unit systems to high consequence areas and/or major transportation corridors, I find that 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 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 at (202) 366-4566. The hearing will be held in Lakewood, Colorado or Washington, DC on a date that is mutually convenient to OPS and the Respondent.

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

Required Corrective Action

OPS has been informed that, following the accidents described in this Order, Respondent has developed system-wide plans beyond requirements in existing Corrective Action Orders to address several of the issues raised from the accidents. These plans include, among other things, refining the internal inspection verification dig criteria and selecting different internal inspection tools to address threats on the system. These plans may be in varying stages of completion and, to OPS's knowledge, have not been fully implemented at the date of this Order.

Pursuant to 49 U.S.C. § 60112, I hereby order Kinder Morgan Energy Partners, L.P., to immediately take the following corrective actions with respect to all hazardous liquid pipeline systems within its Pacific Operations unit, as currently defined. For purposes of this Order, the Pacific Operations unit is comprised of approximately 3900 miles of hazardous liquid pipeline systems owned or operated by Respondent or its subsidiary in Arizona, California, Nevada, New Mexico, Oregon, and Texas and includes, but may not be limited to the pipeline systems currently operated by Sante Fe Pacific Pipeline, LP and the CALNEV system. This Order applies to the entirety of these pipeline systems and is not limited to segments of the pipelines that could affect an HCA. These pipeline systems will remain subject to the provisions of this Order regardless of whether Respondent changes the name or organizational structure of the Pacific Operations unit or the pipeline systems thereunder:

1. Conduct a comprehensive analysis of all known accidents (including accidents required to be reported under 49 C.F.R. §§ 195.50 or 195.52) and documented occurrences that field or control room staff responded to because of potential safety impacts to persons or property ("near misses") since March 31, 2001. The analysis of these accidents and documented occurrences must identify all potential and existing threats to the integrity of all hazardous liquid pipelines and facilities. Examples of potential and existing threats include, but are not limited to, ongoing maintenance issues, environmental changes, poor original construction practices, outside force damage, inadequacies with respect to line marking, inadequacies with respect to one-call procedures, internal and external corrosion susceptibility (inadequacies

with respect to prevention and mitigation), human errors, inadequacies with respect to personnel training, and inadequacies with respect to SCADA capabilities. Execute a remediation plan to address these threats.

- A. The remediation plan must contain all planned pipeline repairs or changes to operations and maintenance, personnel qualification or training, or corrosion control procedures or activities required to address all threats identified by the analysis and must contain a schedule for these repairs or changes. Repairs of pipeline segments must comport at a minimum with the deadlines set out in 49 C.F.R. § 195.452(h)(4). All conditions defined in 49 C.F.R. § 195.452(h)(4)(i) through (iv) must be repaired. All repairs must be performed in compliance with 49 C.F.R. § 195.422.
 - B. The comprehensive analysis and remediation plan must be submitted no later than 3 months after the date of this Order to the Director, Western Region, OPS for review and approval.
 - C. Threats identified in areas where a pipeline failure could affect a high consequence area must be properly addressed by and incorporated into your Integrity Management Program. Submit all resulting changes to your Integrity Management Program no later than 4 months after the date of this Order for the approval of the Director.
 - D. The comprehensive analysis and remediation plan, along with any resulting changes to your Integrity Management Program, must be reviewed by an independent risk assessment expert prior to submission to the Director to verify that you have included all known accidents and occurrences, that you have properly identified potential and existing threats, and that the remediation plan is adequate to address the identified threats.
2. Conduct an assessment of your implementation of the Integrity Management Program required by 49 C.F.R. § 195.452. The assessment must evaluate the effectiveness of your Integrity Management Program and analyze the shortcomings of that program in preventing known accidents and documented occurrences since March 31, 2002 and all threats to pipeline integrity identified under Item 1. The assessment must identify Integrity Management Program elements in need of improvement (e.g., improvements to your baseline assessment plan, information analysis, criteria for remedial actions to address integrity issues, assessment and evaluation methods, preventive and mitigative measures to protect HCAs, and employee qualifications to review integrity assessment results and information analyses) to prevent future accidents and occurrences and eliminate threats to pipeline integrity. Based on this assessment, develop a process and schedule for implementation of changes to all Integrity Management Program elements that require improvement, as well as any resulting changes to your operations and maintenance procedures, to assure compliance with 49 C.F.R. § 195.452, prevent and mitigate future accidents and occurrences, and eliminate threats.
 - A. The assessment must include a certification as to the veracity of the factual information contained therein signed by a director or officer for Respondent and must be submitted for approval to the Director, Western Region, OPS for approval no later than 4 months after the date of this Order.

