

South Dakota Underground Pipeline Task Force



Findings Report

December 1, 2008

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Executive Summary

During the 2008 South Dakota Legislative Session Senate Bill 190, *An Act to provide for regulatory oversight of oil pipelines and to create a task force* was passed into law taking effect July 1, 2008. Section 10 of the Act, now found in South Dakota Codified Law (SDCL) Chapter 34A-18-10 (Appendix A), establishes the South Dakota Underground Pipeline Task Force. The Task Force is made up of seven members appointed by the Governor who are to be knowledgeable of existing federal statutes and regulations and state statutes and rules which govern underground pipeline facilities for the transmission and distribution of water, natural gas, crude oil, ethanol, and refined petroleum products. The appointed members of the Task Force include:

1. Gary Hanson, Task Force Chairman, Commissioner, South Dakota Public Utilities Commission
2. Dennis Davis, Director, South Dakota Association of Rural Water Systems
3. Gordon Woods, Vice President and COO, South Dakota Intrastate Pipeline Company
4. Daniel Holli, Environmental and Regulatory Specialist, Plains Pipeline L.P.
5. Pete Bullene, Environmental Health and Safety Director, Glacial Lakes Energy
6. Troy Styer, Pipeline Safety Coordinator, NuStar Energy and President, South Dakota Pipeline Association
7. Mark Anderson, President, South Dakota State Federation of Labor AFL-CIO

Based on SDCL 34A-18-10, the Task Force has two objectives. 1) Review the status of existing and proposed pipelines in South Dakota and 2) assess the adequacy of state laws and regulations relating to pipelines in South Dakota. In addition, the Task Force is to report its findings to the Governor no later than December 1, 2008.

To accomplish its objectives, the Task Force held four meetings, August 14, 2008, September 22, 2008, October 23, 2008 and November 13, 2008. The Task Force determined there are existing water pipelines, natural gas pipelines, crude oil pipelines and refined petroleum product lines in operation in South Dakota but no existing ethanol pipelines in the state. In addition, there are several water pipeline projects, a methane gas pipeline project and two crude oil pipeline projects proposed in South Dakota. Finally, the Task Force reviewed existing South Dakota law and rules applicable to pipelines and determined them to be adequate, however, the Task Force made several recommendations to continue the safe and reliable operation of South Dakota's pipelines and to ensure the state is prepared for future pipeline development.

The Task Force made the following recommendations:

- 1) The Task Force recommends South Dakota One Call explore the development of a high profile database identifying high profile underground facilities.
- 2) The Task Force recommends South Dakota One Call require mandatory damage reporting. The Task Force further recommends South Dakota One Call work with the South Dakota Public Utilities Commission – Pipeline Safety Program to develop and implement this program.

- 3) The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.
- 4) The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the Federal Department of Transportation.
- 5) The Task Force recommends the South Dakota Department of Environment and Natural Resources explore its ability to assist Dr. Delvin Deboer, a professor at South Dakota State University, with his research on the impact of petroleum products on plastic waterlines.
- 6) The Task Force recommends the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution insurance for public and private entities in South Dakota especially for water and waste water systems.
- 7) The Task Force recommends the state Regulated Substance Response Fund be maintained and preserved as authorized in SDCL 34A-12 to ensure the state always has the capacity to provide for the cleanup of regulated substances during emergencies or when necessary to protect the public health, safety, welfare, or the environment.

A copy of this report and the information presented to the Task Force is available for download on the Task Force website, <http://www.state.sd.us/denr/Boards/PipelineTF.htm> or by contacting the South Dakota Department of Environmental and Natural Resources at 605.773.3296.

1.0 Introduction

During the 2008 South Dakota Legislative Session Senate Bill 190, *An Act to provide for regulatory oversight of oil pipelines and to create a task force* was passed into law taking effect July 1, 2008. Section 10 of the Act, now found in South Dakota Codified Law Chapter 34A-18-10 (Appendix A), establishes the South Dakota Underground Pipeline Task Force. The Task Force is made up of seven members appointed by the Governor who are to be knowledgeable of existing federal statutes and regulations and state statutes and rules which govern underground pipeline facilities for the transmission and distribution of water, natural gas, crude oil, ethanol, and refined petroleum products. The appointed members of the Task Force include:

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To accomplish its objectives, the Task Force held four meetings, August 14, 2008, September 22, 2008, October 23, 2008 and November 13, 2008. This report includes the findings and recommendations of the South Dakota Underground Pipeline Task Force.

2.0 Status of Existing and Proposed Pipelines in South Dakota

The purpose of this section is to review the status of existing and proposed underground pipelines in South Dakota. This section is divided into two groups, existing and proposed pipelines. Within each group, each pipeline type is reviewed.

2.1 Definitions

The purpose of this section is to establish the definitions of existing pipelines and proposed pipelines to be used by the South Dakota Underground Pipeline Task Force.

2.1.1 Existing Pipelines

Existing pipelines includes transmission pipelines that are installed and operational in South Dakota.

2.1.2 Proposed Pipelines

Proposed water pipelines are waterline projects included in the State Water Plan or those that have submitted plans and specifications to the DENR's Drinking Water Program for review.

Proposed natural gas, crude oil, ethanol, and refined petroleum product pipelines include those projects that have applied to the South Dakota Public Utilities Commission for a facility siting permit under the South Dakota Energy Conversion and Transmission Facilities Act or have publicly announced the project in South Dakota.

2.2 Existing Pipelines

Existing pipelines include transmission pipelines that are installed and operational in South Dakota.

2.2.1 Existing Water Pipelines

Existing underground water pipelines transverse many thousands of miles in South Dakota. There are 760 public water systems in South Dakota each utilizing underground pipelines to disperse the water. However, there is no one map available showing all of the water transmission lines. For reference, Figure 1 shows the public water supply systems intakes and Figure 2 is a map of South Dakota's Rural Water system coverage and major distribution lines.

In general, transmission waterlines are buried six feet below grade or deeper and are constructed polyvinyl chloride (PVC), ductile iron or steel. The operating pressure of the waterlines varies depending on pipeline size and system requirements however, the pressure is normally greater than 20 pounds per square inch (psi) with normal operating pressures of 60 to 80 psi (Recommend Standards for Water Works, 2007 Edition).

2.2.2 Existing Natural Gas Pipelines

According to the Federal Pipeline Hazardous Material Safety Administration's Pipeline Mapping System there are approximately 1,458 miles of existing natural gas transmission pipelines in South Dakota. Companies operating natural gas transmission pipelines in South Dakota include: Northern Borders Pipeline, Northern Natural Gas, South Dakota Intrastate Pipeline Company, and the Williston Basin Interstate Pipeline Company. Figure 3 is a map of the natural gas transmission pipelines in South Dakota.

In general, these pipelines are buried with at least 36 inches of cover and are constructed of high strength steel. They range in size from two inches to 36 inches in diameter and have operating pressures ranging from approximately 400 psi – 1,400 psi depending on pipeline size, system requirements and time of year.

2.2.3 Existing Crude Oil Pipelines

There is one, existing crude oil pipeline in South Dakota (Figure 4). This pipeline, operated by Plains Pipeline, L.P., is located in Harding County South Dakota and transports crude oil from Harding County oil producers into North Dakota. The system consists of approximately 22 miles of trunk line with pipeline diameters ranging from two to six inches. The pipeline is constructed of steel and operates below a maximum operating pressure of 1,440 psi. Because this pipeline is considered a gathering pipeline, it is not required to obtain a siting permit from the South Dakota Public Utilities Commission under the Energy Conversion and Transmission Facilities Act.

2.2.4 Existing Ethanol Pipelines

There are no existing ethanol transmission pipelines in operation in South Dakota.

2.2.5 Existing Refined Petroleum Product Pipelines

According to the Federal Pipeline Hazardous Material Safety Administration's Pipeline Mapping System there are approximately 593 miles of existing refined petroleum products transmission pipelines in South Dakota. Companies operating refined petroleum products transmission pipelines in South Dakota include: Magellan Midstream Partners, L.P., Pacific Energy (owned and operated by Plains Pipeline, L.P.), and NuStar Energy L.P. Figure 5 is a map of the refined petroleum products transmission pipelines in South Dakota.

In general, these pipelines are buried with at least 36 inches of cover and are constructed of steel. They range in size from six inches to eight inches in diameter and have operating pressures ranging from approximately 1,200 psi – 1,400 psi depending on pipeline size and system requirements. The refined petroleum products pipelines carry products such as gasoline, diesel fuel and jet fuel to bulk storage terminals in South Dakota.

2.3 Proposed Pipelines

Proposed water pipelines are waterline projects included in the State Water Plan or those that have submitted plans and specifications to the DENR's Drinking Water Program for review. Proposed natural gas, crude oil, ethanol, and refined petroleum product pipelines include those projects that have applied to the South Dakota Public Utilities Commission for a facility siting permit under the South Dakota Conversion and Transmission Facilities Act or have publicly announced the project in South Dakota.

2.3.1 Proposed Water Pipelines

Proposed water pipelines or water projects including pipeline work were considered by the task force if they are part of the State Water Plan or have plans and specifications under review by the DENR's Drinking Water Program. The following sections list the currently proposed water pipeline projects in South Dakota

2.3.1.1 Proposed Projects Listed on the State Water Facilities Plan

The proposed projects on the list below were selected from the 2008 State Water Plan (Appendix D). The proposed projects, each with varying degree of pipeline construction, will be completed in either 2008 or 2009.

Project Sponsor	Project Description
BDM Rural Water	Hecla Area / Internal Expansion
Beresford	East Street Water Main Improvement
Black Hawk WUD	Water Storage and Distribution
Bon Homme – Yankton Water	Douglas County Expansion
Cavour	Waterline Replacement and Meters
DeSmet	Third Street Water Main Replacement
Fall River WUD	Internal Water System Expansion
Green Valley San. District	Water System Construction
Kingbrook RWS	Winfred Water System
Longview San. District	Water Distribution Construction
Menno	Highway 18 Water/Wastewater
Miller	Water Distribution System
Mobridge	Water Main Improvements
Owanka RWS	Construct a New Rural Water System
Pine Cliff Park	Water Distribution
Sioux Falls	Water Distribution Improvements
Spearfish Meadows	Water Distribution System
Tripp County WUD	Water System Expansion
Viewfield Water Association	Rural Water System Construction
Wolsey	Water Distribution
Java	Waterline Replacement
Mid-Dakota RWS	Water Treatment and Distribution

2.3.1.2 Proposed Projects with Plans and Specifications Under Review by the DENR’s Drinking Water Program

As of July 2008, there were no proposed water pipeline projects under review by the DENR’s Drinking Water Program. Please note, projects move on and off this list frequently. To obtain the most current information please contact Mark Mayer with DENR’s Drinking Water Program at (605) 773-3754.

2.3.2 Proposed Natural Gas Pipelines

There are currently no proposed natural gas pipeline projects in South Dakota. There is however, a landfill gas pipeline project proposed in Sioux Falls, South Dakota. This is a joint project between POET and the City of Sioux Falls allowing methane generated from the Sioux Falls Regional Sanitary Landfill to provide energy for POET’s ethanol production facility near Chancellor, South Dakota. The methane will be transported by a 10-mile low-pressure pipeline to be completed by the second quarter 2009.

2.3.3 Proposed Crude Oil Pipelines

There are currently two proposed crude oil pipeline projects in South Dakota, TransCanada Keystone Pipeline and the TransCanada Keystone XL Pipeline. These projects are described in more detail below.

2.3.3.1 Proposed TransCanada Keystone Pipeline

The TransCanada Keystone Pipeline is a proposed crude oil pipeline currently under construction in North and South Dakota (Figure 6). The proposed pipeline is a 30-inch diameter crude oil pipeline designed to carry up to 591,000 barrels per day of crude oil from the oil sands in Alberta, Canada to refineries in the Wood River and Patoka, Illinois area and to storage facilities in Cushing, Oklahoma. The pipeline will be constructed with high strength steel and will be buried with a minimum four-foot depth of cover. Operating pressures will range up to 1,440 psi. Construction will continue through 2008 into 2009 with the line scheduled to begin operation late in 2009.

This pipeline was required to obtain a siting permit from the South Dakota Public Utilities Commission under their Energy Conversion and Transmission Facilities law 49-41B. A copy of the permit conditions is included as Appendix E.

2.3.3.2 Proposed TransCanada Keystone XL Pipeline

The TransCanada Keystone XL Pipeline is a proposed crude oil pipeline project projected to transport crude oil from Alberta, Canada to refineries along the Gulf Coast in Texas. The 36-inch diameter pipeline, with an initial capacity of 700,000 barrels per day, would enter South Dakota in northwest Harding County and leave the state in southeast Tripp County (Figure 6). The pipeline will be constructed with high strength steel and will be buried with a minimum four-foot depth of cover. Operating pressures will range up to 1,440 psi. Construction in South Dakota is tentatively schedule to begin in 2011 with the line to begin operation later that year.

2.3.4 Proposed Ethanol Pipelines

There are currently no proposed ethanol pipeline projects in South Dakota.

2.3.5 Proposed Refined Petroleum Product Pipelines

There are currently no proposed refined petroleum product pipeline projects in South Dakota.

2.3.6 Proposed Pipelines Associated with the Hyperion Energy Center

The Hyperion Energy Center is a proposed oil refinery and power plant located north of Elk Point in Union County, South Dakota. Although no pipeline projects associated with this facility have been announced it is likely, if built, this facility would require underground pipelines for

water, crude oil, and refined petroleum products and may require natural gas and ethanol pipelines.

2.4 General Leak Prevention and Detection Information

In general, underground pipelines in South Dakota employ some or all of the following measures to prevent and detect pipeline leaks. Prior to construction of new pipelines, pipeline companies implement quality control programs at the pipe fabrication plant to ensure the pipeline itself meets all of their coating and construction standards. During construction, each weld is inspected using x-ray or ultrasonic technology to ensure the integrity of the weld. Prior to operation, the entire pipeline is hydrostatically tested to 125 percent of the maximum allowable operating pressure to make sure the pipe will not break or leak. To prevent corrosion, the entire pipeline is fusion bond epoxy coated and there is an active cathodic protection system. During operation, the pipelines are remotely monitored 24-hours per day, 365 days per year for signs of leaks and pipeline operators use volume balance systems to confirm product volumes. In addition, periodic aerial inspections are done to look for abnormalities and local pipeline staff inspect the right-of-way during their normal activities. To test the internal integrity of the pipeline, pipeline operators perform periodic internal inspections using in-line inspection tools or “smart pigs”. The pipelines participate in South Dakota’s One Call system. Finally, each pipeline operator is required to develop and maintain emergency response and spill clean up plans for implementation in the event of a pipeline leak.

The table below shows examples of leak detection and prevention methods employed by existing and proposed pipelines in South Dakota

PIPELINE SYSTEM	LEAK PREVENTION AND DETECTION METHODS
Keystone and Keystone XL Pipeline System (proposed crude oil pipelines)	Fusion bond epoxy coated pipelines, field weld inspections, hydrostatic testing, active cathodic protection, 24/365 remote system monitoring and shutdown, volume balance system, aerial inspections 26 time per year, internal inspections using “smart pigs”, use of internal cleaning “pigs”, participate in the One Call system, emergency response plan of file with federal and state regulators.
Plains Pipeline System (existing crude oil)	Continuous monitoring of real-time operational data, remote system shut-down, daily over-short balance using SCADA, high pressure shutdowns on pumps, seal failure alarms on pumps, corrosion inhibiting chemicals injected into crude oil stream, use of internal cleaning “pigs”, external pipeline coatings, cathodic protection, aerial inspections 26 times per year, participation in the One Call system, emergency response planning.
NuStar Energy Pipeline System (refined products)	Volumetric accounting using SCADA, aerial inspections 26 times per year, internal inspections using “smart pigs”, active cathodic protection and

	cathodic protection monitoring, participation in the One Call system, emergency response planning.
South Dakota Intrastate Pipeline Co. (natural gas)	Flame ionization leak detection, active cathodic protection, SCADA to monitor pressure and gas volume accounting, external and internal corrosion direct assessment, in-line inspection, participation in the One Call system and aerial surveys.

2.5 Pipeline Incident Summary and Spill Response Funds

The purpose of this section is to review Midwest pipeline incidents and to provide an overview of the South Dakota Regulated Substance Response Fund and the Federal Oil Spill Liability Trust Fund.

2.5.1 Pipeline Incident Summary

Appendix F provides a summary of significant pipeline incidents occurring between 1998 and 2008 in South Dakota, North Dakota, Minnesota, Iowa, Nebraska, Montana and Wyoming. The data was gathered from the Pipeline and Hazardous Materials Safety Administration's state information web pages. According to the web page, significant pipeline incidents include incidents with any of the following conditions, 1) a fatality or injury requiring in-patient hospitalization, 2) \$50,000 or more in total costs, 3) highly volatile liquid releases of 5 barrels or more or other liquid releases of 50 barrels or more or 4) liquid releases resulting in an unintentional fire or explosion.

Based on the data presented in Appendix F there were 213 significant pipeline incidents between 1998 and 2008 in these seven states resulting in a gross barrel loss of 105,903 barrels. Of the 213 incidents, 23.9% were caused by material failure and 23.5% were caused by excavation damage. The remaining incidents were caused by human error (7.5%), corrosion (7.5%), natural force damage (10.3%), other outside force damage (8.5%) or other causes (18.8%).

Additional information about pipeline incident cost was presented to the Task Force and can be found in sections 4.2.1.5 and 4.3.1.3 and Appendices G and H of this report.

2.5.2 South Dakota Regulated Substance Response Fund

Appendix I provides additional information on the South Dakota Regulated Substance Response Fund. In general, the fund was established to respond to regulated substance releases where there is either no responsible party or the responsible party refuses or is unable to respond. In these situations, the South Dakota Department of Environment and Natural Resources uses the money from the fund to respond by stopping the release and performing any necessary remedial actions. The Department of Environment and Natural Resources is obligated to attempt to cost recover from the responsible party. As of the end of June 2008, the Regulated Substance Response Fund had a balance of \$2,575,500.00.

Additional information about the South Dakota Regulated Substance Response Fund was presented to the Task Force and can be found in sections 4.1.1.4, 4.2.1.4 and 4.3.1.1 and Appendices J, K and L of this report.

2.5.3 Federal Oil Spill Liability Trust Fund

Appendix N provides additional information on the Federal Oil Spill Liability Trust Fund. In general, the fund was established to pay for cleanup costs and damages resulting from oil spills into or threatening navigable waters of the United States. The fund, managed by the U.S. Coast Guard, can be accessed by all federal on-scene coordinators. Like South Dakota's fund, the oil spill trust fund can be used when there is no responsible party or the responsible party refuses to respond. After responding, the lead federal agency bills the responsible party for federal response costs. The projected 2008 year-end fund balance is \$1,000,341,353.

Additional information about the Federal Oil Spill Liability Trust Fund was presented to the Task Force and can be found in sections 4.1.1.3 and 4.2.1.9 and Appendix O of this report.

3.0 Review of Laws and Regulations Relating to Pipelines in South Dakota

The purpose of this section is to review South Dakota laws and regulations as they relate to the construction and operation of pipelines in South Dakota. In addition, to address this topic it is necessary to review the federal regulations applicable to pipeline facilities.

3.1 Review of Federal Laws and Regulations Relating to Pipelines in South Dakota

The U.S. Department of Transportation – Pipeline Hazardous Material Safety Administration is the primary regulatory authority for the construction and operation of interstate hazardous materials pipelines (including natural gas, crude oil, ethanol, and refined petroleum products). This office develops regulations to assure safety in design, construction, testing, operations, maintenance, and emergency response for pipeline facilities.

In order to maintain consistent regulation on interstate pipeline projects the federal code limits state authority on interstate pipeline safety regulations. The following excerpt from the federal code describes this limitation.

*Title 49 – Transportation
Subtitle VIII – Pipelines
Chapter 601 – Safety
Sec. 60104 – Requirements and Limitations*

*(c) A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. **A state authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.** Notwithstanding the preceding sentence, a State authority may enforce a*

requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

For intrastate pipelines, as stated above, state authorities may adopt additional or more stringent safety standards on intrastate pipeline facilities as long as those standards are compatible with the minimum standards outlined in the federal regulations, however, states are preempted from developing safety standards for interstate pipelines. The South Dakota Public Utilities Commission is the regulatory authority on intrastate pipelines in South Dakota. However, at this time the Public Utilities Commission’s authority is limited to gas pipelines only.

The following is a list of the federal laws and regulations applicable to hazardous materials pipelines in South Dakota.

LAW	AGENCY	DESCRIPTION
Public Law 109-468—DEC. 29, 2006		Pipeline Inspection, Protection, Enforcement and Safety Act of 2006
Title 49 – Transportation Subtitle VIII – Pipelines Chapter 601 – Safety	US DOT	Pipeline Safety Law
Sec 60101	US DOT	Definitions
Sec 60102	US DOT	General authority
Sec 60103	US DOT	Standards for liquefied natural gas pipeline facilities
Sec 60104	US DOT	Requirements and limitations
Sec 60105	US DOT	State pipeline safety program certifications
Sec 60106	US DOT	State pipeline safety agreements
Sec 60107	US DOT	State pipeline safety grants
Sec 60108	US DOT	Inspection and maintenance
Sec 60109	US DOT	High-density population areas and environmentally sensitive areas
Sec 60110	US DOT	Excess flow valves
Sec 60111	US DOT	Financial responsibility for liquefied natural gas facilities
Sec 60112	US DOT	Pipeline facilities hazardous to life and property
Sec 60113	US DOT	Customer-owned natural gas service lines
Sec 60114	US DOT	One-call notification systems
Sec 60115	US DOT	Technical safety standards committees
Sec 60116	US DOT	Public education programs
Sec 60117	US DOT	Administrative
Sec 60118	US DOT	Compliance and waivers
Sec 60119	US DOT	Judicial review
Sec 60120	US DOT	Enforcement
Sec 60121	US DOT	Actions by private persons
Sec 60122	US DOT	Civil penalties
Sec 60123	US DOT	Criminal penalties

Sec 60124	US DOT	Biennial reports
Sec 60125	US DOT	Authorization of appropriations
Sec 60126	US DOT	Risk management
Sec 60127	US DOT	Population encroachment
Sec 60128	US DOT	Dumping within pipeline rights-of-way
RULES	AGENCY	DESCRIPTIONS
Title 49 – Transportation Subtitle B, Chapter 1, Subchapter D – Pipeline Safety	US DOT	Pipeline Safety
Part 190	US DOT	Pipeline Safety Program and Rulemaking Procedures
Part 191	US DOT	Transportation of natural and other gas by pipeline; annual reports, incident reports, and safety related condition reports
Part 192	US DOT	Transportation of natural and other gas by pipeline: Minimum federal safety standards
Part 193	US DOT	Liquefied natural gas facilities: federal safety standards
Part 194	US DOT	Response plans for onshore oil pipelines
Part 195	US DOT	Transportation of hazardous liquids by pipeline
Part 198	US DOT	Regulations for grants to aid state pipeline safety programs
Part 199	US DOT	Drug and alcohol testing

3.2 Review of State Laws and Regulations Relating to Pipelines in South Dakota

The following sections summarize the state laws and regulations relating to pipelines in South Dakota. To avoid duplication, the hazardous materials pipelines (natural gas, crude oil, ethanol and refined petroleum products) are grouped together.

3.2.1 Summary of South Dakota Laws and Regulations for Water Pipelines

The following is a list of South Dakota Laws and Regulations applicable to water pipelines in South Dakota

LAW	AGENCY	DESCRIPTION
31-26-22	DOT	Permit to operate on or under state right of ways
34A-2-29	DENR	Plans, Specifications, and Information Required by the Secretary
RULES	AGENCY	DESCRIPTION
70:04:05	DOT	Utility Accommodations on non-Interstate Rights-of-Way
74:53:04	DENR	Works of Sanitary Significance
74:53:04:01	DENR	Copies of plans and specifications to be submitted to department
74:53:04:02	DENR	Plans and specifications to be prepared by competent persons

74:53:04:03	DENR	Revisions of plans and specifications to be submitted
74:53:04:04	DENR	Disposition of approved plans and specifications
74:53:04:05	DENR	Time required for review
74:53:04:06	DENR	Deviation from approved plans and specifications prohibited
74:53:04:07	DENR	Approval void after two years if construction not started
74:53:04:08	DENR	Department to be notified when system or works completed
74:53:05	DENR	Public Water Supply Systems
74:53:05:01	DENR	Definitions
74:53:05:02	DENR	Written approval of plans and specifications required
74:53:05:03	DENR	Approval for operation of public water supply required
74:53:05:04	DENR	Inspections required -- Defects to be corrected
74:53:05:05	DENR	Department to issue minimum requirements to interested persons

3.2.2 Summary of South Dakota Laws and Regulations for Hazardous Materials Pipelines

The following is a list of South Dakota Laws and Regulations applicable to hazardous material pipelines in South Dakota.

LAW	AGENCY	DESCRIPTION
31-26-22	DOT	Permit to operate on or under state right of ways
34A-12-8	DENR	Discharge of regulated substance prohibited--Exception
34A-12-9	DENR	Report of discharge--Rules for reporting
34A-18	DENR	Oil Pipelines
34A-18-1	DENR	Definition of terms
34A-18-2	DENR	Oil spill response plan required
34A-18-3	DENR	Updating of oil spill response plan
34A-18-4	DENR	Consultation with department
34A-18-5	DENR	Time for submission of oil spill response plan
34A-18-6	DENR	Review of oil spill response plan
34A-18-7	DENR	Modifications to oil spill response plan to be submitted
34A-18-8	DENR	Implementation of plan in the event of oil spill
34A-18-9	DENR	Reports regarding spill
49-34B	PUC	Pipeline Safety
49-34B-1	PUC	Definition of terms
49-34B-2	PUC	Rural gathering facility exempt
49-34B-3	PUC	Pipeline safety inspection program created--Program for compliance
49-34B-4	PUC	Promulgation of safety standards--Considerations
49-34B-5	PUC	Noncompliance--Hearing--Corrective action
49-34B-6	PUC	Plan for inspection and maintenance of facility--Inadequate plan--Hearing--Revision
49-34B-7	PUC	Required records and information--Inspection by employee or agent of commission
49-34B-8	PUC	Programs for prevention of damage
49-34B-9	PUC	Inspection fee for intrastate operators--Recovery of unreasonable fees--Pipeline safety account established

49-34B-10	PUC	Calculating inspection fee for intrastate operators
49-34B-11	PUC	Initial inspection fee for intrastate operators--Filing objection--Delinquency fee--Fees credited to pipeline safety account
49-34B-12	PUC	Civil penalty for violations--Maximum penalties--Penalties credited to pipeline safety account--Interstate facilities exempt
49-34B-13	PUC	Conduct in violation of federal act--Authority of commission to pursue remedies
49-34B-14	PUC	Commission as agent of United States Department of Transportation in regulating interstate pipelines
49-34B-15	PUC	Designation of commission's inspectors as federal agents
49-34B-16	PUC	Inspection fee for interstate operators--Objections to fee--Fees deposited in pipeline safety account
49-34B-17	PUC	Calculation of interstate operator's inspection fee
49-34B-18	PUC	Initial inspection fee for interstate operators--Filing objections--Hearings--Delinquency fee
49-34B-19	PUC	Promulgation of inspection and safety rules
49-34B-20	PUC	Promulgation of rules for calculation, assessment, and collection of fees
49-34B-21	PUC	Accident report available in judicial proceedings
49-34B-22	PUC	Trade secrets information confidential
49-34B-23	PUC	Acceptance of federal moneys
49-34B-24	PUC	Waiver of compliance with standards--Reasons to be stated
49-34B-25	PUC	Damaging or tampering with sign or line markers prohibited--Violation as misdemeanor
49-34B-26	PUC	Prohibition against disposing of, destroying or altering pipeline involved in emergency release--Violation as felony
49-34B-27	PUC	Powers of commission in enforcement of chapter
49-41B	PUC	Energy Conversion and Transmission Facilities
49-41B-1	PUC	Legislative findings--Necessity to require permit for facility
49-41B-2	PUC	Definition of terms
49-41B-2.1	PUC	Transmission facility defined
49-41B-3	PUC	Ten-year plan required of utility planning to own or operate energy conversion facilities--Updating of plan—Contents
49-41B-4	PUC	Permit required before construction of facility after certain date
49-41B-4.1	PUC	Trans-state transmission facility--Permit and legislative approval required
49-41B-4.2	PUC	Trans-state transmission line--Criteria required
49-41B-4.3	PUC	Seasonal diversity exchange of electric power
49-41B-4.4	PUC	Trans-state transmission facility--Eminent domain--Acquisition of fee in land contiguous to right-of-way--Divestiture of agricultural land
49-41B-4.5	PUC	Foreclosure on nondivested agricultural land
49-41B-4.6	PUC	Corporate ownership of agricultural land
49-41B-4.7	PUC	Divestiture of less than fair market value not required
49-41B-5	PUC	Notification of intent to apply for permit required before filing application--Time-- Prefiling conference if applicant requests
49-41B-5.2	PUC	Notification of area landowners by mail--Publication of notice of proposed facility--Time for notification

49-41B-11	PUC	Applications for permit--Filing deadline--Form—Contents
49-41B-12	PUC	Deposit required of applicant--Disposition--Minimum and maximum amounts-- Fee for determining environmental impact
49-41B-13	PUC	Denial, return, or amendment of application--Grounds--Applicant permitted to make changes
49-41B-14	PUC	Further data provided prior to hearings if required--Prehearing conference
49-41B-15	PUC	Procedure followed by commission following receipt of application for permit
49-41B-16	PUC	Public hearings held within thirty days after notice
49-41B-17	PUC	Parties to proceedings under chapter
49-41B-17.1	PUC	County auditor as agent for service of process on party--Request for personal service
49-41B-19	PUC	Evidence from state or local agencies relative to environmental, social and economic conditions
49-41B-20	PUC	Final report heard by commission at final hearing--Decision on application--Adoption of committee's report
49-41B-21	PUC	Environmental impact statement
49-41B-22	PUC	Applicant's burden of proof
49-41B-22.1	PUC	Reapplication for permit--Applicant's burden of proof--Environmental impact statement not required
49-41B-22.2	PUC	Reapplication for permit--Discussion of commission as to applicant's burden of proof
49-41B-22.3	PUC	Reapplication for permit--Deposits and fees required
49-41B-23	PUC	Waiver of compliance with chapter on grounds of urgency, disaster, or civil disorder
49-41B-24	PUC	Large facility or pipeline permit--Complete findings required by commission within year of receipt of application
49-41B-26	PUC	Accounting for expenditures of applicant's deposit provided by commission--Refund of unused moneys
49-41B-27	PUC	Construction, expansion, and improvement of facilities
49-41B-28	PUC	Supersession of local land use controls by facility permit upon finding by commission
49-41B-29	PUC	Transfer of permit--Commission approval—Rules
49-41B-30	PUC	Circuit court review of commission decision by aggrieved party—Procedures
49-41B-31	PUC	Order not stayed by appeal--Stay or suspension by court
49-41B-32	PUC	Surety bond required if order stayed or suspended--Other security
49-41B-33	PUC	Revocation or suspension of permit—Grounds
49-41B-34	PUC	Violation of permit requirements as misdemeanor--Civil penalty--Continuing offense
49-41B-35	PUC	Promulgation of rules
49-41B-36	PUC	Authority to route or locate facilities not delegated to commission
49-41B-38	PUC	Indemnity bond for damage to roads and bridges
RULES	AGENCY	DESCRIPTION
20:10:31	PUC	Assessment of Fees for Intrastate Gas Pipeline Operators

20:10:31:01	PUC	Definitions
20:10:31:02	PUC	Scope and application
20:10:31:03	PUC	Reduction of support and direct costs
20:10:31:04	PUC	Assessment of direct costs
20:10:31:05	PUC	Assessment of support costs
20:10:31:06	PUC	Assessment of initial inspection fees
20:10:31:07	PUC	Objection to assessment
70:04:05	DOT	Utility Accommodations on non-Interstate Rights-of-Way
74:10:05:11.01	DENR	Immediate notice by telephone or facsimile required of fire, releases, breaks, leaks, or blowouts
74:10:10:03	DENR	Pipeline maps required
74:34:01	DENR	Regulated substance list and reporting of discharge
74:34:01:01	DENR	Definitions
74:34:01:02	DENR	Applicability
74:34:01:03	DENR	Regulated substances list
74:34:01:04	DENR	Report of known discharge – reportable quantities
74:34:01:05	DENR	Reporting of suspected discharges
74:34:01:06	DENR	Discharge report
74:36:08:12	DENR	National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations)
74:51:01	DENR	Surface water quality standards
74:54:01	DENR	Ground water quality standards
74:56:05	DENR	Remediation criteria for petroleum contaminated soils

4.0 Summary of Task Force Meetings

4.1 First Task Force Meeting, August 14, 2008

The Task Force held their first meeting on August 14, 2008 in Pierre, South Dakota. The following sections summarize the information presented at the meeting and the task force member discussions. For the complete agenda, minutes and informational presentations refer to the Appendix of this report.

4.1.1 Informational Presentations

4.1.1.1 South Dakota Once Call System

Larry Englerth, Executive Director of South Dakota One Call presented information on the South Dakota One Call system. The presentation provided an overview of the One Call system, the purpose of the system and information and examples of how the system works. In addition, Mr. Englerth described the concept of creating a high profile designation in One Call's database for high profile underground facilities. He explained facilities with this designation would require additional efforts to ensure the one call ticket was properly cleared. Mr. Englerth also discussed the need for One Call to require mandatory damage reporting to ensure any damage to

underground facilities is reported and addressed. Refer to Appendix P for a copy of Mr. Englerth's presentation slides.

4.1.1.2 South Dakota Public Utilities Commission – Pipeline Safety

John Smith, legal counsel for the South Dakota Public Utilities Commission presented information on the Commission's pipeline safety program. The presentation provided an overview of the program's authority, gas statistics for South Dakota, information on federal regulatory authority and a definition for interstate pipelines. Specifically, Mr. Smith explained the federal preemption on state's authority to develop safety regulations on interstate pipelines and explained how the commission currently regulates intrastate gas pipelines. Refer to Appendix Q for a copy of Mr. Smith's presentation slides.

4.1.1.3 Federal Oil Spill Liability Trust Fund

Brian Walsh, Hydrology Specialist with DENR presented a general overview of the Federal Oil Spill Liability Trust Fund and how this fund might be used in South Dakota. In addition, Greg Buie with the U.S. Coast Guard, provided information to the Task Force on the status of the federal response fund and how it operates. For additional information on this fund, refer to sections 2.5.3, 4.1.1.3 and 4.2.1.9 and Appendices N and O of this report.

4.1.1.4 South Dakota Regulated Substance Response Fund

Kim McIntosh, Environmental Senior Scientist with DENR provided an overview of the response fund. The presentation included information on the history of the fund, the use of the fund and the current fund status. For additional information on this fund, refer to sections 2.5.2, 4.1.1.4, 4.2.1.4 and 4.3.1.1 and Appendices I, J, K and L of this report.

4.1.1.5 Pipeline Hazardous Materials Safety Administration (PHMSA)

Harold Winnie, an Outreach Community Assistance & Technical Services Project Manager with the Federal Hazardous Materials Safety Administration, Central Region, provided an overview of PHMSA and the Federal Office of Pipeline Safety. The presentation included discussion on the jurisdiction of the Central Region and information on the best practices for pipeline safety.

4.1.2 Task Force Member Discussion

The Task Force discussed issues including the federal code preemption on state authority to implement safety regulations on interstate pipelines and the cost and availability of pollution liability insurance especially for the state's rural water systems. Following their discussion the Task Force proposed several possible recommendations for further consideration and directed DENR staff to prepare additional information for the next Task Force meeting.

4.1.2.1 Possible Recommendations for Further Consideration

The Task Force identified the following possible recommendations for further consideration.

The task force is considering recommending South Dakota One Call create a high profile designation in their database. Facilities such as hazardous material pipelines would be designated as high profile facilities. When a call ticket was processed near a high profile facility, the facility owner or operator would have to sign-off on the ticket before it is cleared. In addition, the high profile facility owner or operator would be required to have staff present at the excavation site until the excavation is complete.

The task force is considering recommending South Dakota One Call require mandatory damage reporting. If implemented, excavators must report any damage done during an excavation to South Dakota One Call.

The task force is considering a recommendation to expand or make mandatory that all municipalities and counties adopt Wellhead Protection ordinances for regulated public drinking water systems.

The task force is considering recommending the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines.

4.1.2.2 Task Force Direction to DENR Staff

The Task Force directed DENR staff to prepare additional information on the following items for the next Task Force meeting.

Prepare all pre-meeting documents and meeting handouts for placement on DENR's website. In addition, create links on the website leading to Legislative Research Council's webpage and the federal pipeline laws and rules.

Provide the task force with a historical budget of the South Dakota Regulated Substance Response Fund.

Provide the task force with information on the legality of creating a bond or placing a fee on an interstate pipeline running through South Dakota.

Investigate and provide the task force with information on the availability and cost of pollution liability insurance for public and private entities. Include information on current coverage for water and waste water systems in South Dakota.

Investigate and provide the task force with information on other states' cleanup funds or bonds/fees on oil transporters. Compare methods for funding cleanups.

Make available to the task force the voluntary state Wellhead Protection Law.

Investigate and provide information to the task force on whether the South Dakota Regulated Substance Response Fund is sufficiently funded to respond to a pipeline release. Provide to the task force information on how DENR responds and regulates a typical spill.

Create and provide to the task force a map showing the streams that would be eligible for funding from the Federal Oil Pollution Liability Trust Fund.

Provide information to the task force on what happens when private property is contaminated and what options the property owner would have to recover damages.

Arrange a presentation on the impacts of petroleum on plastic waterlines.

Schedule the next task force meetings. Consider the following dates for September, the 22, 29, and 30. Tentatively schedule the October meeting for October 23.

4.2 Second Task Force Meeting, September 22, 2008

The Task Force held their second meeting on September 22, 2008 in Pierre, South Dakota. The following sections summarize the information presented at the meeting and the task force member discussions. For the complete agenda, minutes and informational presentations refer to the Appendix of this report.

4.2.1 Informational Presentations

4.2.1.1 DENR's Source Water Protection and Wellhead Protection Program

Tom Brandner, Natural Resources Engineering Director with DENR, provided the Task Force with an overview of DENR's Source Water and Wellhead Protection Programs. Included in the presentation was a description of the legal authority for the Wellhead Protection Program, a description of how local governments administer the program, statistics on how many local governments use the program and information on how TransCanada used the programs as a planning tool in the development of their pipeline routes. For a copy of Mr. Brandner's presentation and the South Dakota wellhead protection laws refer to Appendices R and S of this report.

4.2.1.2 Legality of a State Imposing a Fee or Bond on an Interstate Pipeline

Joe Nadenicek, Staff Attorney with the DENR, discussed the Dormant Commerce Clause and federal preemption as they relate to the imposition of a per barrel cleanup fee on interstate pipeline systems. Mr. Nadenicek informed the Task Force a per barrel fee on interstate pipelines was very likely in conflict with the dormant commerce clause. Refer to Appendix T for a copy of Mr. Nadenicek's presentation slides.

4.2.1.3 Examples of Other States Cleanup Funds

Brian Walsh, Hydrology Specialist with DENR, presented information to the Task Force on cleanup funds used in other states. The states reviewed included Alaska, California, Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wyoming. Although most other states have environmental response cleanup funds Mr. Walsh did not find any other states imposing a per barrel fee on interstate pipelines for the purposes of

funding an environmental cleanup fund. Refer to Appendix M for a table displaying the state cleanup funds.

4.2.1.4 Historical Budget of the Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with DENR, presented the Task Force with a table detailing the historical budget on South Dakota's Regulated Substance Response Fund. Refer to Appendix J for a copy of the table presented by Mr. Walsh.

4.2.1.5 Review of Pipeline Incident Costs

Brian Walsh, Hydrology Specialist with the DENR, provided information to the Task Force on the cost of pipeline incidents in South Dakota, surrounding states and the United States as a whole based on data from the Pipeline Hazardous Material Safety Administration's significant incident database. The data indicated the average cost of a pipeline incident in the United States between 1988 and 2008 is \$607,649. Refer to Appendix G for a copy of Mr. Walsh's presentation slides.

4.2.1.6 Availability and Cost of Liability Insurance for Public and Private Entities

Gary Joyce, Account Executive with Howalt-McDowell Insurance, Inc., provided the task force with an overview of the availability of pollution liability insurance and explained why most business in South Dakota did not have coverage. In addition, he informed the task force that most general liability policies exclude pollution coverage.

In addition, Mr. Walsh with the DENR requested information from the South Dakota Municipal League in an attempt to determine if South Dakota municipalities carry pollution liability insurance. In response, the Municipal League forwarded the information request to the South Dakota Public Assurance Alliance who responded with a letter from their legal council. Refer to Appendix U to view a copy of the letter.

4.2.1.7 DENR Spill Response Procedures

Kim McIntosh, Environmental Senior Scientist with the DENR, presented information to the task force on the DENR's typical spill response procedures. The presentation covered how spills are reported and responded to and the circumstance under which the DENR will take action using the Regulated Substance Response Fund. Refer to Appendix V for a copy of Ms. McIntosh's presentation slides.

4.2.1.8 What Happens When Private Property is Contaminated?

Brian Walsh, Hydrology Specialist with the DENR, discussed the options an impacted private property owner would have in the event of damages to him or his property due to a pipeline release. He explained to the task force South Dakota's Regulated Substance Response Fund can only pay for cleanup costs. In some instances, the Federal Oil Spill Liability Trust Fund may reimburse for downstream damages from an oil release. However, in many cases, the impacted

individual's only recourse to recover damages, beyond cleanup, may be to pursue litigation against the responsible party.

4.2.1.9 Federal Oil Spill Liability Trust Fund – Eligible Areas in South Dakota

Brain Walsh, Hydrology Specialist with the DENR, presented a map to the task force showing the national hydrography dataset for South Dakota. The U.S. Coast Guard uses this data set to help determine if an oil spill is eligible for reimbursement under the Federal Oil Spill Liability Trust Fund. He further indicated there is no single map available showing whether an oil spill is eligible for reimbursement under the federal fund. The U.S. Coast Guard determines eligibility on a case-by-case basis. Refer to Figure 7 to review the map presented by Mr. Walsh.

4.2.1.10 Petroleum Impacts on Plastic Waterlines

Dr. Delvin DeBoer, Professor of Civil and Environmental Engineering and the Director of Water and Environmental Engineering Research Center with South Dakota State University, presented the task force with an overview of the effects of petroleum on plastic waterlines and gaskets. Refer to Appendix W for a copy of Mr. DeBoer's presentation slides.

4.2.1.11 Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities

Joe Nadenicek, Staff Attorney with the DENR, provided the task force with an explanation of the recent Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities in South Dakota. Refer to Appendix X for a copy of Mr. Nadenicek's presentation slides.

4.2.2 Task Force Member Discussion

Task Force member discussion focused on the topics presented during the meeting.

4.2.2.1 Possible Recommendations for Further Consideration

The task force did not make any possible recommendations for further consideration at this meeting. Instead, they decided to continue their review of the available information and make their final recommendations at the October 23, 2008 task force meeting.

4.2.2.2 Task Force Direction to DENR Staff

The task force directed DENR staff to revise the minutes from the August 14, 2008 meeting and circulate to the task force members for review and approval at the October 23, 2008 meeting.

The task force directed DENR staff to provide additional information on the fines paid into the South Dakota Regulated Substance Response Fund and to explain the \$567,072 transfer to the fund made in FY 2000.

The task force directed DENR staff to provide information on the tax oil producers pay in South Dakota.

The task force directed DENR staff to provide a breakdown of pipeline incident costs in South Dakota and Minnesota by material released.

The task force directed DENR staff to provide information on the number of petroleum releases in South Dakota by source. Specifically, pipeline releases vs. transportation releases.

The task force directed DENR staff to schedule two additional task force meetings for October 23, 2008 at 9:00 AM and November 13, 2008 at 9:00 AM.

4.3 Third Task Force Meeting, October 23, 2008

The Task Force held their third meeting on October 23, 2008 in Pierre, South Dakota. The following sections summarize the information presented at the meeting and the task force member discussions. For the complete agenda, minutes and informational presentations refer to the Appendix of this report.

4.3.1 Informational Presentations

4.3.1.1 Additional Information on the South Dakota Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with additional information on the Regulated Substance Response Fund. Specifically, Mr. Walsh answered two questions asked by Task Force members during the September 22, 2008 meeting. First, Mr. Walsh explained the \$567,072 transfer into the fund in fiscal year 2000 was money returned to the fund because of the removal of a fund cap that had been in place for the previous five years. Second, Mr. Walsh provided the Task Force information on the amount and type of fines paid into the Regulated Substance Response Fund (Appendix L). Refer to Appendix K for a copy of Mr. Walsh's presentation slides.

4.3.1.2 South Dakota Mineral Severance Tax

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with general information about the South Dakota Mineral Severance Tax. Refer to Appendix Y for a copy of Mr. Walsh's presentation slides.

4.3.1.3 Additional Information on Pipeline Incident Cost Data

Brian Walsh, Hydrology Specialist with DENR, presented additional information to the Task Force on pipeline incident cost data. Specifically, at the request of the Task Force, Mr. Walsh presented a breakdown of pipeline incidents in South Dakota and Minnesota by material released. Refer to Appendix H for a copy of Mr. Walsh's presentation slides.

4.3.1.4 Review of South Dakota Petroleum Spills by Source

Brian Walsh, Hydrology Specialist with DENR, presented the Task Force with the number of South Dakota petroleum spills by source. Specifically, at the request of the Task Force, Mr.

Walsh compared the number of transportation petroleum spills to the number of pipeline petroleum spills. Refer to Appendix Z for a copy of Mr. Walsh's presentation slides.

4.3.1.5 Review of Regulated Substance Response Fund and DENR Spill Response Procedures

Per Chairman Hanson's request, Kim McIntosh, DENR, reviewed DENR's spill response procedures and the use of the Regulated Substance Response Fund. Specifically, Ms. McIntosh informed the task force the state's Regulated Substance Response Fund and the Federal Oil Spill Liability Trust Fund could be used simultaneously.

4.3.2 Task Force Member Discussion

Task Force member discussion focused on the development and approval of final recommendations to be included in the Task Force report to the Governor. The section below describes those discussions in more detail.

4.3.2.1 Recommendations Considered for Inclusion in the Final Task Force

4.3.2.1.1 Proposed Recommendation #1 – SD One Call High Profile Facility Database

The first recommendation considered by the Task Force concerned South Dakota One Call creating a high profile designation for facilities such as hazardous materials pipelines. Once designated as high profile, additional steps would need to be taken before One Call would clear an excavation ticket near one of the high profile facilities. Task Force members were in agreement with this recommendation however, they did not feel the high profile designation should be limited to hazardous material pipelines. Therefore, the Task Force did not specifically designate which facilities the One Call system should consider as high profile. In addition, the Task Force did not want to dictate in their recommendation what additional steps One Call would require excavators and facility operators to undertake. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The South Dakota Underground Pipeline Task Force supports South Dakota One Call in the development of a high profile database identifying high profile underground facilities.

Based on subsequent input for the Executive Director of South Dakota One Call the above recommendation was revised to reflect South Dakota One Call's status with respect to the development of a high profile facility database. The revised recommendation is shown below.

The Task Force recommends South Dakota One Call explore the development of a high profile database identifying high profile underground facilities.

4.3.2.1.2 Proposed Recommendation #2 – SD One Call Mandatory Damage Reporting

The second recommendation considered by the Task Force concerned South Dakota One Call mandatory damage reporting. Discussion on this topic included what enforcement would be taken if excavators did not report damage or failed to contact One Call prior to excavation. Task

Force members agreed that issue was for One Call to manage. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends South Dakota One Call require mandatory damage reporting.

Based on subsequent input from the Executive Director of South Dakota One Call the above recommendation was revised to include the cooperation of the South Dakota Public Utilities Commission Pipeline Safety Program in the development and implementation of the mandatory damage reporting program. The revised recommendation is shown below.

The Task Force recommends South Dakota One Call require mandatory damage reporting. The Task Force further recommends South Dakota One Call work with the South Dakota Public Utilities Commission – Pipeline Safety Program to develop and implement this program.

