South Dakota Gas Pipeline Safety Program

Overview

Program Coverage

- Intrastate (in-state) hazardous gas pipelines:
  - Natural gas
  - Propane
  - Liquified natural gas (not any intrastate)
  - Hydrogen (not any intrastate)
  - Other hazardous gases (not any intrastate)

Authority

- SDPUC has a section 60105 certification under the federal pipeline safety statutes in 49 U.S.C. 60101
- This certification by the Office of Pipeline Safety gives the SDPUC authority to regulate, inspect, and enforce rules including assessing penalties
- This authority has been adopted in chapter 49-34B of SDCL with federal gas regulations in 49 CFR 191 and 49 CFR 192 adopted with no changes

Program Operational Overview

- 1 FTE: 2 engineers at 50 % each
- 100 inspection days per year
- Complete regulation review once every two years
- Inspection types:
  - Records
  - Field
  - Construction
  - Drug and Alcohol
  - Public Awareness
  - Operator Qualification
  - Integrity Management

Covered Operators

- Basin Groton CT Pipeline
- Black Hills Power
- Burke Housing Authority - propane
- Crooks Municipal Gas
- Garretson Municipal Gas
- Humboldt Municipal Gas
- Mid-American Energy
- Montana-Dakota Utilities
- Namanny's Subdivision – master meter
- NorthStar Energy – Pollock – propane
- NorthWestern Energy
- South Dakota Intrastate Pipeline
- Watertown Municipal Gas
- Xcel Angus Anson Pipeline

Gas Statistics for South Dakota

Gas transmission mileage	206
Gas distribution mileage	2,786
Number of gas services	138,033

Federal Reportable Incidents

- An event that involves a release of gas from a pipeline ***and***:
- A death, or personal injury requiring in-patient hospitalization; or
- Estimated property damage, including loss of cost of gas lost, of the operator and others, or both, of $50,000 or more.
- An event that is significant, in the judgment of the operator, even though it did not meet the above criteria.

SD Gas Distribution Federal Reportable Incident Summary 1998 – 2008 YTD

Year	Number	Fatalities	Injuries	Property Damage
1998	1	0	0	$90,907
2004	1	0	0	$110,266
2007	2	0	0	$696,630
2008 YTD	1	0	0	$150,000

Probable Cause of Recent Incidents

- 2007 Mitchell house explosion – third party damage to pipe
- 2007 Aberdeen fire – building fire caused rubble to topple meter resulting in gas fire
- 2008 Pierre Town Border Station – flange gasket failure

South Dakota Small Incidents

- A small incident is defined by the Commission as a dig-in or Class 1 leak which results in:
- (1) a loss of service to two or more customers for a duration of two or more hours; or
- (2) the evacuation of a multiple occupancy building or a business; or
- (3) injury of any type (regardless of whether or not it requires in-patient hospitalization); or
- (4) damage to property other than property owned or leased by the operator.
- For purposes of this Section, a Class 1 leak is defined as a leak that could be considered an immediate danger to the public.

2008 YTD Small Incident Summary

# Small Incidents 14 YTD 7-30-08	Probable Cause
9	Third party excavation damage
2	Flooding
1	Vehicular damage
1	Valve failure – frost movement
1	Utility operator error – shut wrong valves

Current Pipeline Safety Events

- 2008 inspections 80 % complete
- Sioux Falls municipal landfill gas pipeline Sept 2008
- Certification training for new inspector
- Hosting operator safety seminar April 2009

Federal Oversight of SD Gas Pipeline Safety Program

- Annual audit of the program by the Office of Pipeline Safety Central Region Kansas City office
  - Inspections made
  - Citations issued
  - Is SD following its pipeline procedures plan?
- Administrative support from the State Programs Office
- Technical support from Central Region and Training & Qualifications
- Inspectors required to complete 6 courses taught by OPS Training & Qualifications group in Oklahoma City

Federal Pipeline Regulatory Authority in South Dakota

- Interstate hazardous gas pipelines
- Hazardous liquids pipelines
- Regulatory authority - Central Region of the Office of Pipeline Safety
  - Ivan Huntoon, Director
  - 901 Locust Street, Suite 462, Kansas City, MO 64106
  - 816-329-3800

Interstate Pipeline Definition

- Gas – Lines subject to the economic regulatory jurisdiction of FERC
- Liquids – Tariff filed with FERC or exemption from filing

Interstate Pipeline Definition

- 49 U.S.C. 60101 – Definitions
- (7) "interstate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce
- (8) "interstate or foreign commerce"—
  - (B) related to hazardous liquid, means commerce between--
    - (i) a place in a State and a place outside that State; or
    - (ii) places in the same State through a place outside the State

Interstate Pipeline Definition

- In order to have an administratively practical approach, DOT has decided that the FERC inventory of pipelines subject to FERC will be used to determine what is an "interstate" liquid pipeline
- Exception for those pipelines with a FERC filing or exemption which DOT determines would clearly not survive a jurisdictional challenge