- B. The process and schedule for implementation of changes to your Integrity Management Program and operations and maintenance procedures must be submitted for approval to the Director, Western Region, OPS no later than 60 days from the date the Director grants approval under Items 1C and 2A.
 - C. The assessment must be reviewed by an independent integrity management expert prior to submission to the Director to verify that you have reviewed the implementation of your Integrity Management Program with regard to threats and known accidents and occurrences since March 31, 2002 and that you have adequately identified program elements requiring improvement. The process and schedule for implementation of changes must be reviewed by an independent integrity management expert prior to submission to the Director to verify that proposed changes to the implementation of your Integrity Management Program and operations and maintenance procedures will adequately address the compliance, prevention and mitigation, and threat elimination requirements of this Item.
 - D. Implement all changes to your Integrity Management Program and operations and maintenance procedures no later than 60 days from the date the Director grants approval under Item 2B.
3. Create a system to integrate all data relevant to the integrity of all hazardous liquid pipeline systems for use in your operations and maintenance procedures and in your Integrity Management Program, including, at minimum: internal inspection tool data, close interval and cathodic protection survey data, coating survey data, excavation and inspection data, foreign line crossing data, pipeline materials specifications, and HCA data. The system must be capable of graphically displaying all integrated data by location, thus linking the data to the stationing system developed under Item 6H. Submit a proposal that includes a schedule for populating the system with relevant data within 4 months after the date of this Order for the approval of the Director, Western Region, OPS.
4. Perform an outside force damage assessment of all hazardous liquid pipelines as follows:
- A. Evaluate all pipelines using an internal inspection tool capable of assessing axial gouges that are not associated with dents within 5 years of the date of this Order. Repair all gouges and other conditions defined under 49 C.F.R. § 195.452(h)(4)(i) through (iv) on a schedule that at a minimum comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4). All repairs must be performed in compliance with 49 C.F.R. § 195.422. Where this assessment is performed on a pipeline segment that could affect an HCA under 49 C.F.R. § 195.452(a), incorporate all resulting information in your Integrity Management Program within 3 months after the assessment of that pipeline segment.
 - B. The requirements of the preceding subparagraph apply to all hazardous liquid pipeline systems unless Respondent demonstrates to the satisfaction of the Director, Western Region, OPS, through a risk assessment verified by an independent risk assessment expert, that any particular pipeline segment has not been subject to outside force damage

in the form of undetected third party damage, mechanical pipe damage inflicted during construction of the pipeline, or other mechanical damage inflicted by outside forces. In such case, after approval of the Director, the Respondent may exclude such segment from the internal inspection otherwise required by the preceding subparagraph. In no event shall the performance of such a risk assessment alter the deadlines established under the preceding subparagraph.

5. Assess the adequacy of the corrosion control system and perform close interval surveys of 100 percent of the hazardous liquid pipeline systems at a rate of no less than 20 percent of the Pacific Operations unit mileage per year, to be completed no later than 5 years from the date of this Order. Submit written status reports to the Director, Western Region, OPS at least once every 6 months beginning on the first of the month 3 months after the date of this Order. The close interval surveys must be repeated every ten years for the life of all pipelines or until otherwise determined by the Director, Western Region, OPS in writing.
 - A. The close interval surveys must be performed in accordance with National Association of Corrosion Engineers (NACE) standard RP0169-96. With respect to each location where the cathodic protection fails to conform to the standard set forth in NACE RP0169-96, hereinafter the "Performance Standard," Respondent shall perform all measures necessary to bring the cathodic protection at each location into compliance with the Performance Standard within 1 year of the date of the close interval survey, except for interference currents, which must be eliminated within 60 days. Respondent shall verify that these measures comply with the Performance Standard through pipe-to-soil readings measured in accordance with NACE standard RP0169-96, Appendix D.
 - B. The status reports submitted to the Director shall include, among other things, a description of all work performed under this Item, an identification of each location on the pipeline using, at a minimum, the stationing system developed pursuant to Item 6H that the close interval survey has identified as falling below the Performance Standard, a description of the corrective measures to be taken to bring that location up to the Performance Standard, and, once those measures have been completed at that location on the schedule required herein, a certification that Respondent has performed the pipe-to-soil verification required by the preceding subparagraph and that the cathodic protection system at such location meets the Performance Standard.
 - C. In conjunction with the close interval surveys, and within 3 months after the close interval survey has been performed at a particular location, Respondent shall integrate the data obtained from the close interval surveys with data regarding corrosion obtained from internal surveys (along with all other relevant data) to identify areas on the pipeline where the coating may be disbonded or damaged. For those areas where the integrated data indicates that the coating may be disbonded or damaged, Respondent shall, within 6 months thereafter, verify whether the coating is disbonded or damaged at that location and make necessary repairs to the coating to achieve compliance with the Performance Standard. Respondent shall verify that these measures have in fact achieved compliance with the Performance Standard through pipe-to-soil readings measured in accordance with NACE standard RP0169-96, Appendix D.