4.3.2.1.3 Proposed Recommendation #3 – Wellhead Protection

The third recommendation considered by the Task Force concerned making mandatory for counties or municipalities adoption of wellhead protection ordinances for regulated public drinking water systems. Although Task Force members agreed in general with this recommendation, there was discussion on whether it was appropriate for the Task Force to recommend implementation be mandatory. Task Force members thought this might be viewed as requiring an unfunded mandate or may place unachievable requirements on some counties. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.

4.3.2.1.4 Proposed Recommendation #4 – SD PUC Liquids Program

The fourth recommendation considered by the Task Force concerned the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines from the Federal Department of Transportation. Discussion on this issue centered on whether the Task Force should recommend the Commission acquire this program not knowing the necessary staffing needs and budget constraints of the Commission. Based on the Task Force's discussion members made and approved (via a 4-3 vote) the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the Federal Department of Transportation.

4.3.2.1.5 Proposed Recommendation #5 – DENR Guidance on Pipeline Crossings

The fifth recommendation considered by the Task Force concerned having the DENR develop guidance on how to encase plastic waterlines that cross under other pipelines. Discussion on this issue include whether this task was within DENR's scope as a regulatory agency. Also discussed

was what if the guidance became a standard and existing plastic waterlines crossing hazardous material pipelines required encasement or retrofitting to meet the standard could this become a burden on the water systems in South Dakota. Based on the Task Force's discussion members did not support this recommendation for inclusion in the final report.

4.3.2.1.6 Proposed Recommendation #6 – Petroleum Impacts on Plastic Waterlines

The sixth recommendation considered by the Task Force concerned having the DENR become involved with Dr. Delvin DeBoer, Director of the Water & Environmental Engineering Research Center at SDSU, in his research on the impact of petroleum products on plastic waterlines. Discussion on this issue included what was meant by the word involved. Task Force members felt it was unlikely DENR could fund the study. In addition, Task Force members asked DENR staff if Dr. DeBoer had contacted DENR and requested their involvement. DENR staff said he had not and Task Force members questioned if they should try to force cooperation that did not seem to be developing on its own. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends DENR explore its ability to assist Dr. DeBoer with South Dakota State University in his research on the impact of petroleum products on plastic waterlines.

4.3.2.1.7 Proposed Recommendation #7 – Pollution Liability Insurance

The seventh recommendation considered by the Task Force concerned having the South Dakota Department of Revenue, Division of Insurance review the availability of pollution liability insurance in South Dakota especially for water and waste water systems. There was only limited discussion on this issue and the Task Force members were in support of the recommendation. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution liability insurance for public and private entities in South Dakota especially for water and waste water systems.

4.3.2.1.8 Proposed Recommendation #8 – Regulated Substance Response Fund

The eighth recommendation considered by the Task Force concerned the preservation of the South Dakota Regulated Substance Response Fund for uses of the fund as outlined in SDCL 34A-12. During the first three task force meetings, there was considerable discussion about who would pay for a cleanup if the responsible party was unable or refused to do so. Task Force members were presented information on the Regulated Substance Response Fund, the Oil Spill Liability Trust Fund and the legality of imposing a fee on interstate pipelines. Based on this information the Task Force did not recommend any fees or fund increases do to the potential legal issues of doing so and the coverage already provided by the Regulated Substance Response Fund and the Oil Liability Trust Fund. However, the Task Force thought it was important to preserve the Regulated Substance Response Fund for its intended use. Below is the Task Force's approved recommendation on this issue.

The Task Force recommends the state Regulated Substance Response Fund be maintained and preserved as authorized in SDCL 34A-12 to ensure the state always has the capacity to provide for the cleanup of regulated substances during emergencies or when necessary to protect the public health, safety, welfare, or the environment.

4.3.2.2 Task Force Direction to DENR Staff

The task force directed DENR staff to finalize the Draft Task Force findings report for review and approval by the Task Force at their final meeting.

4.4 Final Task Force Meeting, November 13, 2008

The Task Force held their final meeting on November 13, 2008 in Pierre, South Dakota. During this meeting, the Task Force reviewed and approved the final findings report. The Task Force directed DENR staff to finalize the report for submittal to the Governor by the December 1, 2008 deadline.

5.0 Conclusion

Senate Bill 190, passed by the 2008 South Dakota Legislature, established the South Dakota Underground Pipeline Task Force. The Task Force has two objectives. 1) Review the status of existing and proposed pipelines in South Dakota and 2) assess the adequacy of state laws and regulations relating to pipelines in South Dakota. In addition, the Task Force is to report its findings to the Governor no later than December 1, 2008.

The Task Force members, appointed by the Governor, accomplished these objectives with four meetings and the preparation of this findings report. As described above, there are existing water pipelines, natural gas pipelines, crude oil pipelines and refined petroleum product lines in operation in South Dakota but no existing ethanol pipelines in the state. In addition, there are several water pipeline projects, a methane gas pipeline project and two crude oil pipeline projects proposed in South Dakota. Finally, the Task Force reviewed existing South Dakota law and rules applicable to pipelines and determined them to be adequate, however, the Task Force made several recommendations to continue the safe and reliable operation of South Dakota's pipelines and to ensure the state is prepared for future pipeline development. The Task Force recommendations are presented in section 6.0 of this report.

6.0 Recommendations

The following are the recommendations of the South Dakota Underground Pipeline Task Force.

- 1) The Task Force recommends South Dakota One Call explore the development of a high profile database identifying high profile underground facilities.
- 2) The Task Force recommends South Dakota One Call require mandatory damage reporting. The Task Force further recommends South Dakota One Call work with the South Dakota Public Utilities Commission – Pipeline Safety Program to develop and implement this program.

- 3) The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.
- 4) The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the Federal Department of Transportation.
- 5) The Task Force recommends the South Dakota Department of Environment and Natural Resources explore its ability to assist Dr. DeBoer with South Dakota State University in his research on the impact of petroleum products on plastic waterlines.
- 6) The Task Force recommends the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution insurance for public and private entities in South Dakota especially for water and waste water systems.
- 7) The Task Force recommends the state Regulated Substance Response Fund be maintained and preserved as authorized in SDCL 34A-12 to ensure the state always has the capacity to provide for the cleanup of regulated substances during emergencies or when necessary to protect the public health, safety, welfare, or the environment.

7.0 Availability of Task Force Information

A copy of this report and the information presented to the Task Force is available for download on the Task Force website, <http://www.state.sd.us/denr/Boards/PipelineTF.htm> or by contacting the South Dakota Department of Environmental and Natural Resources at 605.773.3296.

Figure 1

Public Water Supply Intakes

Figure 1.
Regulated Public Water System Wells/Intakes

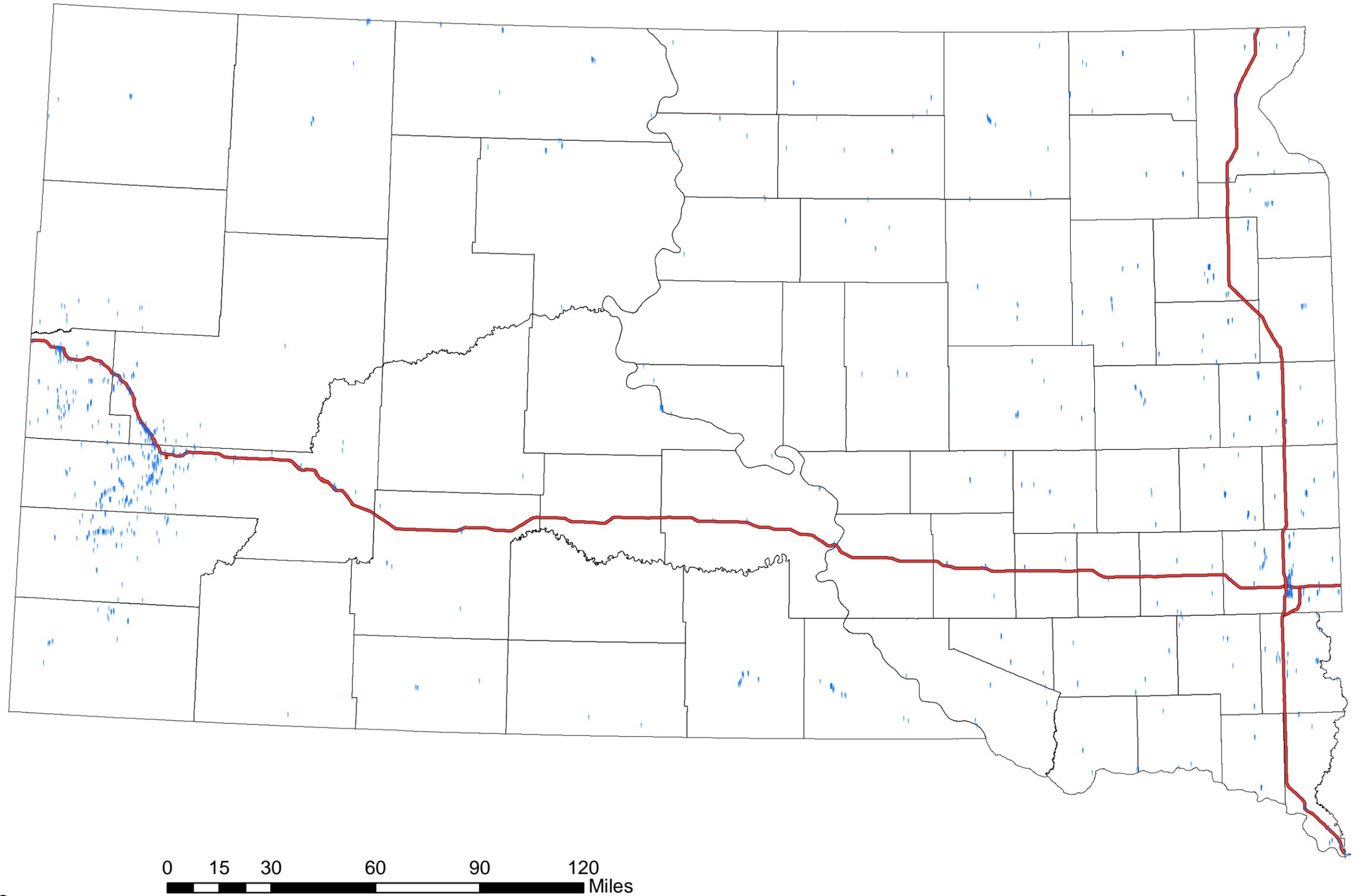
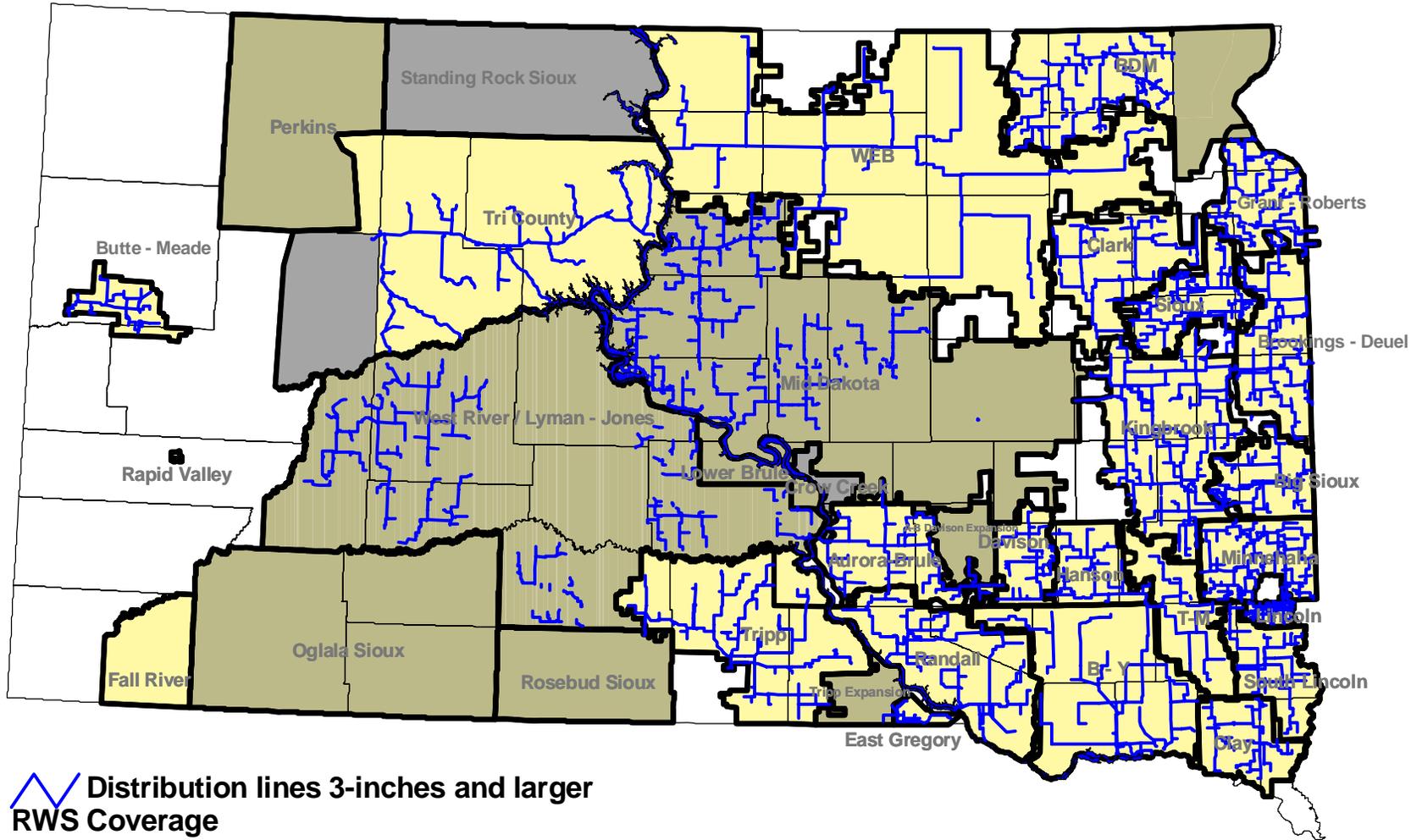


Figure 2

South Dakota Rural Water System Coverage and Major Distribution Lines

Figure 2.

South Dakota Rural Water System Coverage and Major Distribution Lines

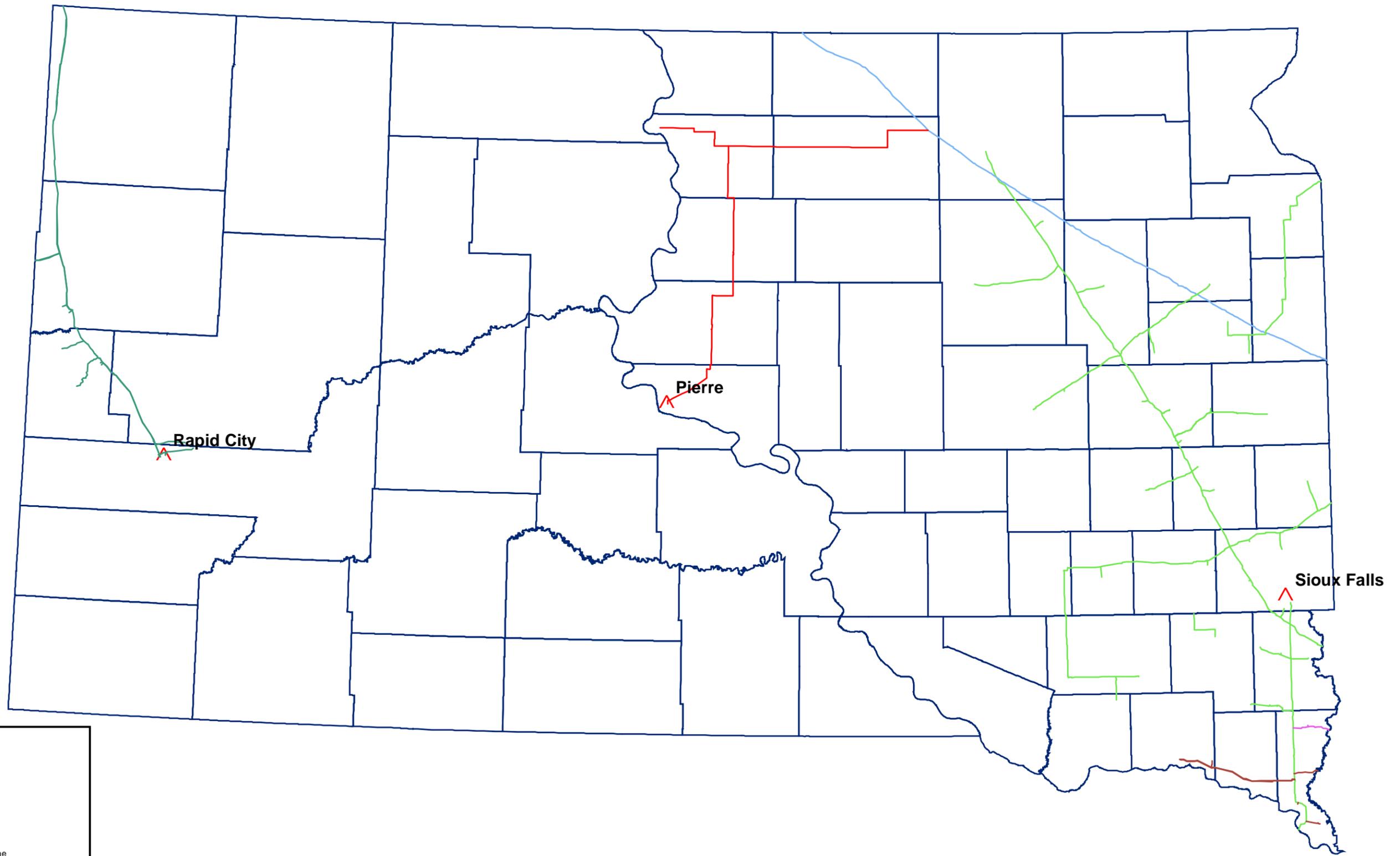


-  Distribution lines 3-inches and larger
-  RWS Coverage Constructed
-  Proposed
-  Under Construction

Figure 3

Existing Natural Gas Transmission Pipelines

Figure 3. Existing Natural Gas Transmission Pipelines



Legend

▲ City

□ County

Natural Gas

Company

— Northern Borders Pipeline

— Northern Natural Gas

— Northern Natural Gas-Neb

— Northern Natural Gas-SD

— South Dakota Intrastate Pipeline Company

— Williston Basin Interstate Pipeline Company

0 20 40 80 120 160 Miles

Figure 4

Existing Crude Oil Transmission Pipelines

Figure 4. Existing Crude Oil Pipelines

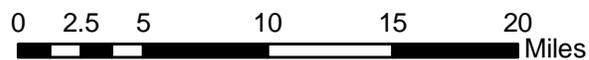
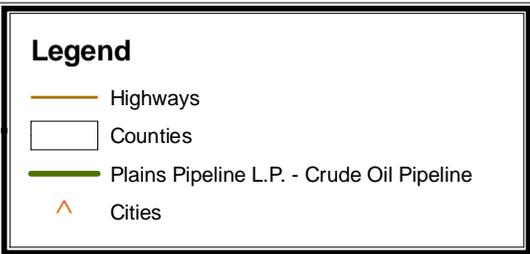
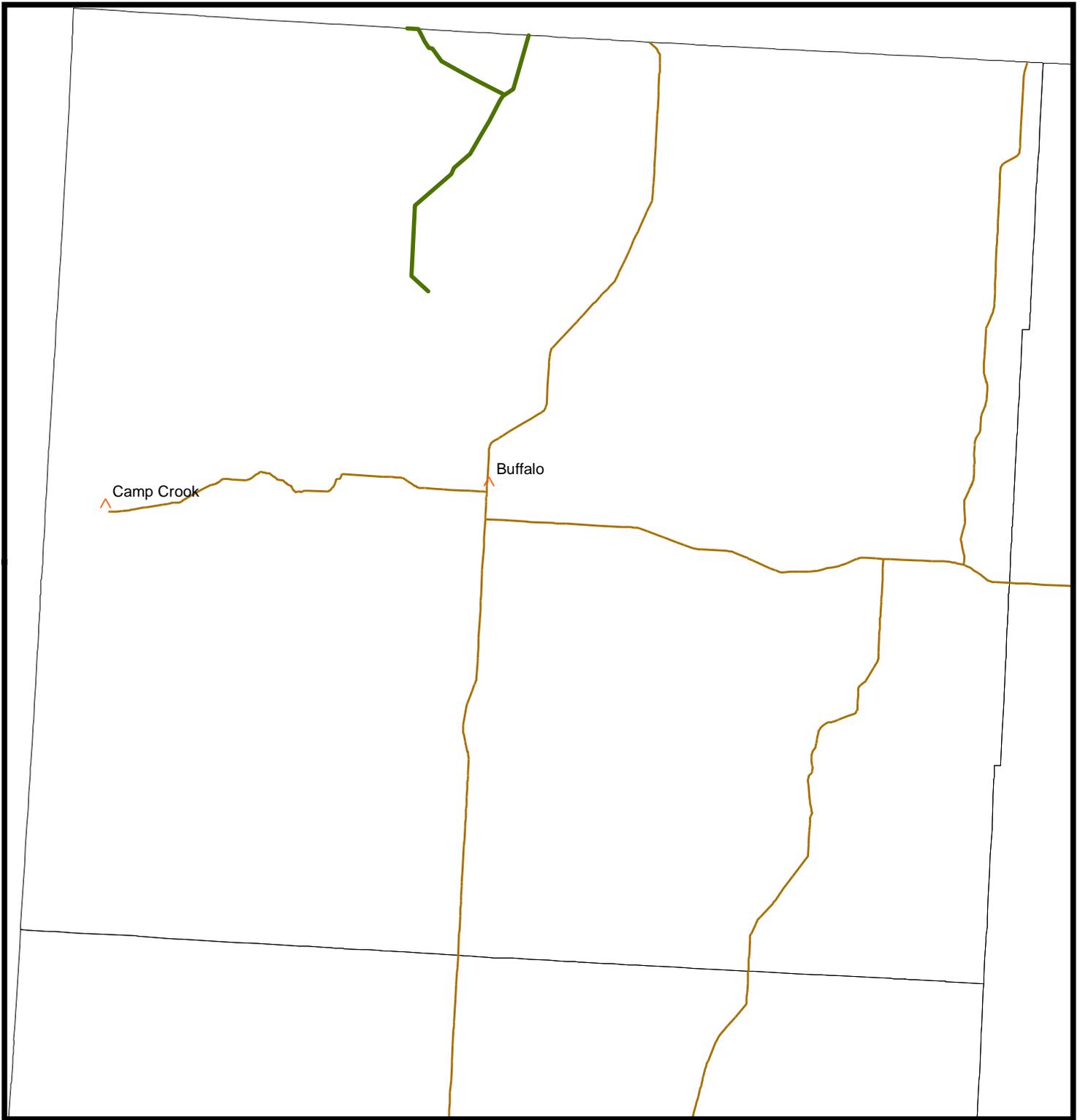
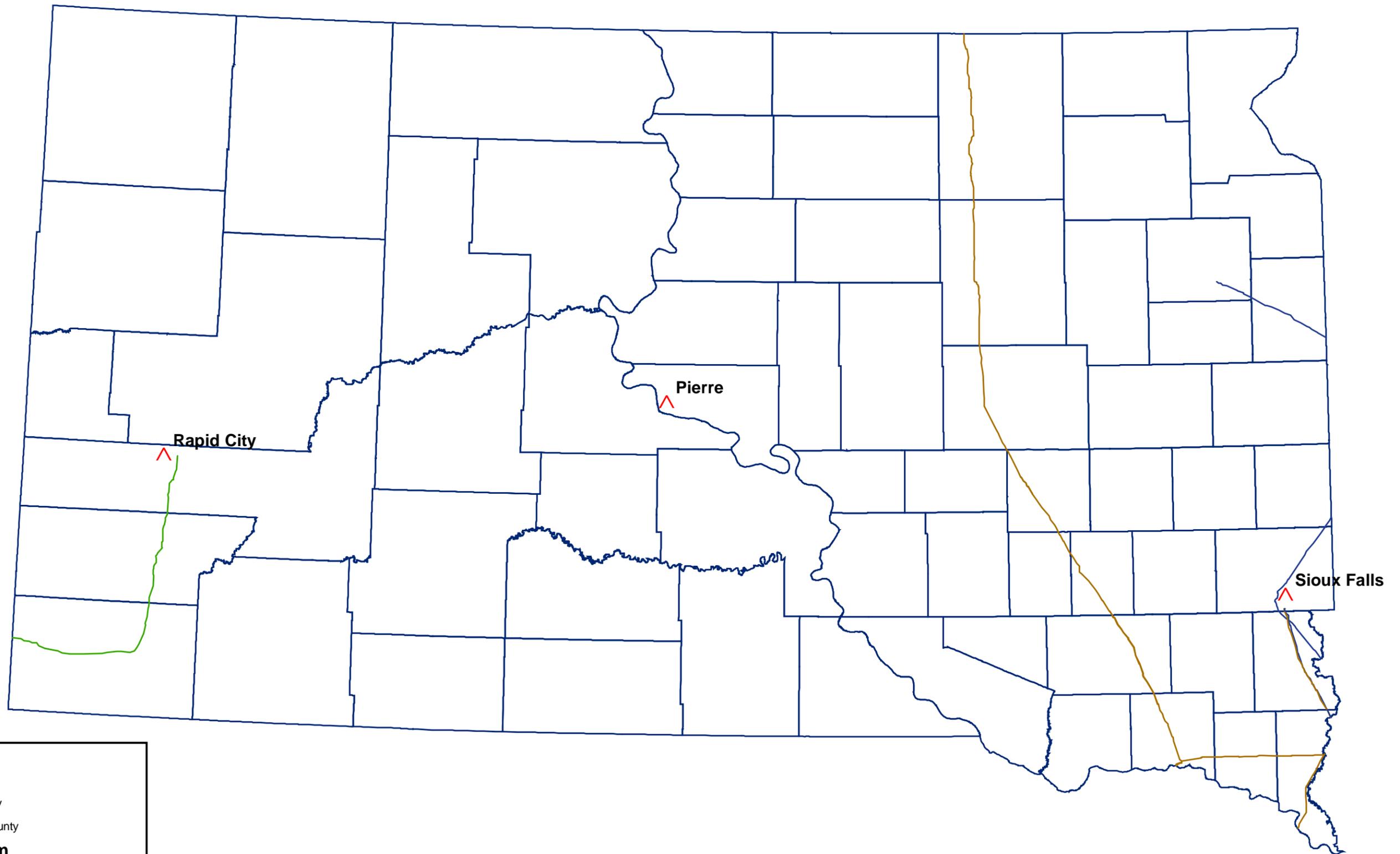


Figure 5

Existing Refined Petroleum Product Transmission Pipelines

Figure 5. Existing Refined Petroleum Products Transmission Pipelines



Legend

- City
- County
- Refined Petroleum Company**
- Magellan Midstream Partners
- Pacific Energy
- NuStar Energy

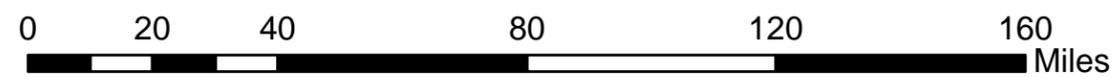
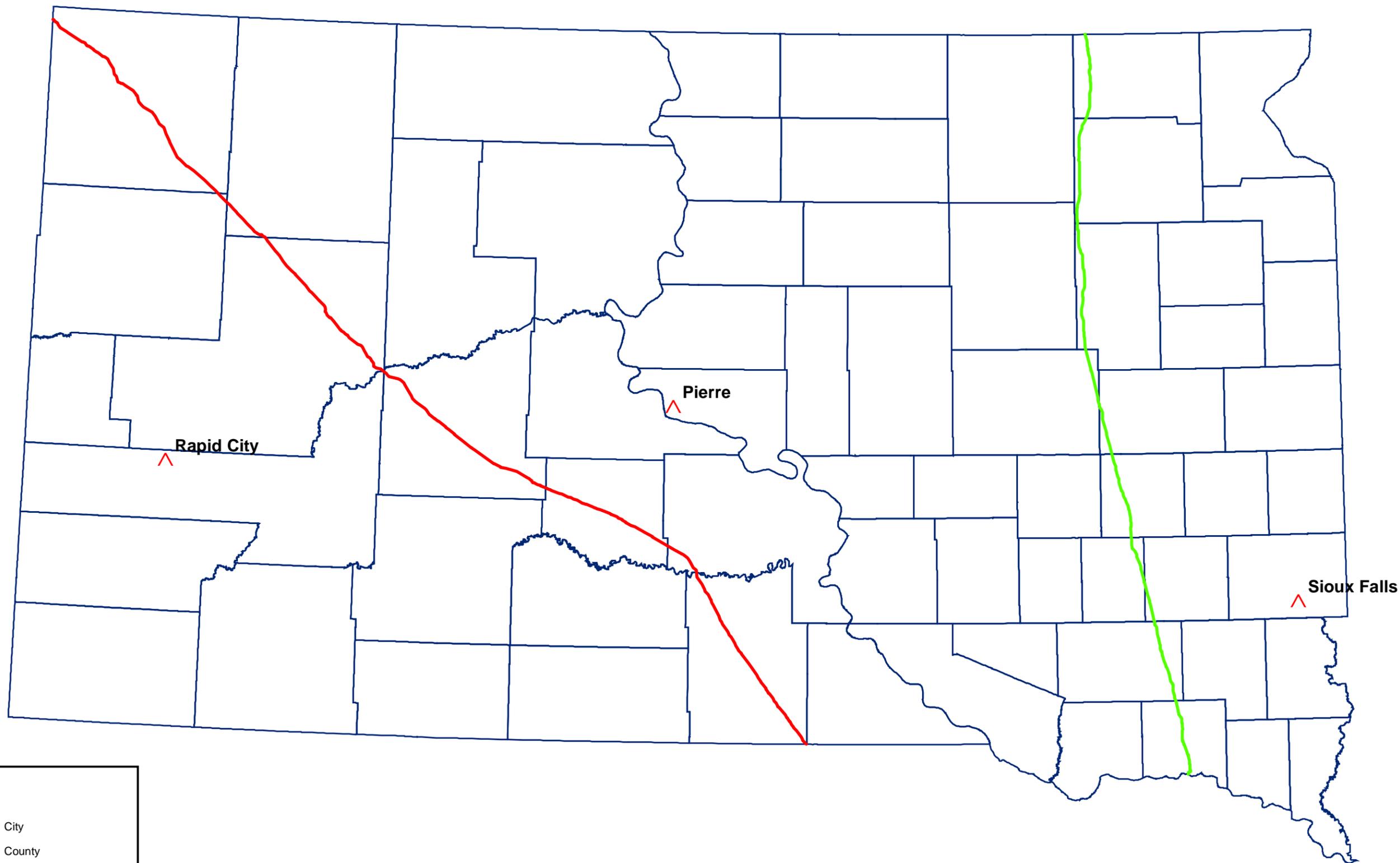


Figure 6

**Proposed TransCanada Keystone Pipeline
and TransCanada Keystone XL Pipeline**

Figure 6.

Proposed TransCanada Keystone Pipeline and TransCanada Keystone XL Pipeline



Legend

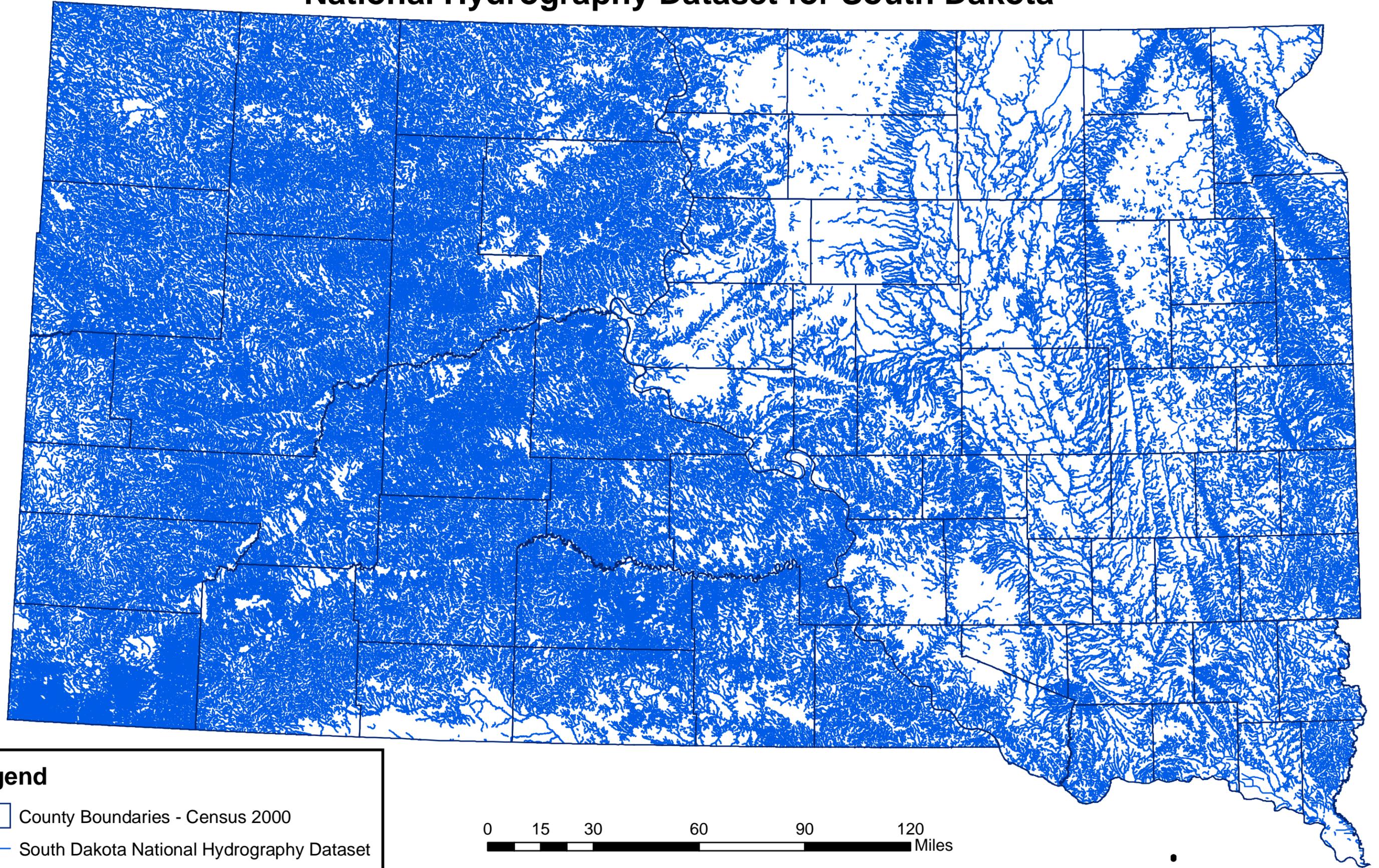
- City (red triangle symbol)
- County (blue outline symbol)
- Keystone Pipeline (green line symbol)
- Keystone XL Pipeline (red line symbol)



Figure 7

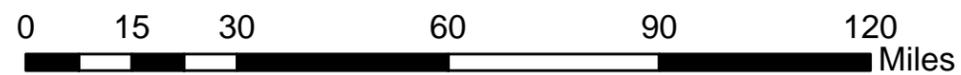
National Hydrography Dataset for South Dakota

Figure 7.
National Hydrography Dataset for South Dakota



Legend

- County Boundaries - Census 2000
- South Dakota National Hydrography Dataset



Appendix A

SDCL 34A-18-10

34A-18-10. South Dakota Underground Pipeline Task Force established. There is established the South Dakota Underground Pipeline Task Force. The task force shall consist of seven members to be appointed by the Governor, not all of the same political party. The members shall be knowledgeable of existing federal statutes and regulations and state statutes and rules which govern underground pipeline facilities for the transmission and distribution of water, natural gas, crude oil, ethanol, and refined petroleum products. The task force shall review the status of existing and proposed pipelines in South Dakota and assess the adequacy of state laws and regulations relating to pipelines in South Dakota. The task force is attached to the Department of Environment and Natural Resources for administrative purposes, and will report its findings to the Governor no later than December 1, 2008.

Appendix B

Meeting Agendas

AGENDA

South Dakota Underground Pipeline Task Force
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

August 14, 2008
10:00 a.m. CDT

- I. Call to order and roll call
- II. Administrative information and meeting protocol – Chairman Hanson
- III. Informational Presentations
 - A. South Dakota One Call
 - B. South Dakota Public Utilities Commission - Pipeline Safety
 - C. Oil Spill Liability Trust Fund
- IV. Discussion of existing and proposed pipelines in South Dakota
 - A. Existing Pipelines
 - 1. Water pipelines
 - 2. Natural gas pipelines
 - 3. Crude oil pipelines
 - 4. Ethanol pipelines
 - 5. Refined petroleum product pipelines
 - B. Proposed Pipelines
 - 1. Water pipelines
 - 2. Natural gas pipelines
 - 3. Crude oil pipelines
 - 4. Ethanol pipelines
 - 5. Refined petroleum product pipelines
- V. Discussion on the adequacy of state laws and regulations relating to pipelines in South Dakota
 - A. Review of Federal laws and regulations relating to pipelines in South Dakota
 - B. Review of state laws and regulations relating to pipelines in South Dakota
 - 1. Water pipelines
 - a. Summary of laws and regulations
 - b. Review of the adequacy of the laws and regulations
 - 2. Hazardous materials pipelines (natural gas, crude oil, ethanol, refined petroleum products)
 - a. Summary of laws and regulations
 - b. Review of the adequacy of the laws and regulations
- VI. Summary of discussion and recommendations made during the meeting
- VII. Direction to task force staff and scheduling of additional task force meetings
- VIII. Adjournment

This agenda is subject to change. Items may be removed, added, or delayed or moved up on the agenda.



South Dakota Underground Pipeline Task Force

523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3296 Fax: (605)773-6035

AGENDA

South Dakota Underground Pipeline Task Force
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

September 22, 2008
9:00 a.m. CDT

- I. Call to order and roll call – Chairman Hanson
- II. Administrative information – Chairman Hanson
- III. Informational Presentations
 - A. Source Water Protection Program / Wellhead Protection – DENR Staff
 - B. Legality of a State Imposing a Fee or Bond on an Interstate Pipeline – DENR Staff
 - C. Examples of Other States Cleanup Funds – DENR Staff
 - D. Historical Budget of the Regulated Substance Response Fund – DENR Staff
 - E. Review of Pipeline Accident Costs – DENR Staff
 - F. Availability and Cost of Liability Insurance for Public and Private Entities - Gary Joyce, Howalt-McDowell Insurance, Inc.
 - G. DENR Spill Response Procedures – DENR Staff
 - H. What Happens When Private Property is Contaminated? – DENR Staff
 - I. Oil Spill Liability Trust Fund – Eligible Areas in South Dakota – DENR Staff
 - J. Petroleum Impacts on Plastic Waterlines - Dr. DeBoer, SDSU
 - K. Attorney General’s Opinion Regarding the Municipal Marking of Underground Utilities – DENR Staff or Attorney General’s Staff
- IV. Task Force Member Discussion
- V. Summary of discussion and recommendations made during the meeting
- VI. Task Force direction to staff and scheduling of additional task force meetings to meet the December 1 deadline.
- VII. Adjournment

This agenda is subject to change. Items may be removed, added, or delayed or moved up on the agenda at the discretion of the Task Force.



South Dakota Underground Pipeline Task Force

Department of Environment and Natural Resources
523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3296 Fax: (605)773-6035

AGENDA

South Dakota Underground Pipeline Task Force
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

October 23, 2008
9:00 a.m. CDT

- I. Call to order and roll call – Chairman Hanson
- II. Administrative information and Approval of Minutes – Chairman Hanson
- III. Informational Presentations as Requested by Task Force members
 - A. Additional Information on the South Dakota Regulated Substance Response Fund – DENR Staff
 - B. South Dakota Mineral Severance Tax – DENR Staff
 - C. Additional Information Pipeline Incident Cost Data – DENR Staff
 - D. Review of South Dakota Petroleum Spills by Source – DENR Staff
- IV. Task Force member discussion on final task force meeting and report
- V. Adjournment

This agenda is subject to change. Items may be removed, added, or delayed or moved up on the agenda at the discretion of the Task Force.



South Dakota Underground Pipeline Task Force

Department of Environment and Natural Resources
523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3296 Fax: (605)773-6035

AGENDA

South Dakota Underground Pipeline Task Force
Room 464, Capitol Building
500 East Capitol Avenue
Pierre, South Dakota

November 13, 2008
9:00 a.m. CST

- I. Call to order and roll call – Chairman Hanson
- II. Administrative information and approval of minutes – Chairman Hanson
- III. Review, discussion and approval of the final task force findings report
- IV. Adjournment

This agenda is subject to change. Items may be removed, added, or delayed or moved up on the agenda at the discretion of the Task Force.

Appendix C

Meeting Minutes

Minutes of the
First Meeting of the Underground Pipeline Task Force
Matthew Training Center
523 East Capitol
Pierre, South Dakota

August 14, 2008
10:00 a.m. CST

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, Mark Anderson, and Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

INFORMATIONAL PRESENTATIONS

South Dakota One Call System

Larry Englerth, Executive Director of South Dakota One Call presented information on the South Dakota One Call System. This was a general presentation providing an overview of the One Call System, the purpose of the system and information and examples on how the system works.

South Dakota Public Utilities Commission – Pipeline Safety

John Smith, Legal Counsel for the Public Utilities Commission (PUC) presented information on the PUC's pipeline safety program. The presentation provided an overview of the program's authority, gas statistics for South Dakota, information on federal regulatory authority and a definition for interstate pipelines.

Oil Spill Liability Trust Fund

Brian Walsh, Hydrology Specialist with DENR, provided a general overview of the federal Oil Pollution Liability Trust Fund, which has an estimated 2008 end of year balance of approximately 1 billion dollars. In addition, Greg Buie with the U.S. Coast Guard, provided information to the task force on the status of the federal response fund and how it operates.

South Dakota Regulated Substance Response Fund

Kim McIntosh, Environmental Senior Scientist with DENR, provided an overview of the South Dakota Regulated Substance Response Fund. The presentation included information on the history of the fund, the use of the fund, and the current fund status.

Pipeline Hazardous Materials Safety Administration (PHMSA)

Harold Winnie, an Outreach Community Assistance & Technical Services Project Manager with the federal Pipeline Hazardous Materials Safety Administration, Central Region, provided an overview of PHMSA and the Office of Pipeline Safety. The presentation included discussion on the jurisdiction of the Central Region and information on best practices for pipeline safety.

TASK FORCE DISCUSSION

Brian Walsh provided an overview of the pre-meeting packet of information briefly outlining the topics addressed in the draft findings report.

The task force discussed issues including the federal code restrictions on state authority to implement safety regulations on interstate pipelines plus the cost and availability of pollution liability insurance. The task force then proposed several possible recommendations for further consideration and directed DENR staff to prepare additional information for the next task force meeting.

Possible Recommendations for Further Consideration

The task force is considering recommending South Dakota One Call create a high profile designation in their database. Facilities such as hazardous material pipelines would be designated as high profile facilities. When a call ticket was processed near a high profile facility, the facility owner or operator would have to sign-off on the ticket before it is cleared. In addition, the high profile facility owner or operator would be required to have staff present at the excavation site until the excavation is complete.

The task force is considering recommending South Dakota One Call require mandatory damage reporting. If implemented, excavators must report any damage done during an excavation to South Dakota One Call.

The task force is considering a recommendation to expand or make mandatory that all municipalities and counties adopt Wellhead Protection ordinances for regulated public drinking water systems.

The task force is considering recommending the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines.

Direction to DENR Staff

Prepare all pre-meeting documents and meeting handouts for placement on DENR's website. In addition, create links on the website leading to Legislative Research Council's webpage and the federal pipeline laws and rules.

Provide the task force with a historical budget of the South Dakota Regulated Substance Response Fund.

Provide the task force with information on the legality of creating a bond or placing a fee on an interstate pipeline running through South Dakota.

Investigate and provide the task force with information on the availability and cost of pollution liability insurance for public and private entities. Include information on current coverages for water and waste water systems in South Dakota.

Investigate and provide the task force with information on other states' cleanup funds or bonds/fees on oil transporters. Compare methods for funding cleanups.

Make available to the task force the voluntary state Wellhead Protection Law.

Investigate and provide information to the task force on whether the South Dakota Regulated Substance Response Fund is sufficiently funded to respond to a pipeline release. Provide to the task force information on how DENR responds and regulates a typical spill.

Create and provide to the task force a map showing the streams that would be eligible for funding from the federal Oil Pollution Liability Trust Fund.

Provide information to the task force on what happens when private property is contaminated and what options the property owner would have to recover damages.

Arrange a presentation on the impacts of petroleum on plastic waterlines.

Schedule the next task force meetings. Consider the following dates for September, the 22, 29, and 30. Tentatively schedule the October meeting for October 23.

MEETING ADJOURNED – 3:30 pm

Minutes of the
Second Meeting of the Underground Pipeline Task Force
Matthew Training Center
523 East Capitol
Pierre, South Dakota

September 22, 2008
9:00 a.m. CDT

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, Mark Anderson, and Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

INFORMATIONAL PRESENTATIONS

Source Water Protection and Wellhead Protection Program

Tom Brandner, Natural Resources Engineering Director with the DENR, provided the task force with an overview of the Source Water and Wellhead Protection Program. Included in the presentation was a description of the legal authority for the Wellhead Protection Program and a description of how local governments can administer the program.

Legality of a State Imposing a Fee or Bond on an Interstate Pipeline

Joe Nadenicek, Staff Attorney with the DENR, discussed the Dormant Commerce Clause and Federal Preemption as they relate to the imposition of a per barrel cleanup fee on interstate pipeline systems.

Examples of Other States Cleanup Funds

Brian Walsh, Hydrology Specialist with the DENR, presented the task force with information on other states' cleanup funds. The other states examined included: Alaska, California, Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wyoming.

Historical Budget of the Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with the DENR, presented the task force with a table detailing the historical budget of South Dakota's Regulated Substance Response Fund.

Review of Pipeline Accident Costs

Brian Walsh, Hydrology Specialist with the DENR, provided information to the task force on the cost of pipeline incidents in South Dakota, surrounding states and the United States as a whole. The source of the data is the Pipeline Hazardous Material Safety Administration's significant incident database.

Availability and Cost of Liability Insurance for Public and Private Entities

Gary Joyce, Account Executive with Howalt-McDowell Insurance, Inc., provided the task force with an overview of the availability of pollution liability insurance and explained why most business in South Dakota did not have coverage. In addition, he informed the task force that most general liability policies exclude pollution coverage.

DENR Spill Response procedures

Kim McIntosh, Environmental Senior Scientist with the DENR, presented information to the task force on the DENR's typical spill response procedures.

What Happens When Private Property is Contaminated?

Brian Walsh, Hydrology Specialist with the DENR, discussed the options an impacted private property owner would have in the event of damages to him or his property due to a pipeline release. He explained to the task force South Dakota's Regulated Substance Response Fund can only pay for cleanup costs. In some instances, the federal Oil Spill Liability Trust Fund may reimburse for downstream damages from an oil release. However, in many cases, the impacted individual's only recourse to recover damages may be to sue the responsible party.

Oil Spill Liability Trust Fund-Eligible Areas in South Dakota

Brian Walsh, Hydrology Specialist with the DENR, presented a map to the task force showing the national hydrography dataset for South Dakota. The U.S. Coast Guard uses this data set to help determine if an oil spill is eligible for reimbursement under the federal Oil Spill Liability Trust Fund. He further indicated there is no single map available showing whether an oil spill is eligible for reimbursement under the federal fund. The U.S. Coast Guard determines eligibility on a case-by-case basis.

Petroleum Impacts on Plastic Waterlines

Dr. Delvin DeBoer, Professor of Civil and Environmental Engineering and the Director of Water and Environmental Engineering Research Center with South Dakota State University, presented the task force with an overview of the affects of petroleum on plastic waterlines and gaskets.

Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities

Joe Nadenicek, Staff Attorney with the DENR, provided the task force with an explanation of the recent Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities in South Dakota.