49-34B-1. Definition of terms. Terms used in this chapter mean:

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(3) "Gas," natural gas, liquefied natural gas, flammable gas, gas which is toxic or corrosive, or liquefied petroleum gas in distribution systems;

(4) "Gas pipeline," all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies;

(5) "Gas pipeline facilities," new and existing pipelines, rights-of-way, master meter systems, pipeline facilities within this state which transport gas from an interstate gas pipeline to a direct sales customer within this state purchasing gas for its own consumption, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation;

* * *

(7) "Intrastate pipeline," any pipeline or that part of a pipeline to which this part applies that is not an interstate pipeline;

(8) "Interstate pipeline," pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, United States Code, Title 15, sections 717 to 717z, inclusive, as amended to January 1, 2007, except that it does not include any pipeline facilities within this state which transport gas from an interstate gas pipeline to a direct sales customer within this state purchasing gas for its own consumption; . . .

49-34B-3. Pipeline safety inspection program created--Program for compliance. There is created a pipeline safety inspection program. The federal safety standards adopted as Code of Federal Regulations, title 49 appendix, parts 191, 192, 193, and 199 as amended to January 1, 2007, are adopted as minimum safety standards for this chapter. The commission shall establish and implement a compliance program to enforce these safety standards. The program shall be established and implemented in a manner that fully complies with requirements for state certification under the United States Code, title 49, section 60105, as amended to January 1, 2007.

49-34B-4. Promulgation of safety standards--Considerations. The commission may, by rules promulgated pursuant to chapter 1-26, establish safety standards, but not more stringent than federal safety standards as provided by § 49-34B-3, for the intrastate transportation of gas and gas pipeline facilities. The standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of gas pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing do not apply to pipeline facilities in existence on the date the standards are adopted by either this state or the federal government. The safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing the standards, the commission shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the standards are appropriate for the particular type of pipeline transportation of gas;

(3) The reasonableness of any proposed standards;

(4) The extent to which the standard will contribute to public safety; and

(5) The existing standards established by the secretary of the United States Department of Transportation pursuant to the United States Code, title 49, section 60101 et seq. as amended to January 1, 2007.

Appendix A to Part 195—Delineation Between Federal and State Jurisdiction—Statement of Agency Policy and Interpretation

In 1979, Congress enacted comprehensive safety legislation governing the transportation of hazardous liquids by pipeline, the Hazardous Liquids Pipeline Safety Act of 1979, 49 U.S.C. 2001 et seq. (HLPSA). The HLPSA expanded the existing statutory authority for safety regulation, which was limited to transportation by common carriers in interstate and foreign commerce, to transportation through facilities used in or affecting interstate or foreign commerce. It also added civil penalty, compliance order, and injunctive enforcement authorities to the existing criminal sanctions. Modeled largely on the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671 et seq. (NGPSA), the HLPSA provides for a national hazardous liquid pipeline safety program with nationally uniform minimal standards and with enforcement administered through a Federal-State partnership. The HLPSA leaves to exclusive Federal regulation and enforcement the "interstate pipeline facilities," those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce. For the remainder of the pipeline facilities, denominated "intrastate pipeline facilities," the HLPSA provides that the same Federal regulation and enforcement will apply unless a State certifies that it will assume those responsibilities. A certified State must adopt the same minimal standards but may adopt additional more stringent standards so long as they are compatible. Therefore, in States which participate in the hazardous liquid pipeline safety program through certification, it is necessary to distinguish the interstate from the intrastate pipeline facilities.

In deciding that an administratively practical approach was necessary in distinguishing between interstate and intrastate liquid pipeline facilities and in determining how best to accomplish this, DOT has logically examined the approach used in the NGPSA. The NGPSA defines the interstate gas pipeline facilities subject to exclusive Federal jurisdiction as those subject to the economic regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC). Experience has proven this approach practical. Unlike the NGPSA however, the HLPSA has no specific reference to FERC jurisdiction, but instead defines interstate liquid pipeline facilities by the more commonly used means of specifying the end points of the transportation involved. For example, the economic regulatory jurisdiction of FERC over the transportation of both gas and liquids by pipeline is defined in much the same way. In implementing the HLPSA DOT has sought a practicable means of distinguishing between interstate and intrastate pipeline facilities that provide the requisite degree of certainty to Federal and State enforcement personnel and to the regulated entities. DOT intends that this statement of agency policy and interpretation provide that certainty.