6. Develop a comprehensive program to enhance the value of internal inspections for identifying integrity threats that includes, at a minimum, all of the requirements in the subparagraphs below. The program must integrate all work performed under and data obtained through the requirements of this Item and its subparagraphs within your operations and maintenance procedures and Integrity Management Program. In addition, the program must ensure that all internal inspections conducted after the date of this Order comport at a minimum with the requirements of all subparagraphs below and the requirements of 49 C.F.R. § 195.452(c)(1)(i)(A) unless the Director, Western Region, OPS provides written permission allowing an internal inspection to be performed via hydrostatic testing or other technology that will be more effective for assessing the integrity of the pipeline.
 - A. Develop algorithms for assessing data obtained from MFL internal inspections utilizing interaction lengths that consider both general corrosion and localized pitting. Assessment of metal loss anomalies must consider tool tolerances and corrosion growth. Submit the algorithms for approval to the Director, Western Region, OPS within 3 months after the date of this Order. Upon approval, use the algorithms in assessing data obtained from all MFL internal inspections.
 - B. Evaluate all internal inspection tool data regarding general corrosion in accordance with NACE standard RP-102-2002 Section 8.4.3.2.3. Respondent may revise the interaction length detailed in the NACE standard if it presents field data to the Director, Western Region, OPS demonstrating that a shorter interaction length would be equally effective to identify integrity-threatening corrosion, and if the Director approves this revision.
 - C. Develop a methodology to identify the growth of corrosion in a single joint of pipe where individual corrosion anomalies may not require excavation and remediation under 49 C.F.R. Part 195, but that, based on the rate of corrosion growth, poses a risk to the joint of pipe. Submit the methodology to the Director, Western Region, OPS within 3 months after the date of this Order for approval. Upon approval, apply the methodology with respect to all internal inspection data obtained regarding corrosion. With respect to each location on the pipeline determined through application of the methodology to be at risk from corrosion, promptly make repairs and take all other measures necessary to ensure the integrity of the pipeline. Repair all conditions defined under 49 C.F.R. § 195.452(h)(4)(i) through (iv) on a schedule that at a minimum comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4). All repairs must be performed in compliance with 49 C.F.R. § 195.422.
 - D. Reevaluate MFL internal inspections conducted on all hazardous liquid pipelines since 1997 in accordance with subparagraphs A, B, and C of this Item within 6 months after the date of this Order. Re-determine safe operating pressure for the pipeline systems based on the results of the reevaluation and do not exceed P-Safe operating pressure on any system. Repair all defects identified through the reevaluation on a schedule, to be submitted to the Director, Western Region, OPS within 7 months of reevaluation of each pipeline system for approval, that at a minimum comports with the deadlines set out in

49 C.F.R. § 195.452(h)(4). All conditions defined in 49 C.F.R. § 195.452(h)(4)(i) through (iv) must be repaired. All repairs must be performed in compliance with 49 C.F.R. § 195.422.