TASK FORCE DISCUSSION

Possible Recommendations for Further Consideration

The task force did not make any recommendations at this meeting. Instead, they decided to continue their review of the available information and make their final recommendations at the October 23, 2008 task force meeting.

Direction to DENR Staff

The task force directed DENR staff to revise the minutes from the August 14, 2008 meeting and circulate to the task force members for review and approval at the October 23, 2008 meeting.

The task force directed DENR staff to provide additional information on the fines paid into the South Dakota Regulated Substance Response Fund and to explain the \$567,072 transfer to the fund made in FY 2000.

The task force directed DENR staff to provide information on the tax oil producers pay in South Dakota.

The task force directed DENR staff to provide a breakdown of pipeline incident costs in South Dakota and Minnesota by material released.

The task force directed DENR staff to provide information on the number of petroleum releases in South Dakota by source. Specifically, pipeline releases vs. transportation releases.

The task force directed DENR staff to schedule two additional task force meetings for October 23, 2008 at 9:00 AM and November 13, 2008 at 9:00 AM.

MEETING ADJOURNED – 12:30 P.M.

Minutes of the
Third Meeting of the Underground Pipeline Task Force
Matthew Training Center
523 East Capitol
Pierre, South Dakota

October 23, 2008
9:00 a.m. CDT

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, Mark Anderson, and Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES: Gordon Woods motioned for an approval of the minutes, second by Pete Bullene. Motion carried.

INFORMATIONAL PRESENTATIONS

Additional Information on the South Dakota Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with additional information on the Regulated Substance Response Fund. Specifically, Mr. Walsh answered two questions asked by Task Force members during the September 22, 2008 meeting. First, Mr. Walsh explained the \$567,072 transfer into the fund in fiscal year 2000 was money returned to the fund because of the removal of a fund CAP that had been in place for the previous five years. Second, Mr. Walsh provided the Task Force information on the amount and type of fines paid into the Regulated Substance Response Fund.

South Dakota Mineral Severance Tax

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with general information about the South Dakota Mineral Severance Tax. He discussed how revenue is allocated, the amount of revenue collected FY2000 to FY2008 and what drives the amount of the tax collected.

Additional Information on Pipeline Incident Cost Data

Brian Walsh, Hydrology Specialist with DENR, presented additional information to the Task Force on pipeline incident cost data. Specifically, at the request of the Task Force, Mr. Walsh presented a breakdown of pipeline incidents in South Dakota and Minnesota by material released.

Review of South Dakota Petroleum Spills by Source

Brian Walsh, Hydrology Specialist with DENR, presented the Task Force with the number of South Dakota petroleum spills by source. Specifically, at the request of the Task Force, Mr.

Walsh compared the number of transportation petroleum spills to the number of pipeline petroleum spills.

Review of Regulated Response Fund and DENR Spill Response Procedures

Per Chairman Hanson's request, Kim McIntosh, DENR, reviewed DENR's spill response procedures and the use of the Regulated Substance Response Fund. Specifically, Ms. McIntosh informed the task force the state's Regulated Substance Response Fund and the federal Oil Spill Liability Trust Fund could be used simultaneously.

TASK FORCE DISCUSSION

Task Force member discussion focused on the development and approval of final recommendations to be included in the Task Force report to the Governor.

Recommendations Considered for Inclusion in the Final Task Force

The first recommendation considered by the Task Force concerned South Dakota One Call creating a high profile designation for facilities such as hazardous materials pipelines. Once designated as high profile, additional steps would need to be taken before One Call would clear an excavation ticket near one of the high profile facilities. Task Force members were in agreement with this recommendation however, they did not feel the high profile designation should be limited to hazardous material pipelines. In addition, the Task Force did not want to dictate in their recommendation what additional steps Once Call would require excavators and facility operators to undertake. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The South Dakota Underground Pipeline Task Force supports South Dakota One Call in the development of a high profile database identifying high profile underground facilities.

The second recommendation considered by the Task Force concerned South Dakota One Call mandatory damage reporting. Discussion on this topic included what enforcement would be taken if excavators did not report damage or failed to contact One Call prior to excavation. Task Force members agreed that issue was for One Call to manage. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends South Dakota One Call require mandatory damage reporting.

The third recommendation considered by the Task Force concerned making mandatory for counties or municipalities adoption of wellhead protection ordinances for regulated public drinking water systems. Although Task Force members agreed in general with this recommendation, there was discussion on whether it was appropriate for the Task Force to recommend implementation be mandatory. Task Force members thought this might be viewed as requiring an unfunded mandate or may place unachievable requirements on some counties. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.

The fourth recommendation considered by the Task Force concerned the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines from the federal Department of Transportation. Discussion on this issue centered on whether the Task Force should recommend the Commission acquire this program not knowing the necessary staffing needs and budget constraints of the Commission. Based on the Task Force's discussion members made and approved (via a 4-3 vote) the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the federal Department of Transportation.

The fifth recommendation considered by the Task Force concerned having the DENR develop guidance on how to encase plastic waterlines that cross under other pipelines. Discussion on this issue include whether this task was within DENR's scope as a regulatory agency. Also discussed was what if the guidance became a standard and existing plastic waterlines crossing hazardous material pipelines required encasement or retrofitting to meet the standard could this become a burden on the water systems in South Dakota. Based on the Task Force's discussion members did not support this recommendation for inclusion in the final report.

The sixth recommendation considered by the Task Force concerned having the DENR become involved with Dr. Delvin DeBoer, Director of the Water & Environmental Engineering Research Center at SDSU, in his research on the impact of petroleum products on plastic waterlines. Discussion on this issue included what was meant by the word involved. Task Force members felt it was unlikely DENR could fund the study. In addition, Task Force members asked DENR staff if Dr. DeBoer had contacted DENR and requested their involvement. DENR staff said he had not and Task Force members questioned if they should try to force cooperation that did not seem to be developing on its own. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends DENR explore its ability to assist Dr. DeBoer with South Dakota State University in his research on the impact of petroleum products on plastic waterlines.

The seventh recommendation considered by the Task Force concerned having the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution liability insurance in South Dakota especially for water and waste water systems. There was only limited discussion on this issue and the Task Force members were in support of the recommendation. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Department of Revenue, Division of Insurance review the availability of pollution liability insurance for public and private entities in South Dakota especially for water and waste water systems.

The eighth recommendation considered by the Task Force concerned the preservation of the South Dakota Regulated Substance Response Fund for uses of the fund as outlined in SDCL 34A-12. During the first three task force meetings, there was considerable discussion about who would pay for a cleanup if the responsible party was unable or refused to do so. Task Force members were presented information on the Regulated Substance Response Fund, the Oil Spill Liability Trust Fund and the legality of imposing a fee on interstate pipelines. Based on this information the Task Force did not recommend any fees or fund increases do to the legality of doing so and the coverage already provided by the Regulated Substance Response Fund and the Oil Liability Trust Fund. However, the Task Force thought it was important to preserve the Regulated Substance Response Fund for its intended use. Task Force members agreed to include a recommendation on this issue in the final report and asked DENR staff to develop the specifics of the recommendation.

Direction to DENR Staff

The task force directed DENR staff schedule the final task for meeting and finalize the DRAFT Task Force findings report for review and approval by the Task Force at their final meeting.

MEETING ADJOURNED – 12:23 p.m.

South Dakota Underground Pipeline Task Force

October 23, 2008

Sign-in Sheet

Name	Affiliation	Email Address (include if you would like to be added to the task force LIST SERVE)
Dennis N. Davis	SD Rural Water	dndavis@sdrws.com
Daniel Holli	Plains Pipeline	djhollie@paalp.com
Gordon Woods	SDIP	Gordon@SDIPCO.COM
Kathy Glines	Harding County	kathy.glines@state.sd.us
Robert Johnson	Harding Co	RWJohnson@SPPlains
Dean Wagner	Harding Co	
Rob Latimer	TRANSCANADA	Rob-Latimer@TransCanada.com
Troy Steyer	NuStar Energy	Troy.Steyer@nustarenergy.com
Bill Markley	DENR	
Senator Frank Klucick	#19 Senator	fklucick@hidmail.com
Cecilia O Stern	#19 Candidate	
Bob Mercer	Newspaper	

Minutes of the
Fourth Meeting of the Underground Pipeline Task Force
Capitol Building, Room 464
500 East Capitol
Pierre, South Dakota

November 13, 2008
9:00 a.m. CST

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, and Mark Anderson.

BOARD MEMBERS ABSENT: Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES: Gordon Woods motioned for an approval of the minutes with discussed changes, second by Troy Styer. Motion carried.

TASK FORCE FINAL REVIEW DISCUSSION

After reviewing each recommendation, the Task Force made no changes to the Draft Final Report, except for the correction of a few grammatical errors.

Mark Anderson made a motion to adjourn, second by Gordon Woods, motion carried.

MEETING ADJOURNED – 9:25 a.m.

Chairman Hanson used chairman's privileges to re-open the meeting at 9:35 a.m. No one challenged his privilege.

Members Present – Gary Hanson, Mark Anderson, Gordon Woods, Dan Holli, and Dennis Davis.

Members Absent – Pete Bullene and Troy Styer.

Gordon Woods made a motion to approve the report with changes, second by Dan Holli. No additional discussion, motion carried. Chairman Hanson asked DENR staff to contact absent task force members to confirm their approval of the final report. Gordon Woods made a motion to adjourn, second by Mark Anderson, no discussion, motion carried.

MEETING ADJOURNED – 9:40 a.m.

Note: Both absent task force members approved the report.

Appendix D

2008 State Water Plan

2008 State Water Plan

Overview

The 1972 State Legislature established the State Water Plan to ensure the optimum overall benefits of the state's water resources for the general health, welfare, safety, and economic well-being of the people of South Dakota through the conservation, development, management, and use of those resources. The Legislature placed the responsibility for this plan with the Board of Water and Natural Resources.

The State Water Plan, as established in SDCL 46A-1-2, consists of two components – the State Water Facilities Plan and the State Water Resources Management System. To be considered for the State Water Facilities Plan, projects must meet criteria established by the board. These eligibility criteria are used as guidelines for the board, the department, and the water development districts when considering a project for inclusion on the State Water Facilities Plan. Addition to or deletion from the State Water Resources Management System can only be accomplished by the State Legislature.

State Water Facilities Plan

The State Water Facilities Plan (Facilities Plan) is a list of potential water projects. The Facilities Plan includes projects such as rural, municipal, and industrial water supply, wastewater collection and treatment facilities, storm sewers, groundwater protection, and watershed restoration. The board is responsible for approving the placement of projects on the Facilities Plan. Projects on the Facilities Plan are eligible to seek state and federal financial assistance. The board can provide direct assistance to projects on the plan and placement on the plan may influence federal and other state agency funding decisions.

In November 2007, the board received 43 applications requesting placement on the State Water Plan. The board placed all 43 of the projects on the Facilities Plan, bringing the total number of projects on the 2008 State Water Facilities Plan to 110 (Table 10). The 43 projects placed on the plan in November will remain on the Facilities Plan through 2009. Projects placed on the plan in November 2006, or that were amended onto the plan during calendar year 2007 will remain on the Facilities Plan through 2008. The bolded projects in Table 10 reflect projects that have received either partial or full funding. The bolded amounts on these projects reflect the amount that has been awarded to date. The projects remain on the Facilities Plan and remain eligible to request additional funding.

Additional projects may be placed on the Facilities Plan during the year. Projects placed on the Facilities Plan through the amendment process remain on the plan for the balance of the calendar year and the following year. Once a project is removed from the Facilities Plan, the project sponsor must submit a new state water plan application to be eligible to seek assistance.

Table 10

2008 STATE WATER FACILITIES PLAN

<u>Sponsor</u>	<u>Project Description</u>	<u>On Plan</u>	<u>Proposed Funding Source*</u>			<u>Total Project</u>
		<u>Through</u>	<u>CWFCP</u>	<u>CWSRF</u>	<u>DWSRF</u>	
Aberdeen	Brown County Water Quality Improvements	2008	\$ 18,000	\$ 1,156,259		\$ 1,274,259
Aberdeen	Wastewater Treatment	2008		19,218,859		19,218,859
Armour	Water System Improvements	2008	200,000		\$ 320,000	1,370,000
Aurora	Wastewater Treatment	2008	300,000	600,000		1,200,000
Aurora-Brule RWS	Water Intake Improvements	2009	250,000			4,249,794
BDM Rural Water	Hecla Area/Internal Expansion	2008	325,000			7,490,000
Beresford	East Street Watermain Improvement	2009	125,000			209,000
Big Sioux Comm. Water	Water Supply and Treatment	2009	300,000			2,969,280
Black Hawk WUD	Water Storage and Distribution	2009			1,140,052	1,478,052
Bon Homme-Yankton Water	Douglas Co. Expansion	2009	300,000			557,478
Box Elder	Wastewater Treatment	2008	400,000			3,130,200
Box Elder	Water Supply and Storage Improvements	2009	553,000			7,132,000
Brandt Lake San. District	Wastewater Collection and Treatment	2008	500,000			4,004,000
Britton	Residential Development	2008	200,000			715,000
Canton	Water/Wastewater Improvements	2008		432,770		860,000
Cavour	Waterline Replacement and Meters	2008	80,000		53,011	133,011
Chamberlain	Dredging in American Creek	2008	50,000			400,000
Chamberlain	Water Treatment Improvements	2009	350,000		403,000	953,000
Clark RWS	Water Treatment Plant	2009	666,000		999,000	6,660,000
Copper Oaks I Water Assoc.	Well Facility Improvements	2009	96,550		96,550	193,900
Corsica	Water and Wastewater Improvements	2008	300,000			2,684,625
Crooks	Wastewater Treatment	2008	300,000	255,000		615,000
Dakota Central RC&D	Upper Snake Creek Watershed	2008	75,000			1,473,200
Dell Rapids	Wastewater Lift Station	2008	400,000	716,000		1,216,000
Dell Rapids	Storm Drainage Improvements	2008	300,000	1,062,000		1,551,000
DeSmet	Third Street Water Main Replacement	2008	100,000		100,000	513,000
Edgemont	Water System Improvements	2009	500,000			2,561,000
Elk Point	Washington Street Water/Wastewater	2008	225,000			447,000
Elk Point	Clay Street Water/Wastewater	2009	250,000	128,300	289,700	873,000
Elk Point	Main Street Water/Wastewater	2009	600,000	145,223	625,000	1,471,000
Emery	Wastewater Treatment	2009	50,000			849,626
Faith	Additional Water Supply	2008	225,000			597,000
Fall River WUD	Internal Water System Expansion	2008	300,000		400,000	1,692,830
Fall River WUD	Supplemental Water Supply	2008	200,000			1,716,889
Frankfort	Wastewater Collection Improvements	2009	61,050			183,150
Freeman	Storm Water Improvements	2008		576,000		1,261,000
Ft. Pierre	Storm Water Drainage	2008		374,620		1,124,620
Garretson	Split Rock Creek Lift Station	2008		568,000		568,000
Gary	Wastewater Treatment Improvements	2008	200,000	225,000		425,000
Geddes	Wastewater Improvements	2008	100,000			950,900
Green Valley San. Dist.	Water System Construction	2009	765,300			4,216,002
Green Valley San. Dist.	Wastewater Collection System Construction	2009	900,000	2,092,000		6,009,582
Gregory	Wastewater Improvements	2008	100,000	257,000		557,000
Groton	Wastewater Improvements	2008	50,000			326,776
Hanson Rural Water	Water Supply	2008	300,000			3,435,800
Harrold	Storm Drainage	2008	238,212			388,212
Hartford	Sanitary/Storm Sewer Improvements	2008		583,000		583,000
Hartford	Water and Wastewater Improvements	2008	350,000			1,092,319
Hermosa	Wastewater Collection and Treatment	2009	338,645			2,032,095
Highmore	Wastewater and Storm Water	2009	500,000			2,035,000
Humboldt	Wastewater Treatment and Collection	2008		127,000		127,000
Hurley	Water System Improvements	2009	100,000		71,064	171,064
Irene	Valley Acres Addition	2008	50,000			236,110
Kingbrook RWS	2008 System Improvements	2009	500,000		4,200,000	6,850,000
Kingbrook RWS	Winfred Water System	2009	50,000		70,000	120,000
Kingsbury Cons. District	Kingsbury County Lakes	2008	20,000			51,000
Lead	Julius Street Sanitary/Storm Sewer	2008	200,000	240,000		2,308,900
Lennox	Wastewater System Improvements	2009	600,000	956,400		1,610,400
Lesterville	Water Tower Repair	2008	20,000			37,682
Longview San. Dist.	Water Rights Acquisition	2008	15,000			20,000
Longview San. Dist.	Water Distribution Construction	2008	500,000		640,000	3,695,000
Madison	Wastewater Treatment	2008	500,000	5,343,256		6,559,256
Martin	North Stabilization Pond Improvements	2008		100,000		285,000

<u>Sponsor</u>	<u>Project Description</u>	<u>On Plan Through</u>	<u>Proposed Funding Source*</u>			<u>Total Project</u>
			<u>CWFCP</u>	<u>CWSRF</u>	<u>DWSRF</u>	
Mellette	Water and Wastewater Improvements	2009	75,000		149,020	224,020
Menno	Highway 18 Water/Wastewater	2008	15,000	70,000		135,000
Miller	Water Distribution System	2008	400,000			1,776,990
Mission Hill	Water System Improvements	2009	100,000		332,300	682,300
Mitchell	Lift Station Replacement	2009	500,000	1,000,000		1,650,000
Mobridge	Water Main Improvements	2008			303,500	303,500
Mobridge	Storm Sewer Improvements	2009	454,343	302,896		757,239
Morristown	Water System Rehabilitation	2009				419,880
New Effington	Wastewater Treatment and Collection	2008	250,000			917,000
Owanka RWS	Construct a New Rural Water System	2008	270,000			1,090,575
Parkston	Wastewater Improvements	2008	200,000	650,000		1,174,752
Pine Cliff Park	Water Distribution	2008	148,200			418,000
Presho	Wastewater Improvements	2008	100,000	309,440		331,780
Provo Township	Water System Rehabilitation	2008	200,000			331,780
Pukwana	Water Improvements	2008				771,800
Randall Comm. Water District	Water System Improvements	2009	1,000,000			29,930,000
Randall RC&D	Lewis & Clark Watershed	2008	168,750			1,347,320
Redfield	Southwest Sanitary Sewer	2008		342,755		392,755
Redfield	Water and Wastewater Improvements	2008	50,000		342,755	1,214,590
Scotland	Highway 25 Water/Wastewater	2008	50,000	62,771		332,421
Sioux Falls	Regional Landfill Closure	2008		500,000		2,800,000
Sioux Falls	Wastewater Improvements	2009		5,657,000		5,657,000
Sioux Falls	Eastside Sanitary Sewer	2009		12,100,000		12,100,000
Sioux Falls	Storm Sewer Detention System	2009		2,621,000		2,621,000
Sioux Falls	Water Treatment Improvements	2009			17,848,000	17,848,000
Sioux Falls	Water Supply Improvements	2009			2,200,000	2,200,000
Sioux Falls	Water Distribution Improvements	2009			2,705,600	2,705,600
Spearfish	Wastewater Treatment	2008	100,000	5,163,000		6,669,000
Spearfish Meadows	Water Distribution System	2009	80,000		170,000	250,000
Summerset	Wastewater Treatment Plant Purchase	2009	500,000	2,623,100		3,123,100
Tripp	Storm Sewer	2009	100,000			803,260
Tripp Co. WUD	Water System Expansion	2009	350,000			4,601,000
Tyndall	Wastewater Collection	2008	1,000,000			8,144,829
Tyndall	Storm Sewer Replacement	2008	50,000	500,000		818,800
Vermillion	Wastewater Treatment Phase II	2009	250,000	3,948,000		4,698,000
Viborg	Water System Improvements	2009			249,775	415,500
Viewfield Water Assoc.	Rural Water System Construction	2008	350,000			1,800,300
Wagner	Water and Wastewater Improvements	2008		150,000	175,000	594,750
Wall Lake San. District	Wastewater Facilities Improvements	2009	220,000			396,600
Watertown	Water System Improvements	2009			23,760,000	23,760,000
Weston Heights	Wastewater Treatment	2008		638,300		938,300
Whitewood	Water Supply, Storage, and Treatment	2008				1,941,000
Wolsey	Water Distribution	2008	125,000		251,600	685,600
Woonsocket	Water System Improvements	2008	100,000		390,000	497,343
Woonsocket	Wastewater Treatment Improvements	2009	80,000			1,086,530
Worthing	Water and Wastewater Improvements	2008	450,000	580,000		1,328,274
Yankton	Water System Improvements	2008			1,100,000	1,469,000
TOTALS			\$22,733,050	\$72,374,949	\$59,384,927	\$283,873,359

* CWFCP - Consolidated Water Facilities Construction Program
CWSRF - Clean Water State Revolving Fund Loan Program
DWSRF - Drinking Water State Revolving Fund Loan Program

State Water Resources Management System

The State Water Resources Management System (SWRMS) identifies large, costly water projects that require specific state or federal authorization and financing. These projects are placed on the list when recommended by the board and approved by the Governor and the Legislature. The SWRMS list (Table 11) serves as the preferred priority list to optimize water resources management in the state. Once a project is placed on the SWRMS list, it remains on until removed by legislative action.

At its November 2007 meeting, the board recommended that the James River Improvement Program be deleted from the SWRMS list and that all other projects currently on the SWRMS list be retained. The current SWRMS list is shown below:

Table 11

STATE WATER RESOURCES MANAGEMENT SYSTEM PROJECTS

<u>Project</u>	<u>Description</u>
Big Sioux Flood Control Study	Watertown Flood Control
Black Hills Hydrology & Water Management Study	Black Hills Water Resources
CENDAK Irrigation Project	Irrigation Project - Central SD
Gregory County Pumped Storage Site	Multi-Purpose Water Utilization
James River Improvement Program	Watershed Improvements
Lake Andes-Wagner/Marty II Irrigation Unit	Irrigation - Charles Mix County
Lewis & Clark Rural Water System	Bulk Water System - Southeastern SD
Mni Wiconi Rural Water System	Rural Water System - Western SD
Perkins County Rural Water System	Rural Water System - Northwest SD
Sioux Falls Flood Control Project	Increased Flood Protection
Slip-Up Creek	Proposed Reservoir near Sioux Falls
Southern Black Hills Water System	Rural Water System - Southern Hills
Vermillion Basin Flood Control Project	Flood Control on Vermillion River

SWRMS Project Status

A brief summary of each project and its status is presented on the following pages. The year in the title indicates when the project was placed on the State Water Resources Management System.

Appendix E

South Dakota Public Utilities Commission Permit Conditions for the TransCanada Keystone Pipeline

**HP07-001 APPLICATION BY TRANSCANADA KEYSTONE PIPELINE, LP
FOR A PERMIT UNDER THE SOUTH DAKOTA ENERGY
CONVERSION AND TRANSMISSION FACILITY ACT TO
CONSTRUCT THE KEYSTONE PIPELINE PROJECT**

Permit Conditions

Compliance with Laws, Regulations, Permits, Standards and Commitments

1. Keystone shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes currently codified at 49 U.S.C. § 60101 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01:32 through 74:02:01:34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.
2. Keystone shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State, Executive Order 11423 of August 16, 1968 (33 Fed. Reg. 11741) and Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25229), for the construction, connection, operation, or maintenance, at the border of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country; Clean Water Act § 404 and Rivers and Harbors Act Section 10 Permits; Special Permit issued by the Pipeline and Hazardous Materials Safety Administration; Temporary Water Use Permit, General Permit for Temporary Discharges and federal, state and local highway and road encroachment permits. Any of such permits not previously filed with the Commission shall be filed with the Commission upon their issuance.
3. Keystone shall comply with and implement the Recommendations set forth in the Final Environmental Impact Statement issued by the United States Department of State on January 11, 2008.
4. The permit granted by this Order shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.
5. Keystone shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application and in its testimony before the Commission at the hearing.

Reporting and Relationships

6. The most recent and accurate depiction of the Project route and facility locations is found in hearing Exhibits A and C, 2 Sept 06, to the Application, Ex TC 1A and 1C, as modified by the valve and pump station relocations described in Ex TC 1C, 5 March 07, Risk Assessment, “6 Overview Valve and Pump Station Relocation (Overview of the Valve and Pump Station Relocation Rationale March 2007)” and “7 Facility Relocation 070328 (Valve and Pump Station Relocation Rationale Keystone Pipeline Project March 22, 2007)” and the route deviation maps introduced into evidence at the hearing. Ex TC 13 and TC 14. The testimony of Keystone’s witness, Buster Gray, indicated that the land acquisition and precise route finalization process was on-going at the time of the hearing. Keystone shall notify the Commission and all affected landowners, utilities and local governmental units as soon as practicable if material deviations are proposed to the route. At such time as Keystone has finalized the pre-construction route, Keystone shall file maps with the Commission depicting the final pre-construction route. If material deviations from this route must be made during construction, Keystone shall advise the Commission and all affected landowners, utilities and local governmental units prior to making such changes and afford the Commission the opportunity to review and approve such modifications. At the conclusion of construction, Keystone shall file detail maps with the Commission depicting the final as-built location of the Project facilities.

7. Keystone shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Keystone, including its contractors, and landowners, local communities and residents and to promptly resolve complaints and problems that may develop for landowners, local communities and residents as a result of the Project. Keystone shall file with the Commission its proposed public liaison officer’s credentials for approval by the Commission prior to the commencement of construction. The public liaison officer shall be afforded immediate access to Keystone’s on-site project manager, its executive project manager and to contractors’ on-site managers and shall be available at all times to the Commission’s Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. Keystone shall also implement and keep an up-dated web site covering the planning and implementation of construction and commencement of operations in this state as an informational medium for the public. As soon as the Keystone’s public liaison officer has been appointed and approved, Keystone shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer’s contact information shall be provided to landowners in each subsequent written communication with them.

8. Until construction of the Project is completed, Keystone shall submit quarterly progress reports to the Commission that summarize the status of land acquisition and route finalization, the status of construction, the status of environmental control activities, including permitting status and Emergency Response Plan and Integrity Management

Plan development, the implementation of the other measures required by these conditions, and the overall percent of physical completion of the project and design changes of a substantive nature. Each report shall include a summary of consultations with the South Dakota Department of Environment and Natural Resources and other agencies concerning the issuance of permits. The reports shall list dates, names, and the results of each contact and the company's progress implementing prescribed construction, land restoration, environmental protection, emergency response and integrity management regulations, plans and standards. The first report shall be due for the period ending June 30, 2008. The reports shall be filed within 31 days after the end of each quarterly period and shall continue until the project is fully operational.

9. Until construction of the Project is completed, Keystone's public liaison officer shall report quarterly to the Commission on the status of the Project from his/her independent vantage point. The report shall detail problems encountered and complaints received. For the period of three years following completion of construction, Keystone's public liaison officer shall report to the Commission annually regarding post-construction landowner and other complaints, the status of road repair and reconstruction and land and crop restoration and any problems or issues occurring during the course of the year.

10. As soon as practicable following the issuance of the permit, Keystone shall commence a program of contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of project operations.

11. Keystone shall conduct a preconstruction conference prior to the commencement of construction to ensure that Keystone fully understands the conditions set forth in this order. At a minimum, the conference shall include a Keystone representative, Keystone's construction supervisor and Commission staff.

12. Once known, Keystone shall inform the Commission of the date construction will commence, report to the Commission on the date construction is started and keep the Commission updated on construction activities as provided in Condition 7.

Construction

13. Except as otherwise provided in the conditions of this Order and Permit, Keystone shall comply with all mitigation measures set forth in the Construction Mitigation and Reclamation Plan (CMR) as set forth in Ex TC 1A as modified in the Final EIS Record of Decision.

14. Keystone shall incorporate environmental inspectors into its Construction Mitigation and Reclamation Plan and obtain follow-up information reports from such inspections upon the completion of each construction spread to help ensure compliance with this Order and Permit and all other applicable laws and rules.

15. During the course of the hearing, Keystone submitted TC 28, a Construction Agreement it executes with all affected landowners. The Construction Agreement includes a landowner option regarding trenching and topsoil removal methods. Keystone shall provide landowners with an explanation regarding these options and shall follow the landowner's selected preference as documented on the Construction Agreement. At a minimum, however, Keystone shall separate topsoil from subsoil in agricultural areas, including shelter belts in agricultural areas and grasslands, as provided in Keystone's Construction Mitigation and Reclamation Plan. Keystone shall utilize slope breakers to prevent erosion at a 2 to 4 percent gradient rather than Keystone's proposed 2 to 8 percent gradient. Keystone's cleanup and reclamation efforts shall commence immediately following backfill operations. Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench and within 10 days in residential areas. In the event seasonal or other weather conditions prevent compliance with the time frames, temporary erosion controls shall be maintained until conditions allow completion of cleanup and reclamation.

16. Keystone shall cover open-bodied dump trucks carrying sand or soil while on paved roads and cover open-bodied dump trucks carrying gravel or other materials having the potential to be expelled onto other vehicles or persons while on all public roads.

17. Herbicides or pesticides shall not be used in or within 100 feet of a water body except as allowed by the landowner and appropriate land management or state agency.

18. Rock excavation from the trench may be used to backfill the trench only to the top of the existing bedrock profile. All other rock shall be considered construction debris.

19. Mulch shall be applied on all slopes concurrent with or immediately after seeding where necessary to stabilize the soil surface and to reduce wind and water erosion. Keystone shall implement Staff's recommendations regarding liquid mulch binders and specifications for mulch use set forth in Staff Exhibit 7.

20. Erosion control matting fabric shall be installed on water body banks at the time of final bank re-contouring, unless riprap or other bank stabilization methods are employed in accordance with federal, state and local permits and approvals.

21. If trees are to be removed that have commercial or other value to affected landowners, Keystone shall compensate the landowner for the fair market value of the trees to be cleared and/or allow the landowner the right to retain ownership of the felled trees. The environmental inspection in Condition 14 shall include forested lands.

22. Unless a wetland is actively cultivated or rotated cropland or unless non-cohesive soil conditions require utilization of greater width, the width of the construction right-of-way shall be limited to 75 feet or less in standard wetlands.

23. Unless a wetland is actively cultivated or rotated cropland, extra work areas shall be located at least 50 feet away from wetland boundaries except where site-specific conditions render a 50-foot setback infeasible.

24. Vegetation clearing shall be limited between extra work areas and the edge of the wetland to the construction right-of way.

25. Wetland boundaries and buffers shall be clearly marked in the field with signs and/or highly visible flagging until construction-related ground disturbing activities are complete.

26. Extra work areas near water bodies shall be located at least 50 feet from the water's edge, except where the adjacent upland consists of actively cultivated or rotated cropland or other disturbed land or where site-specific conditions render a 50-foot setback infeasible. Clearing of vegetation between extra work space areas and the water's edge shall be limited to the construction right-of-way.

27. In water body areas, work area boundaries and buffers shall be clearly marked in the field with signs and or highly visible flagging until construction-related ground disturbing activities are complete.

28. Spoil from minor and intermediate water body crossings and upland spoil from major waterway crossings shall be placed in the construction right of way at least 10 feet from the water's edge or in additional extra work areas, except that in-stream spoil from streams greater than 30 feet in width may be temporarily stored in-stream when stream flow conditions warrant such treatment.

29. Vegetation maintenance adjacent to water bodies shall be conducted in such manner to allow a riparian strip at least 25 feet wide as measured from the water body's mean high water mark to permanently re-vegetate with native plant species across the entire construction right-of way.

30. The width of the clear cuts through any windbreaks and shelterbelts shall be limited to 50 feet or less. The width of clear cuts through extended lengths of wooded areas shall be limited to 85 feet or less.

31. Keystone shall follow all of Staff's recommendations regarding road protection and bonding. Such recommendations include:

a) Keystone shall coordinate road closures with state and local governments and emergency responders.

b) Keystone shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public.

- c) After construction, Keystone shall repair and restore any deterioration caused by construction traffic such that the roads are returned to at least their preconstruction condition.
- d) Keystone shall use appropriate preventative measures as needed to prevent damage to paved roads and to remove excess soil or mud from such roadways.
- e) Pursuant to SDCL 49-41B-38, Keystone shall obtain and file with the Commission a bond in the amount of \$3 million in 2008 and \$12 million in 2009 to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately compensated. Such bonds shall name the Commission as obligee in favor of, and for the benefit of, such townships, counties, or other governmental entities whose property is crossed by the Project. Each bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Either at the contact meetings required by Condition 10 or by mail, Keystone shall give notice of the existence and amount of these bonds to all counties, townships and other governmental entities whose property is crossed by the Project.

32. Due to the nature of residential property, Keystone shall implement the following protections in addition to those set forth in its Construction Mitigation and Reclamation Plan in areas where the Project passes within 500 feet of a residence:

- a) To the extent feasible, Keystone shall coordinate construction work schedules with affected residential landowners prior to the start of construction in the area of the residences.
- b) Keystone shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Keystone and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential landowners and occupants, to the extent possible.
- c) Keystone shall install temporary safety fencing, when reasonably requested by the landowner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.
- d) Keystone shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- e) Keystone shall repair any damage to property that results from construction activities.
- f) Keystone shall restore all areas disturbed by construction to at least their preconstruction condition.

33. Keystone shall coordinate project activities with the South Dakota State Fair Administration to make best use of fair resources for traditional users as well as construction workers.

34. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.

35. Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction.

36. All pre-existing roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway.

37. Keystone shall, prior to any construction, file with the Commission a list identifying private and new access roads that will be used or required during construction and file a description of methods used by Keystone to reclaim those access roads.

38. In the event the winter season delays successful completion of de-compaction, topsoil replacement or seeding until the following spring, Keystone shall prepare and obtain a winterization plan. The Commission and affected landowners and/or governmental units shall be notified.

39. Keystone shall construct and operate the pipeline in the manner described in the application and at the hearing, including in Keystone's exhibits, and in accordance with the conditions of this permit, the PHMSA Special Permit and the conditions of this Order and the construction permit granted herein.

40. Keystone shall require compliance by its shippers with its crude oil specifications in order to minimize the potential for internal corrosion.

41. Keystone's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline.

Pipeline Operations, Detection and Emergency Response

42. In accordance with 49 C.F.R. 195, Keystone shall continue to evaluate and perform assessment activities regarding high consequence areas. Prior to Keystone commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Emergency Response Plan and Integrity Management Plan. In its continuing assessment and evaluation of environmentally sensitive and high consequence areas,

Keystone shall seek out and consider local knowledge, including the knowledge of the South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.

43. The evidence in the record demonstrates that in some reaches of the Project in northern Marshall County, the Middle James Aquifer is present at or very near ground surface and is not overlain by sufficient impermeable material to isolate it from surficial infiltration of contaminants. The evidence also demonstrates that this aquifer serves as the water source for at least one significant public water supply system and several domestic farm wells. Keystone shall identify the Middle James Aquifer area in Marshall County as a hydrologically sensitive area in its Integrity Management and Emergency Management Plans, except in areas where Keystone can demonstrate that the aquifer is overlain by sufficient unoxidized glacial till or other impermeable material to isolate it from infiltration of contaminants in the event of a release from the Project. Keystone shall similarly treat any other surficial aquifers of which it becomes aware during construction and continuing route evaluation.

44. Prior to putting the Keystone Pipeline into operation, Keystone shall prepare, file with PHMSA and implement an emergency response plan as required under 49 CFR 194 and a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Keystone shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452. At such time as Keystone files its Emergency Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01:41 may be invoked by Keystone with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Commission Staff or the Commission may invoke the procedures of ARSD 20:10:01:41 through 20:10:01:43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.

45. To facilitate periodic pipeline leak surveys during operation of the facilities in wetland areas, a corridor centered on the pipeline and up to 15 feet wide shall be maintained in an herbaceous state. Trees within 15 feet of the pipeline greater than 15 feet in height may be selectively cut and removed from the permanent right-of-way.

46. To facilitate periodic pipeline leak surveys in riparian areas, a corridor centered on the pipeline and up to 10 feet wide shall be maintained in an herbaceous state.

47. At the hearing, Keystone's expert witness, Brian Thomas, testified that there do not currently exist any viable and cost effective remote sensing or monitoring systems that could either be installed along the pipeline, particularly at sensitive locations, or employed in aerial and/or ground surveillance activities to detect volatile organic

compounds or other indicators of potential leaks. The Commission believes that such technologies, when available, could increase the effectiveness of visual surveillance and augment the SCADA system and mass balance and other leak detection methods that Keystone will employ. The Commission accordingly directs Keystone to keep abreast of the latest developments in such technologies and report to the Commission on the status of innovation in such pipeline leak detection equipment and methods on or before April 1, 2010 and at such additional times thereafter until 2019 as the Commission shall specifically request, but in no case more frequently than once every three years.

Environmental

48. Except to the extent waived by the owner or lessee in writing or to the extent the noise levels already exceed such standard, the noise levels associated with Keystone's pump station and other noise-producing facilities will not exceed the L10=55dbA standard at the nearest occupied, existing residence, office, hotel/motel or non-industrial business not owned by Keystone. The point of measurement will be within 100 feet of the residence or business in the direction of the pump station facility. Post-construction operational noise assessments will be completed by an independent third-party noise consultant, approved by the Commission, to show compliance with the noise level at each pump station or other noise-producing facility. The noise assessments will be performed in accordance with applicable American National Standards Institute standards. The results of the assessments will be filed with the Commission. In the event the noise level exceeds the limits set forth in this condition at any pump station or other noise producing facility, Keystone shall promptly implement noise mitigation measures to bring the facility into compliance with the limits set forth in this condition and shall report to the Commission concerning the measures taken and the results of post-mitigation assessments demonstrating that the noise limits have been met.

49. At the request of any landowner or public water supply system that offers to provide the necessary access to Keystone over his/her property or easement(s) to perform the necessary work, Keystone shall replace at no cost to such landowner or public water supply system, any polyethylene water piping located within 500 feet of the Project. Keystone shall not be required to replace that portion of any piping that passes through or under a basement wall or other wall of a home or other structure. At least forty-five (45) days prior to commencing construction, Keystone shall publish a notice in at least one newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of this condition.

50. If during construction, Keystone or its agents discover what may be an archaeological resource, cultural resource, paleontological resource, historical resource or gravesite, Keystone or its agents shall immediately cease work at that portion of the site and notify the Commission and the State Historical Preservation Office. If the SHPO determines a protectable resource is present, Keystone shall develop a plan that is acceptable to the SHPO to salvage, avoid or protect the archaeological resource. If such a plan will require a different route than that approved by the Commission, Keystone shall obtain Commission approval for the new route before proceeding with any further construction.

51. Keystone shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species that Keystone becomes aware of and that were not previously reported to the Commission.

52. Keystone shall keep a record of drain tile system information throughout construction. Location information shall be collected using a sub-meter accuracy global positioning system where available or, where not available by accurately documenting the pipeline station numbers of each exposed drain tile. Keystone shall maintain the drain tile location information and tile specifications and incorporate it into its Emergency Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release.

Liability for Damage

53. Keystone shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility, including but not limited to, all fences, gates and irrigation or drainage systems. Keystone shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses.

54. In the event that a person's well is contaminated as a result of the pipeline operation, Keystone shall pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity; and any other related damages including but not limited to any consequences, medical or otherwise, related to water contamination.

55. Any damage that occurs as a result of soil disturbance on a persons' property shall be paid for by Keystone.

56. No person will be held responsible for a pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the pipeline.

57. Keystone shall pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim or action resulting from Keystone's use of the easement, except to the extent such loss, damage claim or action results from the gross negligence or willful misconduct of the landowner or its agents.

Appendix F

Pipeline Hazardous Material Safety Administration Midwest Pipeline Incident Data

South Dakota All Pipeline Systems: 1998-2008 YTD										
Date	City	Operator	Cause	Fatalities	Injuries	Property Damage (B) (C)	Gross Barrels Lost	Barrels Recovered	Net Barrels Lost	
04/04/1998		KANEB PIPELINE CO	EXCAVATION DAMAGE	0	0	\$48,484	195	0	195	
05/30/1998	SPENCER	NORTHWESTERN PUBLIC SERVICE CO	NATURAL FORCE DAMAGE	0	0	\$90,907	0	0	0	
08/10/1998		KANEB PIPELINE CO	CORROSION	0	0	\$36,363	123	0	123	
10/11/2004	RAPID CITY	MONTANA - DAKOTA UTILITIES CO	OTHER OUTSIDE FORCE DAMAGE	0	0	\$110,266	0	0	0	
12/28/2004	WOONSOCKET	KANEB PIPE LINE OPERATING COMPANY LP	EXCAVATION DAMAGE	0	0	\$196,835	193	154	39	
03/08/2007	MITCHELL	NORTHWESTERN ENERGY	EXCAVATION DAMAGE	0	0	\$471,362	0	0	0	
03/29/2007	BERESFORD	NORTHERN NATURAL GAS COMPANY	CORROSION	0	0	\$476,430	0	0	0	
08/24/2007	ABERDEEN	NORTHWESTERN ENERGY	OTHER OUTSIDE FORCE DAMAGE	0	0	\$225,268	0	0	0	
02/20/2008	PIERRE	MONTANA - DAKOTA UTILITIES CO	MATERIAL FAILURE	0	0	\$150,000	0	0	0	
Totals				0	0	\$1,805,915	511	154	357	

North Dakota All Pipeline Systems: 1998-2008 YTD										
Date	City	Operator	Cause	Fatalities	Injuries	Property Damage (B) (C)	Gross Barrels Lost	Barrels Recovered	Net Barrels Lost	
04/21/1998		PORTAL PIPELINE CO	ALL OTHER CAUSES	0	0	\$12,121	175	170	5	
10/07/1999	TIOGA	AMOCO PIPELINE CO	ALL OTHER CAUSES	0	0	\$0	90	85	5	
11/19/2000	TIOGA	DAKOTA GASIFICATION COMPANY	ALL OTHER CAUSES	0	0	\$435,072	83	0	83	
04/01/2001		DOME PIPELINE CORP	EXCAVATION DAMAGE	0	0	\$1,014,109	27,660	0	27,660	
07/16/2003	VALLEY CITY	DOME PIPELINE CORP	CORROSION	0	0	\$1,341,652	7,324	0	7,324	
08/04/2003	VALLEY CITY	DOME PIPELINE CORP	MATERIAL FAILURE	0	0	\$103,449	3,283	0	3,283	
06/08/2004	CENTER	TESORO - HIGH PLAINS PIPELINE COMPANY	CORROSION	0	0	\$880,290	400	0	400	
12/15/2004	MANTADOR	DOME PIPELINE CORPORATION	MATERIAL FAILURE	0	0	\$183,714	2,500	0	2,500	
09/27/2005		ENBRIDGE PIPELINES (NORTH DAKOTA) LLC	EXCAVATION DAMAGE	0	0	\$378,011	350	320	30	
09/21/2006	MCGREGOR	DAKOTA GASIFICATION COMPANY	MATERIAL FAILURE	0	0	\$526,213	100	0	100	
01/25/2007	STANLEY	ENBRIDGE PIPELINES (NORTH DAKOTA) LLC	HUMAN ERROR	0	0	\$75,750	215	200	15	
07/17/2007	VALLEY CITY	KINDER MORGAN COCHIN LLC	CORROSION	0	0	\$102,306	0	0	0	
11/24/2007	MAXBASS	ENBRIDGE PIPELINES (NORTH DAKOTA) LLC	HUMAN ERROR	0	0	\$10,300	84	84	0	
01/11/2008	ALEXANDER	BELLE FOURCHE PIPELINE CO	EXCAVATION DAMAGE	0	0	\$5,739	265	260	5	
01/27/2008	MANDAN	MONTANA - DAKOTA UTILITIES CO	ALL OTHER CAUSES	0	0	\$355,500	0	0	0	
03/30/2008	BISMARCK	MONTANA - DAKOTA UTILITIES CO	OTHER OUTSIDE FORCE DAMAGE	0	0	\$250,250	0	0	0	
04/10/2008	GRAND FORKS	VIKING GAS TRANSMISSION CO	CORROSION	0	0	\$302,000	0	0	0	
Totals				0	0	\$5,976,476	42,529	1,119	41,410	

