

Pipeline Safety Administrative Rules

March 2011



The South Dakota legal landscape

SD STATUTES

- Created and changed through legislative action only
- SD Pipeline Safety program created by the legislature
- The statutes allow us to make rules

ADMINISTRATIVE RULES

- 49-34A-4: The Commission may write rules that pertain to: design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of gas pipeline facilities
- Recently drafted - 2009
- Intended to further specify process by which to follow the statutes.

The Rule-making Process

Anyone can open a rule making docket

The process requires significant comment by all affected parties.

Please advise if any of our rules do not work...or could be better.

Rule Making Legislative Process

- Publish proposed rules
- Written comments accepted
- Live commission hearing
- Commission Order
- Submission of rules to Rules Committee
- Hearing with the Rules Committee

General principles

If the rules don't otherwise specify.....

- * follow federal code and/or state statute
- * follow PUC process...examples: docket process, filing rules, confidentiality issues

What is the point? The Administrative rules simply add more red tape to keep track of!

- * to help define roles and obligations of all parties...including the inspector
- * to make the process transparent

General principles continued...

What if the rules don't help?

- * a PUC hearing is always available upon request.

What is a “hearing?”

- * It can be as formal (lawyers, witnesses, experts, etc.) or as informal (a commission meeting) as you wish.

Routine Inspection - Report

Inspection report drafted after each inspection

- Operator shall complete an inspection report within 90 days
- SHALL include summary of probable noncompliance issues (if any)
 - Notice of Probable violation
 - Warning
 - Notice of concern

Routine Inspection report continued....

- MAY include remediation plan if applicable (time frames if any may be extended by inspector)
- Copy provided to the Operator
- Not “docketed”---stays between you and your inspector

Non-compliance categories

- Notice of Probable violation: if the inspector has good cause to believe a serious or repeat violation of applicable pipeline safety standards has occurred.
 - SHALL include a statement of the statute rule or regulation allegedly violated
 - SHALL describe the factual basis
 - SHALL state the amount of the proposed penalty (if any)
 - May be an “elevated warning” (a warning item not remedied in a timely fashion)

Non-compliance continued...

- Warning: probable violation of a less serious nature or a first time violation.
 - MAY include specific corrective action
- Notice of concern: used to inform the operator where best industry practices are not being followed
 - No direct code violation
 - SHALL be used for information purposes only
 - NO PIPELINE OPERATOR ACTION IS REQUIRED

Routine Inspection – RESPONSE

Pipeline Operator Response to Report (30 business days)

- If probable violations or warning exist
 - Admit the violation and comply with inspectors recommendations
 - Written dispute of any portion of the inspectors findings and recommendation. Not docketed...stays between you and your inspector

RESULTS

- Inspector report and/or recommendations amended OR a
- Hearing....the Commissioners decide who is “right”

INCIDENTS – Operator Notification Obligations

- NOTIFY THE PUC BY PHONE - Earliest practical time
- ALSO – federal reporting requirements

INCIDENT – Inspector Obligations

- Open an incident docket. *OPEN TO THE PUBLIC AND INTERVENERS ARE ALLOWED!!*
- Inspector investigation---*INTERVENERS ALLOWED TO “PARTICIPATE”*
- Requests for information – 10 day operator reply time
- Disputes resolved by the commission
- Incident report - docket closed when the Commission “approves” the report
- Civil penalties possible

POST INCIDENT INVESTIGATION MEETING

- BEFORE filing of a formal incident report
- Inspector notify operator of completed investigation
- Either party may request a meeting to discuss findings (meeting may take place prior to or after the filing of the report)

INCIDENTS – operator reply to inspector findings

- 30 day reply period
 - Can be extended upon request
 - Failure to reply considered consent
 - 2 reply “options”

REMEMBER: Either party may request hearing at any time in the process

Reply options

OPTION 1: Agree with inspection report

- If the results show no “fault” of operator....dismiss docket
- If some “fault” attributed to operator
 - The inspector and the operator can settle---sent to the commission for approval
 - OR HEARING

OPTION 2: Disagree with inspection report (assumes inspector found some “fault” attributable to operator)

- Result = amended inspector report (inspector was wrong)
OR
- or hearing

Other Items

- Change in ownership
 - Notification requirement (unless sale receives commission approval)
 - Written
 - Within 30 days of purchase or sale
 - Sent to pipeline safety program...not filed.
- Line Construction
 - Notification requirement: construction, relocation or replacement of transmission line
 - 60 days prior

Other items continued...

- Annual reports
 - Submit a copy of Form RSPA F7100.1-1 and/or Form RSPA F 7100.2-1
 - Exception: petroleum gas system which serve fewer than 100 customers from a single source or master meter system