



STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF PIPELINE SAFETY

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

STATEMENT OF NEED
AND REASONABLENESS

GENERAL STATEMENT

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

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

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

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

Public Safety ¹

FEB 07 1990

Commissioner's Office

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

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

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

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

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

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

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

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

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

STATUTORY AUTHORITY

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

EFFECT OF THE RULE

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

SMALL BUSINESS CONSIDERATIONS

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

FEES IMPOSED BY THE RULES

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

FISCAL IMPACT

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

ENVIRONMENTAL EFFECTS

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

RULE BY RULE ANALYSIS

7530.0100 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

7530.0300 INSPECTIONS

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

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

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

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

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

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

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

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

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

7530.0400 INSPECTION RESULTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7530.0500 DIRECTOR REVIEW.

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

7530.0800 CONSENT ORDER.

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

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

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

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

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

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

7530.1000 CIVIL PENALTIES.

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

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

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

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

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

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

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

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

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

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

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

7530.1200 HAZARDOUS FACILITY ORDERS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7530.1400 REPORTABLE INCIDENT INVESTIGATION.

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

7530.1500 TESTING AND TEST RESULTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subp. 5.C. the test results.

1941
1942
1943
1944
1945

1946
1947

1948
1949

1950
1951

1952
1953

1954
1955
1956
1957
1958
1959
1960