Minnesota All Pipeline Systems: 1998-2008 YTD

Date	City	Operator	Cause	Fatalities	Injuries	Property	Gross	Barrels	Net Barrels
						Damage (B) (C)	Barrels Lost	Recovered	Lost
03/29/1998	ST PETER	MINNEGASCO INC	NATURAL FORCE DAMAGE	0	0	\$90,907	0	0	0
08/19/1998		AMOCO PIPELINE CO	EXCAVATION DAMAGE	0	0	\$0	1,300	700	600
08/25/1998	LITTLE FALLS	MINNESOTA PIPELINE CO	ALL OTHER CAUSES	0	0	\$121,209	200	133	67
09/06/1998	CLOQUET	GREAT LAKES GAS TRANSMISSION CO	ALL OTHER CAUSES	0	0	\$1,713,900	0	0	0
09/16/1998		LAKEHEAD PIPE LINE CO INC	EXCAVATION DAMAGE	0	0	\$121,209	5,700	5,415	285
10/19/1998		LAKEHEAD PIPE LINE CO INC	EXCAVATION DAMAGE	0	0	\$121,209	950	0	950
12/11/1998	ST. CLOUD	NORTHERN STATES POWER CO	EXCAVATION DAMAGE	4	1	\$6,060,465	0	0	0
02/22/1999		LAKEHEAD PIPE LINE CO INC	ALL OTHER CAUSES	0	0	\$59,819	400	385	15
04/23/1999	FERGUS FALLS	AMOCO PIPELINE CO	EXCAVATION DAMAGE	0	0	\$0	600	150	450
08/25/1999		LAKEHEAD PIPE LINE CO INC	ALL OTHER CAUSES	0	0	\$0	1	0	1
10/29/1999		WILLIAMS PIPE LINE COMPANY	ALL OTHER CAUSES	0	0	\$149,549	200	0	200
11/09/1999		WILLIAMS PIPE LINE COMPANY	CORROSION	0	0	\$239,278	300	260	40
02/07/2000		LAKEHEAD PIPE LINE CO INC	MATERIAL FAILURE	0	0	\$225,158	25	10	15
02/23/2000		LAKEHEAD PIPE LINE CO INC	ALL OTHER CAUSES	0	0	\$117,270	10	5	5
04/26/2000		WILLIAMS PIPE LINE COMPANY	EXCAVATION DAMAGE	0	0	\$152,451	50	17	33
05/06/2000	ROGERS	AMOCO PIPELINE CO	EXCAVATION DAMAGE	0	0	\$351,810	425	300	125
07/22/2000		LAKEHEAD PIPE LINE CO INC	ALL OTHER CAUSES	0	0	\$358,846	50	10	40
10/23/2000	EAGAN	PEOPLES NATURAL GAS	MATERIAL FAILURE	0	1	\$1,172,700	0	0	0
11/16/2000	ST PAUL	NORTHERN STATES POWER CO	EXCAVATION DAMAGE	0	1	\$152,451	0	0	0
11/18/2000	OSAKIS	NORTHERN NATURAL GAS CO (ENRON)	CORROSION	0	0	\$151,278	0	0	0
01/01/2001	MINNETONKA	MINNEGASCO INC	NATURAL FORCE DAMAGE	0	0	\$1,145,886	0	0	0
01/25/2001		LAKEHEAD PIPE LINE COMPANY, LP	ALL OTHER CAUSES	0	0	\$229,177	25	10	15
03/04/2001		LAKEHEAD PIPE LINE COMPANY, LP	MATERIAL FAILURE	0	0	\$229,177	25	15	10
04/24/2001		MINNESOTA PIPELINE CO	ALL OTHER CAUSES	0	0	\$173,096	2	2	0
04/24/2001	NORTHFIELD	NORTHERN STATES POWER CO	ALL OTHER CAUSES	0	0	\$286,472	0	0	0
08/18/2001	EDEN PRAIRIE	MINNEGASCO INC	EXCAVATION DAMAGE	0	0	\$458,355	0	0	0
02/13/2002	ROCHESTER	PEOPLES NATURAL GAS	EXCAVATION DAMAGE	0	0	\$157,636	0	0	0
02/14/2002	CASS LAKE	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	EXCAVATION DAMAGE	0	0	\$11,373	50	45	5
02/22/2002	CLEARBROOK	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	HUMAN ERROR	0	0	\$135,117	50	50	0
03/29/2002	CLEARBROOK	KOCH PIPELINE COMPANY, L.P.	MATERIAL FAILURE	0	0	\$118,227	180	165	15
04/24/2002		MAGELLAN PIPELINE COMPANY LLC	MATERIAL FAILURE	0	0	\$703,733	725	311	414
07/04/2002	COHASSET	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	MATERIAL FAILURE	0	0	\$6,302,405	6,000	2,574	3,426
11/04/2002	FLOODWOOD	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	MATERIAL FAILURE	0	0	\$168,896	4	1	3
01/23/2003	BRECKENRIDGE	GREAT PLAINS NATURAL GAS CO	NATURAL FORCE DAMAGE	0	0	\$553,944	0	0	0
02/10/2003	SILVER BAY	NORTHERN NATURAL GAS CO	CORROSION	0	0	\$1,790,089	0	0	0
03/16/2003	CLEARBROOK	KOCH PIPELINE COMPANY, L.P.	NATURAL FORCE DAMAGE	0	0	\$97,885	1	0	1
04/14/2003	TRAIL	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	MATERIAL FAILURE	0	0	\$1,107,889	125	75	50
05/26/2003	CLEARBROOK	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	MATERIAL FAILURE	0	0	\$22,158	100	100	0
06/12/2003	WAKEFIELD	MINNEGASCO INC	ALL OTHER CAUSES	0	1	\$19,942	0	0	0
01/13/2004	ROYALTON	NORTHERN STATES POWER CO	NATURAL FORCE DAMAGE	0	1	\$218,706	0	0	0
02/19/2004	GRAND RAPIDS	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	NATURAL FORCE DAMAGE	0	0	\$1,191,717	1,003	9	994
02/19/2004	BUFFALO	CENTERPOINT ENERGY MINNEGASCO	ALL OTHER CAUSES	0	0	\$216,519	0	0	0
05/10/2004	HOPKINS	CENTERPOINT ENERGY MINNEGASCO	ALL OTHER CAUSES	0	1	\$164,030	0	0	0
05/20/2004	CLEARBROOK	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	MATERIAL FAILURE	0	0	\$109,353	0	0	0
06/15/2004	BRANDON	MAGELLAN PIPELINE COMPANY, LLC	MATERIAL FAILURE	0	0	\$93,033	2	0	2
09/29/2004	SHELDON	NORTHERN NATURAL GAS CO	EXCAVATION DAMAGE	0	0	\$296,330	0	0	0
11/27/2004	RED WING	STATES POWER COMPANY DBA XCEL ENERGY	NATURAL FORCE DAMAGE	0	1	\$2,188	0	0	0
12/07/2004	ALEXANDRIA	CENTERPOINT ENERGY	OTHER OUTSIDE FORCE DAMAGE	0	0	\$563,167	0	0	0
12/28/2004	RAMSEY	DBA CENTERPOINT ENERGY MINNESOTA GAS	NATURAL FORCE DAMAGE	3	1	\$328,059	0	0	0
04/06/2005	JACKSON	NORTHERN NATURAL GAS COMPANY	HUMAN ERROR	0	0	\$111,553	0	0	0
08/15/2005	ROVE HEIGHTS	ENTERPRISE PRODUCTS OPERATING LP	HUMAN ERROR	0	0	\$65,108	500	0	500
10/04/2005	OTTAGE GROVE	STATES POWER COMPANY D/B/A XCEL ENERGY	NATURAL FORCE DAMAGE	0	2	\$280,808	0	0	0
01/25/2006	ST. PAUL	STATES POWER COMPANY DBA XCEL ENERGY	OTHER OUTSIDE FORCE DAMAGE	0	0	\$183,953	0	0	0
03/02/2006	ANNANDALE	NORTHERN NATURAL GAS COMPANY	OTHER OUTSIDE FORCE DAMAGE	0	0	\$114,691	0	0	0
05/31/2006	MINNEAPOLIS	D/B/A CENTERPOINT ENERGY MINNESOTA GAS	HUMAN ERROR	0	2	\$1,000	0	0	0
06/27/2006	LITTLE FALLS	KOCH PIPELINE COMPANY, LP	OTHER OUTSIDE FORCE DAMAGE	0	0	\$4,250,045	3,200	1,750	1,450
10/12/2006	BUFFALO	NORTHERN NATURAL GAS COMPANY	ALL OTHER CAUSES	0	0	\$510,980	0	0	0
03/07/2007	OTTAGE GROVE	KOCH PIPELINE COMPANY, LP	OTHER OUTSIDE FORCE DAMAGE	0	0	\$101	0	0	0
08/19/2007	BURNSVILLE	DBA CENTERPOINT ENERGY MINNESOTA GAS	NATURAL FORCE DAMAGE	0	0	\$151,000	0	0	0
11/28/2007	CLEARBROOK	ENBRIDGE ENERGY, LIMITED PARTNERSHIP	ALL OTHER CAUSES	2	0	\$2,607,375	325	0	325
12/24/2007	MOORHEAD	XCEL ENERGY	NATURAL FORCE DAMAGE	0	0	\$100,000	0	0	0
03/12/2008	ROCHESTER	MINNESOTA ENERGY RESOURCES CORPORATION	ALL OTHER CAUSES	0	0	\$325,000	0	0	0
03/23/2008	CLEARBROOK	KOCH PIPELINE COMPANY, L.P.	NATURAL FORCE DAMAGE	0	0	\$572,000	1,600	1,500	100
04/14/2008	DULUTH	CITY OF DULUTH PUBLIC WORKS & UTILITIES	ALL OTHER CAUSES	0	0	\$400,000	0	0	0
Totals				9	12	\$37,927,682	24,128	13,992	10,136

Iowa All Pipeline Systems: 1998-2008 YTD

Date	City	Operator	Cause	Fatalities	Injuries	Property Damage (B) (C)	Gross Barrels Lost	Barrels Recovered	Net Barrels Lost
01/05/1998	ST DES MOINES	MIDAMERICAN ENERGY CO	ALL OTHER CAUSES	0	0	\$242,419	0	0	0
01/13/1998		KINDER MORGAN GP, INC.	MATERIAL FAILURE	0	0	\$606	15	0	15
07/11/1998	DES MOINES	KINDER MORGAN ENERGY PARTNERS, L.P.	MATERIAL FAILURE	0	0	\$606	14	0	14
02/13/1999		WILLIAMS PIPELINE CO	ALL OTHER CAUSES	0	0	\$95,711	670	528	142
05/01/1999	PLEASANT HILL	KOCH PIPELINE COMPANY, L.P.	EXCAVATION DAMAGE	0	0	\$1,914,222	3,663	3,662	1
05/24/1999		WILLIAMS PIPELINE CO	MATERIAL FAILURE	0	0	\$338,578	73	0	73
08/06/1999	SIOUX CITY	WILLIAMS PIPE LINE COMPANY	HUMAN ERROR	0	0	\$89,729	100	38	62
08/27/1999		WILLIAMS PIPE LINE COMPANY	MATERIAL FAILURE	0	0	\$358,917	98	4	94
10/06/1999	DES MOINES	KINDER MORGAN GP, INC.	HUMAN ERROR	0	1	\$0	0	0	0
11/11/1999	OELWEIN	NORTHERN NATURAL GAS CO (ENRON)	EXCAVATION DAMAGE	1	1	\$173,696	0	0	0
12/28/1999		KINDER MORGAN GP, INC.	ALL OTHER CAUSES	0	0	\$1,196	13	0	13
02/26/2000		WILLIAMS PIPE LINE COMPANY	ALL OTHER CAUSES	0	0	\$469,080	756	566	190
09/26/2000	DES MOINES	KINDER MORGAN ENERGY PARTNERS, L.P.	HUMAN ERROR	0	0	\$1,173	13	0	13
12/07/2000	HUBBARD	I E S UTILITIES, INC.	NATURAL FORCE DAMAGE	0	0	\$1,172,700	0	0	0
04/07/2001	CONCORD	KOCH PIPELINE COMPANY, L.P.	NATURAL FORCE DAMAGE	0	0	\$7,620	176	0	176
08/23/2001		KINDER MORGAN ENERGY PARTNERS, L.P.	HUMAN ERROR	0	0	\$401	16	0	16
11/19/2001		KANEB PIPE LINE CO	EXCAVATION DAMAGE	0	0	\$11,459	150	0	150
12/14/2001		KOCH PIPELINE COMPANY, L.P. AMMONIA	EXCAVATION DAMAGE	0	1	\$2,291,773	1,442	0	1,442
01/02/2002	DES MOINES	WILLIAMS PIPE LINE COMPANY	MATERIAL FAILURE	0	0	\$5,630	0	0	0
02/03/2002	IOWA CITY	WILLIAMS PIPE LINE COMPANY	MATERIAL FAILURE	0	0	\$7,659	80	79	1
04/17/2002	EDGEWOOD	BP PIPELINE (NORTH AMERICA) INC.	EXCAVATION DAMAGE	0	0	\$651,151	200	150	50
07/16/2002	CLEAR LAKE	KOCH PIPELINE COMPANY, L.P.	MATERIAL FAILURE	0	0	\$135,116	20	0	20
10/08/2002	KELLOGG	NORTHERN NATURAL GAS CO	EXCAVATION DAMAGE	0	0	\$181,886	0	0	0
12/27/2002	GILMORE CITY	GILMORE CITY MUNICIPAL GAS SYSTEM INC	ALL OTHER CAUSES	0	0	\$146,376	0	0	0
03/11/2003	BUS JUNCTION	NATURAL GAS PIPELINE CO OF AMERICA (KMI)	HUMAN ERROR	0	1	\$0	0	0	0
03/25/2004	WOODWARD	NORTHERN NATURAL GAS CO	EXCAVATION DAMAGE	0	0	\$269,276	0	0	0
05/31/2004	CEDAR RAPIDS	MIDAMERICAN ENERGY COMPANY	NATURAL FORCE DAMAGE	0	0	\$433,164	0	0	0
11/01/2004	RED OAK	MIDAMERICAN ENERGY COMPANY	HUMAN ERROR	0	1	\$1,094	0	0	0
12/02/2004	DAVENPORT	KINDER MORGAN ENERGY PARTNERS LP	ALL OTHER CAUSES	0	0	\$3,502	52	0	52
03/17/2005	GRINNELL	MAGELLAN PIPELINE COMPANY LP	EXCAVATION DAMAGE	0	0	\$231,451	81	81	0
06/01/2005	BERNARD	ENTERPRISE PRODUCTS OPERATING L.P.	MATERIAL FAILURE	0	0	\$60,698	81	0	81
06/03/2005	DANBURY	ENTERPRISE PRODUCTS OPERATING L.P.	MATERIAL FAILURE	0	0	\$134,345	3	0	3
07/04/2005	MONTICELLO	NORTHERN NATURAL GAS COMPANY	MATERIAL FAILURE	0	0	\$98,781	0	0	0
08/19/2005	CAMANCHE	ENTERPRISE PRODUCTS OPERATING LP	MATERIAL FAILURE	0	0	\$795	10	0	10
08/26/2005	SALIX	ENTERPRISE PRODUCTS OPERATING LP	CORROSION	0	0	\$320,510	9	0	9
11/09/2005	BELLEVUE	NORTHERN NATURAL GAS COMPANY	EXCAVATION DAMAGE	0	1	\$321,294	0	0	0
12/29/2005	LEE	VALERO, LP DBA KANEB PIPE LINE	MATERIAL FAILURE	0	0	\$27,936	7	0	7
07/27/2006	WINFIELD	WINFIELD MUNICIPAL GAS	OTHER OUTSIDE FORCE DAMAGE	0	0	\$154,360	0	0	0
07/28/2006	ONAWA	ENTERPRISE PRODUCTS OPERATING LP	MATERIAL FAILURE	0	0	\$89,595	0	0	0
08/03/2006	NEW VIRGINIA	NATURAL GAS PIPELINE CO. OF AMERICA	MATERIAL FAILURE	0	0	\$233,025	0	0	0
12/30/2007	DUBUQUE	ENTERPRISE PRODUCTS OPERATING LLC	ALL OTHER CAUSES	0	0	\$206,600	100	0	100
01/25/2008	DES MOINES	MAGELLAN PIPELINE COMPANY, LP	NATURAL FORCE DAMAGE	0	0	\$110,732	2	2	0
03/01/2008	MONTEZUMA	MAGELLAN PIPELINE COMPANY, LP	MATERIAL FAILURE	0	0	\$2,557	11	0	11
04/11/2008	RED OAK	MIDAMERICAN ENERGY COMPANY	ALL OTHER CAUSES	0	2	\$0	0	0	0
Totals				1	8	\$10,997,419	7,855	5,110	2,745

Nebraska All Pipeline Systems: 1998-2008 YTD

Date	City	Operator	Cause	Fatalities	Injuries	Property Damage (B) (C)	Gross Barrels Lost	Barrels Recovered	Net Barrels Lost
02/24/2000		KANEB PIPELINE CO	EXCAVATION DAMAGE	0	0	\$205,223	5,808	5,808	0
02/22/2002	SIoux FALLS	NORTHERN NATURAL GAS CO (ENRON)	OTHER OUTSIDE FORCE DAMAGE	0	0	\$146,416	0	0	0
05/20/2002	COZAD	ENERGY INC(KANSAS NEBRASKA GAS CO) (KMI)	ALL OTHER CAUSES	0	1	\$67,558	0	0	0
07/22/2002	LODGEPOLE	K N INTERSTATE GAS TRANSMISSION CO	CORROSION	0	0	\$153,133	0	0	0
12/09/2002	NEHAWKA	KINDER MORGAN ENERGY PARTNERS, L.P.	EXCAVATION DAMAGE	0	0	\$75,839	1,047	0	1,047
02/20/2003	OMAHA	METROPOLITAN UTILITIES DISTRICT	ALL OTHER CAUSES	0	0	\$110,789	0	0	0
02/20/2003	OMAHA	METROPOLITAN UTILITIES DISTRICT	NATURAL FORCE DAMAGE	0	0	\$110,789	0	0	0
02/11/2004	HOLDREGE	JAYHAWK PIPELINE LLC	MATERIAL FAILURE	0	0	\$44,649	10	0	10
08/22/2004	BENNINGTON	METROPOLITAN UTILITIES DISTRICT	OTHER OUTSIDE FORCE DAMAGE	0	0	\$765,470	0	0	0
08/22/2004	BENNINGTON	METROPOLITAN UTILITIES DISTRICT	ALL OTHER CAUSES	0	0	\$765,470	0	0	0
09/27/2004	BLAIR	ENTERPRISE PRODUCTS OPERATING LP	EXCAVATION DAMAGE	0	0	\$342,051	895	895	0
11/08/2004	DAVENPORT	K N INTERSTATE GAS TRANSMISSION CO	EXCAVATION DAMAGE	0	0	\$102,983	0	0	0
01/19/2005	OMAHA	METROPOLITAN UTILITIES DISTRICT	OTHER OUTSIDE FORCE DAMAGE	0	1	\$756,023	0	0	0
06/22/2005	FRANKLIN	KINDER MORGAN INTERSTATE GAS TRANSMISSION	EXCAVATION DAMAGE	0	0	\$176,857	0	0	0
09/13/2005	OMAHA	METROPOLITAN UTILITIES DISTRICT	OTHER OUTSIDE FORCE DAMAGE	2	2	\$75,602	0	0	0
05/23/2006	VALLEY	ENTERPRISE PRODUCTS OPERATING LP	MATERIAL FAILURE	0	0	\$170,769	2	0	2
03/29/2007	YUTAN	ENTERPRISE PRODUCTS OPERATING LLC	EXCAVATION DAMAGE	0	0	\$684,240	1,725	28	1,697
10/07/2007	PHILLIPS	SOURCEGAS LLC	OTHER OUTSIDE FORCE DAMAGE	0	1	\$4,609	0	0	0
12/27/2007	RTH LAS VEGAS	SOUTHWEST GAS CORP	EXCAVATION DAMAGE	1	0	\$2,494	0	0	0
02/22/2008	NORTH PLATTE	NORTHWESTERN ENERGY LLC	OTHER OUTSIDE FORCE DAMAGE	0	0	\$207,010	0	0	0
03/19/2008	BEATRICE	AQUILA NETWORKS	HUMAN ERROR	0	0	\$156,851	0	0	0
05/29/2008	KEARNEY	NORTHWESTERN ENERGY LLC	NATURAL FORCE DAMAGE	0	0	\$100,385	0	0	0
06/18/2008	MCCOOK	SOURCEGAS LLC	OTHER OUTSIDE FORCE DAMAGE	0	2	\$16,322	0	0	0
Totals				3	7	\$5,241,532	9,487	6,731	2,756

Montana All Pipeline Systems: 1998-2008 YTD

Date	City	Operator	Cause	Fatalities	Injuries	Property Damage (B) (C)	Gross Barrels Lost	Barrels Recovered	Net Barrels Lost
06/23/1998		PORTAL PIPELINE CO	MATERIAL FAILURE	0	0	\$8,485	100	95	5
12/28/1998	ALZADA	EQUILON PIPELINE COMPANY LLC	NATURAL FORCE DAMAGE	0	0	\$72,726	190	160	30
09/20/1999	BOULDER	MONTANA POWER CO	EXCAVATION DAMAGE	0	0	\$136,388	0	0	0
08/02/2000		CONOCO INC (AKA CONOCO PIPE LINE)	EXCAVATION DAMAGE	0	0	\$586,350	383	0	383
10/19/2000	CUT BANK	CONOCO INC (AKA CONOCO PIPE LINE)	MATERIAL FAILURE	0	0	\$469,080	1,390	102	1,288
12/13/2000	HELENA	CONOCO INC (AKA CONOCO PIPE LINE)	HUMAN ERROR	0	0	\$879,525	1,247	42	1,205
02/04/2001	HELENA	MONTANA POWER CO	EXCAVATION DAMAGE	0	0	\$171,883	0	0	0
06/01/2002	BUTTE	NORTHWESTERN ENERGY LLC	EXCAVATION DAMAGE	0	1	\$11,260	0	0	0
09/20/2002	GLENDIVE	CENEX PIPELINE	EXCAVATION DAMAGE	0	0	\$0	997	502	495
06/10/2003	ALZADA	BELLE FOURCHE PIPELINE CO	MATERIAL FAILURE	0	0	\$7,201	120	115	5
09/22/2004	WALKERSVILLE	NORTHWESTERN ENERGY	EXCAVATION DAMAGE	0	1	\$131,223	0	0	0
09/15/2005	LIVINGSTON	NORTHWESTERN ENERGY	EXCAVATION DAMAGE	0	1	\$541,097	0	0	0
04/08/2007	BUTTE	NORTHWESTERN ENERGY	ALL OTHER CAUSES	0	1	\$120,000	0	0	0
10/09/2007	BILLINGS	CONOCOPHILLIPS PIPE LINE CO.	ALL OTHER CAUSES	0	0	\$17,120	267	267	0
05/18/2008	BRIDGER	KINDER MORGAN PIPELINES (USA) INC	MATERIAL FAILURE	0	0	\$418,841	119	119	0
Totals				0	4	\$3,571,179	4,813	1,402	3,411

Wyoming All Pipeline Systems: 1998-2008 YTD

Date	City	Operator	Cause	Fatalities	Injuries	Property Damage (B) (C)	Gross Barrels Lost	Barrels Recovered	Net Barrels Lost
03/31/1998		MAPCO INC	EXCAVATION DAMAGE	0	0	\$75,526	3,358	0	3,358
06/09/1998		CONOCO INC (AKA CONOCO PIPE LINE)	ALL OTHER CAUSES	0	0	\$6,303	265	255	10
07/21/1998	GILLETTE	WILLISTON BASIN INTERSTATE PIPELINE CO	ALL OTHER CAUSES	0	0	\$503,443	0	0	0
09/19/1998		CONOCO INC (AKA CONOCO PIPE LINE)	HUMAN ERROR	0	0	\$6,060	75	0	75
11/23/1998	RIVERTON	K N ENERGY INC(KANSAS NEBRASKA GAS CO)	MATERIAL FAILURE	0	0	\$121,209	0	0	0
01/29/1999	CHEYENNE	CHEYENNE LIGHT FUEL & POWER	MATERIAL FAILURE	0	0	\$119,639	0	0	0
03/19/1999		SINCLAIR PIPELINE CO	ALL OTHER CAUSES	0	0	\$179,458	3,370	2,019	1,351
07/03/1999		CONOCO INC (AKA CONOCO PIPE LINE)	ALL OTHER CAUSES	0	0	\$119,639	4,700	3,700	1,000
02/18/2000		BELLE FOURCHE PIPELINE CO	EXCAVATION DAMAGE	0	0	\$23,454	400	300	100
03/03/2000		BELLE FOURCHE PIPELINE CO	CORROSION	0	0	\$35,181	100	0	100
11/14/2000		CONOCO INC (AKA CONOCO PIPE LINE)	MATERIAL FAILURE	0	0	\$527,715	900	4	896
06/25/2001	DEAVER	FRANNIE - DEAVER UTILITIES	EXCAVATION DAMAGE	2	1	\$45,835	0	0	0
02/05/2002	WYOMING	COLORADO INTERSTATE GAS CO	MATERIAL FAILURE	0	0	\$177,798	0	0	0
03/03/2002	SWEETWATER	BP PIPELINE (NORTH AMERICA) INC.	NATURAL FORCE DAMAGE	0	0	\$4,189	60	40	20
03/14/2002	WORLAND	MARATHON ASHLAND PIPE LINE LLC	MATERIAL FAILURE	0	0	\$140,747	633	595	38
03/26/2002	RAWLINS	COLORADO INTERSTATE GAS CO	MATERIAL FAILURE	0	0	\$281,318	0	0	0
04/14/2002	SINCLAIR	CONOCO INC (AKA CONOCO PIPE LINE)	EXCAVATION DAMAGE	0	0	\$315,273	522	0	522
02/11/2003	SUBLETTE	ROCKY MOUNTAIN PIPELINE SYSTEM, LLC	CORROSION	0	0	\$46,975	350	300	50
03/21/2003	PLATTE	ROCKY MOUNTAIN PIPELINE SYSTEM, LLC	CORROSION	0	0	\$20,851	230	80	150
03/26/2003	ELK MOUNTAIN	SINCLAIR PIPELINE CO	OTHER OUTSIDE FORCE DAMAGE	0	0	\$444,263	528	52	476
04/03/2003		KERN RIVER GAS TRANSMISSION CO (WGP)	ALL OTHER CAUSES	0	0	\$136,270	0	0	0
07/24/2003	SINCLAIR	COLORADO INTERSTATE GAS CO	EXCAVATION DAMAGE	0	0	\$11,078	225	0	225
10/08/2003		TERASEN PIPELINE (USA) INC	EXCAVATION DAMAGE	0	0	\$11,079	70	70	0
11/08/2003	KEMMERER	NORTHWEST PIPELINE CORP (WGP)	MATERIAL FAILURE	0	0	\$103,684	0	0	0
12/09/2003	CASPER	TERASEN PIPELINE (USA) INC	HUMAN ERROR	0	4	\$0	0	0	0
01/02/2004	GRANGER	NORTHWEST PIPELINE CORP (WGP)	MATERIAL FAILURE	0	0	\$134,144	0	0	0
01/16/2004	CHEYENNE	KANE PIPE LINE CO	NATURAL FORCE DAMAGE	0	0	\$72,173	250	0	250
05/03/2004	GUERNSEY	TERASEN PIPELINE (USA) INC	MATERIAL FAILURE	0	0	\$20,777	130	130	0
09/24/2004	LAMONT	SINCLAIR PIPELINE CO	EXCAVATION DAMAGE	0	0	\$6,015	55	48	7
03/03/2005		BELLE FOURCHE PIPELINE	EXCAVATION DAMAGE	0	0	\$3,240	50	30	20
08/15/2005	WAMSUTTER	ROCKY MOUNTAIN PIPELINE SYSTEM LLC	CORROSION	0	0	\$3,791	54	50	4
08/28/2005		TERASEN PIPELINES (USA) INC.	CORROSION	0	0	\$27,000	70	70	0
09/29/2005	ROCK SPRINGS	COLORADO INTERSTATE GAS	MATERIAL FAILURE	0	0	\$235,523	0	0	0
12/05/2005	CASPER	CONOCOPHILLIPS PIPE LINE CO.	ALL OTHER CAUSES	0	0	\$34,009	55	4	51
12/08/2005	GREEN RIVER	NORHTWEST PIPELINE COMPANY	MATERIAL FAILURE	0	0	\$1,282,203	0	0	0
12/08/2005		COLORADO INTERSTATE GAS	OTHER OUTSIDE FORCE DAMAGE	0	0	\$103,195	0	0	0
02/01/2006	CASPER	TERASEN PIPELINES (USA) INC	MATERIAL FAILURE	0	0	\$236,073	50	50	0
11/11/2006	BORIE	COLORADO INTERSTATE GAS	EXCAVATION DAMAGE	1	0	\$0	0	0	0
12/15/2006	OPAL	NORTHWEST PIPELINE	MATERIAL FAILURE	0	0	\$151,609	0	0	0
11/09/2007	WHEATLAND	ROCKY MOUNTAIN PIPELINE SYSTEM, LLC	MATERIAL FAILURE	0	0	\$97,769	10	0	10
06/03/2008	CASPER	KINDER MORGAN PIPELINES (USA) INC	MATERIAL FAILURE	0	0	\$183,120	70	70	0
Totals				3	5	\$6,047,628	16,580	7,867	8,713

Appendix G

Brian Walsh's Presentation on Pipeline Incident Cost

Pipeline Incident Cost Data

South Dakota Underground Pipeline Task Force

September 22, 2008

Introduction

- The purpose of this presentation is to review available incident costs for hazardous materials (includes natural gas) pipelines in the United States.
- To do this the PHMSA incident database was used to review pipeline incident cost data for South Dakota and surrounding states and the U.S. as a whole.

PHMSA Accident Database

- Pipeline incidents included in the database are those meeting the following criteria:
 - Those with gross loss greater than 50 barrels or,
 - Those with a fatality or injury requiring in-patient hospitalization or,
 - Those with fire or explosions or,
 - Those with Highly volatile liquid releases with gross loss of more than 5 barrels or,
 - Those involving costs greater than or equal to \$50,000
- Cost include all public and private cost associated with the incident (includes cleanup and response costs)

South Dakota and Surrounding States

- Data reviewed for these states includes all pipeline incidents between January 1, 1998 and 2008 YTD
- States reviewed include: South Dakota, North Dakota, Minnesota, Iowa, Nebraska, Montana and Wyoming

South Dakota

- Number of Incidents = 9
- Maximum Incident Cost = \$476,430
- Minimum Incident Cost = \$36,363
- Average Cost Per Incident = \$200,657
- Median Cost Per Incident = \$150,000

North Dakota

- Number of Incidents = 17
- Maximum Incident Cost = \$1,341,652
- Minimum Incident Cost = \$0
- Average Cost Per Incident = \$372,772
- Median Cost Per Incident = \$276,125

Minnesota

- > Number of Incidents = 64
- > Maximum Incident Cost = \$6,302,405
- > Minimum Incident Cost = \$0
- > Average Cost Per Incident = \$592,620
- > Median Cost Per Incident = \$170,996

Iowa

- > Number of Incidents = 44
- > Maximum Incident Cost = \$2,291,773
- > Minimum Incident Cost = \$0
- > Average Cost Per Incident = \$249,941
- > Median Cost Per Incident = \$104,757

Nebraska

- > Number of Incidents = 23
- > Maximum Incident Cost = \$765,470
- > Minimum Incident Cost = \$2,494
- > Average Cost Per Incident = \$227,893
- > Median Cost Per Incident = \$146,416

Montana

- > Number of Incidents = 15
- > Maximum Incident Cost = \$879,525
- > Minimum Incident Cost = \$0
- > Average Cost Per Incident = \$238,079
- > Median Cost Per Incident = \$131,223

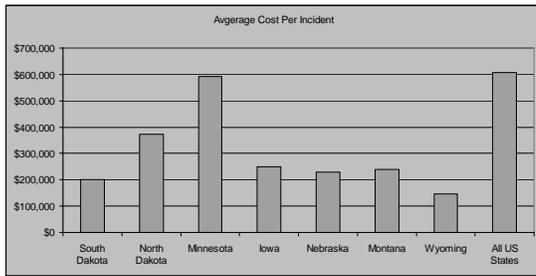
Wyoming

- > Number of Incidents = 41
- > Maximum Incident Cost = \$1,282,203
- > Minimum Incident Cost = \$0
- > Average Cost Per Incident = \$147,503
- > Median Cost Per Incident = \$97,769

U.S. Pipeline Incidents

- > Data reviewed for the U.S. includes all pipeline accidents between January 1, 1988 and 2008 YTD
 - Number of Incidents = 5,921
 - Average Cost per Incident = \$607,649

Average Cost Per Accident Summary Chart



Questions?

Appendix H

Brian Walsh's Presentation on Additional Information Concerning Pipeline Incident Costs

Additional Information Pipeline Incident Cost Data

South Dakota Underground
Pipeline Task Force

October 23, 2008

Introduction

- > The purpose of this presentation is to present a review of available incident costs for hazardous materials pipelines in South Dakota and Minnesota by material released.
- > Follow-up to the general presentation on incident cost data at the September 22, 2008 pipeline task force meeting.

PHMSA Incident Database

- > Pipeline incidents included in the dataset are those meeting the following criteria:
 - Those with gross loss greater than 50 barrels or,
 - Those with a fatality or injury requiring in-patient hospitalization or,
 - Those with fire or explosions or,
 - Those with Highly volatile liquid releases with gross loss of more than 5 barrels or,
 - Those involving costs greater than or equal to \$50,000
- > Cost include all public and private cost associated with the incident (includes cleanup and response costs)

South Dakota Pipeline Incidents 1998 - 2008

- > Number of Incidents = 9
- > Maximum Incident Cost = \$476,430
- > Minimum Incident Cost = \$36,363
- > Average Cost Per Incident = \$200,657
- > Median Cost Per Incident = \$150,000

South Dakota Pipeline Incidents by Material Released

South Dakota Significant Pipeline Incidents (1988 – 2008)			
Material	Number of Incidents	Average Incident Cost	Median Incident Cost
Gas	6	\$254,039	\$187,634
Refined Products	3	\$93,894	\$48,484

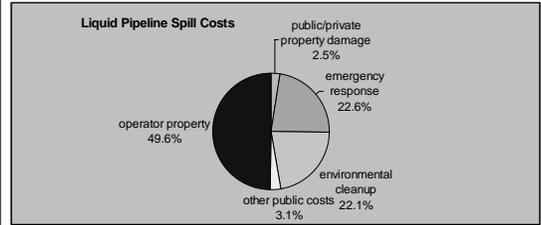
Minnesota Pipeline Incidents 1998 - 2008

- > Number of Incidents = 64
- > Maximum Incident Cost = \$6,302,405
- > Minimum Incident Cost = \$0
- > Average Cost Per Incident = \$592,620
- > Median Cost Per Incident = \$170,996

Minnesota Pipeline Incidents by Material Released

Minnesota Significant Pipeline Incidents (1988 - 2008)			
Material	Number of Incidents	Average Incident Cost	Median Incident Cost
Gas	32	\$557,233	\$217,613
Refined Products	8	\$211,232	\$151,000
Crude Oil	22	\$828,184	\$170,996
Propane	1	-	-
Liquid Natural Gas	1	-	-

Incident Cost Breakdown



Source: PHMSA Incident Database 2002 - 2008 (2,507 records)

Questions?

Appendix I

South Dakota Regulated Substance Response Fund

REGULATED SUBSTANCE RESPONSE FUND

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CONTACTS:

Steve Pirner, Secretary

Tim Tollefsrud, Director

INTENT / USE / PURPOSE:

The money in the Regulated Substance Response Fund is continuously appropriated to provide funding for the clean up of regulated substance discharges. The Secretary of the Department of Environment and Natural Resources may expend funds from the response fund to provide for the costs of investigations, **emergency remedial efforts**, corrective actions, and managerial or administrative activities associated with such activities.

SUMMARY:

In 1988 SDCL: 34A-12-3 created the Regulated Substance Response Fund. The fund was created through an appropriation from general fund, a one-time contribution from the petroleum release compensation fund, and a temporary pesticide registration fee.

On going deposits into the fund come from; money from civil action or administrative proceedings for violation of environmental statutes or upon damage to the environment, including actions for administrative expense recoveries, civil penalties, compensatory damages, and money paid pursuant to any agreement, stipulation, or settlement in such actions or proceedings; and interest attributable to investment of the money in the response fund. Before the fund can be used, there must be a discharge of a regulated substance, but then the money is continuously appropriated to provide funds for the clean up of regulated substance discharges. The department may file civil actions or liens on property owned by the responsible person to cost recover.

REQUIREMENTS:

The Secretary of the Department of Environment and Natural Resources may expend funds from the response fund to provide for the costs of investigations, **emergency remedial efforts**, corrective actions, and managerial or administrative activities associated with discharges of regulated substances. For a substance to be classified as a regulated substance, it must be defined in either statute or rule. SDCL 34A-12-1 exempts sewage and sewage sludge from being classified as a regulated substance.

The secretary's use of the response fund shall be based upon the following:

- (1) In the case of an investigation, when the secretary determines that a discharge requiring an emergency remedial effort may have occurred and that the general operating budget of the department for such purposes is not adequate to cover the costs of the necessary investigatory activities;

(2) In the case of an emergency remedial effort, when the secretary determines that a discharge has occurred and that corrective actions shall be immediately undertaken to protect an imminent threat to the public health or safety or to contain a discharge which, if not immediately contained, shall in time pose a significantly greater threat to public health or safety or to the environment of this state than if such action is not immediately taken;

(3) In the case of a discharge not of an emergency nature when the secretary determines that a discharge has occurred, that a responsible party or liability fund capable of performing the corrective actions either cannot be identified or refuses to undertake corrective actions, and that corrective actions shall be undertaken to protect the public health, safety, welfare, or environment of the state.

SDCL 34A-12-12 makes the responsible person strictly liable for any corrective action costs expended from the Regulated Substance Response Fund, and the department may file either civil actions or liens on property owned by responsible persons to cost recover.

STATUTES:

34A-12-3. Regulated substance response fund established - Purpose - Source of funds - Continuous appropriation - Informational budget - Annual legislative review --

There is hereby established in the state treasury an operating fund to be known as the regulated substance response fund for the purpose of providing funds for the clean up of regulated substance discharges. In addition to the money from the petroleum release cleanup fund as provided in § [34A-12-2](#) and the temporary pesticide registration fee increase provided by § 38-20A-9, funds from the following sources shall be deposited into the response fund:

- (1) Direct appropriations to the response fund from the general fund;
- (2) Money, other than criminal fines assessed in criminal actions, recovered by the state in any action or administrative proceeding based upon violation of the state's environmental statutes or upon damage to the environment, including actions for administrative expense recoveries, civil penalties, compensatory damages, and money paid pursuant to any agreement, stipulation, or settlement in such actions or proceedings;
- (3) Interest attributable to investment of the money in the response fund;
- (4) Money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the response fund.

All money in the response fund is continuously appropriated for the purposes specified in § [34A-12-4](#). All money received by the department for the response fund shall be set forth in an informational budget pursuant to § [4-7-7.2](#) and be annually reviewed by the Legislature.

Source: SL 1988, ch 291, § 4.

34A-12-2. One-time contribution from petroleum release compensation fund to response fund - Annual contribution to groundwater protection fund --

The petroleum release compensation fund established pursuant to § [34A-13-18](#), shall make a one time contribution of three hundred fifty thousand dollars, to the response fund within one year after March 1, 1988, and shall contribute one hundred thousand dollars annually for five years to the groundwater protection fund to fund the groundwater research and education program established pursuant to § [46A-1-85](#). Source: SL 1988, ch 291, § 3; 1989, ch 306, § 55.

34A-12-4. Expenditure of funds by secretary - Grounds for expenditures -- When necessary in the performance of the secretary's duties under §§ [23A-27-25](#), [34A-1-39](#), [34A-2-75](#), [34A-6-1.4](#), [34A-6-1.31](#), [34A-11-9](#), [34A-11-10](#), [34A-11-12](#), [34A-11-14](#), [34A-12-1](#) to [34A-12-15](#), inclusive, [45-6B-70](#), [45-6C-45](#), [45-6D-60](#), and [45-9-68](#) and [Title 34A](#) relative to discharges, the secretary may expend funds from the response fund to provide for the costs of investigations, emergency remedial efforts, corrective actions, and managerial or administrative activities associated with such activities. The secretary's use of the response fund shall be based upon the following:

- (1) In the case of an investigation, when the secretary determines that a discharge requiring an emergency remedial effort may have occurred and that the general operating budget of the department for such purposes is not adequate to cover the costs of the necessary investigatory activities;
- (2) In the case of an emergency remedial effort, when the secretary determines that a discharge has occurred and that corrective actions shall be immediately undertaken to protect an imminent threat to the public health or safety or to contain a discharge which, if not immediately contained, shall in time pose a significantly greater threat to public health or safety or to the environment of this state than if such action is not immediately taken;
- (3) In the case of a discharge not of an emergency nature when the secretary determines that a discharge has occurred, that a responsible party or liability fund capable of performing the corrective actions either cannot be identified or refuses to undertake corrective actions, and that corrective actions shall be undertaken to protect the public health, safety, welfare, or environment of the state. Source: SL 1988, ch 291, § 5; 1992, ch 158, § 55A; 1999, ch 182, § 3.

34A-12-12. Strict liability for costs of corrective action. Any person who has caused a discharge of a regulated substance in violation of § [34A-12-8](#) is strictly liable for the corrective action costs expended by the department pursuant to §§ [23A-27-25](#), [34A-1-39](#), [34A-12-1](#) to [34A-12-15](#), inclusive, [38-20A-9](#), [45-6B-70](#), [45-6C-45](#), [45-6D-60](#), and [45-9-68](#). Source: SL 1988, ch 291, § 13.

CURRENT STATUS

The Department of Environment and Natural Resources currently has six (6) contracts in place with environmental consulting firms to provide response capabilities. These contracts are 4 year contracts with extension provisions. Currently the department has contracts with the following firms: Geotek Engineering & Testing Services (Sioux Falls); Leggette, Brashears & Graham (Sioux Falls); Terracon Consultants (Rapid City and Omaha); West Central Environmental (Morris, Minnesota); BayWest (St. Paul, Minnesota); and American Engineering Testing Services (Pierre and Rapid City).

The balance of the Regulated Substance Response Fund as of 06/30/2008 was \$ 2,575,500.00.

Appendix J

Table Displaying the Historical Budget of the South Dakota Regulated Substance Response Fund

**DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
REGULATED RESPONSE FUND**

	ACTUAL FY1989	ACTUAL FY1990	ACTUAL FY1991	ACTUAL FY1992	ACTUAL FY1993	ACTUAL FY1994	ACTUAL FY1995	ACTUAL FY1996	ACTUAL FY1997	ACTUAL FY1998	ACTUAL FY1999	ACTUAL FY2000	ACTUAL FY2001	ACTUAL FY2002	ACTUAL FY2003	ACTUAL FY2004	ACTUAL FY2005	ACTUAL FY2006	ACTUAL FY2007	ACTUAL FY2008
Start Up	\$500,000																			
Fines, Forfeits & Penalties	\$207,284	\$31,843	\$100,429	\$154,547	\$588,888	\$33,315	\$37,626	\$155,000	\$31,558	\$89,833	\$521,126	\$181,187	\$174,516	\$122,180	\$159,639	\$204,469	\$92,675	\$71,822	\$258,119	\$330,884
Interest	\$387	\$24,405	\$64,734	\$70,347	\$75,366	\$68,498	\$67,100	\$88,876	\$122,578	\$120,870	\$123,162	\$131,559	\$141,283	\$134,315	\$117,149	\$74,132	\$54,764	\$53,185	\$64,020	\$92,523
Other Revenues							\$27,008	\$27,042	\$6,058				\$2,866		\$12,053	\$2,292	\$3,000			\$958
Nonoperating Revenues																				
TOTAL RECEIPTS	\$707,671	\$56,248	\$165,163	\$224,894	\$664,254	\$101,813	\$131,734	\$270,918	\$160,194	\$210,703	\$644,288	\$312,746	\$318,665	\$256,495	\$288,841	\$280,893	\$150,439	\$125,007	\$322,139	\$424,365
Contractual Services		\$0	\$73,568	\$28,894	\$0	\$38,854	\$61,885	\$53,100	\$44,107	\$76,111	\$55,637	\$1,183,092	\$239,095	\$1,007,002	\$85,410	\$25,512	\$60,274	\$110,598	\$34,222	\$83,529
TOTAL DISBURSEMENTS	\$0	\$0	\$73,568	\$28,894	\$0	\$38,854	\$61,885	\$53,100	\$44,107	\$76,111	\$55,637	\$1,183,092	\$239,095	\$1,007,002	\$85,410	\$25,512	\$60,274	\$110,598	\$34,222	\$83,529
TRANSFER IN / (OUT)							(\$28,726)	(\$69,849)	(\$190,776)	(\$143,129)	(\$134,592)	\$567,072				\$13,922		\$5,000		
NET (Receipts + Transf - Disburs)	\$707,671	\$56,248	\$91,595	\$196,000	\$664,254	\$62,959	\$41,123	\$147,969	(\$74,689)	(\$8,537)	\$454,059	(\$303,274)	\$79,570	(\$750,507)	\$203,431	\$269,303	\$90,165	\$19,409	\$287,917	\$340,836
BEGINNING CASH BALANCE		\$707,670	\$763,918	\$855,513	\$1,051,513	\$1,715,767	\$1,778,726	\$1,819,849	\$1,967,818	\$1,893,129	\$1,884,592	\$2,338,651	\$2,035,377	\$2,114,947	\$1,364,442	\$1,567,873	\$1,837,176	\$1,927,341	\$1,946,750	\$2,234,667
ENDING CASH BALANCE	\$707,671	\$763,918	\$855,513	\$1,051,513	\$1,715,767	\$1,778,726	\$1,819,849	\$1,967,818	\$1,893,129	\$1,884,592	\$2,338,651	\$2,035,377	\$2,114,947	\$1,364,440	\$1,567,873	\$1,837,176	\$1,927,341	\$1,946,750	\$2,234,667	\$2,575,503

Start up Revenue was \$350,000 from the PRCF. This occurred 2/6/89.
Also, \$150,000 of start up revenue came from Pesticide Registration.
However my records do not indicate whether that revenue was actually received in SFY 88 or 89, so I just added them to '89.

Appendix K

**Brian Walsh's Presentation on Additional
Information Concerning the South Dakota
Regulate Substance Response Fund**

Additional Information Regulated Substance Response Fund

South Dakota Underground
Pipeline Task Force

October 23, 2008

Introduction

The purpose of this presentation is to provide additional information to the task force on the South Dakota Regulated Substance Response Fund based on questions raised by task force members at the September 22, 2008 task force meeting.

Question 1

- Explain the \$567,072 Transfer into the fund in FY2000

Answer: In 1994, SDCL 34A-12-3.2 established a \$1,750,000 CAP on the fund. In July, 1995, and in July in each of the next four years funds were transferred out to reduce the balance to reach the CAP. In 1999, Senate Bill 38 lifted the CAP and all funds removed because of the CAP were returned to the fund. The amount returned to the fund was \$567,072.

Question 2

- Provide a breakdown of the fines paid into the fund.

Answer: The following data represents fines paid into the RSRF between July 1988 and June 2008 (see handout).

Total Number of Fines =	322
Maximum Fine Amount =	\$489,000
Minimum Fine Amount =	\$23
Average Fine Amount =	\$10,603
Median Fine Amount =	\$1,800

Question 2 (Continued)

- Provide a breakdown of the fines paid into the fund.

Answer: Fines further organized by media impacted

Air =	80 (25% of total)
Land =	74 (23% of total)
Water =	97 (30% of total)
Multimedia =	25 (8% of total)
NI* =	46 (14% of total)

*Not Identified = Due to the availability staff resources and the level of file review necessary DENR did identify all of the fines.

Questions?