- E. In all internal inspections after the date of this Order, any geometry tools used must be capable of accurate characterization of features that include dents, ovalities, wrinkles, and buckles. The tool must have adequate sensor spacing to ensure data obtained will allow accurate strain analyses calculations. The tool must meet, at a minimum, the following specifications:
- i. Capable of detecting dents with depths of greater than .15 inches of the nominal pipe diameter in pipelines of up to 24 inches in diameter at a 90 percent probability of detection;
 - ii. Capable of detecting ovalities of less than 1.0 percent of the nominal pipeline diameter for pipelines greater than 10 inches in diameter at a 90 percent probability of detection;
 - iii. Capable of characterizing dent depths to +/- 1.0 percent of the nominal pipeline diameter at 85 percent confidence;
 - iv. Capable of detecting dents with areal dimensions greater than 1.0 inch width by 1.0 inch length;
 - v. Possessing circumferential accuracy within +/- 1 o'clock position; and
 - vi. Possessing axial accuracy within +/- 1 percent of a reference point.
- F. Reevaluate all internal inspections since 1997 that utilized geometry tools, taking into account the tolerances of each tool used, within 6 months after the date of this Order. Alternatively, within 3 years of the date of this Order, re-inspect all hazardous liquid pipelines that have been internally inspected with a geometry tool since 1997 utilizing a tool that meets, at a minimum, the specifications required in subparagraph E of this Item. Repair all defects identified through the reevaluation on a schedule that at a minimum comports with the deadlines set out in 49 C.F.R. § 195.452(h)(4). All conditions defined in 49 C.F.R. § 195.452(h)(4)(i) through (iv) must be repaired. All repairs must be performed in compliance with 49 C.F.R. § 195.422.
- G. Establish a documented feedback process within 3 months after the date of this Order for approval by the Director, Western Region, OPS. The feedback process must provide accurate information from your personnel to any internal inspection tool vendor regarding the correlation of field non-destructive examinations and internal inspection tool data. The process must include procedures to perform excavations and assess pipeline conditions and anomalies in the field, and to correlate the information obtained in the field with internal inspection data. Upon approval of the Director, comply fully with all aspects of the required process and its procedures. In addition, provide

comprehensive and effective training to all personnel responsible for non-destructive testing to ensure their ability to implement the requirements of this Item.

H. Develop a uniform stationing system that utilizes, at a minimum, girth weld positioning to correlate internal inspection tool data with pipeline locations. Submit a proposal within 3 months after the date of this Order for the system to be used to the Director, Western Region, OPS for approval. Upon approval, use this stationing system to correlate pipeline locations with internal inspection tool data, cathodic protection and close interval survey data, and any other pipeline inspection data.

Documentation and Approvals

7. Incorporate all requirements under Items 1 – 6 as applicable into your Integrity Management Program procedures and/or manual for Operations, Maintenance, and Emergencies.
8. Create a secure website to enable OPS and its agents to access the status of the actions required under Items 1-6 and the data pertinent to those actions. All applicable data on the website must be correlated to the uniform stationing system developed under Item 6H. The website must be operational, populated with all available relevant data, and accessible by OPS within 4 months after the date of this Order.
9. Submit all documentation required for approval under this Order to: Director, Western Region, Office of Pipeline Safety, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228. Label the documentation such that it can be easily identified with the underlined language in the above items.
10. With respect to each submission that under this Order requires the approval of the Director, Western Region, OPS, 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, or the Director may otherwise proceed to enforce the terms of this Order.
11. Within 30 days of the date of this Order, Respondent shall submit to the Director, Western Region, OPS, a list of names of proposed independent experts to be retained by Respondent to fulfill the requirements of each Item requiring utilization of an independent expert, to include a list for Item 1, a list for Item 2, and a list for Item 4 (provided that Respondent plans to take action in accordance with Item 4B). Each expert proposed by Respondent must be qualified to carry out the applicable requirements of the Item for which that expert is proposed. Respondent must submit information sufficient for the Director to determine

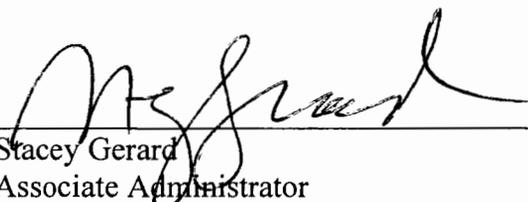
whether each expert possesses the necessary qualifications. None of the experts shall have an existing contractual relationship with Respondent or a financial interest in Respondent. After reviewing the information submitted by Respondent, the Director may approve one or more of the names submitted or disapprove any or all of the names. With respect to each Item for which an independent expert is required, if the Director disapproves of all the names proposed for that Item, Respondent shall submit a new list of names that meet the above requirements within 10 days of the disapproval.

The Director, Western Region, OPS may grant an extension of time for compliance with any of the terms of this Order for good cause. A request for an extension must be in writing.

Respondent may appeal any decision of the Director, Western Region, OPS 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 systems under 49 C.F.R. Part 195, any existing order issued to Respondent or its subsidiary under authority of 49 U.S.C. 60101 et seq., or any other provision of Federal or state law.

Failure to comply with this Order may result in the assessment of civil penalties of not more than \$100,000 per day and in referral to the Attorney General for appropriate relief in a United States District Court.



Stacey Gerard
Associate Administrator
for Pipeline Safety

AUG 24 2005

Date Issued

§ 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 requiring 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.

(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]