In 1981, DOT decided that the inventory of liquid pipeline facilities identified as subject to the jurisdiction of FERC approximates the HLPSA category of "interstate pipeline facilities." Administrative use of the FERC inventory has the added benefit of avoiding the creation of a separate Federal scheme for determination of jurisdiction over the same regulated entities. DOT recognizes that the FERC inventory is only an approximation and may not be totally satisfactory without some modification. The difficulties stem from some significant differences in the economic regulation of liquid and of natural gas pipelines. There is an affirmative assertion of jurisdiction by FERC over natural gas pipelines through the issuance of certificates of public convenience and necessity prior to commencing operations. With liquid pipelines, there is only a rebuttable presumption of jurisdiction created by the filing by pipeline operators of tariffs (or concurrences) for movement of liquids through existing facilities. Although FERC does police the filings for such matters as compliance with the general duties of common carriers, the

question of jurisdiction is normally only aired upon complaint. While any person, including State or Federal agencies, can avail themselves of the FERC forum by use of the complaint process, that process has only been rarely used to review jurisdictional matters (probably because of the infrequency of real disputes on the issue). Where the issue has arisen, the reviewing body has noted the need to examine various criteria primarily of an economic nature. DOT believes that, in most cases, the formal FERC forum can better receive and evaluate the type of information that is needed to make decisions of this nature than can DOT.

In delineating which liquid pipeline facilities are interstate pipeline facilities within the meaning of the HLPSA, DOT will generally rely on the FERC filings; that is, if there is a tariff or concurrence filed with FERC governing the transportation of hazardous liquids over a pipeline facility or if there has been an exemption from the obligation to file tariffs obtained from FERC, then DOT will, as a general rule, consider the facility to be an interstate pipeline facility within the meaning of the HLPSA. The types of situations in which DOT will ignore the existence or non-existence of a filing with FERC will be limited to those cases in which it appears obvious that a complaint filed with FERC would be successful or in which blind reliance on a FERC filing would result in a situation clearly not intended by the HLPSA such as a pipeline facility not being subject to either State or Federal safety regulation. DOT anticipates that the situations in which there is any question about the validity of the FERC filings as a ready reference will be few and that the actual variations from reliance on those filings will be rare. The following examples indicate the types of facilities which DOT believes are interstate pipeline facilities subject to the HLPSA despite the lack of a filing with FERC and the types of facilities over which DOT will generally defer to the jurisdiction of a certifying state despite the existence of a filing with FERC.

Example 1. Pipeline company P operates a pipeline from "Point A" located in State X to "Point B" (also in X). The physical facilities never cross a state line and do not connect with any other pipeline which does cross a state line. Pipeline company P also operates another pipeline between "Point C" in State X and "Point D" in an adjoining State Y. Pipeline company P files a tariff with FERC for transportation from "Point A" to "Point B" as well as for transportation from "Point C" to "Point D." DOT will ignore filing for the line from "Point A" to "Point B" and consider the line to be intrastate.

Example 2. Same as in example 1 except that P does not file any tariffs with FERC. DOT will assume jurisdiction of the line between "Point C" and "Point D."

Example 3. Same as in example 1 except that P files its tariff for the line between "Point C" and "Point D" not only with FERC but also with State X. DOT will rely on the FERC filing as indication of interstate commerce.

Example 4. Same as in example 1 except that the pipeline from "Point A" to "Point B" (in State X) connects with a pipeline operated by another company transports liquid between "Point B" (in State X) and "Point D" (in State Y). DOT will rely on the FERC filing as indication of interstate commerce.

Example 5. Same as in example 1 except that the line between "Point C" and "Point D" has a lateral line connected to it. The lateral is located entirely with State X. DOT will rely on the existence or non-existence of a FERC filing covering transportation over that lateral as determinative of interstate commerce.

Example 6. Same as in example 1 except that the certified agency in State X has brought an enforcement action (under the pipeline safety laws) against P because of its operation of the line

between "Point A" and "Point B". P has successfully defended against the action on jurisdictional grounds. DOT will assume jurisdiction if necessary to avoid the anomaly of a pipeline subject to neither State or Federal safety enforcement. DOT's assertion of jurisdiction in such a case would be based on the gap in the state's enforcement authority rather than a DOT decision that the pipeline is an interstate pipeline facility.

Example 7. Pipeline Company P operates a pipeline that originates on the Outer Continental Shelf. P does not file any tariff for that line with FERC. DOT will consider the pipeline to be an interstate pipeline facility.

Example 8. Pipeline Company P is constructing a pipeline from "Point C" (in State X) to "Point D" (in State Y). DOT will consider the pipeline to be an interstate pipeline facility.

Example 9. Pipeline company P is constructing a pipeline from "Point C" to "Point E" (both in State X) but intends to file tariffs with FERC in the transportation of hazardous liquid in interstate commerce. Assuming there is some connection to an interstate pipeline facility, DOT will consider this line to be an interstate pipeline facility.

Example 10. Pipeline Company P has operated a pipeline subject to FERC economic regulation. Solely because of some statutory economic deregulation, that pipeline is no longer regulated by FERC. DOT will continue to consider that pipeline to be an interstate pipeline facility.

As seen from the examples, the types of situations in which DOT will not defer to the FERC regulatory scheme are generally clear-cut cases. For the remainder of the situations where variation from the FERC scheme would require DOT to replicate the forum already provided by FERC and to consider economic factors better left to that agency, DOT will decline to vary its reliance on the FERC filings unless, of course, not doing so would result in situations clearly not intended by the HLPSA.