Appendix L

Table Listing Fines Paid to the South Dakota Regulated Substance Response Fund by Media

Fines Paid to the Regulated Substance Response Fund (1988 - June 2008)

Media	Amount	Date Received
Air	\$1,000	07-15-88
Air	\$3,000	09-16-88
Water	\$1,000	10-25-88
Water	\$2,000	11-10-88
	\$14,000	11-30-88
		Total - 1988
		\$21,000
Air	\$2,500	01-02-89
Multimedia	\$177,089	04-07-89
Air	\$1,500	06-09-89
Water	\$4,115	06-23-89
Air	\$1,080	06-26-89
Air	\$1,000	07-07-89
Air	\$1,000	07-31-89
Air	\$2,298	11-13-89
		Total - 1989
		\$190,582
Land	\$500	01-04-90
	\$2,300	05-24-90
	\$5,000	05-24-90
Multimedia	\$19,744	06-05-90
	\$677	07-12-90
Air	\$8,500	07-24-90
Air	\$3,000	07-30-90
Air	\$2,652	09-19-90
Air	\$7,500	10-09-90
Air	\$1,800	10-30-90
Air	\$800	12-04-90
	\$750	12-12-90
		Total - 1990
		\$53,223
Water	\$4,800	02-22-91
Air	\$3,500	04-22-91
Land	\$60,000	04-22-91
Air	\$1,000	05-06-91
Land	\$2,000	05-23-91
	\$2,200	06-17-91
Air	\$1,250	06-20-91
Air	\$750	07-05-91
Land	\$1,862	07-16-91
Air	\$1,400	07-23-91
Air	\$3,038	07-23-91
Air	\$1,800	08-12-91
Water	\$99,800	08-15-91
Air	\$1,760	08-16-91
Air	\$3,000	08-17-91
Multimedia	\$6,311	08-22-91
	\$1,400	08-27-91
	\$3,100	10-21-91
	\$1,615	10-29-91
Land	\$2,000	11-14-91
	\$512	12-06-91
		Total - 1991
		\$203,097
	\$1,200	02-92
	\$25,000	4-16-92
Land	\$3,823	09-01-92
	\$2,090	09-92
	\$3,000	09-24-92
Land	\$2,500	10-05-92
	\$25,000	10-15-92
		Total - 1992
		\$62,612

Media	Amount	Date Received
Land	\$3,107	01-08-93
	\$2,200	01-19-93
Air	\$1,800	03-01-93
	\$3,262	03-19-93
Water	\$489,000	04-08-93
Land	\$3,107	04-20-93
Multimedia	\$50,000	05-05-93
Multimedia	\$14,715	08-27-93
Air	\$3,500	09-07-93
Air	\$1,700	12-07-93
Air	\$2,600	12-09-93
	<u>Total - 1993</u>	
	\$574,991	
Air	\$4,750	01-26-94
	\$850	02-01-94
Air	\$100	02-17-94
Air	\$100	03-04-94
Air	\$100	04-12-94
Land	\$700	04-15-94
Air	\$100	05-94
Land	\$4,000	05-16-94
Air	\$100	06-03-94
Air	\$100	07-08-94
Air	\$100	08-05-94
	\$3,600	08-01-94
Land	\$4,000	08-01-94
Air	\$3,000	09-07-94
Air	\$100	09-10-94
Air	\$1,600	09-19-94
Air	\$150	10-12-94
Land	\$3,423	10-24-94
Land	\$100	11-01-94
Land	\$4,000	11-01-94
	<u>Total - 1994</u>	
	\$30,973	
Air	\$2,328	12-27-95
	\$1,965	01-11-95
Land	\$4,011	02-01-95
Multimedia	\$9,148	02-21-95
Land	\$5,000	09-29-95
Water	\$150,000	11-13-95
	<u>Total - 1995</u>	
	\$172,452	
Land	\$5,000	08-96
Land	\$5,614	10-96
	<u>Total - 1996</u>	
	\$10,614	
Air	\$5,500	01-03-97
Air	\$2,000	02-18-97
Air	\$4,900	02-18-97
Air	\$1,816	05-06-97
Water	\$5,400	05-20-97
Land	\$1,328	05-97
Air	\$5,912	08-04-97
Air	\$635	08-29-97
Air	\$6,550	09-02-97
Air	\$5,260	10-14-97
Air	\$2,000	10-23-97
Air	\$5,036	10-28-97
Land	\$1,175	11-04-97
	\$7,753	11-21-97
Air	\$2,750	12-17-97
Land	\$7,500	12-23-97
	<u>Total - 1997</u>	
	\$65,515	

Media	Amount	Date Received
Water	\$10,000	01-12-98
	\$7,753	02-13-98
Land	\$17,879	03-10-98
	\$7,753	05-19-98
	\$940	06-12-98
	\$500	06-26-98
Multimedia	\$9,700	07-02-98
	\$3,200	07-22-98
Water	\$8,000	09-11-98
Water	\$76,000	10-01-98
Air	\$500	11-02-98
	\$8,750	11-13-98
Air	\$3,060	11-16-98
Water	\$10,000	12-18-98
	\$9,998	12-28-98
		<u>Total - 1998</u>
		\$174,033
Water	\$150,000	01-15-99
Air	\$1,000	01-19-99
Air	\$86,000	02-05-99
Land	\$809	03-01-99
Air	\$71,000	03-02-99
Water	\$3,000	03-03-99
Land	\$2,529	03-05-99
Land	\$50,495	03-08-99
Land	\$809	04-02-99
Multimedia	\$2,815	04-05-99
Land	\$500	04-28-99
Land	\$809	05-03-99
Air	\$200	05-13-99
	\$400	05-20-99
	\$260	05-20-99
	\$100	05-20-99
Water	\$300	05-24-99
Land	\$809	06-01-99
Land	\$2,529	06-07-99
	\$440	06-17-99
	\$400	06-22-99
Air	\$1,000	07-02-99
Land	\$809	07-06-99
Land	\$100	07-08-99
Land	\$100	07-14-99
Land	\$100	07-16-99
Land	\$200	07-27-99
Land	\$500	08-11-99
Land	\$2,529	09-14-99
Land	\$100	10-29-99
Land	\$200	11-09-99
Water	\$900	11-10-99
Water	\$8,000	11-18-99
Land	\$2,529	12-06-99
	\$400	12-09-99
Water	\$10,000	12-17-99
Air	\$5,000	12-17-99
Multimedia	\$100	12-23-99
		<u>Total - 1999</u>
		\$407,774
Land	\$440	01-11-00
Air	\$8,030	01-25-00
Land	\$1,000	01-25-00
Land	\$240	02-09-00
Air	\$5,036	03-01-00

<u>Media</u>	<u>Amount</u>	<u>Date Received</u>
Air	\$2,725	03-06-00
Land	\$1,042	05-17-00
Land	\$1,042	06-19-00
Land	\$500	06-19-00
Water	\$9,120	06-20-00
Water	\$1,813	06-27-00
Water	\$500	07-12-00
Land	\$1,042	07-14-00
Land	\$709	07-27-00
Land	\$1,042	08-21-00
Land	\$5,000	09-05-00
Land	\$709	09-13-00
Land	\$1,042	09-18-00
Land	\$926	10-10-00
Land	\$1,041	10-16-00
Water	\$2,065	10-27-00
Air	\$9,244	10-30-00
Land	\$926	11-07-00
Water	\$10,000	12-08-00
Water	\$900	12-08-00
Land	\$927	12-15-00
	<u>Total - 2000</u>	
	\$67,061	
Land	\$926	01-16-01
Multimedia	\$375	01-16-01
Multimedia	\$7,100	01-23-01
Air	\$3,251	01-23-01
Land	\$926	02-12-01
Multimedia	\$375	02-20-01
Multimedia	\$375	03-08-01
Land	\$926	03-19-01
Land	\$1,108	03-28-01
Land	\$1,108	03-28-01
Multimedia	\$375	04-13-01
Land	\$1,108	04-16-01
Water	\$53,020	04-24-01
Air	\$65,874	04-25-01
Multimedia	\$375	05-25-01
Land	\$1,108	05-25-01
Multimedia	\$780	06-05-01
Multimedia	\$375	06-15-01
Land	\$1,108	06-19-01
Land	\$1,108	07-16-01
Multimedia	\$375	07-18-01
Multimedia	\$375	08-12-01
Land	\$1,108	08-27-01
Water	\$31,382	08-27-01
Water	\$2,144	08-27-01
Water	\$2,144	09-10-01
Multimedia	\$375	09-21-01
Land	\$1,108	09-24-01
Water	\$2,144	10-11-01
Multimedia	\$375	10-15-01
	\$3,500	10-26-01
Multimedia	\$375	11-09-01
Air	\$13,760	11-30-01
Water	\$2,144	12-07-01
	<u>Total - 2001</u>	
	\$203,010	
Multimedia	\$375	01-02-02
Water	\$4,288	02-08-02
Land	\$1,000	03-22-02

Media	Amount	Date Received
Land	\$53,600	04-03-02
Water	\$500	04-10-02
Multimedia	\$14,950	07-08-02
Water	\$50	07-12-02
Water	\$10,000	08-01-02
Water	\$100	08-02-02
	\$200	08-05-02
Water	\$210	08-07-02
	\$663	11-01-02
Water	\$50	11-13-02
Water	\$513	12-09-02
Water	\$116	12-10-02
	\$1,250	12-13-02
		<u>Total - 2002</u>
		\$87,865
	\$450	01-07-03
	\$80	01-14-03
Water	\$250	02-13-03
	\$23	02-24-03
Air	\$4,730	03-10-03
Air	\$2,930	03-24-03
Water	\$500	04-21-03
Water	\$3,144	04-21-03
Water	\$57,430	06-09-03
Water	\$62,000	06-09-03
Water	\$1,250	07-25-03
Water	\$58,471	08-11-03
Water	\$4,144	08-12-03
Water	\$465	09-03-03
Water	\$319	09-08-03
Water	\$250	09-17-03
Water	\$344	10-31-03
Water	\$100	11-10-03
Water	\$150	11-26-03
Water	\$750	12-01-03
Water	\$150	12-08-03
Water	\$50,000	12-18-03
Water	\$1,250	12-29-03
Water	\$2,800	12-30-03
		<u>Total - 2003</u>
		\$251,980
Air	\$7,369	01-09-04
Water	\$150	01-14-04
Water	\$5,950	01-26-04
Water	\$500	02-09-04
Water	\$12,352	02-12-04
Water	\$6,750	02-27-04
Water	\$2,500	03-29-04
Water	\$1,000	04-28-04
Water	\$150	05-04-04
Water	\$34,155	05-05-04
Water	\$500	05-07-04
Water	\$1,500	05-27-04
Water	\$1,250	06-07-04
Air	\$9,400	06-10-04
Water	\$500	06-23-04
Land	\$901	07-19-04
Water	\$1,000	08-05-04
Water	\$250	09-01-04
	\$500	10-05-04
Water	\$1,000	10-06-04
Water	\$500	10-18-04
Air	\$6,656	11-18-04
	\$125	12-16-04
Water	\$50,000	12-23-04
		<u>Total</u>
		Cal. Yr.2004
		\$144,958

Media	Amount	Date Received
Water	\$1,000	02-10-05
Water	\$1,912	02-16-05
Air	\$6,249	03-23-05
Land	\$7,000 (Total SFY 05)	04-06-05
Water	\$15,582 \$92,675	06-20-05
Water	\$1,955	07-01-05
Air	\$3,544	07-06-05
Air	\$20,948	07-15-05
Water	\$42,681 Total	08-04-05
	\$2,044 Cal. Yr.2005	09-26-05
	\$102,915	
Water	\$150	03-20-06
Water	\$150	04-21-06
Water	\$150	05-17-06
Water	\$50 (Total SFY 06)	06-05-06
Water	\$150 \$71,822	06-19-06
Water	\$10,000	07-06-06
Air	\$112,466 Total	08-07-06
Water	\$7,500 Cal. Yr.2006	08-29-06
	\$130,616	
Air	\$28,550	03-28-07
Air	\$99,603 (Total SFY 07)	06-18-07
Multimedia	\$60,000 \$258,119	07-05-07
Land	\$10,124	07-09-07
Water	\$100	08-20-07
Water	\$3,500	08-28-07
Air	\$45,727	11-08-07
	\$500 Total	11-27-07
Water	\$250 Cal. Yr.2007	12-17-07
Air	\$28,853 \$248,354	12-28-07
Water	\$500	02-11-08
	\$350	02-20-08
Air	\$20,250	03-03-08
Water	\$150	04-03-08
Land	\$7,500	04-07-08
Water	\$149,930	04-28-08
Water	\$1,000	05-14-08
Water	\$1,900 (Total SFY 08)	05-15-08
Water	\$250 \$330,884	06-13-08
	\$3,414,308	

Appendix M

Table Displaying Examples of Other State's Cleanup Funds

Summary of State Cleanup Funds*
Not Petroleum Specific

State	Cleanup Fund Name	Balance at end of FY 2000	Significant Funding Source (>20%)	Minor Funding Source (<20%)	Use of the Fund
Alaska	Oil and Hazardous Release Response Fund (Prevention Account)	\$14,199,376	Cost Recovery, Taxes	NA	Site Inspection, CERCLA Match, Studies and Design, Removals, Emergency Response, Grants to Local Governments, Remedial Action, Program Administration, Long-term Stewardship
	Oil and Hazardous Release Response Fund (Response Fund)	\$50,756,587	Cost Recovery, Taxes, Interest	NA	Site Inspection, Studies and Design, Operations and Maintenance, Removals, Emergency Response, Remedial Actions
California	Hazardous Waste Control Account / Toxic Substances Control Account	\$80,661,000	Appropriations	User Fees	Site Investigation, CERCLA Match, Studies and Design, Operation and Maintenance, Removals, Emergency Response, Remedial Action, Program Administration
	Reimbursements	\$3,887,000	NA	Appropriations, User Fees	Site Investigation, Studies and Design, Operation and Maintenance, Removals, Remedial Actions, Long-term Stewardship
Colorado	Hazardous Substance Response Fund	\$9,055,640	Cost Recoveries, Waste Fees	Taxes	Site Investigation, CERCLA Match, Studies and Design, Operations and Maintenance, Remedial Actions, Program Administration
	Natural Resource Damages Fund	\$7,063,425	Cost Recoveries	Interest	Natural Resource Restorations
Iowa	Hazardous Waste Remedial Fund	\$89,484	Waste Fees	Cost Recoveries, Private Funds	Site Investigation, CERCLA Match, Studies and Design, Operations and Maintenance, Removals, Emergency Response, Grants to Local Governments, Remedial Actions, Program Administration, Natural Resource Restoration, Long-term Stewardship
Minnesota	Superfund (MERLA)	\$12,800,000	Waste Fees, Taxes	Penalties, Cost Recoveries, Interest	Site Investigation, CERCLA Match, Studies and Design, Operations and Maintenance, Removals, Victim Compensation, Emergency Response, Grants to Local Governments, Remedial Actions, Program Administration, Natural Resource Restorations, Long-term Stewardship
Montana	Direct PRP Fund	\$13,763,918**	Private Funds	NA	Site Investigations, Studies and Design, Operations and Maintenance, Removals, Remedial Actions, Program Administration, Natural Resource Restorations
	Environmental Quality Protection Fund	\$742,549**	Cost Recoveries, Interest	NA	Site Investigations, CERCLA Match, Studies and Design, Operations and Maintenance, Removals, Emergency Response, Remedial Actions, Program Administration, Natural Resource Restoration
Nebraska	NA	NA	NA	NA	NA
North Dakota	Environmental Quality Restoration Fund	\$163,000	Cost Recoveries, Interest	Penalties	Site Investigation, Studies and Design, Removals, Emergency Response, Remedial Action, Other
Oklahoma	Environmental Trust Fund	\$0.53	Transfers		CERCLA Match, Operations and Maintenance
	Hazardous Waste Fund	\$313,450	Waste Fees	Penalties	CERCLA Match, Operations and Maintenance, Emergency Response
South Dakota	Environmental Livestock Cleanup Fund	\$800,355	Appropriations	Penalties, Cost Recoveries, Interest	Site Inspection, Studies and Design, Operations and Maintenance, Removals, Emergency Response, Remedial Actions, Natural Resource Restoration
	Regulated Substance Response Fund	\$2,035,377	Penalties	Cost Recoveries, Interest	Site Investigation, CERCLA Match, Studies and Design, Operations and Maintenance, Removals, Emergency Response, Remedial Actions, Natural Resource Restoration
Texas	Hazardous and Solid Waste Remediation Fee Account (Fund 550)	\$55,605,312	Waste Fees, Other	Cost Recoveries, Interest	Site Investigation, CERCLA Match, Studies and Design, Operations and Maintenance, Removals, Emergency Response, Remedial Actions, Program Administration, Long-term Stewardship, Other
	Spill Response Fund	\$116,297	Appropriations	NA	Removals, Emergency Response
Wyoming	The Trust and Agency Account Fund	NA	NA	NA	Emergency Response

*Data Source: An Analysis of State Superfund Programs, 50-State Study, 2001 Update. November 2002. Environmental Law Institute.

**Montana Figures from the end of FY 97

NA = Not Available in the Report

Appendix N

Federal Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund

Introduction

The Oil Spill Liability Trust Fund (fund) was created by Congress in 1986 and its use was authorized by the signing of the Oil Pollution Act in 1990. The fund, managed by the U.S. Coast Guard, is established as a funding source to pay for cleanup costs and damages resulting from oil spills or threats of oil spills to navigable waters of the United States. For the purposes of this fund “navigable waters” is defined in § 300.5 of the National Contingency Plan.

The fund has two major components. First, the emergency fund. The emergency fund is available for Federal On-Scene Coordinators to respond to oil discharges and for Federal natural resource trustees to initiate natural resource damage assessments. This portion of the fund receives an annual \$50 million apportionment. The Coast Guard has the authority to advance an additional \$100 million into the emergency fund each year to supplement shortfalls. Second, the remaining Principal Fund balance is used to pay claims and to fund appropriations by Congress to Federal agencies to administer the provisions of the Oil Pollution Act and support research and development.

Who Can Access the Fund?

- All Federal On-Scene Coordinators
- Other Federal, State, Local, and Indian tribal government agencies that assist the Federal On-Scene Coordinator can be reimbursed for their costs.
- Natural Resource Trustees
- Claimants – individuals, corporations, and governments can submit claims for uncompensated removal costs and damages if the responsible party does not satisfy their claim.

Limitations to Accessing the Fund

- The release or threat of release must be into or on the navigable waters of the United States or adjoining shorelines or the Exclusive Economic Zone
- The discharge must be oil
- In general, the maximum amount expendable from the fund per incident is \$1 billion.

Responsibility of the Responsible Party to a Spill

- When an oil spill occurs, the responsible party is responsible for complete cleanup of the spill.
- If the responsible party does not fully remove the spill and the Federal On-Scene Coordinator responds to the spill the responsible party will be later billed for all Federal response costs.

Funding

- The fund balance on April 27, 2006 was \$662 million.
- As of March 18, 2008, the following is the projected end of year fund balance based on the barrel tax and historical expenditures:

2008 - \$1,030,009,455

2009 - \$1,107,363,831

2010 - \$1,227,242,256

2011 - \$1,345,434,782

2012 - \$1,468,866,674

2013 - \$1,601,770,189

2014 - \$1,744,565,195

EPA’s Use of the Fund in South Dakota

In the early 1990's EPA used monies from the fund to cleanup a coal tar spill in the Big Sioux River at Fawick Park in Sioux Falls.

USING THE OIL SPILL LIABILITY TRUST FUND

A Primer of Key Funding Eligibility Concepts and Procedures

These concepts are intended solely for the guidance of agency personnel. These concepts do not constitute a regulation and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity by any person. This document may change at any time, without prior notice.

July 11, 2005

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I. INTRODUCTION

The Coast Guard (CG) and the Environmental Protection Agency (EPA) are authorized under Section 311(c) of the Federal Water Pollution Control Act ("FWPCA") (as amended by the Oil Pollution Act of 1990), 33 U.S.C. § 1321(c), to remove a discharge, and to mitigate or prevent a substantial threat of a discharge, of oil to navigable waters or adjoining shorelines.^{1/} A principal purpose of the Oil Pollution Act of 1990, P.L. 101-380 ("OPA") is to ensure that federal responders have the financial resources readily available to support an immediate and effective response. Those resources are provided by a \$50 million annual appropriation from the Oil Spill Liability Trust Fund ("OSLTF") as outlined under OPA section 6002.^{2/}

The three questions that must be answered to determine whether an oil response is authorized under Section 311(c) of the FWPCA are:

- (1) Is the substance involved an oil?
- (2) Is there a discharge or substantial threat of a discharge of oil?
- (3) Is the discharge or substantial threat of discharge into navigable waters or adjoining shorelines?

If each of these elements is present, the Federal On-Scene Coordinator ("FOSC") is authorized to take oil response action under Section 311(c) of the FWPCA. Also, if each of these three elements is present, the OSLTF is available for use by the FOSC. Thus, it is important that each of these elements be documented by FOSCs when they access the OSLTF (or as soon thereafter as practical) so that the National Pollution Funds Center ("NPFC") can ensure that funds are being accessed appropriately.

This document provides funding eligibility guidance to FOSCs on these three threshold elements. In addition, guidance is provided on how to document these elements. Guidance is also provided on FOSC responsibilities with respect to documentation regarding the identification of responsible parties^{3/}

^{1/}Pursuant to Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991), the President's authority under Section 311(c) of the FWPCA has been delegated to EPA for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone. The authority to remove a discharge, and to mitigate or prevent a substantial threat of a discharge, of oil extends not only to navigable waters and adjoining shorelines, but also to the waters of the exclusive economic zone and to discharges or substantial threats of discharges of oil "that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States." 33 U.S.C. §1321(c). Simply for ease of reference, the remainder of the guidance refers solely to "navigable waters or adjoining shorelines," but is not to be construed as any limitation on the full scope of authority available under Section 311(c) of the FWPCA.

^{2/}Section 7 of Executive Order 12777 delegates authority for management of the Oil Spill Liability Trust Fund to the Secretary of the Department in which the Coast Guard is operating, and this authority is exercised within the Coast Guard by the National Pollution Funds Center.

^{3/}FOSCs also have responsibilities with respect to the documentation of removal costs. Guidance this topic may be found in the NPFC User Reference Guide.

II. THE FOSC HAS BROAD REMOVAL AUTHORITY

A fundamental public policy underlying the FWPCA is that there shall be no discharge of oil to navigable water or adjoining shorelines. 33 USC 1321(b)(1). Consistent with that policy the President may, in accordance with the National Contingency Plan (NCP), ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of discharge, of oil to navigable waters and adjoining shorelines. 33 USC 1321(c)(1). As noted above, the President's removal authority has been delegated to the Coast Guard for the coastal zone and to the Environmental Protection Agency for the inland zone. These authorities are also established in the NCP. See, e.g., 40 C.F.R. §§300.120(a) and 300.130. The OSLTF is available to pay the costs of federal oil removal. 33 USC 1321(s); 33 USC 2712(a)(1); 33 USC 2752(b).

"Remove or Removal" is defined as "containment and removal of the oil...from the water and shorelines or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches." 33 USC 1321(a)(8).

"Removal costs" are the "costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize or mitigate oil pollution from such an incident." 33 U.S.C. 2701(31).

When there is a discharge or substantial threat of discharge of oil to navigable waters or adjoining shorelines, the FOSC determines the response actions appropriate under the NCP. The FOSC has broad authority to remove or arrange for the removal of a discharge and to mitigate or prevent a substantial threat of a discharge, and to direct or monitor all federal, state and private actions to remove a discharge or to mitigate or prevent a substantial threat of a discharge. 33 U.S.C. §1321(c); 40 C.F.R. §§ 300.130 and 300.305(d). Containment, countermeasures and cleanup of the oil include a wide range of activities including controlling the source of a spill. 40 C.F.R. 300.310(a).

Removal authority should be construed broadly to achieve the policy enunciated by Congress – that there shall be no discharge of oil to navigable waters. The NCP recognizes that removal authority necessarily includes authority to address a discharge at its source, consistent with the no discharge policy. 40 C.F.R. 300.310(a). However, once the discharge to the water is stopped, the oil is removed from the navigable waters and shorelines, and all steps have been completed to prevent, minimize or mitigate any substantial threat of discharge to the water, NPFC removal funding typically ends.

The NPFC is responsible for making funds available for removal, but does not exercise oil removal authority under the FWPCA. Amounts appropriated annually from the OSLTF are made available by the NPFC to CG or EPA FOSCs for oil removal projects that are authorized under FWPCA 311(c) and consistent with the NCP. The NPFC has a fiduciary responsibility to ensure proper use of the OSLTF. Therefore, availability of funding is subject to NPFC policies and guidelines. In cases where it is unclear that the three FWPCA threshold elements have been met, the NPFC will work with the FOSC to ensure that the OSLTF will be used appropriately.

III. THRESHOLD ELEMENTS AND DOCUMENTATION REQUIREMENTS

A. Is it Oil?

1. FWPCA and OPA definitions of "oil"

Section 311(a) of the FWPCA defines "oil" as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." 33 U.S.C. § 1321(a)(1). OPA Title I, 33 U.S.C. §§2701-2720 creates a liability and compensation regime for oil discharges that is complementary to the provisions of Section 311 of the FWPCA. OPA Title I adopts the FWPCA definition of oil but adds an express exclusion for "any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601) and which is subject to the provisions of that Act." 33 U.S.C. §2701(23). Thus, FWPCA oils are also OPA Title I oils except for any FWPCA oil that is specifically listed or designated as a CERCLA hazardous substance. See CERCLA Table of Hazardous Substances at 40 C.F.R. 302.4.

2. NPFC Policy on OSLTF Funding with Respect to Certain Substances

As a matter of policy, the NPFC and EPA have agreed that the NPFC will not generally provide funding from the OSLTF for responses with respect to the substances identified below, for which funding is generally available from the Hazardous Substance Superfund established under CERCLA.

a. Hexane. Hexane is specifically listed as a CERCLA hazardous substance. As a matter of policy, the NPFC will not generally provide funding from the OSLTF for response to the discharge or substantial threat of a discharge of hexane. FOSCs that are contemplating accessing the OSLTF to fund removal activities in response to the discharge or substantial threat of discharge of hexane should consult with their NPFC Regional Manager prior to accessing the OSLTF.

b. Creosote. Creosote is not widely used today, but historically was widely used as a wood preservative by wood treatment facilities. Creosote is specifically listed as a CERCLA hazardous substance. As a matter of policy, the NPFC will not generally provide funding from the OSLTF for responses to the discharge or substantial threat of a discharge of creosote. FOSCs that are contemplating accessing the OSLTF to fund removal activities in response to the discharge or a substantial threat of discharge of creosote-related contaminants should consult with their NPFC Regional Manager prior to accessing the OSLTF.

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c. "Coal Tar" Wastes From Former Manufactured Gas Plants (MGPs). The term "coal tar" is often loosely used to refer to several types of substances derived from the distillation of coal, some of which are products, or by-products, and others which are wastes.

With respect to funding, responses to discharges of "coal tar" wastes from former Manufactured Gas Plants ("MGPs") that contain constituents that are hazardous substances under CERCLA have typically been funded from the Hazardous Substance Superfund. As a matter of policy, the NPFC will not generally provide funding from the OSLTF for responses to the discharge or substantial threat of a discharge of "coal tar" wastes from MGPs. FOSCs that are contemplating accessing the OSLTF to fund removal activities in response to the discharge or substantial threat of discharge of "coal tar" wastes from a MGP should consult with their NPFC Regional Manager prior to accessing the OSLTF.

3. Natural Gas

Natural gas is not an oil. Response to a discharge or substantial threat of discharge of natural gas is not an oil response under FWPCA and is not funded from the OSLTF. However, oil may be present in some amounts when there is a natural gas incident, such as a leak, fire, or explosion from certain natural gas wells. Such oil may discharge to navigable waters or adjoining shorelines or there may be a substantial threat of such a discharge. Therefore, while a response to a natural gas incident will in general not be a response under the FWPCA for which OSLTF funding is available, FOSC response to the discharge of oil to navigable waters or adjoining shorelines, or the substantial threat of such a discharge, may be funded from the OSLTF. When confronted with a natural gas incident, FOSCs should explain and document how the response for which OSLTF funding will be used is for the primary purpose of removing a discharge of oil to navigable waters, or adjoining shorelines or mitigating or preventing the substantial threat of such a discharge.

4. Tire Fires

Oil may be produced in some amounts when there is a tire fire. Such oil may discharge to navigable waters or adjoining shorelines or there may be a substantial threat of such a discharge. Therefore, while a response to a tire fire in general will not be a response under the FWPCA for which OSLTF funding is available, FOSC response to the discharge of oil to navigable waters or adjoining shorelines, or the substantial threat of such a discharge, may be funded from the OSLTF. When confronted with a tire fire incident, FOSCs should explain and document how the response for which OSLTF funding will be used is for the primary purpose of removing a discharge of oil to navigable waters, or adjoining shorelines or mitigating or preventing the substantial threat of such a discharge.

5. Responses Potentially Involving Both FWPCA Oil and a CERCLA Hazardous Substance

a. The CERCLA "Petroleum Exclusion". The CERCLA definition of "hazardous substances" does not include, "petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of [section 101(14)] and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas)." 42 U.S.C. §9601(14).

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EPA has interpreted the petroleum exclusion to only apply to: crude oil that naturally contains hazardous substances; and refined product containing hazardous substances or constituents that normally are added during the refining process. See Memorandum from Francis S. Blake, General Counsel, "Scope of the CERCLA Petroleum Exclusion Under Sections 101(14) and 104(a)(2)," July 31, 1987. Hazardous substances that are added to petroleum during use, or increased in concentration as a result of use, are not subject to the petroleum exclusion and are subject to regulation under CERCLA. Courts generally have accepted this interpretation.

If the facts and circumstances indicate that the CERCLA petroleum exclusion is not applicable to substances subject to the response action, the FOSC should closely coordinate with the NPFC and EPA Headquarters regarding funding.

b. Mixes of Oil and Hazardous Substances. When a discharge to navigable waters or adjoining shorelines is discovered or reported, the FOSC must be able to make a swift, field decision about whether the discharging material is oil, a hazardous substance, or a mix or combination of both in order to determine response authority and funding. These field determinations will take into account any readily available information from the RP or other informed source (e.g., state or local agencies). If the circumstances indicate that the substance is likely to be a mix or combination of oil and a specifically listed or designated CERCLA hazardous substance, the FOSC should closely coordinate with the NPFC and EPA Headquarters before funding is provided.

Even after deciding to conduct an oil response under the FWPCA and accessing the OSLTF, the FOSC should test the substance as soon as practical in order to confirm the nature of the substance. If the source of the discharge is not known, testing of the substance may also be useful in identifying the source and the responsible party for the source.

If, during a removal funded from the OSLTF, it is determined that the substance discharging or substantially threatening to discharge to protected waters or shorelines is a specifically listed or designated CERCLA hazardous substance, NPFC policy is that generally OSLTF funding should end. At that point, as appropriate, the FOSC may decide to seek funding from the CERCLA Superfund. In such circumstances, the NPFC and EPA should work together to facilitate a smooth transition of funding sources.

If an incident includes a distinct discharge or substantial threat of discharge of an oil and a distinct release or substantial threat of release of a CERCLA hazardous substance, and there are distinct response actions directed to each, those distinct response actions directed to the discharge or substantial threat of discharge of oil generally should be funded from the OSLTF, and those distinct activities directed to the CERCLA hazardous substances generally should be funded from CERCLA's Superfund.

B. Is there a Discharge or Substantial Threat of a Discharge?

If there is oil in or on the navigable water or adjoining shorelines, there has been an actual discharge that clearly satisfies this threshold element. This element is also satisfied if there is a substantial threat of a discharge of oil to navigable waters or adjoining shorelines.

1. FOSC and NPFC roles

The FOSC, in exercise of his/her FWPCA oil response authority, determines the existence of a discharge or a substantial threat of a discharge of oil to navigable waters or adjoining shorelines. The FOSC also determines what action is needed to ensure the substantial threat of a discharge to protected waters and shorelines is mitigated or prevented. The NPFC does not exercise oil removal authority under FWPCA, but is responsible for making funds available for response actions authorized under 33 USC §1321 and consistent with the NCP to ensure the substantial threat of a discharge of oil to navigable waters or adjoining shorelines is mitigated or prevented. NPFC has a fiduciary responsibility to ensure proper use of the OSLTF and therefore will work with the FOSC to ensure that the OSLTF will be used appropriately.

To that end, the FOSC and the NPFC Case Officer should initiate a dialogue at the beginning of a response to a substantial threat of a discharge. These discussions help provide the NPFC with a full understanding of the FOSC's determination that a substantial threat of a discharge exists and help facilitate funding.

2. Substantial Threat

The OSLTF may be used when the FOSC responds under authority of FWPCA section 311(c) to prevent or mitigate a substantial threat of a discharge of oil to the navigable waters or adjoining shorelines. In making the determination that circumstances present a substantial threat of a discharge of oil to navigable waters or adjoining shorelines the FOSC should consider relevant factors in the context of the overall situation, including the following:

a. The source of the oil, the condition of the source including any environmental factors or weather which may change the condition of the source, and if the source is functioning in some way to contain the oil in whole or in part, facts relevant to an evaluation of the integrity of that containment mechanism and predicted or potential failures of that containment mechanism;

b. The proximity of the oil source to navigable waters or adjoining shorelines, the quantity of oil, any relevant available information regarding the nature of the oil, and the flow path from the oil source to the navigable waters, including slope, terrain, natural or manufactured conduits or drains, the absence of effective natural or manmade barriers between the source and the navigable waters, any environmental factors or weather conditions that may affect movement of the oil, and any other available information relevant to the potential movement of the oil from the source to the navigable waters;

c. Whether under all the facts and circumstances response action should be undertaken in order to prevent a discharge of oil to navigable waters or adjoining shorelines.

3. Documentation for Substantial Threat Incidents

FOSCs are to document the facts and circumstances relied upon in making the "substantial threat" determinations to the NPFC in order to memorialize the basis for the exercise of removal authority. Summary documentation should be provided in the initial POLREP, and detailed documentation should be provided as soon as practical. All documentation should reflect consideration of the relevant factors, as discussed above, and the basis for the determination that the circumstances present a substantial threat of a discharge of oil to the navigable waters or adjoining shorelines

Documentation of the "substantial threat" determination is important since the OSLTF is not available for response when an oil source has merely a remote potential to discharge oil "someday". Thus, provision of adequate documentation is a predicate to OSLTF funding. Even after OSLTF funding is made available, if additional relevant information becomes available, it is the FOSC's responsibility to provide that additional information and documentation to the NPFC, and to respond to NPFC's requests for additional information. In addition to its funding responsibilities, this documentation is also used by NPFC in support of other responsibilities that the NPFC fulfills, including the payment of claims under OPA, determination of liable responsible party debts, and to support enforcement actions necessary to recover removal costs from responsible parties

There are numerous ways an FOSC can document the factors considered and the basis for the decision that a specific situation presents a substantial threat of discharge, in support of their request for funding. Whatever methods are used, the FOSC should describe all of the relevant facts and circumstances, as discussed above, and include any available photographs. The following list provides several examples of the types of documentation that may be used for this purpose:

- a. For Coast Guard-managed incidents: Operational logs or ICS forms such as the Incident Information Form, the Incident Briefing form (ICS 201), the Response Objectives form (ICS 202), the Unit Log (ICS 214) or the Executive Summary form (ICS Exec. Sum.);
- b. For EPA managed incidents: the OPA90 Removal Project Plan (ORPP);
- c. POLREPS;
- d. E-mail to operational superiors and the NPFC;
- e. A memorandum regarding the substantial threat determination; or
- f. Administrative orders issued under FWPCA 311(c) to responsible parties.

Any of these or other similar methods of documentation may be used as long as the purpose is fulfilled, which is to document the FOSC's consideration of relevant factors and the basis for the determination that the circumstances present a substantial threat of a discharge of oil to the navigable waters or adjoining shorelines.

C. Is the Discharge or Substantial Threat of a Discharge into Navigable Waters?

Under the FWPCA, the term "navigable waters" is broadly defined as "the waters of the United States, including the territorial seas." 33 U.S.C. §1362(7).^{4/} Regulatory definitions of the term include, among other things, waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters that are subject to the ebb and flow of the tide (sometimes referred to as traditional navigable waters); interstate waters, including interstate wetlands; tributaries to traditional navigable waters; and wetlands that are adjacent to traditional navigable waters or their tributaries. See, e.g., 40 C.F.R. §300.5.

In January 2001, the Supreme Court held that use of isolated, non-navigable, intrastate waters by migratory birds was not a sufficient basis for the exercise of federal regulatory jurisdiction under Section 404(a) of the FWPCA. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001) ("SWANCC"). Since that decision was rendered, case law with respect to the meaning of the term "navigable waters" has been evolving.

Particularly given these legal developments, the FOOSC should provide relevant information on the affected water or shoreline to the NPFC case officer, including the name and nature of the water, tributary connections between the water and downstream traditional navigable waters, and information regarding any other adjacent waters. If a question should arise with respect to the jurisdictional status of a particular water, agency counsel should be consulted.

D. Responsible Party Identification - Facility/Vessel Source

1. RP Definitions

OPA imposes liability for removal costs and damages "on each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone...." 33 U.S.C. §2702(a). Identification of the responsible parties under OPA depends on the source of the discharge or substantial threat of a discharge. See 33 U.S.C. §2701(32). In general, responsible parties for each type of pollution source are as follows:

a. Vessel. In the case of a vessel, responsible party or parties means the owner(s), operator(s), and demise charterer(s).

b. Onshore Facility. In the case of an onshore facility, responsible party or parties means the owner(s) and operator(s) of the facility. An onshore facility is any facility located in, on, or under any land within the United States other than submerged land.^{5/} There are

^{4/} Under OPA, the term "navigable waters" is also defined as the "waters of the United States, including the territorial seas," 33 U.S.C. §2701(21), and the term has been construed by courts to have the same meaning under OPA as under the FWPCA.

^{5/} "Facility" is further defined as

some exceptions for states and other government owners that have transferred possession and right to use the property to other persons by lease, assignment or permit at the time of the discharge or substantial threat of discharge. In the case of an actual discharge, the relevant time for determining ownership and operation is the time during which the discharge occurred. In the case of a substantial threat of a discharge, the relevant time for determining ownership and operation is the time during which a substantial threat was posed.

c. Offshore facility. In the case of an offshore facility, responsible party or parties means the lessee(s), permittee(s), and holder(s) of a right of use and easement of the area in which the facility is located. An offshore facility includes any facility located in, on, or under water. There are some exceptions for states and other government owners that have transferred possession and right to use the property to other persons by lease, assignment or permit at the time of the discharge or substantial threat of discharge.

d. Deepwater Port. In the case of a deepwater port licensed under the Deepwater Port Act of 1974, responsible party or parties means the licensee

e. Pipeline. In the case of a pipeline, responsible party or parties means the owner(s) or operator(s) of the pipeline.

f. Abandonment. In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, responsible party or parties means the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

2. Documentation Required From FOSC

Under the NCP, the FOSC is responsible for identifying potentially responsible parties to the extent practicable. 40 CFR 300.305(b)(3). For a simple vessel case, this task is fairly straightforward. For a facility case involving numerous leases and other title documents, that process may be more lengthy and complicated. In the case of an onshore facility, FOSCs should generally retain a deed and title search company when the FPN is opened in order to identify all of the responsible parties as promptly as possible. Because this search facilitates the prompt identification of responsible parties, it should be conducted before the commencement of the removal where time permits and, in any event, as soon as possible during the response phase. The OSLTF is generally available to pay the costs of this search, and a draft model Scope of Work ("SOW") for this purpose is available from the NPFC. This procedure is also available with respect to offshore facilities. Documentation with respect to the identification of responsible parties for vessels and onshore and offshore facilities is discussed further below.

a. Vessel. In the case of a vessel, documentation of the responsible party should include the name of the vessel, dimensions, type of vessel, and some identifying number, such an official number if it is a U.S. flag vessel or a Lloyds number for foreign flag vessels.

any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes; exploring for, drilling for, producing, storing, handling, transferring, processing or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes. 33 U.S.C. § 2701(9).

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A copy of the vessel's Certificate of Documentation should be in the case file. For vessels with no Coast Guard documents, a copy of the vessel's state registration and drivers license of the owner and/or operator should be obtained, along with any other documents identifying the owners and operators.

b. Onshore Facility. As soon as the FPN is opened, in a case involving an onshore facility, the FOSC should generally retain a deed and title search company familiar with relevant property records. The attached model SOW for "Onshore Facilities" should be used in contracting with the deed and title search company and modified where appropriate. If the FOSC does not retain a deed and title search company, the FOSC should obtain the information and documentation set forth in the model SOW. In general, the title documents and leases will determine the owner(s) of the facility at the time of the discharge or substantial threat of a discharge of oil. The term operator is not limited to the operator of record. The term operator may include others who had control with respect to the facility's operations, even though these parties may not have been designated an operator of record by the state regulatory body. FOSCs should contact their Regional Counsel (for EPA) or District Legal Office (for Coast Guard) to resolve any enforcement issues and interpretation of various legal documents.

c. Offshore Facility. As soon as the FPN is opened, in the case of an offshore facility, the FOSC should generally obtain the documents and information set forth in the attached SOW for "Offshore Facilities." With respect to submerged lands owned by the state most of this information is usually kept by the state leasing authority or state oil gas regulatory body. As discussed above, the FOSC may contract these services out at the beginning of the removal project to a deed and title company familiar with records pertaining to oil and gas leasing.

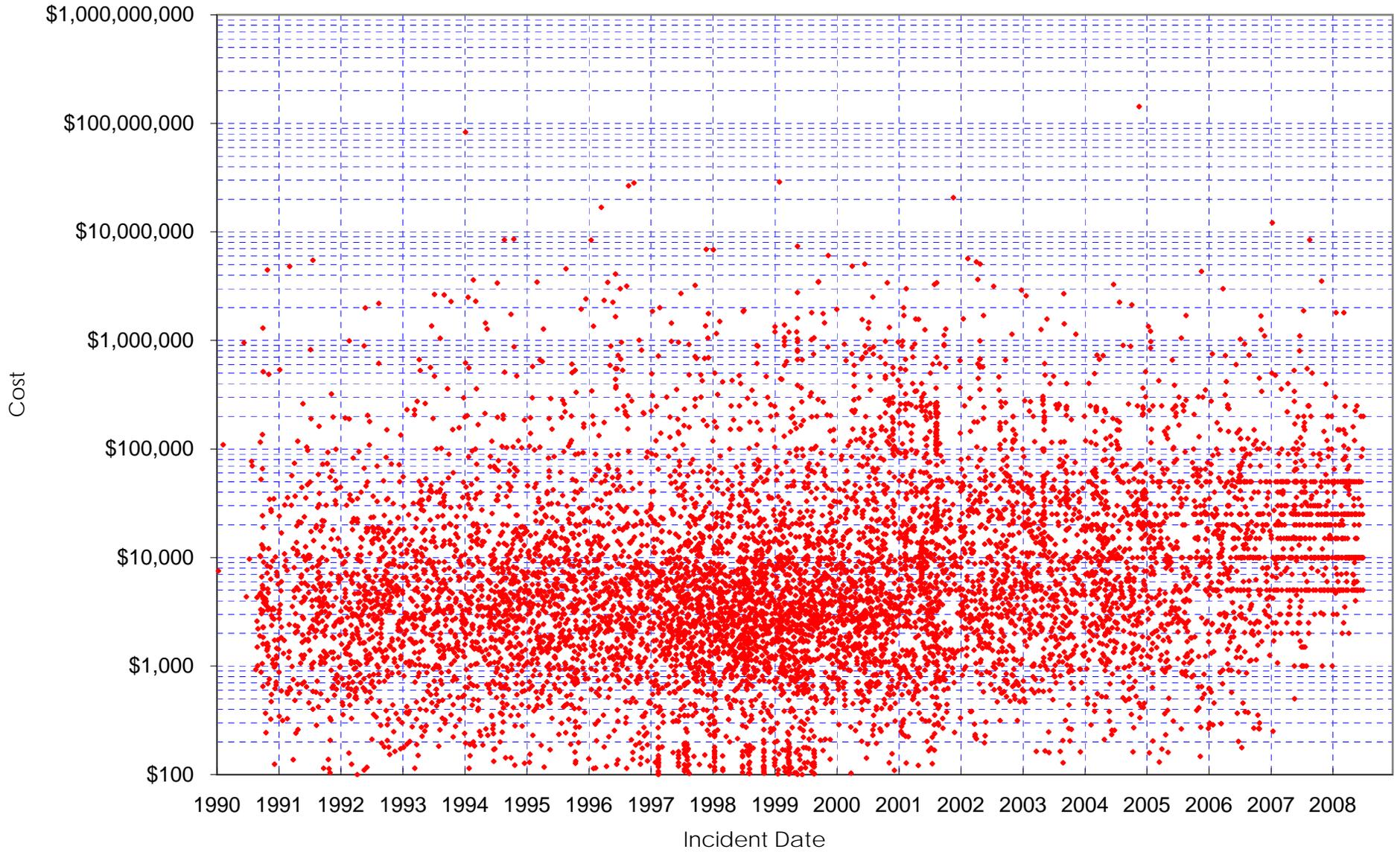
FOSCs should contact their Regional Counsel (for EPA) or District Legal Office (for Coast Guard) to resolve any enforcement issues and interpretation of various legal documents. NPFC legal staff is available to provide advice to case managers on interpretation of these documents.

E. Funds Access Procedures

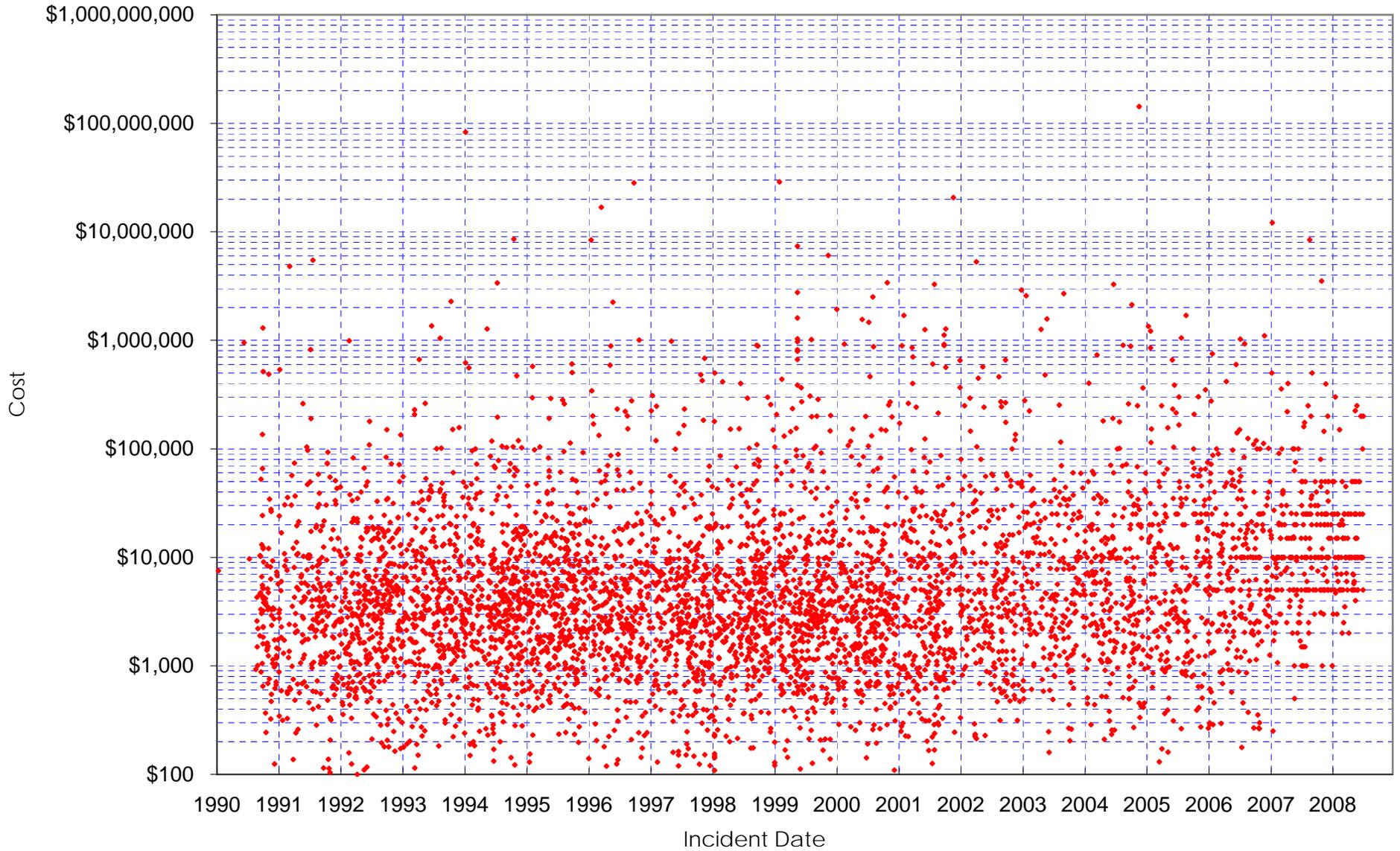
1. EPA FOSCs can initially obtain \$50K from the OSLTF using CANAPS. EPA FOSCs should use CANAPS to request higher ceilings when necessary. Upon receipt of the request, the NPFC Case Officer will coordinate with the FOSC and raise the ceiling as appropriate. EPA FOSCs must prepare and submit Oil Removal Project Plans when requesting ceilings in excess of \$250K.

2. USCG FOSCs can initially obtain \$500K from the OSLTF using CANAPS. USCG FOSCs should use CANAPS to request higher ceilings when necessary. Upon receipt of the request, the NPFC Case Officer will coordinate with the FOSC and raise the ceiling as appropriate.

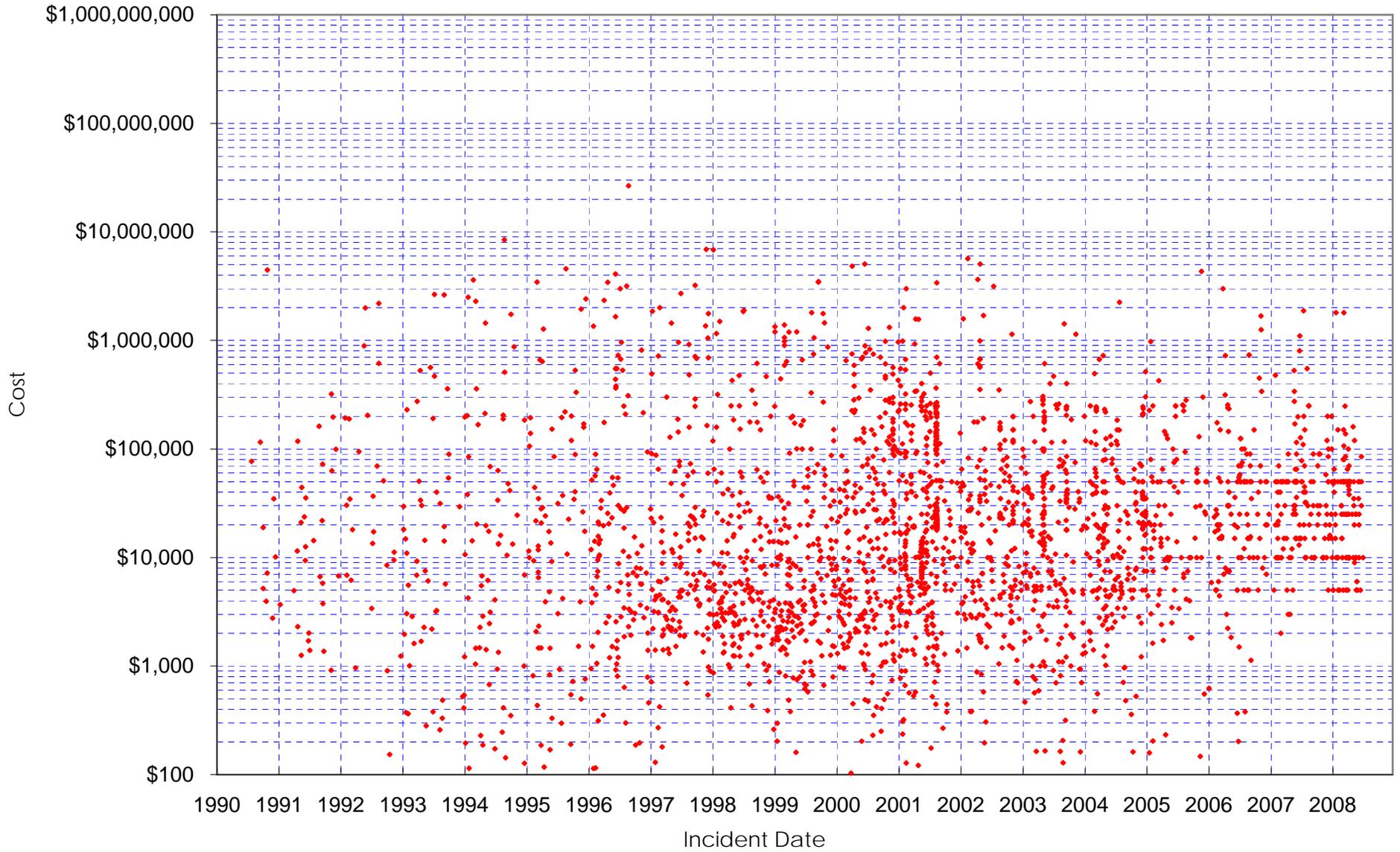
OSLTF Funding (Removal Costs and Claims)



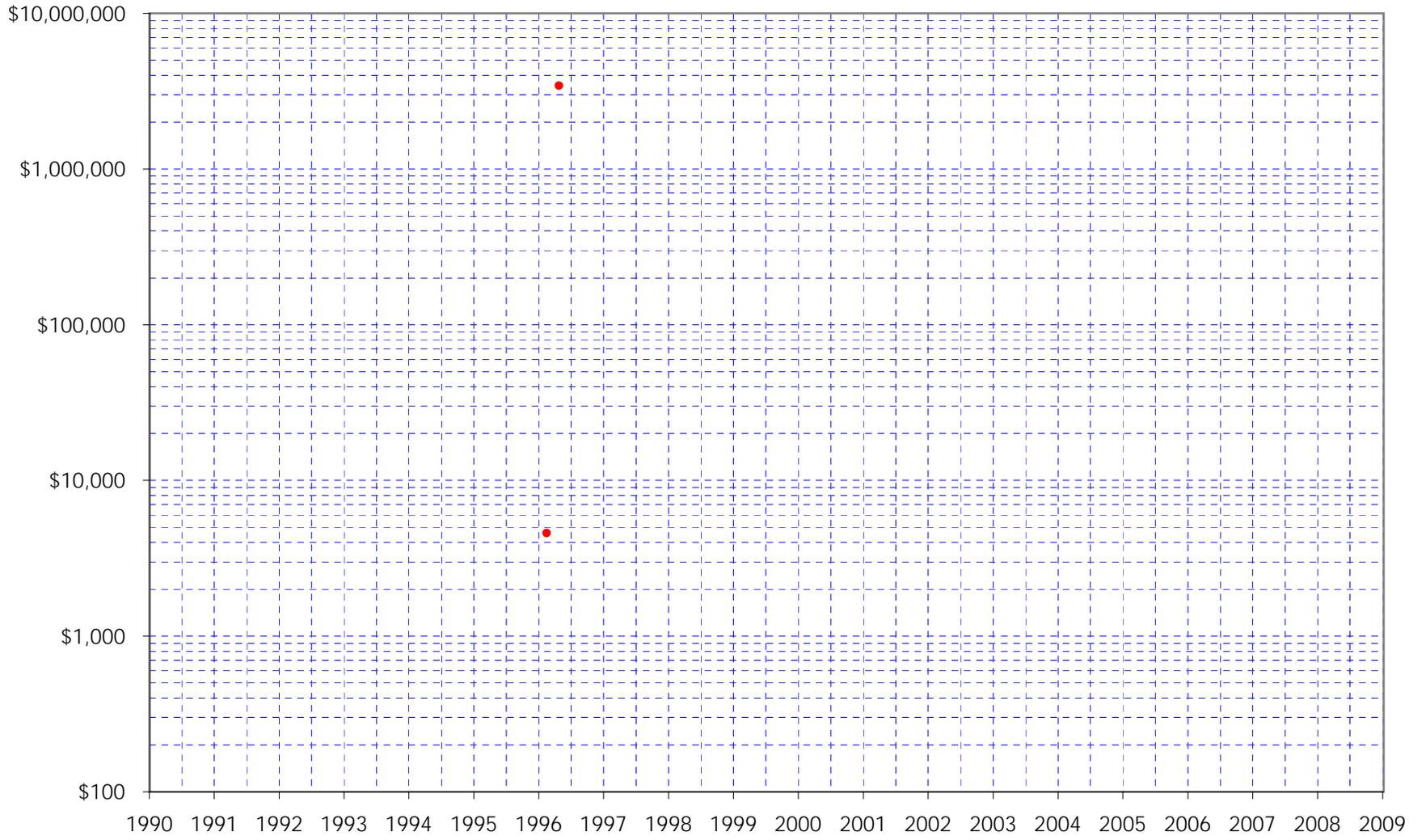
OSLTF Funding: Coast Guard Projects (Removal Costs and Claims)



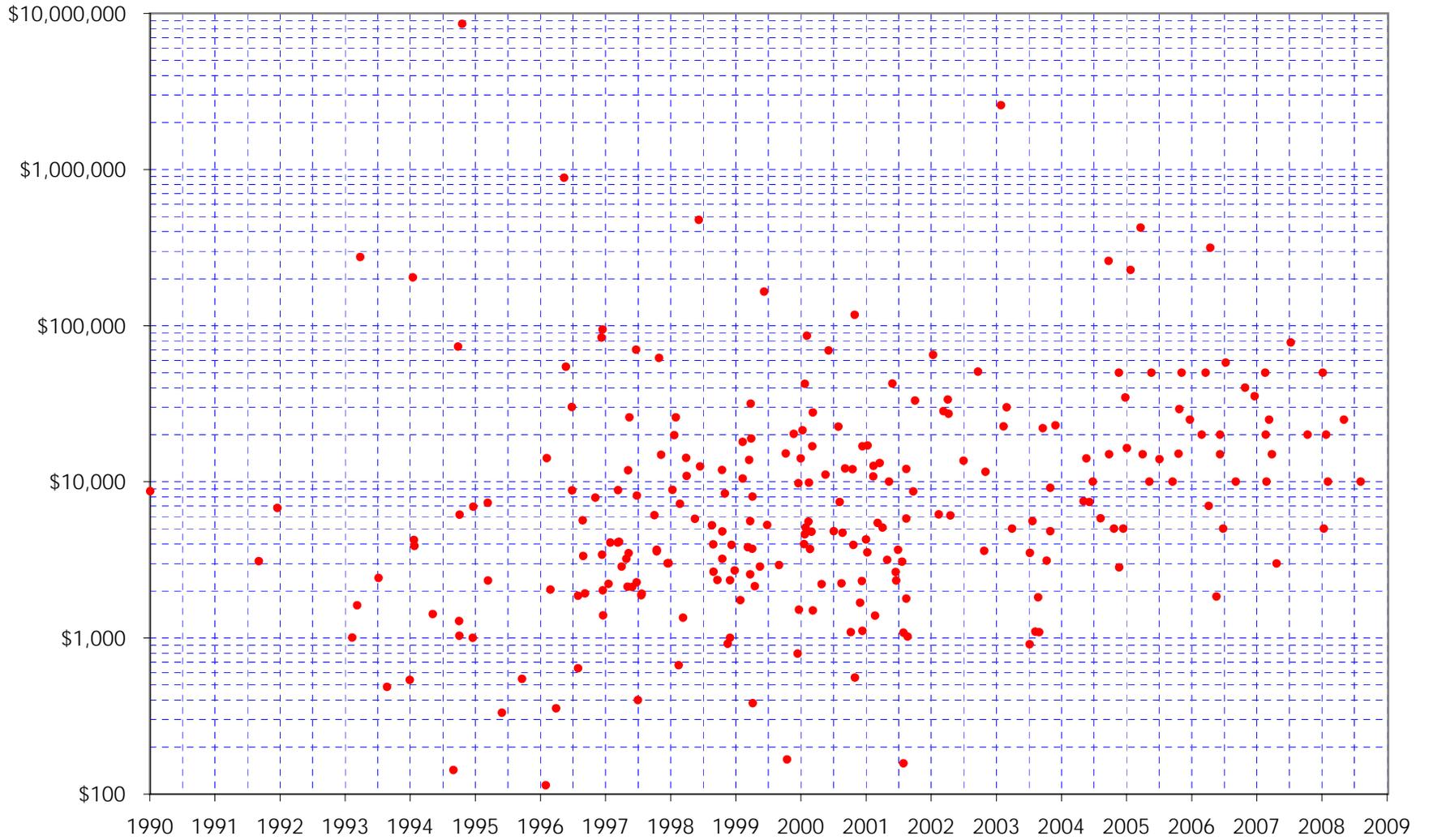
OSLTF Funding: EPA Projects
(Removal Costs and Claims)



OSLTF Removal Costs and Claims
South Dakota



OSLTF Removal Costs and Claims
Pipelines



Appendix O

Brian Walsh's Presentation on the Federal Oil Spill Liability Trust Fund

Overview of the Oil Spill Liability Trust Fund

South Dakota Underground
Pipeline Task Force
August 14, 2008

Introduction

- The Oil Spill Liability Trust Fund (fund) was created by Congress in 1986 and its use was authorized by the signing of the Oil Pollution Act in 1990.
- The fund, managed by the U.S. Coast Guard, is established as a funding source to pay for cleanup costs and damages resulting from oil spills or threats of oil spills to navigable waters of the United States.

Major Fund Components

- First, the emergency fund. The emergency fund is available for Federal On-Scene Coordinators to respond to oil discharges and for Federal natural resource trustees to initiate resource damage assessments. This portion of the fund receives an annual \$50 million apportionment. The Coast Guard has the authority to automatically advance an additional \$100 million into the emergency fund each year to supplement shortfalls.
- Second, the remaining Principal Fund balance is used to pay claims and to fund appropriations by Congress to Federal agencies to administer the provisions of the Oil Pollution Act and support research and development.

Who Can Access the Fund?

- All Federal On-Scene Coordinators
- Other Federal, State, Local, and Indian tribal government agencies that assist the Federal On-Scene. Assisting agencies may be reimbursed for their costs.
- Federal Natural Resource Trustees
- Claimants – individuals, corporations, and governments can submit claims for uncompensated removal costs and damages if the responsible party does not satisfy their claim.

Limitations to Accessing the Fund

- The release or threat of release must be into or on the navigable waters of the United States
- The discharge must be oil
- In general, the maximum amount expendable from the fund per incident is \$1 billion.

Responsibility of the Responsible Party to a Spill

- When an oil spill occurs, the responsible party is responsible for complete cleanup of the spill.
- If the responsible party does not fully remove the spill and the Federal On-Scene Coordinator responds to the spill the responsible party will be later billed for all Federal response costs.

Funding

- The fund balance on April 27, 2006 was \$662 million.
- The following is the projected end of year fund balance based on the barrel tax and historical expenditures:
 - 2008 - \$1,030,009,455
 - 2009 - \$1,107,363,831
 - 2010 - \$1,227,242,256
 - 2011 - \$1,345,434,782
 - 2012 - \$1,468,866,674
 - 2013 - \$1,601,770,189
 - 2014 - \$1,744,565,195

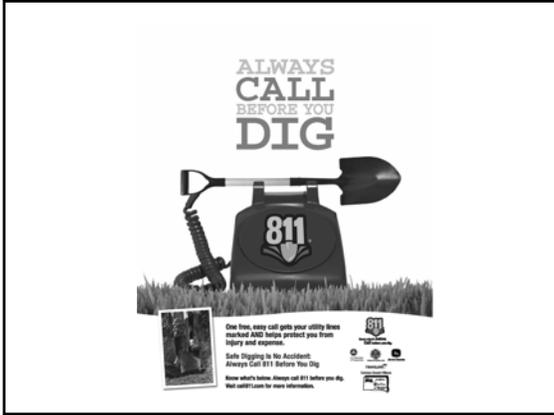
EPA's Use of the Fund in South Dakota

- In the early 1990's EPA used monies from the fund to cleanup a coal tar spill in the Big Sioux River at Fawick Park in Sioux Falls.

Questions?

Appendix P

Larry Englerth's Presentation on the South Dakota One Call System



What is South Dakota One Call?

- One Call Board was created as a State Agency by statute in 1994
- A communication link between parties planning to excavate and facility operators who maintain underground facilities.
- Governed by a Board of eleven members
 - Appointed by the Governor
 - Represent various stakeholder groups

What is the primary purpose of the South Dakota One Call System?

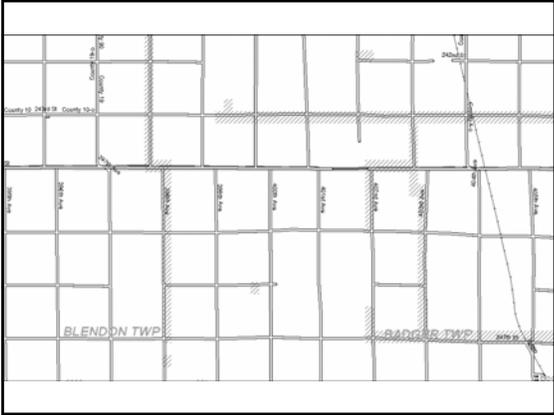
- Preventing Damage to Underground Facilities
- Insuring the Safety of Excavation Personnel
- Improving Safety for the General Public

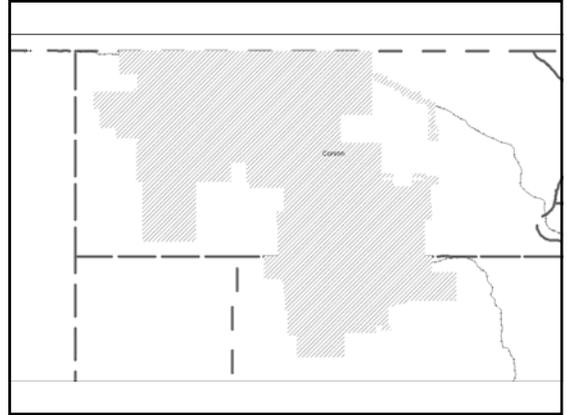
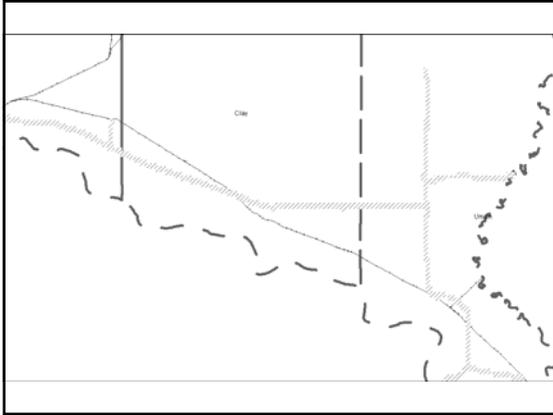
Utility Members

- What underground facilities are part of the South Dakota One Call System?
 - Mandatory except if facility is totally contained on property owned by the property owner
 - Propane Lines (Crooks)
 - Electric/Gas incl Farm taps/Rural Water Lines behind the meter
 - Sewer and Water Laterals ???
 - (Pending Attorney General Opinion)

Utility Members

- Required to register the location of their underground facilities
 - Quarter Sections
 - 1/5 or 1/10 minute grids
 - Electronic Files – converted to 1/10 minute grids
- Should be web based by end of this year





Utility Members

- Required to register the location of their underground facilities
- Mark Facilities Accurately within a specified time period
- Effective January 1, 2009, all newly placed facilities must be locatable

Excavators

- Notify the One Call System prior to excavating
- Provide complete and accurate information
- Preserve and protect marks
- Hand or Soft dig within 18" horizontal from the marked facility

South Dakota One Call SEQUENCE NUMBER 0004 CDC - 309K
 Type: *** S O U T H D A K O T A ***
 Transmittal: 08/12/08 At: 0644 CDT
 Prepared: 12 AUG 08 Time: 0644 CDT By: RZA
 Ticket No.: 08220004

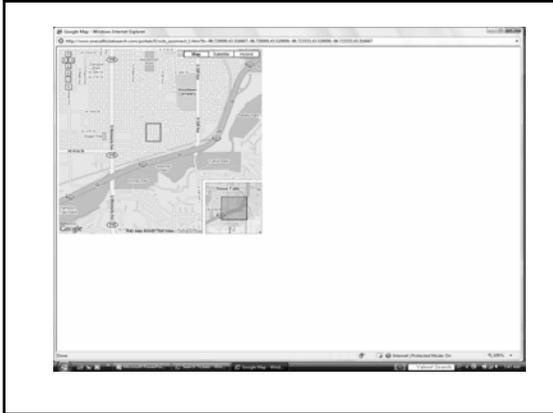
Operators Notified:
 SPO=SDUX FALLS WTR SPO=MC=SDUX FALLS LW=SDWEST LOCAL-ELW
 M01=MEC-SDUX FALLS ND=MC=CEL ENERGY /

Excavator Information:
 Caller: ROCK Phone: 605-332-6641
 Excavator: CLIFF AVENUE GREENHOUSE
 Address: 2101 E 26TH ST
 City: SDUX FALLS, SD 57105
 Phone: 605-332-6641 Fax: 605-332-6835
 Email:
 Contact: RICK SANDER Phone: 605-360-5140 CELL
 Alt. Contact: COLLEEN B Phone: 605-332-6641

Location Information:
 County: MINNEAPHA City/Village: SDUX FALLS

Map Ref: 43320564188 Grid: 3
 Etc. Site Address: 100 N OGDEN AVE
 Nearest Intersection: N LEADALE AVE
 Type of Work: LANDSCAPING
 Work Being Done For: MRS OVERFIELD
 Depth: 2 FT Elevation: 0 Turnoff/Box: N
 Start Date: 08/14/08 Time: 0642 CDT Duration: 01 DAY
 Mailing Requested: N Start Time to Contact: 0600 - 0500
 Etc. Site (Marking Use): R.O.W.: N TRSQ: 101N 49W 15 NE
 MARK THE FRONT HALF OF TROOP
 GPS: LarkLog
 Remarks and Driving Directions:
 EXPRES SEP 04 W 0642 CDT





National Level

- PHMSA/NAPSR
- COMMON GROUND ALLIANCE
 - Non-Profit Organization Created following the Federal Initiative to develop the industry best practices
 - Sixteen different Stakeholder groups actively participate
 - Focus remains on Best Practices, R&D, Education, and data gathering ... One Call Systems Int'l is a committee in CGA

Summary

- System depends Center/Board to provide
 - Accurate street level maps
 - Accurate input by CSR/Excavator

Summary

- System depends Center/Board to provide
 - Accurate street level maps
 - Accurate input by CSR/Excavator
- System depends on Excavators to
 - Call b/4 digging
 - Providing Accurate Information
 - Utilize Safe Excavation Practices

Summary

- System depends Center/Board to provide
 - Accurate street level maps
 - Accurate input by CSR/Excavator
- System depends on Excavators to
 - Call b/4 digging
 - Providing Accurate Information
 - Utilize Safe Excavation Practices
- System depends on Utility Operators to
 - Maintain current and accurate database
 - Mark tickets accurately and timely

ALWAYS
CALL
BEFORE YOU
DIG



One free, easy call gets your utility lines marked AND helps protect you from injury and expense.
Safe Digging is No Accident!
Always Call 811 Before You Dig.
Know what's below. Always call 811 before you dig.
Visit www.811.com for more information.



Appendix Q

**John Smith's Presentation on the South
Dakota Public Utilities Commission –
Pipeline Safety**

South Dakota Gas Pipeline Safety Program

Overview

Program Coverage

- Intrastate (in-state) hazardous gas pipelines:
 - Natural gas
 - Propane
 - Liquefied 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

Appendix R

Tom Brandner's Presentation on the DENR's Source Water and Wellhead Protection Programs

SOUTH DAKOTA WELLHEAD/SOURCE WATER PROTECTION PROGRAM

SAFE DRINKING WATER ACT

- Act was passed in 1974
- Requirements to provide safe drinking water to public water supplies
- Develop drinking water standards and maximum contamination levels

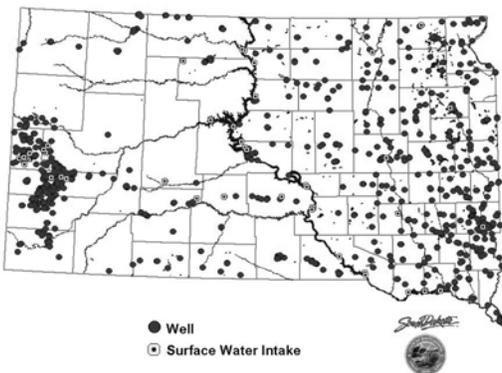
SDWA AMENDMENTS

- 1986 Amendments
 - Required states to develop WHP program document for local communities to use to protect PWS if they wish
 - Not apply to private wells or commercial wells
 - Not a regulatory program requiring local action
- 1996 Amendments
 - Required states to conduct source water assessments for all PWS systems and provide data to PWS
 - Not apply to private wells or commercial wells
 - Not a regulatory program requiring local action

Public Water Supply Systems

- 15 Service Connections
- 25 People Served
- Municipalities, RWS, schools, rest stops, campgrounds

Location of All Wells and Surface Water Intakes
Used by Public Water Supply Systems in South Dakota



BASIC STEPS FOR BOTH WHP & SWP

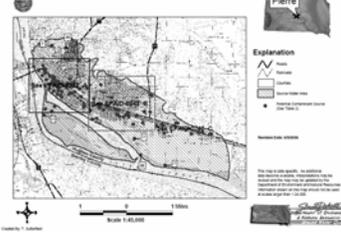
- Determine critical area around PWS well or area upstream of surface water intake contributing water to PWS
- Identify potential contaminant sources in defined critical area
- Determine how to manage the potential contaminant sources in the critical area (local community decisions)

CRITICAL WHP & SWP AREAS

- GW – 500 foot radius to 1-10 miles in length depending upon number of wells, vulnerability, pumping rate and area hydrogeology
- SW – Primary area is 10 miles upstream from the PWS intake
- Black Hills – Done differently because of karst topography, gw/sw interactions and recharge zones

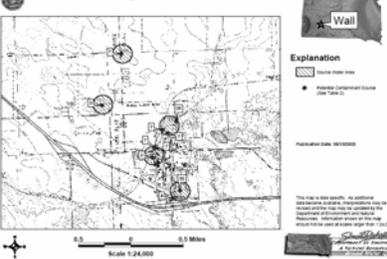
VULNERABLE GW SOURCE

Source Water Area for the Pierre Public Water Supply System EPAID #0242



NON VULNERABLE GW SOURCE

Source Water Area for the Wall Public Water Supply System EPAID #0417



VULNERABLE SW SOURCE

Zone A Source Water Area for the Bon Homme-Yankton Rural Water System EPAID #0865



MANAGEMENT MEASURES

- Regulatory
 - Zoning: Overlay Protection Districts
 - Permits/Restrictions
- Non-Regulatory
 - Best management practices
 - Public education (pamphlets, clean up days, school visits)
 - Land acquisition or easements
 - Early detection monitoring wells

WHP vs SWP

- WHP
 - State required to develop generic program document
 - Only applicable to gw systems
 - Authorized by State law (regulatory zoning authority)
- SWP
 - State required to conduct delineation and contaminant inventory and give report to local PWS
 - Contacted all PWS in SD via SWP report
 - Applicable to gw and sw systems
 - Not authorized by State law

State Authority for WHP

1989 Centennial Environmental
Protection Act
(Sections 42-44)

State Authority (Cont.)

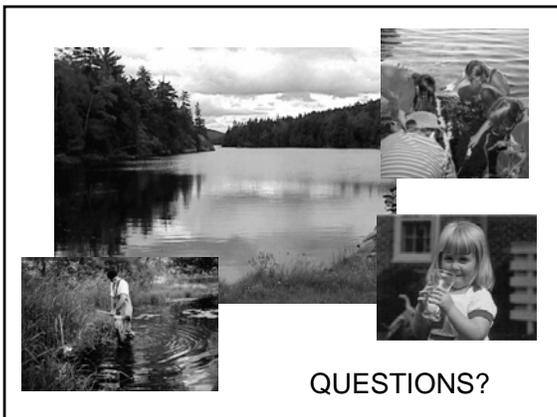
- SDCL 34A-3A-17: Department required to develop voluntary WHP program with accompanying guidelines for local communities to use
- SDCL 7-18-20: Gave counties authority to adopt ordinances to protect ground water to implement WHP program
- SDCL 9-12-17: Gave municipalities authority to adopt ordinances to protect ground water to implement WHP program

LOCAL ORDINANCES

- Approximately 20-25 % of counties have GW protection ordinances
- Approximately 20-25 % of counties have no zoning ordinances

PIPELINES AND WHP/SWP

- DENR provided WHP/SWP information to TransCanada for both the Keystone and Keystone XL projects early in the company's route planning process
- TransCanada provided preliminary route information and compared that to WHP/SWP locations
- TransCanada used the WHP/SWP information to avoid routing the pipelines through these critical areas



Appendix S

South Dakota Wellhead Protection Law

7-18-20. Adoption of ordinances to protect groundwater authorized--Scope and purpose--Agreements to implement and enforce wellhead protection program. A county may adopt ordinances for the purpose of protecting public groundwater supplies from pollution. The ordinances shall be consistent with the wellhead protection program guidelines developed by the department pursuant to § 34A-3A-17, and may include ordinances to establish wellhead protection areas; to zone for the purpose of protecting such areas from pollution; to monitor and regulate activities and sources of potential or actual pollution within the areas; and to provide for the containment and cleanup of pollution or other remedial action within the areas. A county may enter into agreements with the state and with other political subdivisions to implement and enforce a wellhead protection program.

Source: SL 1989, ch 306, § 44.

9-12-17. Power to adopt ordinances to protect groundwater--Scope and purpose--Agreements to implement and enforce wellhead protection program. A municipality may adopt ordinances for the purpose of protecting public groundwater supplies from pollution. The ordinances shall be consistent with the wellhead protection program guidelines developed by the department pursuant to § 34A-3A-17, and may include ordinances to establish wellhead protection areas; to zone for the purpose of protecting such areas from pollution; to monitor and regulate activities and sources of potential or actual pollution within the areas; and to provide for the containment and cleanup of pollution or other remedial action within the areas. A municipality may enter into agreements with the state and with other political subdivisions to implement and enforce a wellhead protection program.

Source: SL 1989, ch 306, § 43.

34A-3A-2. Definitions. Terms used in this chapter mean:

- (1) "Area of influence," the area surrounding a pumping or recharging well within which the potentiometric surface or the water table has been changed;
- (2) "Board," the Water Management Board;
- (3) "Cone of depression," the shape of the area of influence in cross section;
- (4) "Critical aquifer protection area," all or part of an area located within an area for which an application or designation as a sole source aquifer has been submitted and approved by the administrator of the United States Environmental Protection Agency;
- (5) "Department," the Department of Environment and Natural Resources;
- (6) "Maximum contaminant level," the maximum permissible level of a contaminant in water which is delivered to any user of a public water system;

(7) "Potentiometric surface," an imaginary surface representing the total head of groundwater in a confined aquifer and defined by the level to which water will rise in a well;

(8) "Public water system," a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year and as provided for in 40 CFR sections 141.2 and 142.2 as amended to April 28, 1998;

(9) "Recharge area," the area through which water may percolate to the aquifer and eventually reach the well;

(10) "Secretary," the secretary of the Department of Environment and Natural Resources;

(11) "Sole source aquifer," an aquifer which provides fifty percent or more of the drinking water for an area and which if contaminated, would create a significant hazard to public health;

(12) "Supplier of water," any person who owns or operates a public water system;

(13) "Water table," that surface of a body of unconfined groundwater at which the pressure is equal to that of the atmosphere;

(14) "Wellhead protection area," the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

Source: SL 1983, ch 260, § 2; SL 1987, ch 259, § 1; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1999, ch 181, § 1.

34A-3A-17. Prevention of pollution of water supply systems--Development of voluntary wellhead protection program--Specifications. The department shall develop procedures necessary to safeguard public health and welfare and prevent pollution of public water supply systems. The department shall develop a voluntary wellhead protection program which will specify the following:

(1) Guidelines for a wellhead protection program to protect the public water supplies from new and existing facilities which may be potential or actual pollution sources, including, but not limited to, the design of new facilities and modification of existing facilities, the department approval or denial under existing authority of plans and specifications for new facilities or modifications to existing facilities, the construction and the installation of release detection and containment systems, siting criteria for new facilities, operation and maintenance criteria, contingency plans for pollutant release containment and cleanup, technical assistance,

and education and training;

(2) Guidelines specifying the duties of the department and local governments in developing and implementing the wellhead protection program;

(3) Guidelines for determining the extent of wellhead protection areas. Factors for consideration may include, but are not limited to, the cone of depression, the area of influence, the area of contribution and the recharge area;

(4) Guidelines for determining all potential and actual pollution sources which may have an adverse effect on public health;

(5) Guidelines for taking into consideration potential sources of pollution when siting new wells for public water supplies; and

(6) Guidelines for developing contingency plans for pollution release containment, cleanup and the provision of alternative drinking water supplies for each public water system in the event of well or wellfield pollution.

Source: SL 1989, ch 306, § 42.

34A-3A-24. Certain animal feeding operations prohibited from locating over shallow aquifer. No concentrated animal feeding operation that includes a number of animals equal to or greater than one thousand animal units may be located over a shallow aquifer unless a groundwater discharge permit has been approved in accordance with chapter 34A-2. For purposes of this section, a shallow aquifer is any aquifer having the following characteristics:

(1) The aquifer is within fifty feet or less below the land surface with fifteen feet or less of continuous, overlying, extremely low permeability geologic material, such as clayey till or shale. Weathered till or highly fractured weathered shale is not an extremely low permeability material for purposes of this section; or

(2) The aquifer is greater than fifty feet but less than one hundred feet below the land surface with thirty feet or less of continuous overlying low to extremely low permeability geologic material that may be a combination of weathered and unweathered till, shale, or till and shale.

This section does not apply to any concentrated animal feeding operation that was operating on or before July 1, 1997. This section does not limit or prohibit the expansion of any concentrated animal feeding operation that was operating on or before July 1, 1997.

The provisions of this section do not apply to any county which has officially adopted a comprehensive plan and zoning ordinances pursuant to chapter 11-2 and wellhead protection ordinances pursuant to § 7-18-20.

Source: SL 1997, ch 210, §§ 1, 2.

34A-2-107. Standards used in prioritizing groundwater prevention efforts--Other factors for consideration. The secretary shall use the groundwater quality standards promulgated pursuant to §§ 34A-2-10 and 34A-2-11 in prioritizing the groundwater prevention and protection efforts for the state. Other factors that may be considered by the secretary include, but are not limited to, beneficial uses of water, the extent to which a groundwater source supplies or might feasibly supply public water systems or wellhead protection areas established pursuant to § 34A-3A-17, the degree of hazard to public health and welfare, the dependence of local citizens upon groundwater supplies, and the vulnerability of groundwater supplies to contamination.

Source: SL 1989, ch 306, § 45.

Appendix T

Joe Nadenicek's Presentation on the Legality of a State Imposing a Fee or Bond on an Interstate Pipeline

Legality of Pipeline Cleanup Funding Mechanism

South Dakota Underground Pipeline
Task Force

September 22, 2008

Interstate Commerce - Dormant Commerce Clause:

The "**Dormant**" **Commerce Clause**, also known as the "Negative" Commerce Clause, is a legal doctrine that courts in the United States have inferred from the Commerce Clause of the United States Constitution. The Commerce Clause expressly grants Congress the power to enact legislation that affects interstate commerce. The idea behind the Dormant Commerce Clause is that this grant of power implies a negative converse — a restriction prohibiting a state from passing legislation that improperly burdens or discriminates against interstate commerce. The restriction is self-executing and applies even in the absence of a conflicting federal statute.

The premise of the doctrine is that the U.S. Constitution reserves for the United States Congress at least some degree of exclusive power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Article I, § 8).

Does it discriminate against interstate commerce on its face?

Even if it does not, does it have the effect of treating interstate commerce differently from similar intrastate activities?

If the perceived gap in adequacy relates solely to the coverage of the federal Oil Spill Liability Trust Fund and interstate facilities, that correction is under the jurisdiction of Congress. That is likely true, even if our state Legislature would enact an assessment and cleanup fund mechanism that is non-discriminatory on its face, but in effect covers only facilities engaged in interstate commerce.

Federal Preemption

In the legal system of the United States, **preemption** generally refers to the displacing effect that federal law will have on a conflicting or inconsistent state law.

Express preemption occurs where Congress says within the statute 'we hereby preempt' or uses words of similar import. Here, federal laws are explicitly precluding state and local regulations.

Implied preemption has, within itself, three sub-categories: conflicts preemption, preemption because state law impedes the achievement of a federal objective, and preemption because federal law occupies the field.

For instance - under implied preemption, the US Supreme Court held that a NJ statute creating a spill compensation cleanup fund was preempted by CERCLA (Superfund) for sites on the Superfund National Priorities List (NPL) (Exxon Corp. v. Hunt - 1986)

The federal Oil Spill Liability Trust Fund is preemptive on its face (express preemption) as it relates to safety standards (See 49 USC section 60104(c))

The federal Oil Spill Liability Trust Fund is silent on whether it preempts other state laws relating to interstate pipelines - whether such state enactments would not be barred based upon implied preemption is an open question

State Enactments Effecting Interstate Commerce - Surviving the Dormant Commerce Clause

Evenhanded

Impacting similarly situated intrastate and interstate activities in the same manner

Legitimate state interest

Reasonably related to a risk of harm in which the state has a legitimate interest at stake

Rational Approach

The protective state law is rationally related to a reasonable and quantifiable risk of harm - not punitive or arbitrary

Appendix U

Letter from the South Dakota Public Assurance Alliance

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September 22, 2008

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E-mail
pmg@magt.com

Brian Walsh
South Dakota Department of Energy and Natural Resources
523 E. Capitol Avenue
Pierre, SD 57501

RE: Question about liability insurance
Our File: 0257

Dear Brian:

Our firm acts as general counsel to the South Dakota Public Assurance Alliance (SDPAA). As you know, the SDPAA provides liability and property coverage to many of the cities, counties, and special districts in South Dakota.

Sandi Larson forwarded your email on liability insurance for a governmental entity that causes pollution. It is very difficult to answer hypothetical questions about the coverage provided by coverage documents, as a coverage question in the real world has more facts, complexities, and nuances than does any hypothetical scenario. Ultimately, an insured person or entity has the coverage that their insurance contracts provide, no more and no less, and coverage in a real-life accident can only be determined by reference to the coverage documents.

That being said, I will attempt to answer the question you posed in your email. A member of the SDPAA generally has coverage for liability to third parties arising from negligent damage to a privately-owned pipeline, unless additional facts cause an exclusion to come into play. However, a member generally does not have property coverage for pollutant seepage from a privately-owned pipeline, unless the seepage was caused by an event for which the member otherwise has property coverage AND the damage caused by the pollutants is of a sort for which the member otherwise has coverage. In other words, there is no liability exclusion that applies specifically to privately owned oil pipelines, but there are specific property exclusions that apply to pollutant seepage.

Brian Walsh
September 22, 2008
Page 2 of 2

Specifically, you asked Sandi whether a South Dakota municipality would have insurance coverage if a crew working on a waterline accidentally damaged a crude oil pipeline. For purposes of the question, I'm going to assume that the crew was composed of municipal employees and that the oil pipeline was owned by a third party. In this scenario, the general liability coverage provided by the SDPAA would likely cover the negligent acts of the municipal employees – the fact that the harm caused by that negligence included pollution would not exclude coverage for the municipality's liability to third parties.

To give you an idea how additional facts can alter coverage, however, suppose that the municipality employee who caused the damage had intentionally and repeatedly hacked at the exposed pipeline with a pickaxe. In this scenario, the damage to the pipeline did not occur because of mere negligence, but as a result of deliberate, criminal action. In this case, coverage may be excluded because the SDPAA coverage documents contain a liability exclusion for criminal activity. Likewise, assume that pollution from the pipeline damaged not only property owned by third parties, but also damaged a park owned by the municipality. Any damage to the park would not be covered by the municipality's liability coverage, and pollution damage to municipal real estate is typically not covered by SDPAA property coverage.

As you can see, whether or not a member has coverage will turn on the specific facts of the accident that caused the pollution. I hope that this letter has provided some answers to the question that you sent to Sandi. Ultimately, however, each member has the coverage described in their coverage documents and must determine which risks they should insure against and whether those risks are covered under the terms, limitations, conditions, and exclusions of their coverage documents.

Feel free to contact me if you have additional questions about this matter.

Sincerely,

MAY, ADAM, GERDES & THOMPSON LLP



PATRICK M. GRODE

Appendix V

Kim McIntosh's Presentation on DENR's Spill Response Procedures

Spill Reporting and Cleanup

Department of Environment and Natural Resources
Ground Water Quality Program

Kim McIntosh
773-3296

24 hour on-call system for the reporting of spills and releases.



Oil and Chemical Spill/ Release Reporting

South Dakota DENR National Response
(605) 773-3296 or Center (24-hour)
(605) 773-3231 1-800-424-8802
(after hours).



Oil and Chemical Spill/ Release Reporting

Discharges of regulated substances must be reported to the DENR **immediately**, pursuant to ARSD 74:34:01.



Reportable Quantities:

The discharge may impact surface or ground water;
The discharge may endanger human health or safety;
The discharge exceeds 25 gallons;
The discharge causes a sheen on water;
The discharge quantity meets the SARA Title III reportable quantity;
Surface water or ground-water standards are exceeded;
The discharge may threaten wildlife or aquatic life;
The discharge of crude oil in field activities conducted under SDCL chapter 45-9 is greater than 1 barrel (42 gal).

Regulated Substances Chapter 34A-12 and ARSD 74:34:01:03

- Pesticides and fertilizers
- Hazardous substances
- Contaminates and pollutants – Clean Water Act and Toxic Substance Control Act
- Radiological, chemical or biological warfare agents or radiological waste
- Substances on the “List of Lists” – (CERCLA) Comprehensive, Environmental Response, Compensation, and Liability Act
- Hazardous wastes – (RCRA) Resource Conservation and Recovery Act.

Specified Regulated Substances

- Petroleum, petroleum substances, oil, gas, diesel, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, substances, or additives to be used in the refining or blending of crude petroleum or petroleum stock, and any other oil or petroleum substance. (Excludes sewage and sewage sludge).

DENR Actions

- Provide advice and direction on emergency response actions that may need to be taken.
 - stopping the release at the source;
 - evacuation of the area;
 - shutting off ignition sources;
 - containing the material with earthen berms, floor dry or sorbant materials.

DENR Actions

- Assist in obtaining information and resources to cleanup the release and dispose of contaminated material.
 - Environmental consulting firms/cleanup contractors
 - Permitted landfarm sites
 - Permitted landfills
 - EPA toxicologists
- Assist in complying with federal reporting requirements.

DENR Actions

- Evaluate initial release information to determine the party or parties most responsible for the release and contamination. (SDCL 34A-12-16)
- Notify and direct the responsible party(ies) of state requirements to assess and cleanup contamination to state standards (SDCL 34A-12 and ARSD 74:34:01).
- Coordinate with other state and federal agencies (DOT, DOA, USFW, EPA) on cleanup requirements.

Other Actions

- If necessary the department may obtain court orders or begin legal actions to require the responsible party to comply with state requirements.
- SDCL 34A-12-14 outlines the conditions the Department Secretary can expend funds from the Regulated Substance Response Fund to hire consultants, contractors, excavators, etc., to secure the site or conduct cleanup actions.

Regulated Substance Response Fund

- DENR has never used the Regulated Substance Response Fund to assess or cleanup a petroleum release from a pipeline.
- SDCL 34A-18-8 outlines that a crude oil pipeline will implement response to a spill regardless of the cause or the party responsible for the release.

Guidance/Resources

- Handbook For Reporting, Investigating, and Remediating Petroleum Releases in South Dakota
- Annual Ground Water Quality Conference

“The Handbook”

- Reporting Requirements
- Steps to take after a release occurs
- Tier Assessments
 - Tier I
 - Tier II
 - Tier III
- Corrective Action Requirements
 - Excavation
 - Soil Vapor Extraction
 - Air Sparging
 - Biosparging
 - Monitored Natural Attenuation
- Closure

Typical Actions Required

- Soil testing to identify the extent of contamination
- Installation of ground water monitoring wells
- Excavation
- Soil venting and sparging
- Product recovery trenches
- Replacement of utilities
- Relocation of utilities or wells

Risk Based Corrective Action (RBCA)

Assessment and Cleanup Process

Receptors and Pathways

- Aquifers
- Non-Aquifers
- Receptors
 - water lines
 - sewer lines
 - basements
 - drinking water wells
 - surface waters

Risk Based Corrective Action (RBCA)

- Tier I Levels (soils)
 - Benzene .2 ppm
 - Toluene 15 ppm
 - ethylbenzene 10 ppm
 - xylene 300 ppm
 - naphthalene 25 ppm
 - TPH 500 ppm (trigger level only)

Ground Water Quality Standards

- Benzene .005 ppm
- Toluene 1 ppm
- ethylbenzene .7 ppm
- xylene 10 ppm
- naphthalene 20 ppm (based on health advisory numbers)
- TPH 10 ppm or .1ppm (in a wellhead protection area)

Other Risk Based Guidance

- EPA developed risk based screening levels
 - Soil
 - Water
 - Vapor impacts to indoor air
 - Soil to ground water leaching levels

Risk - Risk - Risk

A site may be closed or assigned a No Further Action Status even if contamination remains.

Closure/No Further Action

- Standard Closure
 - no receptors
 - ground water and soil contamination below standards
- No Further Action
 - no receptors
 - ground water concentration above standards but level are stabilized or decreasing
 - not a wellhead protection area

Environmental Events Database

- Documentation of spill location, response activities, responsible party, consultant, assessment and cleanup data and the status of the project.
- Documentation of “clean” properties also included in database.
- Searchable database or hard copies of files available upon request.
- Web site: www.state.sd.us/spills

Appendix W

**Dr. Delvin DeBoer's Presentation on
Petroleum Impacts on Plastic Waterlines**

Petroleum Impacts on Plastic Waterlines

SD Underground Pipeline Task Force
September 22, 2008
Delvin E. DeBoer, Ph.D., P.E.
South Dakota State University

Literature (Environmental Exposure)

- Journal of Vinyl & Additive Technology
- Journal of Materials Processing Technology
- Materials and Structures
- Journal of Testing and Evaluation
- Proceedings of Symposium on Buried Plastic Pipe Technology

Literature (Hydrocarbon Exposure & Permeation)

- Journal of the American Water Works Association
- American Water Works Association Research Foundation
- Ground Water Monitoring & Remediation
- Water Research
- EPA Office of Research and Development

Water Pipeline Materials

- Pipes
 - Cast/Ductile Iron
 - Plastic
 - Polybutylene
 - Polyethylene (sometimes used for service connections)
 - Polyvinyl chloride (very common)
- Gaskets
 - Styrene butadiene rubber (SBR)
 - nitrile butadiene rubber (NBR, Buna-N)
 - fluoroelastomer rubber (FKM)
 - ethylene propylenediene monomer (EPDM)
 - Neoprene

Impacts on Pipelines

- Permeation impacts
 - Tastes and odors
 - Violate drinking water standard
- Permeation Routes
 - Pipe wall
 - Gaskets
- Strength
 - External pressure (soil structure)
 - Internal pressure (continuous vs. transients)

Permeation Impacts

- Violate Drinking Water Standards
 - Benzene – 0.005 mg/L
 - Toluene – 1 mg/L
 - Ethylbenzene – 0.7 mg/L
 - Xylenes – 10 mg/L
- Tastes and Odors
 - TON for benzene varies from 23 µg/L to 190 µg/L (AwwaRF 2008)
 - Likely smell or taste contamination at concentrations higher than the drinking water standard

Permeation Studies

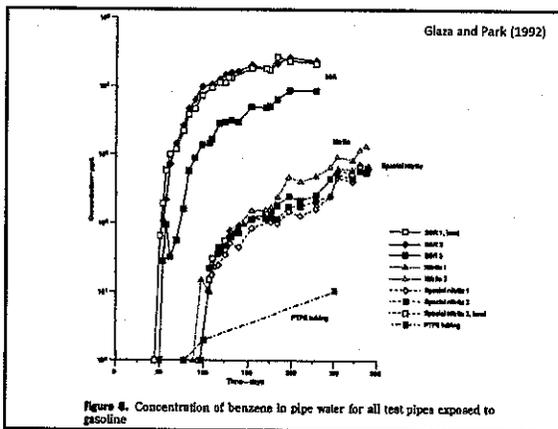
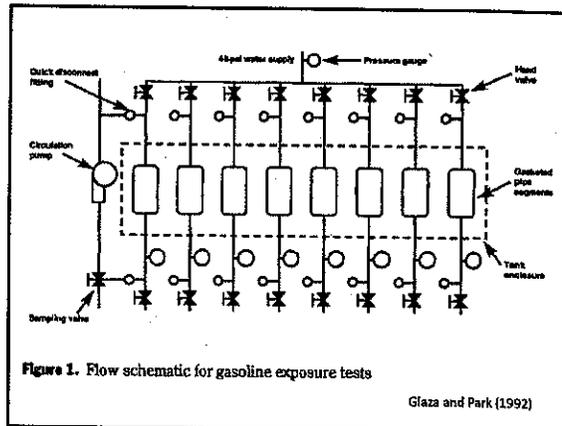
- Berens (1985). "Prediction of Organic Chemical Permeation through PVC Pipe." *Journal of the American Water Works Assoc.*, 77(11), p. 57.
- Glaza and Park (1992). "Permeation of Organic Contaminants Through Gasketed Pipe Joints." *Journal of American Water Works Assoc.*, 84(7), p. 92.
- Ong, Gaunt, Mao, Cheng, Esteve-Agelet, Hurburgh (2008). *Impact of Hydrocarbons on PE/PVC Pipes and Pipe Gaskets*, Awwa Research Foundation, Denver, CO. (hereinafter called the AwwaRF 2008 Study)

Berens (1985)

- Studied permeation of organics through sheet PVC and absorption of organics using weight gains
- Conclusions
 - Permeation is likely dependent on the concentration of organics
 - PVC pipe may be appreciably permeated in a matter of days or weeks if exposed to nearly pure strong swelling agents or solvents
 - Except in the case of a gross spill, rigid PVC pipe is an effective barrier
- Observations (in the Discussion of the paper)
 - What is a gross spill?
 - PVC may be subject to swelling or bursting because of structural failure under normal water system pressures after only a few months of exposure to a gross spill
 - More work needed
 - Polyethylene pipe failures cited

Glaza and Park (1992) Experiments

- Ductile Iron Pipe segments with SBR and NBR gaskets buried in sand saturated with gasoline and a mix of solvents
 - permeation through gasket into water inside the pipes
- Gaskets directly immersed in gasoline and solvents
 - adsorption through weight gain
 - material strength tests

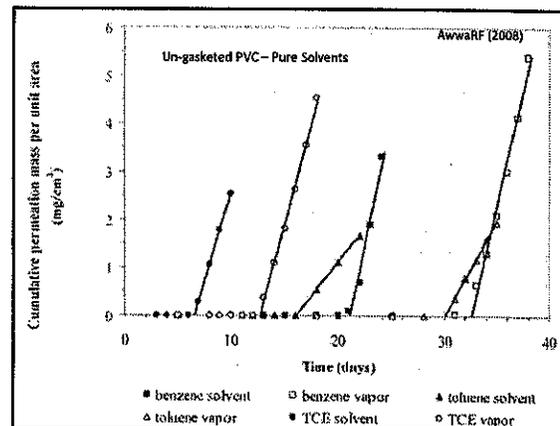
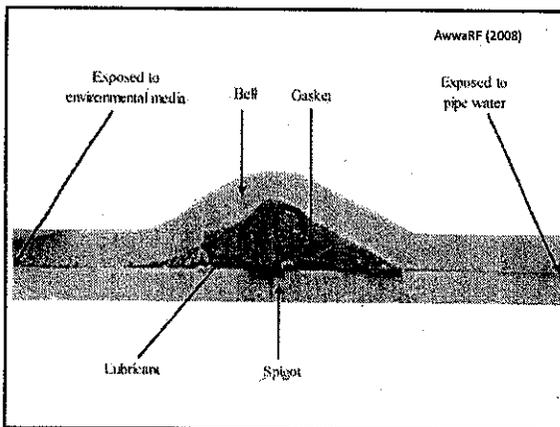
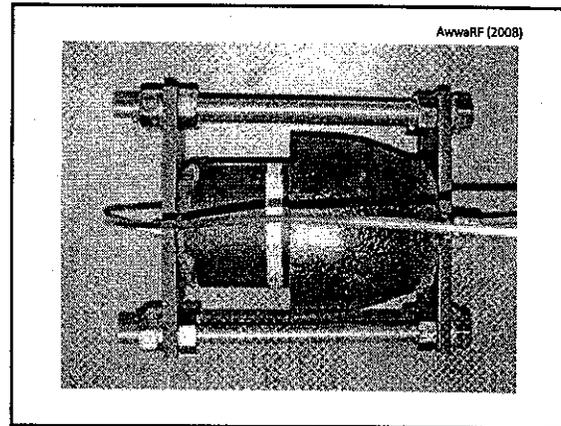
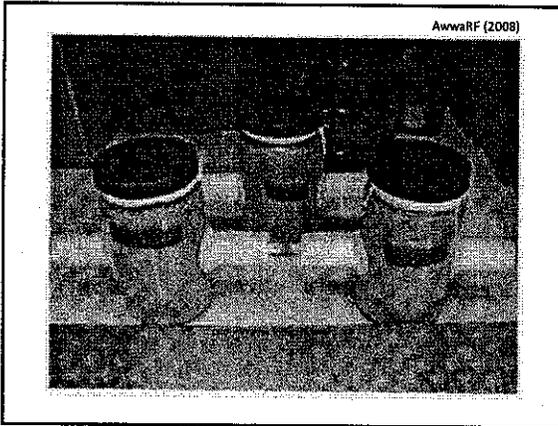
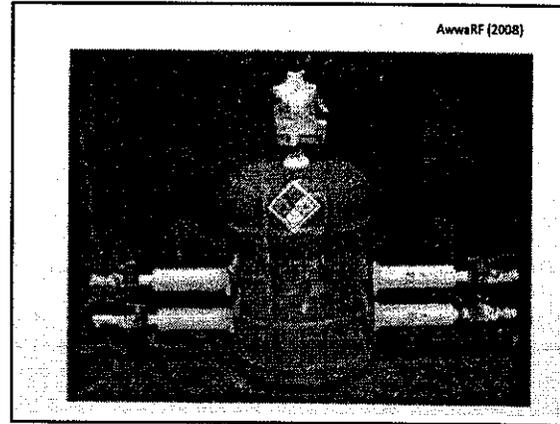


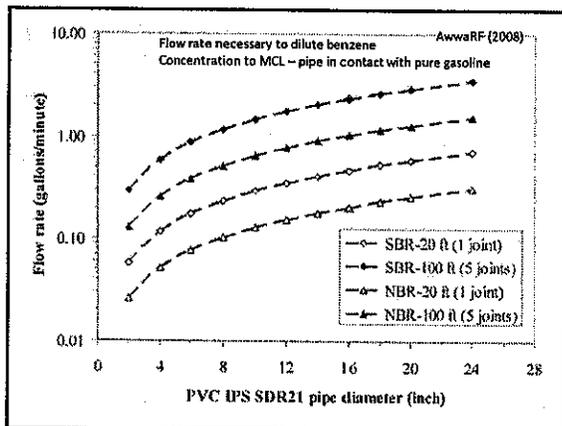
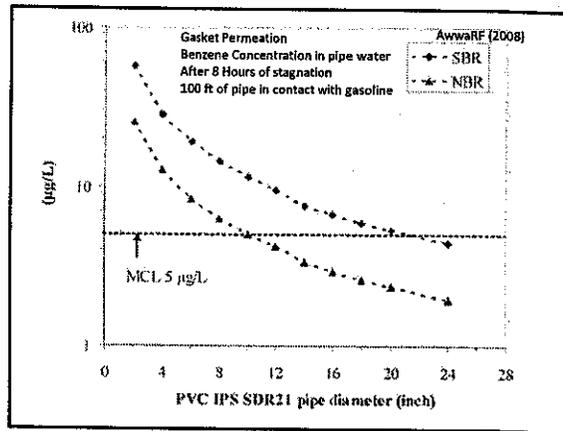
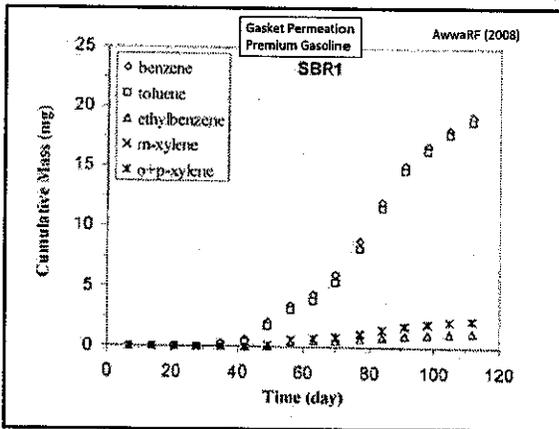
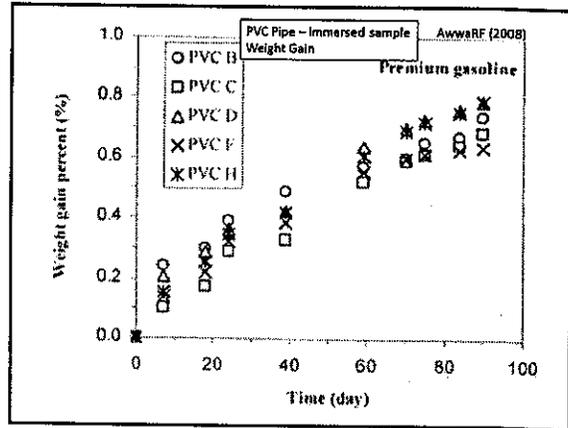
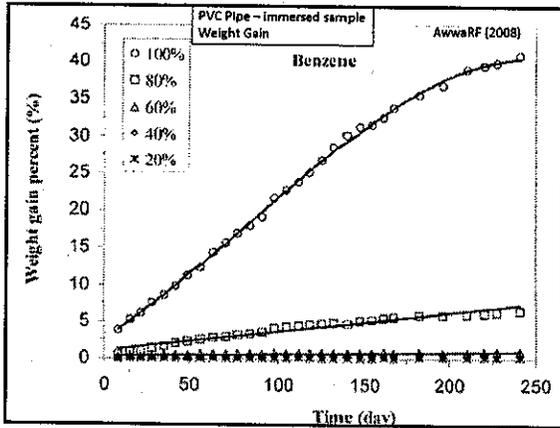
Conclusions (Glaza and Park, 1992)

- nitrile butadiene rubber (NBR) more resistant than styrene butadiene rubber (SBR) to permeation by gasoline compounds
- Benzene compounds in pipe water after 8-hour stagnation > 550 µg/L (SBR) and approx. 40 µg/L (NBR)
- Of the gasoline compounds, benzene permeated the fastest
- Long-term exposure to gasoline caused both gaskets to fail minimum requirements for tensile strength. SBR failed compression and hardness tests.

AwwaRF (2008) study

- Focused on polyethylene and PVC pipes
- Exposed to pure gas and BTEX along with water/solvent mixtures
- Studied gasket joints and ungasketed pipe
- Focused on permeation (exceeding drinking water standards) under field conditions (flowing water and stagnant water)





Conclusions - AwwaRF (2008)

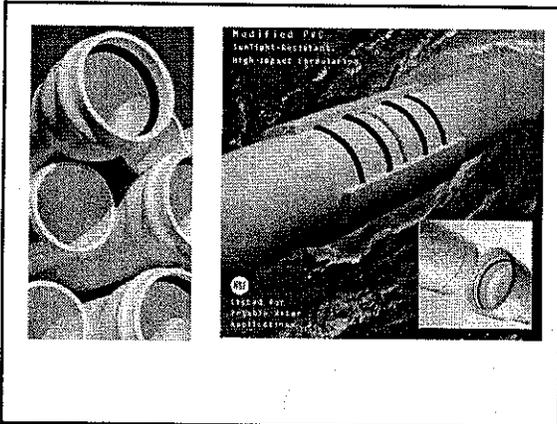
- Permeation through Pipe Wall
 - PE Pipe
 - Rapid permeation (also documented in case studies)
 - PVC pipe
 - Depended on concentration of BTEX
 - Pure solvents permeated in a matter of days (toluene 16 days, benzene 20 days) - pipes noticeably swollen
 - Gasoline (BTEX) did not permeate in 2 years (due to lower concentrations of BTEX than in pure solvent)

Conclusions - AwwaRF (2008)

- Hydrocarbon Permeation through gaskets in PVC pipe
 - IS a source of contamination
 - NBR more resistant to permeation than SBR gaskets
 - Under stagnant-flow conditions, can exceed MCL for Benzene when submerged in free product gasoline
 - Water flow through pipe dilutes benzene below MCL (required flow depends on pipe size)
 - Less potential for contamination if ground water dilutes the gasoline

Unknowns

- What is the impact of non-gasoline petroleum products on permeation through PVC pipe and gaskets?
- What are the permeation characteristics of other pipe configurations (joints and fittings)?
- What is the impact of petroleum products on pipe strength characteristics?



RWSRC Project

- Examine impacts of petroleum products on small diameter PVC pipe characteristics
 - Restrained joint systems (permeability of gaskets)
 - Pipe strength?
 - Non-gasoline petroleum products?

Appendix X

Joe Nadenicek's Presentation on the South Dakota Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities

South Dakota Attorney
General's Opinion 08-07
Responsibility to Mark Underground
Facilities as is Required by SDCL 49-7A

South Dakota Underground Pipeline
Task Force

September 22, 2008

OFFICIAL OPINION NO. 08-07
Responsibility to mark underground facilities as is required by SDCL 49-7A

FACTS: When an excavator provides notification of excavation, some utility companies do not mark the water or sewer lines located in either the public right-of-way or on private real property. These utility companies contend that these lines are owned by the real property owner, making he/she the actual operator under SDCL 49-7A. Private homeowners would then be required to adhere to the marking responsibilities of SDCL 49-7A. As a result, the underground facility is often unidentified for the excavator, significantly increasing the risk of serious damage to both person and property.

OFFICIAL OPINION NO. 08-07
Responsibility to mark underground facilities as is required by SDCL 49-7A -
Question 1

1. Pursuant to SDCL 49-7A, who is the party responsible for marking the underground water and sewer facilities in the right-of-way as required by SDCL 49-7A-8—the facility operator or real property owner?

In sum, the term operator under SDCL 49-7A-1(7) means the person who actually runs or operates the underground facility. The people who run/operate the underground facility are utility companies and municipalities. Private homeowners are not operators. These homeowners may own the underground facility lines; however, they are merely customers of the operators. If property owners were included in the definition of "operators," underground facilities would go unmarked because these property owners likely do not know how to locate and mark these lines. Unallocated lines would lead to more broken lines by excavators.

Therefore, SDCL 49-7A-8 requires that facility operators mark both the underground facilities in the public right-of-way, and any service laterals which extend from their facilities on to private property (which are in the excavation zone).

OFFICIAL OPINION NO. 08-07
Responsibility to mark underground facilities as is required by SDCL 49-7A
Questions 2 & 3

2. Does SDCL 49-7A-1(9) (definition of underground facility) include the water facility from the right-of-way to the meter, thus requiring the marking of all underground water facilities from a right-of-way to the meter, as required by SDCL 49-7A-8, or is the operation of the underground water facility included under SDCL 49-7A-15 and so is excluded from the underground facilities covered in SDCL 49-7A-1(9)?
3. Does SDCL 49-7A-1(9) (definition of underground facility) include the sewer facility from the right-of-way to the first termination at the building on the real property, thus requiring the markings of all underground sewer facilities from a right-of-way to the building, as required by SDCL 49-7A-8, or is the operation of this underground sewer facility included under SDCL 49-7A-15 and so is excluded from the underground facilities covered under SDCL 49-7A-1(9)?

As noted above, SDCL 49-7A-15 is an exception to the rules laid out in SDCL 49-7A. This statute says that landowners whose private underground facilities do not extend past their property lines are exempt from 49-7A enforcement. *** Since both the water and sewer lines in these two questions are not wholly contained within private property and the water and sewage companies are utility companies and not private landowners, the exception in SDCL 49-7A-15 does not apply.

The two questions ask how close to personal residences do underground facilities need to be marked by their operators. The answer to both of these questions can be found in SDCL 49-7A-8. The pertinent part of that statute says "An operator shall, upon receipt of the notice, advise the excavator of the location of underground facilities in the proposed excavation area."

SDCL 49-7A-8 says operators must mark all the underground facilities within the proposed excavation area.

Appendix Y

Brian Walsh's Presentation on the South Dakota Mineral Severance Tax

Information on the South Dakota Mineral Severance Tax

South Dakota Underground Pipeline
Task Force

October 23, 2008

Authority

- SDCL 10-39 Mineral Severance Tax
- SDCL 10-39A Energy Minerals Severance Tax
- SDCL 10-39B Conservation Tax on Severance of Energy Minerals
- ARSD 64:27 Mineral Tax

Authority Continued

- 10-39A-1. Severance tax imposed on energy minerals--Rate. For the privilege of severing energy minerals in this state, there is imposed on the owner or operator of any energy mineral an excise tax, to be termed a "severance tax," equal to four and one-half percent of the taxable value of any energy minerals severed and saved by or for the owner or operator.

Energy Minerals Taxed

- Oil
- Gas
- Coal (no coal mining currently underway)
- Uranium (no uranium mining currently underway)
- Therefore: 100% of the Energy Minerals Tax Revenue comes from Oil and Gas Production

How is the Revenue Allocated?

- 50% to the State General Fund
- 50% to the County Where the Mineral was Severed

Revenue FY 2000 - 2008

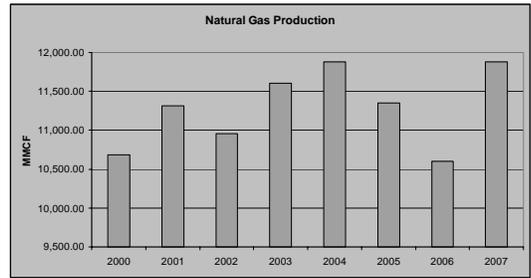
Fiscal Year	State Share	County Share	Gross Amount Collected
2000	\$ 525,526.35	\$ 525,526.04	\$ 1,051,052.39
2001	\$ 782,898.52	\$ 782,898.00	\$ 1,565,796.52
2002	\$ 614,985.29	\$ 614,984.97	\$ 1,229,970.26
2003	\$ 722,404.30	\$ 722,392.05	\$ 1,444,796.35
2004	\$ 829,182.25	\$ 829,182.00	\$ 1,658,364.25
2005	\$1,253,465.64	\$1,253,465.42	\$ 2,506,931.06
2006	\$1,627,927.75	\$1,627,925.34	\$ 3,255,853.09
2007	\$1,576,445.11	\$1,576,444.54	\$ 3,152,889.65
2008	\$2,763,495.11	\$2,763,494.53	\$ 5,526,989.64

Data provided by South Dakota Department of Revenue and Regulation

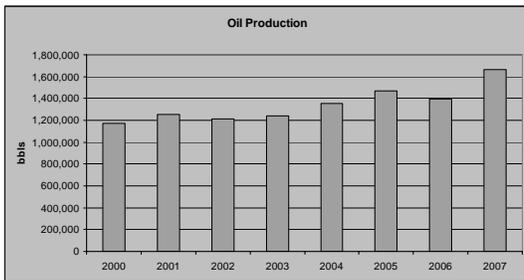
What Drives the Amount of Tax Collected

- Volume Produced and the Price of the Commodity
- Amount of Tax Collected Primarily Driven by the Price of the Commodity

Natural Gas Production Since 2000



Oil Production Since 2000



Questions?

Appendix Z

Brian Walsh's Presentation on South Dakota Spills by Source

South Dakota Petroleum Spills – Transportation v. Pipeline

South Dakota Underground Pipeline Task Force

October 23, 2008

Introduction

The purpose of this presentation is to answer the task force's questions concerning South Dakota petroleum spills. Specifically, compare pipeline, petroleum spills to transportation petroleum spills.

Pipeline v. Transportation Spills

- The vast majority of petroleum spills in SD come from non-transportation (UST, AST, others) incidents (~ 88%)
- Of the petroleum spills occurring at either pipelines or due to transportation incidents approximately 95% are attributed to transportation incidents.
- Based on reported releases in SD, transportation petroleum spills out number pipeline releases approximately 18:1

Questions?

Appendix AA

Public Comment

Walsh, Brian

From: Curt Hohn [chohn@webwater.org]
Sent: Wednesday, October 08, 2008 11:04 AM
To: Walsh, Brian
Subject: FW: Photos from Sunday's Transco pipeline rupture

Brian

Please pass this along to all members of the Pipeline Task Force.

Thank you.

Curt Hohn

The photos attached are of a TransCo gas pipeline explosion near Appomattox, Virginia which failed at 7:44 a.m. on Sept. 14, a Sunday . This is gas pipeline, the Keystone Pipelines crossing SD will move tar sands crude oil. There is a risk with both products.

These photos reaffirm the concern about the proximate of a high pressure pipeline to homes and building structures.

Problems found near Appomattox blast site

- http://www.newsadvance.com/lna/news/local/article/problems_found_near_appomattox_blast_site/9032/
- Photo



Chet White

A view from above the Appomattox pipeline explosion.

Text size: [small](#) | [medium](#) | [large](#)

By CARRIE J. SIDENER

Published: October 2, 2008

[Read a Pipeline and Hazardous Materials Safety Administration report on the Williams Transco pipeline](#)

10/08/2008

Preliminary findings by federal inspectors charged with investigating the rupture of a natural gas pipeline in Appomattox show some measure of metal loss near the failure, according to a corrective order issued last week to the company that operates the line.

The order also listed concerns with corrosion-control systems along the line, and required the operator, Williams Gas Co., to lower the pressure in the two lines that run adjacent to the one that ruptured until a complete evaluation is done.

The exact cause of last month's pipeline rupture, which sparked a devastating fireball and leveled two homes, is not yet known. It is under investigation by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, the agency that issued the Sept. 25 corrective order.

The natural gas pipeline that runs through Appomattox is part of the Transco line, which extends from the Gulf of Mexico to New York, including 858 miles in Virginia.

Under normal operation, gas is pushed through those lines at 800 pounds per square inch. Williams immediately lowered the pressure to 670 psi after the Sept. 14 explosion. The corrective order requires Williams to lower it to 640 psi, which the company did last week. The order also outlines the steps needed to return the three natural gas lines to full service. "Most of the items covered were things we already planned to do," Christopher Stockton, spokesman for the company, said Thursday.

Stockton said that the company will have a public meeting before pressure is restored, a move that is not expected before late November.

Patricia Klinger, spokesperson for PHMSA, the federal oversight agency, said the measures outlined in the corrective order are "reassuring us that the line is safe when it goes back into service."

The investigation is ongoing, she said. The ruptured section of pipe went to a metallurgy lab, where scientists are trying to determine what may have caused or contributed to the failure. The B line that crosses Virginia 26 just north of the town of Appomattox failed at 7:44 a.m. on Sept. 14, a Sunday. The natural gas it released ignited a fireball that burned an area 1,125 feet in diameter, according to preliminary findings in the order. Twenty-three families were evacuated. Two homes were destroyed. Five people were hurt, none seriously.

The explosion blew a 30-foot section of pipe out of the ground and across Virginia 26. The neighboring lines did not appear to be damaged in the blast, the order said.

The 30-inch B line, installed in 1955, is coated with asphalt enamel and protected by a light electrical current applied to prevent corrosion. The neighboring A and C lines are protected the same way.

Measurements called "pipe to soil potentials" taken in 2006 were low — an indicator, Klinger said, of the effectiveness of the protection. The company took steps to boost those readings in 2007, but it is unclear if that helped, the corrective action order said.

"(Inspectors) were concerned that it wasn't properly protected," Klinger said.

Last October, the agency issued a Notice of Probable Violation and Proposed Civil Penalty, alleging that five of Williams' devices that apply slight electrical current to the pipes to prevent corrosion were not operating properly. One of those devices was 3.8 miles from the explosion site, the order said. Another was less than 20 miles.

The A line was inspected in 2000, leading to the replacement of a 36-foot section near the failure site. Lines B and C were inspected this year and a 200-foot section of the C line was replaced, according to the order.

Williams has inspected both the A and C lines since the explosion and they appear to be in good

condition, Stockton said. Pipeline inspectors reviewed the data collected from the inline inspection tool for all three lines, prompting them to dig up 20 places where repairs might be needed starting three miles south of the explosion site and going 60 miles north.

"We are examining the pipe in those locations to ensure it is safe and making repairs as needed," he said.

The families of Linda Jamerson and Calvin Childress — the two whose homes were destroyed — have been placed in temporary or permanent housing, Stockton said.

"We are working with all affected homeowners to ensure their concerns are addressed. We are in the process of arranging home inspections, home repairs, water well and septic analysis for homes which may have been affected."

Stockton said he can't comment on any settlement issues.

"We want to protect the privacy of all affected landowners and any discussion about settlements is considered private and confidential," he said. "However, I can say that we are working with landowners to determine any losses and damages they incurred due to the incident."

Pipeline questions answered

By *STEPHANIE A. JAMES/Staff Writer*

Wednesday, September 24, 2008 9:53 AM EDT

Star Tribune - Virginia Times

<http://www.wpcva.com/articles/2008/09/24/appomattox/news/news32.txt>

The following questions were compiled to answer some questions about the Williams Gas Pipeline-Transco and last week's pipeline rupture.

Q: How many natural gas transmission pipelines are operated by Williams Gas Transco and how much of the population receives the natural gas from the company?

A: Three. There are Northwest Pipeline, Transco, and Gulfstream. Williams delivers to approximately 12 percent of the nation's daily supply of natural gas. The gas is transported to heat homes and generate electricity.

Q: Where are Williams pipelines located?

A: The pipeline extends from the Gulf of Mexico to New York and consists of 10,500 miles. A map can be viewed of the National Pipeline Mapping System on the Pipeline and Hazardous Material Safety Administration (PHMSA) website at www.npms.phmsa.dot.gov. Web users can find the location by entering in the state and County.

Q: What is the life expectancy of the pipeline?

A: Williams Vice President Larry Hjalmarson said that with proper maintenance of the pipes the pipes last "indefinitely." The three pipelines that were in the area where the pipeline ruptured are between 50 and 60 years old.

Q: How is the pipe checked for defects and how safe is it?

A: A pipeline inspection gauge (or PIG) is a tool that is inserted in the pipe to detect defects.

Since last week's explosion in Appomattox, the company has taken a number

of measures to ensure that the pipeline is safe. The pipes are inspected regularly. The adjacent pipes have been reduced to a lower level and will not return to full service until the company ensures that the pipelines are safe. Hydrostatic pressure tests will be done on the ruptured pipe. The test detects leaks.

Q: How much pressure is in the pipeline?

A: The maximum allowed is 800 pounds per square inch.

Q: How is the pipeline maintained?

A: The pipeline is lined with a coating or a current to reverse the process of corrosion.

Q: What was the cause of the pipeline explosion and what was the cost of the damages?

A: The cause of the explosion has not been determined yet. The estimated cost of the damages has not been calculated yet. Williams representatives told citizens last week during a forum-style meeting that the company would pay for damages to homes and trauma counseling services.

Q: Who is involved in the investigation of the pipeline rupture?

A: Williams spokesman Jeff Pounds said that PHMSA and the Virginia State Corporation Commission (SCC) are working with Williams on the investigation. The SCC has the safety jurisdiction of more than 16,100 miles of intrastate pipelines that transport natural gas and hazardous liquid throughout the state. In addition the SCC has safety jurisdiction over approximately 200 natural gas master meter systems, two liquid natural gas and two natural gas storage facilities.

Q: What has the Virginia Health Department done?

A: The health department has conducted preliminary tests on the wells and there were no initial problems found.

Q: What else has been done?

A: A compressor station that is located just outside of the Town of Appomattox has been shut down since the pipeline rupture. Another station has been used in its place.

The gas pressure is monitored by the gas control office.

Q: What other incidents have there been of failure?

A: According to a PHMSA incident report, in 2005 there was an incident for Williams Gas Pipeline involving excavation damage in the city of Chantilly, Va. The property damage totaled \$160, 743.

Q: What does legislation say about pipeline safety?

A: There is the Pipeline Safety Improvement Act of 2002, which establishes more regulations and requires companies to inspect and assess segments of pipeline meeting specific criteria, such as the pipeline's proximity to high density population areas. The law calls for the inspection of transmission pipelines, which are larger lines that carry greater volumes of natural gas than smaller distribution and service pipelines. In late 2006, President George W. Bush signed the Pipeline Inspection, Protection, Enforcement & Safety Act, which modifies the Department of Transportation's 2002 pipeline safety programs.

With these safety programs, energy companies are required to follow certain

guidelines ensuring natural gas and oil pipelines are operated safely across the country.

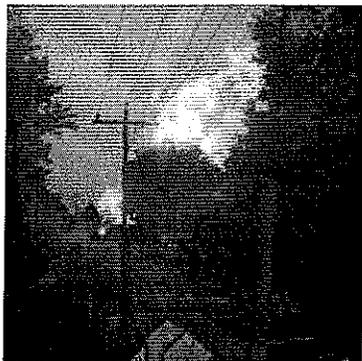
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September 16, 2008

UPDATED: Many scared to return home after explosion near Appomattox



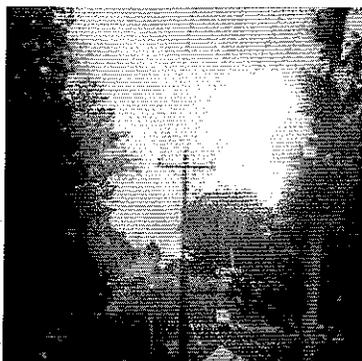
The blast destroyed two homes and damaged dozens of others along Route 26 Sunday.

Updated Tuesday 6:20 p.m.

Cleanup is finally underway, two days after a gas pipeline explosion in Appomattox County.

The blast destroyed two homes and damaged dozens of others along Route 26 Sunday. Everyone was allowed back in the neighborhood Tuesday. Police removed a barricade around the area.

Meanwhile, some victims of the explosion are deciding whether to return home at all. Some say going home will be difficult since gas is still being pumped through the area.



Photos Courtesy of: Breanna Slagle

"My kids are scared to go home right now," says Kathy Brown, who lives near the blast site. "We are allowed to go home, but they are scared to go home. They were very, very traumatized."

While one pipeline has been destroyed, two others are still carrying gas just a few feet away.

"I just want to be safe. I just want to know that it's going to be safe and the people of the community will be safe," says Scott Armstrong, who also lives near the site. "Right now, I think shutting off the gas would be the number one thing to do."

Residents say they're worried about the integrity of the pipelines after Sunday's explosion.

"Our technical people are looking to see if there is any problem. We don't believe there is," says Larry Hjalmarson with Williams Gas.

The two functioning pipelines are running with reduced pressure. Williams Gas says it won't return the lines to full service until they're sure it's safe to do so.

"We really want to work with the community and those affected and help them get their lives back to normal," says Hjalmarson.

Still, many say normal will be hard to achieve with those gas lines just a few feet away.

"You can reduce pressure all you want to, it's still fuel there to fire," says Jeremy Smith, who lives nearby.

Associated Links

▶ [Pipeline Safety and Information](#)

ADVERTISEMENT

Williams Gas is holding a second community meeting Tuesday night for victims to ask questions. It starts at 7:00 inside the auditorium at Appomattox County High School. **Updated Monday @11:35 p.m.**

Williams Gas held a community meeting tonight at Appomattox County High School to try and answer

10/08/2008

questions about the explosion.

Many wanted to know whether their property damage would be paid for and whether the blast area was safe for living.

Five people were injured, and two homes were destroyed when a pipe near Route 26 failed Sunday morning.

The ruptured pipe is one of three natural gas lines that run through Appomattox.

They're all owned by Williams Gas.

Company officials say this is the first time anyone's been injured by an incident along one of their lines.

Local T-V stations, including News 7, were on hand for the meeting, but the company did not allow us to record audio or video of the event.

We talked to blast victims after the meeting who say the company didn't give them what they came for.

Felicia Lewis lives near the blast site. "I wasn't satisfied. I felt like they were hiding things. They didn't give much information as far as helping us."

Jeremy Smith, who also lives near the blast site said, "It wasn't even worth coming to, for the sole reason that he could answer anything we wanted to ask and he's going to put money before people. He's still pumping gas through an area that's been affected by a blast that shook people for miles away."

Williams Gas will hold another community meeting on Tuesday evening at 7 o'clock.

UPDATED: Monday @ 5 p.m.

Officials are still trying to figure out what caused a gas pipeline to explode in Appomattox County. Five people were injured, and two homes were destroyed when a pipe near Route 26 failed Sunday morning.

We're told the process of investigating the explosion could take months because they want to pursue every angle. Williams Gas is the company that owns the pipe.

They say the line has been in place in Appomattox since the 1950's, but it gets maintained on a regular basis, and they don't believe the age of the line had anything to do with why it failed.

UPDATED: Monday @ 2:00 p.m.

Central Virginia Electric Cooperative says the number of power outages due to the explosion stands at 45. That's down from about 500 Sunday.

UPDATED: Monday @ 12:51 p.m.

There will be a community meeting with Williams Gas at Appomattox High School starting at 7 p.m. Monday. Residents will have the opportunity to ask the company questions.

Five people were hurt and two homes were destroyed after a natural gas pipeline exploded Sunday.

It happened shortly before 8 a.m. near Appomattox, about 30 miles from Lynchburg.

Two homes were destroyed by the explosion and the flames that followed. Nearby residents describe the

10/08/2008

sounds as loud booms and explosions.

"It was a loud explosion, about blew me out of the bed," said David Mills.

"I heard some boom-boom, my son's trailer was shaking," said Sadie Harris.

The pipeline is operated by Williams and owned by Transco and is part of a 10,500-mile interstate natural gas pipeline. After the explosion the natural gas was immediately re-routed to other lines.

"Certainly, this is a serious incident and Williams employees are doing everything they can to ensure public safety," said Randy Barnard, Transco's senior executive for operations. "We are very concerned about the report of injuries and the property damage. Our thoughts and prayers are with those who have been affected."

Residents did not have long to get out. Watt Jamerson's relatives lived in one of the homes that was destroyed.

"They jumped up and ran. The heat was so intense that they ran into the creek to a neighbor's house," said Jamerson.

Several homes were evacuated as a precaution. Five people were hurt, but they have all since been released from the hospital.

Nearby pipelines still working after Appomattox explosion

• Photo



Chet White/The News & Advance

http://www.newsadvance.com/lna/news/local/article/nearby_pipelines_still_operating_after_appomattox_county

Dwight Dixon (left) and Corey Robinson, both of Central Virginia Electric Cooperative, head back from surveying Virginia 26 in Appomattox County on Monday. CVEC will replace burned poles and reconstruct existing power lines. About 40 homes are without electricity.

By CARRIE J. SIDENER

Published: September 16, 2008

APPOMATTOX — More than a day after a natural gas pipeline explosion destroyed two homes and injured five people, nearby residents expressed concern that two pipelines are still flowing gas through their community.

The cause of the explosion is still under investigation.

Related:

Problems found near Appomattox blast site

'Massive fireball' leaves five injured, no one killed

A view from above: Appomattox pipeline explosion

Fund set up for family who lost home in Appomattox pipeline blast

Morning of terror: Pipeline explosion

Three pipelines run side-by-side between the charred and shattered brick remains of the homes of Linda Jamerson and Calvin Childress along Kelly Creek and Oakville roads in Appomattox County.

Two pipelines are still funneling gas, said Larry Hjalmarson, vice president of operations for Williams gas company, which runs those lines.

The third, situated in the middle, is 47 feet from one pipe and 25 feet from the other. It failed early Sunday, sparking an explosion that ignited the gas and sent a fireball hundreds of feet in the air. The blast, which created an almost 50-foot crater, destroyed two homes, damaged at least six others and injured five people.

Michelle Marcellino said her children don't want to return home. One cried, telling her, "Mommy, I don't want to be here." Her 6-year-old daughter can't sleep.

"I'm scared it will happen again," Marcellino said.

Hjalmarson told the more than 100 people gathered in the auditorium at Appomattox County High School that the lines still in operation are being thoroughly inspected for damage and are running at lower pressure than normal.

Still, some residents questioned how safe it is to move their families back into the homes that neighbor the pipelines built more than 50 years ago.

The A line was inspected for problems in 2000. The C line was inspected early this year. The B line — the one that failed — had just been inspected, but Williams' officials had not been able to analyze the results when the explosion happened.

"All I can do is assure you that we are operating these pipelines with safety in mind," Hjalmarson said. "We will not restore full service until we are confident that the whole thing is safe."

The B line is a 30-inch pipe that operates at about 800 pounds per square inch of pressure. No leak has been

detected in that line prior to 7:44 a.m. Sunday, said Stuart Roach, district manager for Williams.

While work was done in the area in recent weeks, Hjalmarson said it was performed on the C line to replace some anti-corrosive material in the pipe.

The Pipeline Safety Improvement Act of 2002 requires all pipelines to be inspected by Dec. 17 this year for high consequence areas and 2012 for all other sections of pipeline. All pipelines must be re-inspected on a seven-year cycle.

"I've been out there walking along them," said Hjalmarson. "We will inspect the A and C lines. We will expose those lines and take a look at them. ... We do what is needed to keep it safe."

Bobby Wingfield, director of public safety for Appomattox County, said more than 600 calls came into Appomattox's 911 center Sunday in the wake of the explosion.

"I understand the magnitude of this," Wingfield said. "It is a catastrophic event. They are going to make amends. I live in this community too and I understand they are trying to do the best they can."

Jeff Pounds, spokesman for Williams, said the company handles everything from the extraction, to the processing and distribution of natural gas. The company is based in Tulsa, Okla.

The Transco Pipeline, which includes the lines that run through Appomattox, covers 10,500 miles from Texas to New York. It is one of three pipelines that the company operates and by far the largest.

Compressor stations are situated every 75 to 100 miles along these pipelines to boost the pressure lost while moving the gas through the pipeline. One such station is in Appomattox.

"I understand why people are concerned, but in 50 years of operation, this is the first rupture that resulted in the injury to the public," Pounds said. "Right now our first concern is with the families and the public affected."

Pounds said investigators from the U.S. Department of Transportation's Pipeline Hazardous Materials Safety Administration and Williams company have been on site investigating the cause of the explosion.

It is too soon, he said, to know just what caused the explosion and how much damage it caused.

"We know we can never make this right and erase it," Hjalmarson said.

None of the homes impacted in the explosion have been examined structurally, Hjalmarson said.

Vicky Phelps, spokeswoman for Appomattox County, said with the exception of three families, all the families that were evacuated were allowed to return home Monday morning.

"The Williams people have been in and out all day," said Deputy Todd Craft, of the Appomattox County Sheriff's Office. "The investigation takes precedence now."

Oakville Road is closed and will remain that way until engineers with the Virginia Department of Transportation deem the road safe, Wingfield said. The flames destroyed the asphalt on the road and that needs to be assessed before the road can reopen.

Power is still out for more than 40 residents. Other utilities were also impacted.

Williams has provided housing for families who still can't return home. The Central Virginia Community Services Board is providing counseling to those traumatized by the explosion.

The immediate scene remains closed while federal investigators and investigators with the Williams company work to determine the cause of the pipeline rupture.

“They don’t want the area disturbed at all for the investigation,” Phelps said.

Numbers provided by the Pipeline Safety Trust from 1986 through 2008 showed 11 non-public injuries and \$43 million in damages along the entire length of the Transco line. Most of the failures were caused by material defects, corrosion or outside forces.

Reader Reactions

Posted by (tb) on September 16, 2008 at 11:06 am

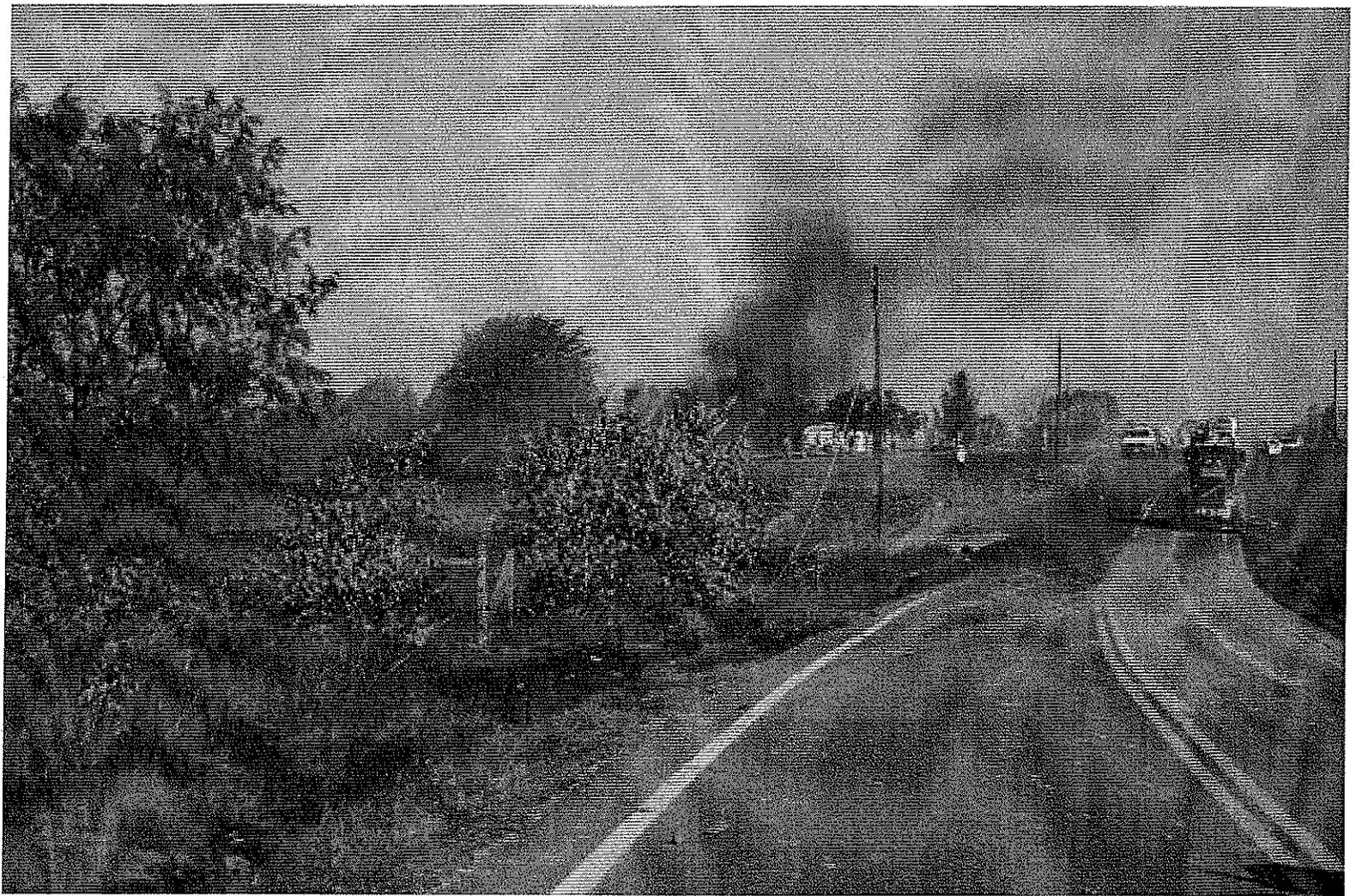
It would seem logical and safe to shut down the gas lines until the inspection has been completed and a clear assessment determined.

This is our hometown and we DO NOT FEEL SAFE! Williams Gas Company can afford to lose a little when our neighbors have lost SO MUCH!
WAKE UP WILLIAMS!

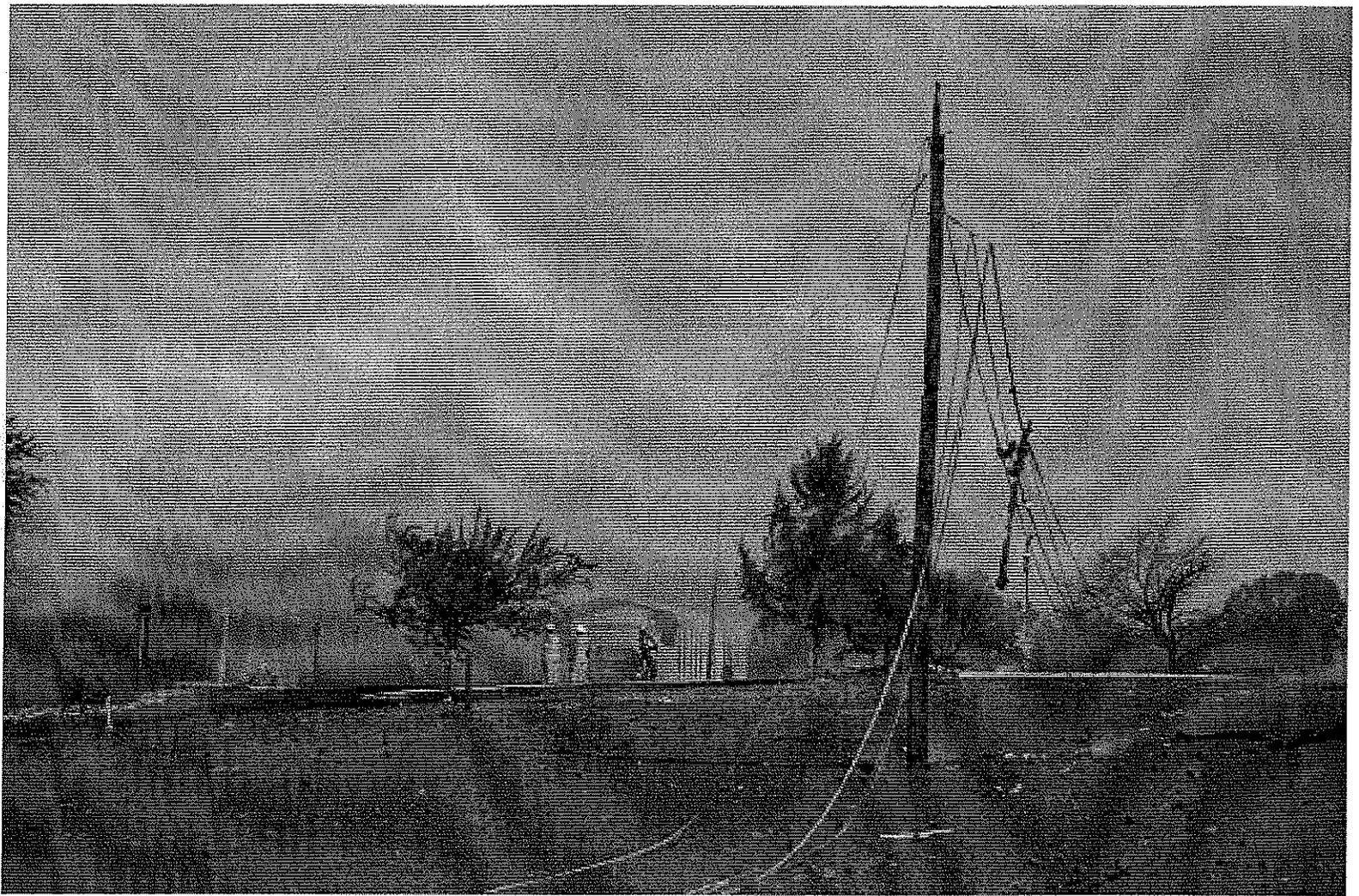
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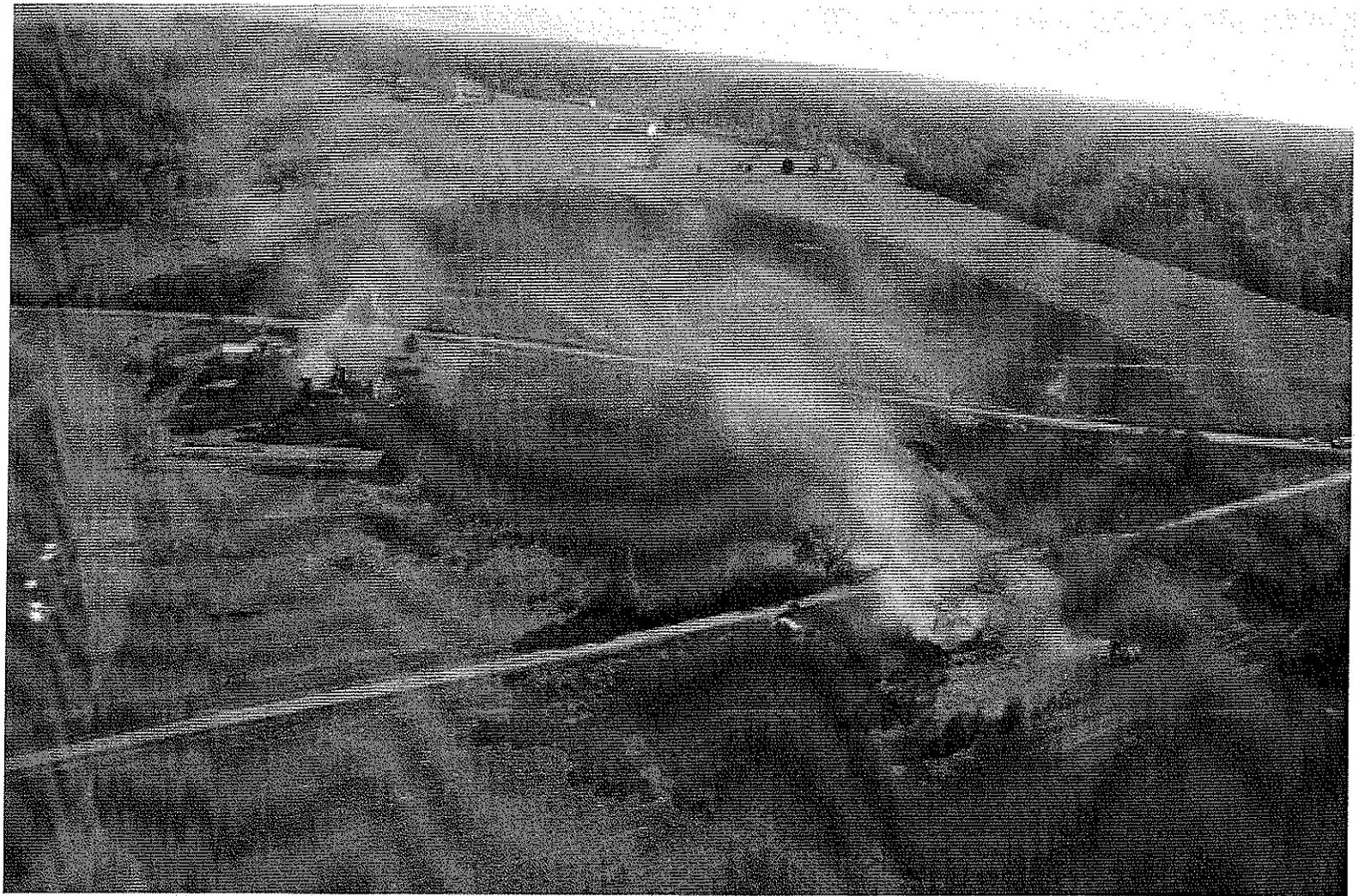


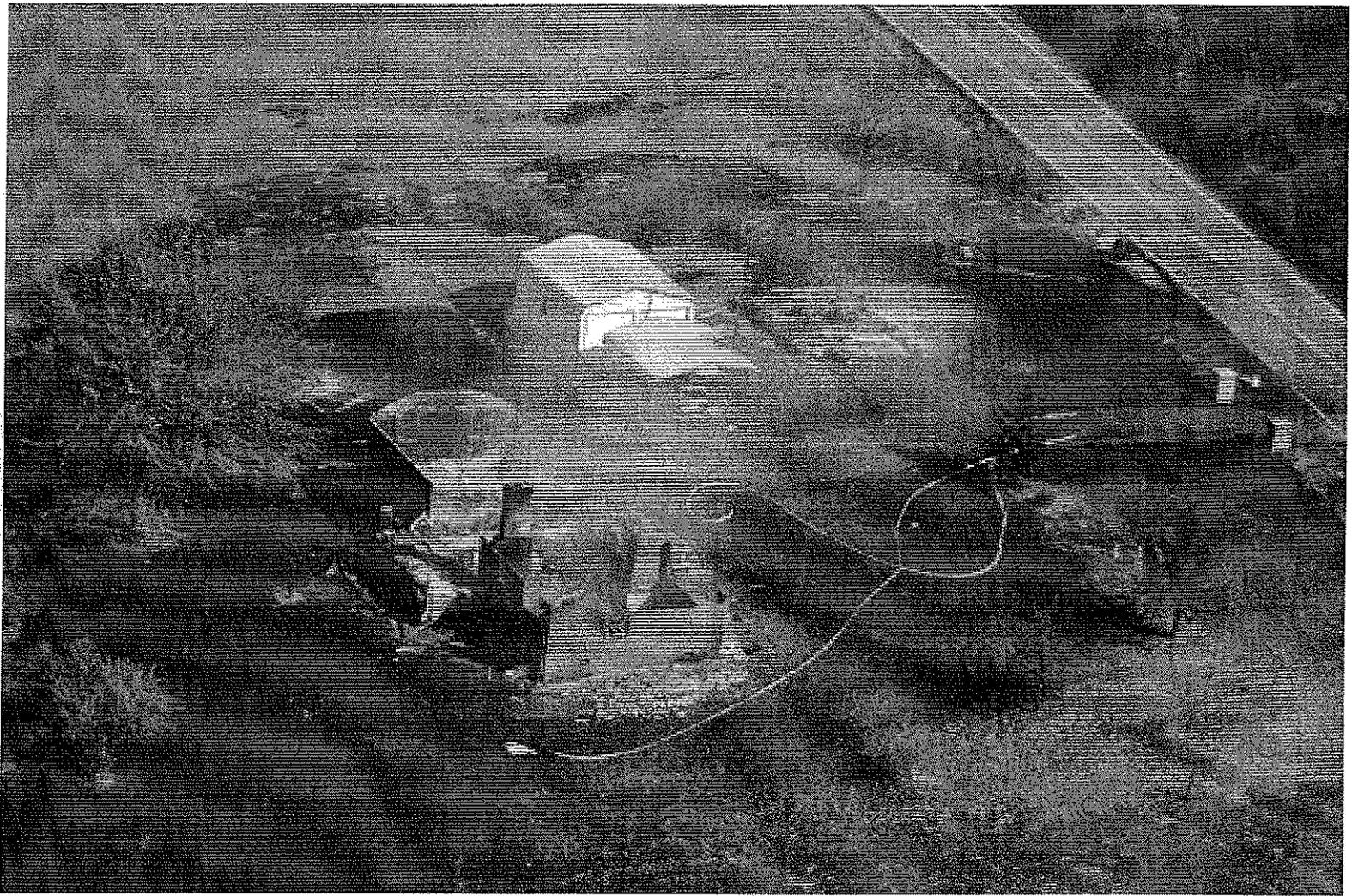














Walsh, Brian

From: Curt Hohn [chohn@webwater.org]
Sent: Thursday, October 02, 2008 8:48 AM
To: Walsh, Brian; Dennis Davis
Subject: FW: [safepipelines] PHMSA recommends \$2.4 million fine for Enbridge fatal accident

This news story relates to the tar sands crude oil pipeline that failed near Clearbrook, MN in November of 2007,.... just a few days before the SDPUC held hearings on TransCanada Keystone.

According to the full report, the pipeline was being operated at a pressure in excess of the approved design pressure.

Enbridge is consider to be the industry leader in the operation of crude oil pipelines. They have 4 pipelines located in the easement corridor where this pipe (3) failed. Two employees (Dave Mussati, Jr. and Steve Arnovich) were working on a pinhole leak in the 34 inch crude oil pipeline when fumes ignited, causing an explosion which killed both men.

<http://www.business north.com/ kuws.asp? RID=2538>

News From 91.3 KUWS

Enbridge pipeline explosion federal investigation recommends \$2.4 million fine

Story posted Wednesday at 4:19 p.m.

10/1/2008

A 10 month federal investigation is saying Enbridge Energy committed probable violations of Pipeline Safety Regulations that **lead to the death of two workers** last year. Mike Simonson reports. Today, the Pipeline Safety Administration is proposing a \$2.4 million fine.

In a letter sent to Enbridge Energy Partners based in Houston, this notice of probable violation ends a 10 month investigation which began when two members of a pipeline repair crew were killed November 28, 2007 in Clearbrook, Minnesota. The men were both from the Superior area.

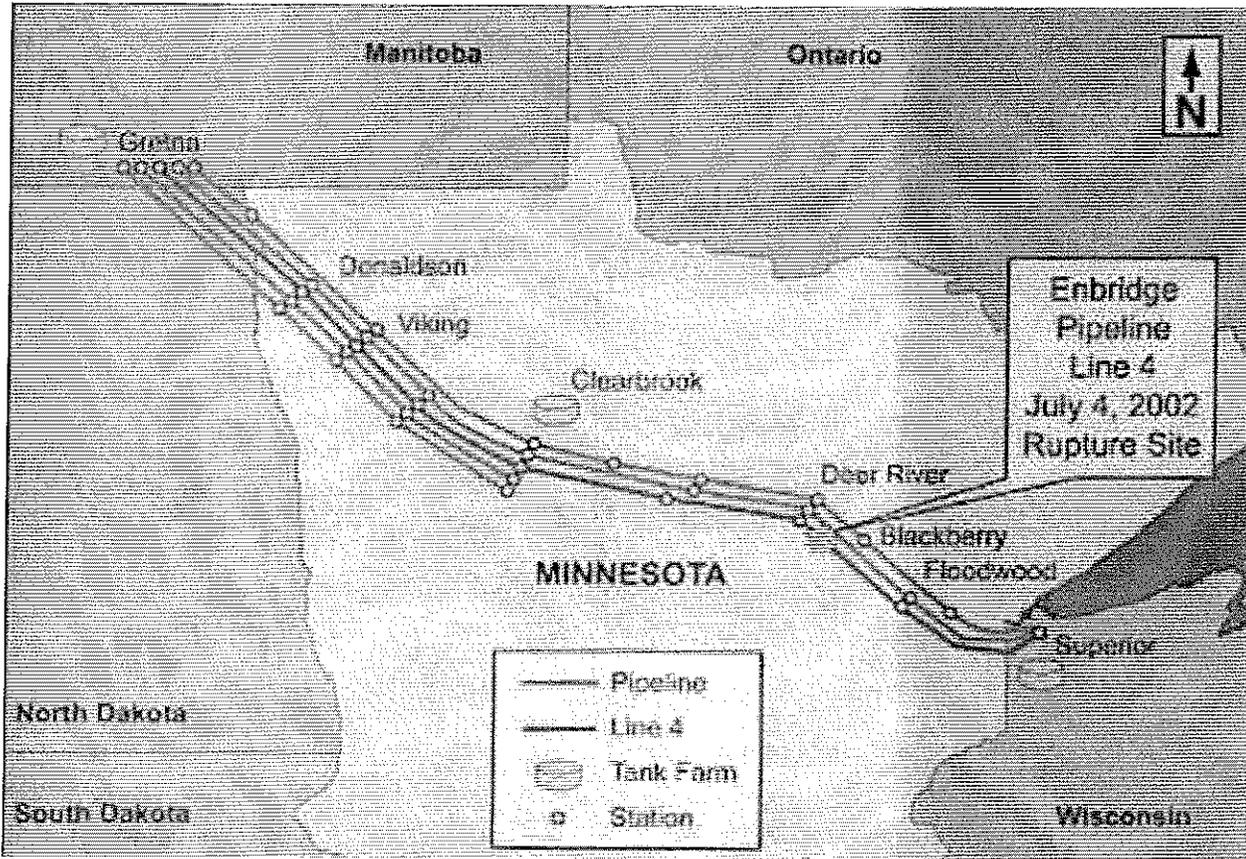
The investigation alleges eight procedural violations by Enbridge, including **operating the line in excess of the design pressure** of the weld and ends couplings and allowing multiple ignition sources near the pipeline repair site in northwestern Minnesota. Pipeline Safety Spokeswoman Patricia Klinger says that most likely includes a heater near the pipeline when it exploded. "That was the actual ignition source. That was considered, yes, absolutely."

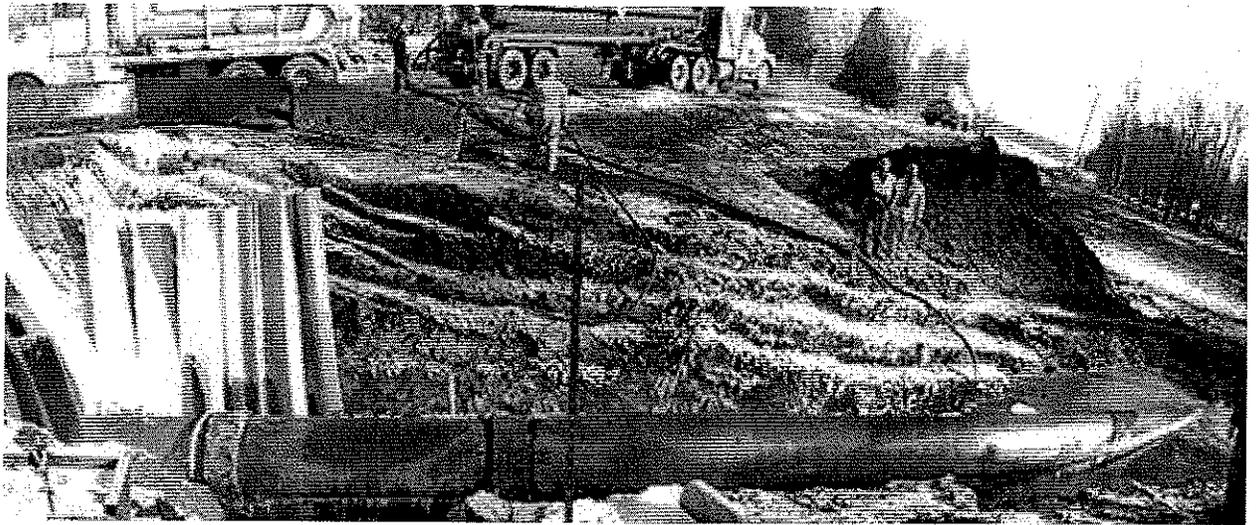
Enbridge Energy Spokeswoman Denise Hamsher says the feds investigation is similar to their own, which they released in May. So she's unsure if they'll appeal the \$2.4 million proposed fine.

"What this really is about is a tragic accident. We lost two employees. It is one of the worst incidents in Enbridge or Lakehead Pipeline history. What's important here is getting at the bottom of the practices, the

10/02/2008

training and procedures which we have been doing for many months now." Enbridge has 30 days to respond to the investigation.







NEWS RELEASE

Incident on Enbridge Pipeline – Update -- Line 3 Restarted

Calgary, Alberta and HOUSTON, December 3, 2007 -- Enbridge Inc. (TSX: ENB) (NYSE: ENB) and Enbridge Energy Partners, L.P. (NYSE: EEP) today report that Enbridge Energy Partners' Line 3, the line damaged in last week's accident near Clearbrook, Minnesota, was restarted at 4:35 a.m. MST December 3, 2007.

The duration of the unplanned outage, combined with storage capability and optimization of Enbridge system flexibility minimized impact on crude oil production and deliveries. Enbridge appreciates the cooperation of shippers on the Enbridge system in realigning deliveries which facilitated operations on Lines 1, 2 and 4 that returned to service starting the morning of November 29, 2007.

Repairs were conducted continuously over the weekend, overcoming the challenges of a major winter snow storm in Minnesota on Saturday. A segment of pipeline approximately 180 feet long was replaced and the pipeline has been returned to pre-incident operating pressures following consultation with the Federal pipeline safety regulator, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Clean-up of the site also progressed over the weekend with all oil and the majority of impacted soils removed from the area. The volume of oil released was estimated to be 325 barrels, which was largely contained in the trench that had been excavated to facilitate the planned maintenance. Contaminated soil was excavated and transported to an approved facility. While environmental impacts are expected to be minimal, Enbridge will continue to work with the U.S. Environmental Protection Agency and the Minnesota Pollution Control Agency to complete the environmental cleanup of the site.

The cause of the accident remains under active investigation with complete results not expected for several weeks. The section of pipeline involved in the failure was removed and transported to a third party facility for examination and testing. Enbridge continues to work closely with federal and state agencies in the investigation of the incident, including the PHMSA, representatives of the Minnesota Office of Pipeline Safety and the Occupational Health and Safety Administration (OSHA), along with state and local public safety officials. Enbridge expresses its sincere appreciation to the community of Clearbrook, Clearwater County and surrounding areas emergency responders for their professional, diligent and supportive actions.

Enbridge Inc. (www.enbridge.com) is a leader in energy transportation and distribution in North America and internationally. As a transporter of energy, Enbridge operates, in Canada and the United States, the world's longest crude oil and liquids pipeline system. Enbridge also has international operations and a growing involvement in the natural gas

transmission and midstream businesses. As a distributor of energy, Enbridge owns and operates Canada's largest natural gas distribution company, which provides distribution services in the provinces of Ontario and Quebec, and in New York State; and is developing a gas distribution system for the Province of New Brunswick. Enbridge is a Canadian company and its common shares trade on the Toronto Stock Exchange in Canada and on the New York Stock Exchange in the United States under the symbol ENB.

Enbridge Energy Partners, L.P. owns the U.S. portion of the world's longest liquid petroleum pipeline and is active in natural gas gathering, treating, processing and transmission. Enbridge Energy Management, L.L.C. (NYSE:EEQ) manages the business and affairs of the Partnership and its sole asset is an approximate 14 percent interest in the Partnership. Enbridge Energy Company, Inc., an indirect wholly owned subsidiary of Enbridge Inc. of Calgary, Alberta, is the general partner and holds an approximate 15 percent interest in the Partnership.

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Deadly pipeline fire sends oil prices soaring



Photo by Eric Hylden, Grand Forks Herald

<http://www.startribune.com/462/story/1580513.html>

Matt Lavin, who lives near the site of the Enbridge Energy oil pipeline, saw the explosion Wednesday night while he was deer hunting and ran away. He said flames reached about 200 feet in the air and he saw about 15 workers running away from the site.

By Joy Powell, Star Tribune

Last update: November 29, 2007 – 4:49 PM

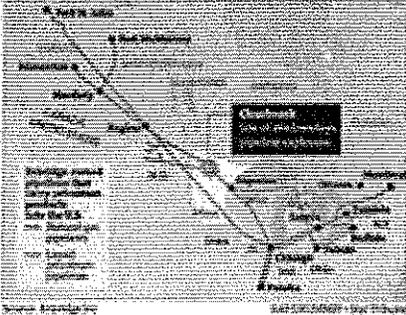


Two maintenance workers were killed Wednesday in a fire along a crude oil pipeline near Clearbrook, Minn.

Eric Hylden, Grand Forks Herald

THREE OF THE FOUR PIPELINES BACK IN SERVICE

Three of four pipelines that carry oil from Canada to the United States are back in service after a deadly fire at a pipeline in Clearbrook, Minn. The fire, which occurred on Tuesday, killed two workers and injured a third. The pipeline, which carries oil from Saskatchewan, Canada, to the Chicago area, had been out of service for several days. The pipeline is one of four that carry oil from Canada to the United States.



Graphic: 3 of 4 pipelines back in service

A deadly fire at a pipeline from Canada that feeds oil to the United States sent oil prices soaring today before it burned out.

"It looks like it's out now. They're just mopping up and making sure," said Blake Olson, a terminal supervisor at the pipeline in Clearbrook, Minn.

Two workers fixing the underground pipeline were killed when fumes apparently escaped and ignited the blaze, said Kristine Chapin, a spokeswoman for the Minnesota Department of Public Safety.

Light, sweet crude for January delivery jumped \$3.47 to \$94.09 a barrel in electronic trading on the New York Mercantile Exchange by midday in Europe. It climbed as much as \$4.55 to \$95.17 in the electronic session before slipping back.

The contract had plunged \$3.80 to \$90.62 a barrel Wednesday in New York, adding to the previous session's drop of \$3.28. That was a front-month contract's second largest two-day price decline since the Nymex introduced futures trading in 1983.

In London, January Brent crude rose \$2.21 Thursday to \$92.02 a barrel on the ICE Futures exchange.

The crude oil is used to make several kinds of fuel, such as gasoline and heating oil for homes.

Clearbrook is about 215 miles northwest of Minneapolis.

The victims' bodies were recovered, said Chapin. The workers' names have not yet been released.

The 34-inch pipeline carries crude oil from Saskatchewan to the Chicago area, Chapin said. The pipe had leaked a few weeks ago and was being repaired, she said.

"It appears as though one of those fittings may have failed and caused fumes to leak, and it caught fire," Chapin said. She said there wasn't an explosion and described it as a "big fire."

Nearby residents were evacuated because of the thick black smoke in the sparsely populated area.

An average of 1.5 million barrels of oil passes through the pipeline each day, said Enbridge spokesman Larry Springer.

The U.S. consumes 20.58 million barrels of oil a day.

The pipeline that leaked and three others were shut down, Enbridge said. Two of the lines were re-started Thursday morning, Springer said. Another line will be inspected to see if it is safe to come back online, but the line with the leak will likely be out for some time, Springer said.

"Nothing is going to be re-started until we're absolutely sure it's safe to be operated," Springer said.

The Clearwater County Sheriff's Office said the fire was reported about 3:50 p.m. Several rural fire departments responded. Residents in a one-mile radius were evacuated for a time because of smoke.

Environmental damage is likely to be minimal, said Darren Lemmerman, acting chief engineer with the Minnesota Office of Pipeline Safety.

"This was pretty well contained because it wasn't operating at full pressure during the maintenance process," he said. "The quantity is not determined at this point, but it's not large."

Firefighters let oil on the ground be consumed in a controlled burn, he said.

Enbridge Inc., a Canadian company that also operates in the United States, has the world's longest crude oil and liquids pipeline system.

The company has reported spills and ruptures before.

Currently, Enbridge Pipelines plans to build a pipeline and related facilities and to pump crude oil and liquid hydrocarbon from a supply hub in Manitoba to the terminal in Clearbrook. It would consist of about 313 miles of new pipeline and have the capacity to deliver 186,000 barrels per day, according to the U.S. Environmental Protection Agency.

The proposed expansion would run through the Minnesota counties of Kittson, Marshall, Pennington, Red Lake, Polk and Clearwater, as well as Pembina County, N.D.

The Associated Press contributed to this report.

- Mexico's Pemex says Gulf oil leak could take months to fix
- July 9, 1986: Gasoline pipeline explodes in Mounds View

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FACTBOX-Accidents on Enbridge oil pipeline system in 2007

Thu Nov 29, 2007 11:17am EST

<http://www.reuters.com/article/governmentFilingsNews/idUSN2920728020071129>

Nov 29 (Reuters) - An explosion and fire on the giant Enbridge crude oil pipeline system near Clearbrook, Minnesota, forced the partial shutdown of the system which transports two-thirds of the Canadian crude oil imported into the United States.

The entire system is comprised of more than a dozen pipelines in various parts of North America with a combined capacity of 2.2 million barrels per day. The mainline between Alberta and Superior, Wisconsin, transports approximately 1.5 million bpd, most of which goes to refineries in the U.S. Midwest. The remainder is shipped to refineries in Central Canada.

Capacity on the pipeline is growing tight due to rising oil production in Alberta and Enbridge has been working to expand the pipeline. The system suffered several incidents this year prior to the blast on Wednesday. A list of these incidents follows: JANUARY 3

- 300,000 bpd Line 14, which connects Superior, Wisconsin, to Chicago, ruptures in rural Wisconsin. The line is shut for approximately 24 hours. FEBRUARY 2

- Line 14 suffers another leak in Wisconsin. Nearby 630,000 bpd Line 6A, which connects Superior, Wisconsin to Chicago, is also shut as a precaution. APRIL 16

- 450,000 bpd Line 3, which connects Hardisty, Alberta, with Superior, Wisconsin, has a leak near Gleavon, Saskatchewan. NOVEMBER 14

- Line 3 shut for 18 hours after small spill discovered near Clearbrook, Minnesota. Nearby 670,000 bpd Line 4, which connects Edmonton, Alberta, with Superior, Wisconsin, is also shut as a precaution. NOVEMBER 29

- Explosion and fire kills two workers who were inspecting the pipeline. Lines 1 through 4 are shut. Two lines are restarted within hours of the blast. (Reporting by Robert Campbell, editing by Matthew Lewis)

Crude Oil Rises After Explosion at Enbridge Pipeline to U.S.

By Margot Habiby

<http://www.bloomberg.com/apps/news?pid=20601087&sid=altT5gILacV8&refer=home>



[+ Enlarge/Details](#)

Nov. 29 (Bloomberg) -- Crude oil rose, ending three days of declines, after an explosion cut Canadian oil shipments through Enbridge Inc. pipelines that supply U.S. refiners.

Three of four pipelines closed after yesterday's blast have opened, Enbridge said. Futures pared earlier gains after the company announced plans to resume full operation in two or three days. The pipelines transport oil to U.S. refiners, who processed the most in two months in the week ended Nov. 23.

"Any fears that this is going to lead to a major disruption have been alleviated," said Phil Flynn, senior trader at Alaron Trading Corp. in Chicago.

Crude oil for January delivery rose 39 cents, or 0.4 percent, to settle at \$91.01 a barrel at 2:45 p.m. on the New York Mercantile Exchange. Oil earlier gained more than 5 percent to \$95.17 a barrel. Futures are up 46 percent from a year ago.

Yesterday's blast killed two workers and curtailed Canadian imports to the U.S. that average 1.5 million barrels a day.

Enbridge's pipelines supply refineries including BP Plc's plant in Whiting, Indiana, and plants along the Gulf Coast. The U.S. imported 10.3 million barrels a day last week.

The U.S. Energy Department said it's "reaching out" to Midwestern refiners and that oil from the U.S. Strategic Petroleum Reserve "is available to alleviate a severe supply disruption," spokeswoman Megan Barnett said in a telephone interview. She declined to say whether the department has received any requests to tap the reserve.

Supply Adequate

ConocoPhillips's 306,000 barrel-a-day Wood River refinery in Illinois and Western Refining Inc.'s facilities won't be affected, the companies said today. Exxon Mobil Corp. said it will tap storage for crude oil to ensure uninterrupted supplies to refineries. Sinclair Oil Corp. said its supply is adequate for now, though it does buy oil from Canada.

Today's rally snaps a 7.7 percent slide in the first three days of the week, driven by signs that the Organization of Petroleum Exporting Countries is raising production and may increase output further. Crude touched a record high of \$99.29 a barrel in New York on Nov. 21.

"You have to think about the WTI front month contract as a proxy for a global benchmark and not a reflection of supply conditions in the U.S.," said Jeff Spittel, an analyst with Natixis Bleichroeder in Houston. "As it becomes more apparent that OPEC is turning on the taps, that will start to be reflected in the pit."

OPEC Shipments

OPEC's daily shipments of crude oil will rise 2 percent in the four weeks to Dec. 15 from the previous month, according to consulting company Oil Movements. OPEC promised to raise output by 500,000 barrels a day starting Nov. 1 to deflate soaring prices.

Brent crude oil for January settlement climbed 41 cents, or 0.5 percent, to \$90.22 a barrel on the London-based ICE Futures Europe exchange. The contract earlier touched \$92.82 a barrel.

Also reining in the rally were gains in the dollar, which strengthened the most in more than two weeks against the euro and pound. The U.S. currency rose on concerns the reluctance of banks to lend is spreading to Europe. Goldman Sachs Group Inc. said the dollar's decline may be ending.

"The dollar is lifting itself off of the matt and showing some incredible strength," Alaron's Flynn said. "Strength in the dollar is going to put pressure on oil."

Crude oil stockpiles are 3 percent above the five-year average, the Energy Department said yesterday, after a report showed a decline of 452,000 barrels to 313.2 million last week. Oil inventories in the Midwest regions affected by the Enbridge blast were at 63.54 million barrels, the highest since the week ended Sept. 28.

U.S. refineries operated at 89.4 percent of capacity, the highest since the week ended Sept. 14, the Energy Department said. Refiners usually start in November units that were shut during the previous two months for repairs after the summer driving season ends and before demand for heating oil picks up.

To contact the reporter on this story: Margot Habiby in Dallas at mhabiby@bloomberg.net.

Last Updated: November 29, 2007 15:55 EST

<http://www.businessnorth.com/kuws.asp?RID=2180>

Enbridge pipeline explosion preliminary report: Improper procedures part of the cause

Story posted Monday at 11:46 a.m.

2/18/2008

The pipeline explosion in northwestern Minnesota that killed two Superior men was caused in part by improper procedures used during repair work. Mike Simonson reports from Superior.

U.S. Pipeline Safety Public Affairs Officer Damon Hill in Washington, D.C. says this is a preliminary finding and not the complete investigation of the Enbridge Energy Pipeline incident last November 28.

"The investigation is still ongoing, but it looks like there were improper procedures conducted but until the investigation is complete, I can't give an exact determination of cause." Hill says they have ordered Enbridge to make changes since the pipeline explosion near Clearbrook, Minnesota.

"We've required the company to operate the pipeline at a reduced rate of pressure until we can determine what the cause of failure was. We've worked with the company to make sure that when they're doing anymore work on the pipeline that proper procedures are followed."

Hill says other specifics of the investigation can't be released now. He says it's difficult to say how long the Pipeline Safety Office will take for this inquiry.

"Sometimes an investigation can be rather quick or take a lot of time, depending on the facts involved. Everything that needs to be looked into, whether it's questioning that needs to be done of various employees or metallurgical examination of pipes, different factors involved cause different time frames."

Enbridge Energy workers Dave Mussati, Jr. and Steve Arnovich were working on a pinhole leak in the 34 inch crude oil pipeline when fumes ignited, causing an explosion which killed both of them.

Walsh, Brian

From: Curt Hohn [chohn@webwater.org]
Sent: Thursday, September 25, 2008 9:24 AM
To: Walsh, Brian
Subject: FW: WHY is SD Exempting TransCanada Pipeline From State Excise Tax?

Brian,

Please pass this email and the attached information on to the members of the Pipeline Task Force.

Curt Hohn

The Pipeline Task Force has met twice to develop its recommendation for the Governor as to the need for a state cleanup fund for crude oil pipelines. They have heard reports from DENR staff that SB 190 was flawed because it would be challenge under the interstate commerce law. PUC Commissioner Hansen suggested that if a per barrel fee was not possible because of interstate commerce then another source of funds might be the taxes that the pipelines will pay to the general fund.

Below are portions of a letter we sent to the SD Department of Revenue asking WHY ...**\$13.5 million in state excise tax** was being **refunded to TransCanada**, as reported in a news story written Sept. 28, 2007 by Bob Mercer (copy attached). Maybe this could be a source of funding. Keep the excise tax and use it to "start" the fund.

During the last session the legislature learned that the bond posted on the gold mining in western SD was not adequate to cover cleanup cost and now the state will share 10% of the cost with EPA handling 90%.....for years to come. It would seem prudent to avoid that same kind of problem with crude oil pipelines.

As to the expense of cleanups, the recent oil leak and pipe failure on Nov. 2007 on the Enbridge Pipeline near Clearbrook, MN resulted in **\$6.4 million in damage and cleanup** and it's still not done. The Enbridge pipeline was moving the same product that will move through South Dakota, tar sands crude oil. This information was provided by DENR staffer Brian Marsh at the Task Force meeting.

Oil publications continue to report that the volume of tar sands oil the industry plans to move from Canada south into the USA could equal a volume of up to 5 or 6 pipelines. We have two now, one being built from Britton to Yankton, the other being planned from Buffalo to Winner. There are more pipelines on the horizon that could impact even more areas of South Dakota.

SB190 should be filed again in the 2009 session, tightened up if necessary, and then passed with bipartisan support. TransCanada and other crude oil pipeline companies can well afford a few cents per barrel when they are selling the oil they ship for \$120+ per barrel. South Dakota taxpayers wouldn't have to worry about getting stuck with another environmental cleanup in the future. This is not a "D" or and "R" issue, it's a South Dakota protection issue and it's just plain good business.

(the following text was taken from the attached letter sent to the SD Dept of Revenue)

09/25/2008

Enclosed is a news story dated September 28, 2007 in which TransCanada VP Robert Jones states that **... "sales and use taxes would normally be about \$18 million, but a state law allows a 75 percent refund that would result in TransCanada paying about \$4.5 million"**. Has the Department of Revenue and the State of South Dakota agreed to refund \$13.5 million dollars in sales and contractor excise tax that would normally be paid on a pipeline construction project like the TransCanada-Keystone Pipeline? What is the legal basis for allowing a tax waiver or credit of this kind? Please provide the State law(s) that would allow such a refund or waiver.

We understand that a **waiver or refund** has been granted by the State to ethanol plants and electrical power generation plants such as Big Stone II because of the energy they produce and the jobs they create jobs (see news clip attached). However, TransCanada will employ only 3 employees stationed at Yankton and will generate no power in South Dakota. **Why would the State of South Dakota offer a special waiver or tax break of this kind to a private oil company from a foreign country?** If it's intended to be an incentive to encourage the construction of the pipeline through South Dakota it wouldn't appear to be necessary. The pipeline would be built with or without the tax incentive. Please provide us with copies of all correspondence related to the waiver of sales tax and excise tax for TransCanada.

We read in the newspaper that the State is short of funds to match federal highway funding. **Couldn't the \$13.5 million in sales and excise tax waived for TransCanada be used to fund highway construction? School districts have taken the State to court over school funding. Couldn't the \$13.5 million in taxes being waived or refunded to TransCanada be kept and used to meet school funding needs?** If the State doesn't need the tax why couldn't the \$13.5 million be held in reserve to deal with possible oil leaks, environmental impacts, property damage and cleanup costs?

WEB has always collected sales and excise taxes from our customers and projects as required by law and remitted the tax to the State. **Why is it that South Dakota rural water systems, farmers, ranchers, and small business pay their share of State sales tax and contractor's excise tax whenever they build something or add on to their business? Yet a private oil company from a foreign country gets a 75% tax break when oil is \$100 per barrel?** TransCanada must have been laughing all the way back to Alberta, Canada in their corporate jet. The Governor has said the annual tax revenue would be \$6,400,000. TransCanada VP Robert Johnson confirmed that in testimony filed with the SDPUC dated September 21, 2007. A flier TransCanada distributed in daily news papers on Sunday, November 25, 2007 claimed the amount will be \$7,005,094.37. A TransCanada ad published in daily newspapers on Monday, November 28, 2007 raised the amount to \$9,142,013.93. What is the correct amount?

Official: Pipeline, refinery not linked

By Bob Mercer
American News Correspondent

PIERRE — The Keystone crude-oil pipeline that TransCanada wants to build through South Dakota is not intended to serve the Hyperion oil refinery project proposed near Elk Point, according to sworn testimony filed with the state Public Utilities Commission.

Robert Jones, vice president for TransCanada Pipelines, said Keystone has firm contracts to deliver 495,000 barrels per day to customers at Wood River and Patoka, Ill., and Cushing, Okla.

"Hyperion is not included as a firm shipper. Keystone has not negotiated any shipping contracts or connection contracts with the proposed Hyperion project or any other proposed refinery," Jones said in his prefiled testimony.

Jones said there are sufficient commitments to lead TransCanada to increase the pipeline's capacity to 591,000 barrels per day.

"Keystone is not dependent on the construction of the Hyperion

See OIL, Page 10A

Oil: Cost estimated at \$300 million

Continued from Page 1A

refinery or any other proposed refinery," he added.

Opponents of the pipeline have charged that TransCanada and Hyperion are linked.

The PUC will have a hearing in December on whether to grant TransCanada the necessary state permit to construct the pipeline through South Dakota. The 220-mile route would cross 10 counties.

Interstate 29: A project consultant said TransCanada never considered running the pipeline down the Interstate

29 corridor because such a route wouldn't be allowed for safety reasons.

The consultant, Michael Troski, said TransCanada also rejected the option of running the pipeline on property adjacent to I-29 because that route would need to loop around interchanges, overpasses and residential and commercial areas of development.

Opponents have urged the project be relocated from the James River Valley to the I-29 corridor.

Jones in his testimony said Keystone will have three

full-time employees in South Dakota after construction is complete, along with 50 to 60 part-time contractual positions.

TransCanada wants to start construction in 2008 and have the project in operation by late 2009.

Cost, tax revenue: Jones said the estimated cost of construction in South Dakota is \$300 million. He said sales and use taxes would normally be about \$18 million, but a state law allows a 75 percent refund that would result in TransCanada paying about \$4.5 million.

He expects the pipeline to generate about \$6.5 million in taxes in the first year after construction.

The pre-filed testimony from TransCanada officials is the first step in the process leading up to the December hearing. Opponents will pre-file their testimony next, followed by rebuttals from each side.

The purpose of the pre-filed testimony is to allow the three PUC members to better consider the written statements and to accelerate the hearing process.



JENNY MICHAEL / AP

Gov. Mike Rounds signs a bill giving tax breaks to agriculture expansion projects, while members of the agricultural community stand by Friday in Pierre.

Rounds approves two tax breaks

THE ASSOCIATED PRESS

PIERRE - Gov. Mike Rounds signed two business-related bills Friday that he had requested.

One will give state tax refunds to agricultural processors that spend at least \$4.5 million to expand their operations.

State law already allows full refunds of the 2 percent contractor's excise tax and 4 percent state sales tax on construction costs of new agricultural processing plants exceeding \$4.5 million. The new law will allow existing ethanol plants and other agricultural facilities to get the tax breaks if they expand in present locations.

"Long term, it means better jobs. It means more jobs, and it means more of our basic commodities being processed within our borders," Rounds said.

Another bill will provide exemptions from local property taxes for power companies that spend at least \$10 million on equipment to meet pollution standards.

The new law will help the Big Stone I power plant update environmental controls that also will be used by the planned Big Stone II project.

Rounds signed the bills in a ceremony attended by members of the agricultural and energy industries.

Other bills the governor has signed will:

- let the South Dakota crime lab, sheriffs and police sell firearms seized from criminals;

- exempt water pipelines from a South Dakota law forbidding waterways from being built within 250 feet of homes, other buildings, orchards and gardens without the consent of property owners. The law will allow the Lewis & Clark Rural Water System to use eminent domain powers to put its pipeline closer to buildings;

- give state money to help build National Guard armories in Mobridge and Watertown.

November 27, 2007

Paul Kinsman, Secretary
SD Department of Revenue & Regulation
445 East Capitol Avenue
Pierre, South Dakota 57501

RE: Taxes & TransCanada-Keystone Pipeline

Dear Secretary Kinsman,

Enclosed is a copy of a portion of testimony presented by John Muehlhausen of Merjent Inc., a witness on behalf of South Dakota Public Utilities Commission, regarding taxes and the TransCanada-Keystone Pipeline. Also enclosed is a copy of page 3 of a flier that was released over the weekend by TransCanada. We have several questions for you regarding the information provided in both documents.

It's our understanding that your agency either handles or is involved in the central assessment of taxes paid on pipelines and that your agency is responsible for the collection of sales tax and contractor's excise tax on large construction projects of this kind. I'm sure you know that the South Dakota Public Utilities Commission will be holding hearings on this project the week of December 3, 2007. We would ask that you provide a written response to this letter and send it to me by 5:00 pm, Tuesday, December 4, 2007 by U.S. mail and by email to chohn@webwater.org and by fax to (605) 229-4492.

1. Was the information in Table 7 of the Merjent testimony or the TransCanada flier reviewed and approved by the SD Department of Revenue? To your knowledge was it reviewed and approved by each County Assessor of the ten counties that will be crossed by the pipeline? Please provide us with copies of any reports, emails or letters you or others in your agency have received or sent regarding taxes paid by TransCanada and the information provided in Merjent's testimony and the TransCanada flier.
2. The Merjent testimony includes the following statement...*"Assuming the value of the pipeline system would be roughly equivalent to the cost of construction, the proposed pipeline would have total taxable value of about \$300,000,000."* Has your agency received any information as to the estimated construction cost of the TransCanada pipeline through South Dakota being \$300 million? Does that estimate take into account the 86% cost increase that was reported recently in the news media that the total project cost has went from \$2.7 billion to \$5.4 billion? How will your agency determine and confirm what the actual final cost of the project is through South Dakota since the project is being built with private funds by a foreign oil company?
3. What is the depreciation schedule that TransCanada or your agency has estimated for the TransCanada-Keystone Pipeline? What will be the amount of taxes paid for the next 25 years? The next 50 years? What is the break down by county, school district, fire district,

- etc. What portion of the taxes will the State receive?
4. The Merjent testimony includes the following statement...*"Generally, the assessment would decrease over time."* TransCanada owns and operate gas pipelines in South Dakota so they should be familiar with how taxes are applied in South Dakota. TransCanada is a part owner and currently the operating partner of the Northern Border Pipeline. What was the total value of that portion of the Northern Border Pipeline built in South Dakota? What has the depreciation schedule and the taxable value of the Northern Border Pipeline been since 1982? What has been the amount of taxes paid by the Northern Border Pipeline each year since 1982? What is the break down by county, school district, fire district, etc, per year. What portion of the taxes will be received by the State, each county, each school district and other special districts?
 5. Does State law allow for the taxable value of the Northern Border Pipeline and the TransCanada-Keystone Pipeline be depreciated down or devalued to the point that no taxes will be paid on the pipeline to State and local government?
 6. Table 7 of the Merjent testimony apparently represents the estimate of the tax revenue that TransCanada will pay for the first year of operation? Have you reviewed this table and do you agree with the estimate shown? Table 7 fails to show where the tax revenues will end up and who will get the money. Please provide a revised Table 7 which shows what your agency thinks the tax revenue will be per county for the first year of operation and where the estimated tax revenues will end up going; (1) State of South Dakota, (2) County government, (3) School Districts, (4) Fire Districts and other entities.
 7. It's our understanding that the property tax that will be collected on the TransCanada-Keystone Pipeline will be "centrally assessed" by state government in Pierre? What portion of the taxes collected by the state on the TransCanada-Keystone Pipeline will go directly back to local school districts that are crossed by the pipeline? Will the "per pupil amount" remitted by the state to the school districts crossed change from previous years because of the taxes collected on the Keystone Pipeline and if so how much per each of the school districts crossed? What will the "net change" be for each school district from 2007, 2008 and 2009? School officials tell us that the money each school district receives will not change materially because state funding for schools is distributed on a per student basis. Is that correct?
 8. Enclosed is a news story dated September 28, 2007 in which TransCanada VP Robert Jones states that **..."sales and use taxes would normally be about \$18 million, but a state law allows a 75 percent refund that would result in TransCanada paying about \$4.5 million"**. Has the Department of Revenue and the State of South Dakota agreed to refund \$13.5 million dollars in sales and contractor excise tax that would normally be paid on a pipeline construction project like the TransCanada-Keystone Pipeline? What is the legal basis for allowing a tax waiver or credit of this kind? Please provide the State law(s) that would allow such a refund or waiver.
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Sincerely,

Curt Hohn
WEB General Manager
Email: chohn@webwater.org

Fax (605) 229-4492

Cc: Division Administrator
Department of Revenue
419 Moccasin Drive
Aberdeen, South Dakota 57401

(the following was taken from pages 35 and 36 of the Merjent testimony filed with the SDPUC. The full testimony is available on the PUC website under pre-filed testimony)

Taxes

As of 2005, South Dakota had the lowest per capita total state tax rate in the United States. The state does not levy inheritance tax, personal or corporate income tax, or tax on intangible personal property. However, sales tax is applied to the gross receipts of all retail sales in South Dakota, including the selling, leasing, and renting of tangible personal property or the sale of services. A use tax of the same rate as the sales tax applies to all goods and services that are used, stored, or consumed in South Dakota on which South Dakota sales tax was not paid. The purchaser or consumer of the goods or services is responsible for reporting and remitting the use tax in the filing period in which they receive the goods or services. The state sales and use tax rate is 4%.

In addition to state sales and use tax, municipalities may impose sales and use tax of up to 2% and gross receipts tax of up to 1%. Within the project area, the proposed project avoids municipalities (except perhaps for a small corner of Yankton), which is consistent with the general pipeline routing goal of avoiding populated areas. South Dakota also imposes a contractors' excise tax on the gross receipts resulting from construction services or realty improvements. The contractors' excise tax is 2%.

The proposed project would be subject to 4% sales and use tax and 2% contractors' excise tax, for a total of 6% tax. TransCanada estimates the taxable value of the project in South Dakota at \$300 million. The taxable value of the project is higher than the total cost of purchases from firms located within the region. This is due to the fact that items purchased outside of South Dakota, but used in South Dakota (e.g., pipe, pump motors, *etc.*) are subject to use tax. Based on the taxable value of the project in South Dakota, the state would collect about \$18 million from construction. Compared to statewide sales and use tax and contractors' excise tax collected in 2006 of about \$926 million, the proposed project would *have* a modest benefit on state tax revenues of about 2%. Spread over two years, the benefits would be less noticeable.

New and expanded business facilities (with the exception of retail, housing, and health care facilities and any facility that is exempt from property tax) may be eligible for partial sales and use tax and contractors' excise tax refund if project

costs are greater than \$10 million. Refunds are based on the following project cost scale: (see footnote 53 below)

- \$0 to \$10 million =0%
- \$10 to \$15 million =25%
- \$15 to \$20 million =33%
- \$20 to \$40 million =50%
- \$40 to \$60 million =67%
- \$60 to \$600 million =75%
- \$600 million and up =90%

In accordance with the value of the project in South Dakota, **TransCanada may be eligible for up to a 75% refund, thereby effectively dropping the cumulative sales and use tax and contractors' excise tax rate to 1.5%, or \$4.5 million.**

Compared to the statewide taxes collected in 2006 of about \$926 million, the proposed project would have a minor benefit on tax revenues of about 0.5%. Spread over two years, the benefit would appear still less significant.

During operation, crude oil shipped in the pipeline would not be retailed within the state; therefore, no sales or use tax would be generated by the product in the pipeline. However, the electricity (as well as other goods and services) purchased by TransCanada would be subject to a 4% sales and use tax. TransCanada estimates that it would purchase about \$10.1 million in local electricity annually to operate its pump stations in South Dakota.²² This equates to \$404,000 of annual tax revenue. Other goods and services purchased locally might exceed \$500,000 annually and could add more than \$20,000 to annual tax revenue.²⁰⁻²²

The state also taxes the operation of pipelines (as well as railroads, airlines, and public utilities). Pipelines are taxed via *ad valorem* property tax, which is a tax based on the assessed value of the pipeline. The phrase *ad valorem* is Latin for "according to value." *Ad valorem* taxes such as this are incurred through ownership of an asset, and contrast to transactional taxes such as sales taxes, which are incurred only at the time of transaction.

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By Bob Mercer

American News Correspondent

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See Oil, Page 10A

Oil: Cost estimated at \$300 million

Continued from Page 1A

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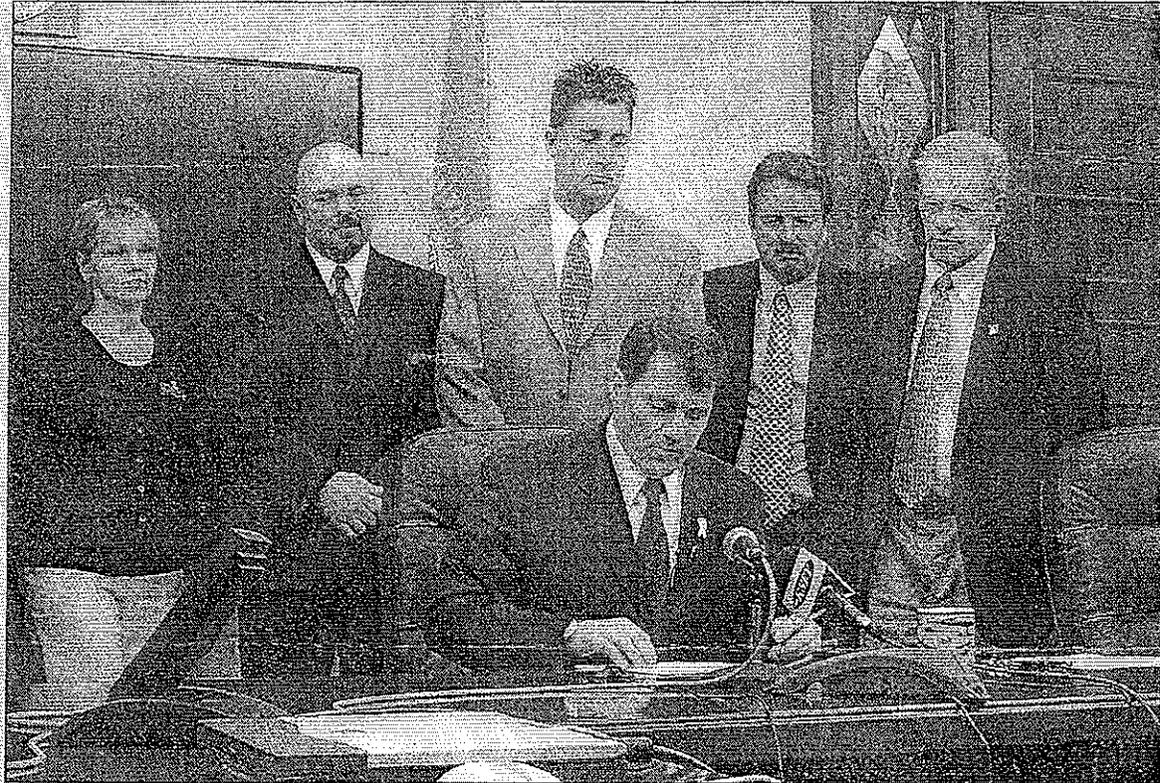
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Ethanol Developers Receive Special Tax Breaks From The SD Legislature & The Governor

ARGUS LEADER, SATURDAY FEBRUARY 23, 2006

Legislature
2006



JENNY MICHAEL / AP

Gov. Mike Rounds signs a bill giving tax breaks to agriculture expansion projects, while members of the agricultural community stand by Friday in Pierre.

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THE ASSOCIATED PRESS

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- give state money to help build National Guard armories in Mobridge and Watertown.

From: GEORGE PIPER
To: Walsh, Brian;
CC:
Subject: Pipeline Task Force
Date: Friday, September 12, 2008 7:20:44 AM
Attachments:

TO: Pipeline Task Force
FROM: George Piper, 818 - 9th ST SW, Huron, SD
DATE: 9/12/08

During the permitting process for the Keystone Crude Oil Pipeline held by the PUC, a large body of evidence showed that oil pipelines leak sometimes with dramatic adverse impacts on land and water resources.

I believe that the State of South Dakota should require that the pipeline owners be assessed a fee to build a fund to clean up spills and compensate property owners for damages from crude oil spills. During this time of record crude oil prices a fee at 15 cents per barrel would be very reasonable.

1123 Northeast Drive
Rapid City, S. Dak. 57701
September 8, 2008

Mr. Brian Walsh
Hydrology Specialist
S.D. Dept. of Environment & Natural Resources
523 E. Capitol
Pierre, S. Dak. 57501

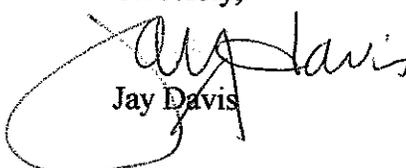
Dear Mr. Walsh:

I am writing you to provide written input in advance of the Task Force meeting on proposed legislation and regulations concerning oil pipelines which are being built and proposed across the state of South Dakota.

Clearly, there are environmental and public safety risks involved in the construction of oil pipelines. Apparently, the oil from the pipelines is primarily destined for other parts of the United States. At a minimum, any oil pipeline which is constructed across our state should pay a "per barrel" fee, perhaps 15 or 20 cents. This fee should be used to clean up any accidental spills, and also to reimburse property owners for damages to their land. Otherwise, a pipeline company could go bankrupt in a few years, leaving taxpayers holding the bag for potentially millions of dollars in damages.

Thank you for your consideration in this matter.

Sincerely,


Jay Davis

