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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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March 9, 2009

Patricia Van Gerpen
PUC Executive Director
500 E. Capitol Ave
Pierre, SD 57532

Re: Pipeline Safety Rules

Dear Ms. Van Gerpen:

Attached for filing in a new rule making docket please find:

- 1) Staff's proposed rules
- 2) A memorandum inclusive of explanation and staff comment regarding the proposed rules.

Thank you.

Kara Semmler

Proposed Administrative Rules

Chapter 20:10:XX Pipeline Safety Enforcement and Penalties

Section

20:10:XX:XX. Definitions. Terms defined in SDCL 49-34B-1 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

- (1) "Inspector," a pipeline safety inspector employed by, or contracted as an agent of the commission;
- (2) "Incident," is any of the following events:
 - (a) A release of gas from a gas pipeline facility or of liquefied natural gas or gas from an liquefied natural gas facility and
 - (i) A death, or personal injury necessitating in-patient hospitalization; or
 - (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more;
 - (b) An event that results in an emergency shutdown of a liquefied natural gas facility; or
 - (c) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subdivisions a and b above;
- (3) "Inspection," a review of the books, files, records, reports, supplemental data, other documents and information, plant, property, and facilities of a pipeline operator to ensure compliance with applicable pipeline safety standards;
- (4) "Inspection report," the report drafted by an inspector after an inspection of any type, except for an incident;
- (5) "Incident report," the report drafted by an inspector after an incident;
- (6) "Pipeline safety program," is the program administered by the South Dakota Public Utilities Commission with regulatory jurisdiction over the safety standards and practices of all jurisdictional intrastate natural gas and other gas pipelines within South Dakota.

20:10:XX:XX Landfill Gas Pipeline Classification

Landfill gas pipelines shall be classified as gas transmission facilities unless they are operated at a hoop stress of less than twenty percent of specified minimum yield strength as defined by the Code of Federal Regulations, title 49, part 192.3 as of January 1, 2009, or plastic pipe and associated facilities which operate at less than fifty percent of the design pressure as determined by the formula specified in Code of Federal Regulations, title 49, part 192.121 as of January 1, 2009 and operate at an maximum allowable operating pressure of 50 pounds per square inch

gauge or less. Landfill gas lines that are not gathering lines and not classified as transmission lines shall be classified as gas distribution pipelines.

20:10:XX:XX. Scope and application. This chapter sets forth the procedures and standards to be used to enforce pipeline safety standards and impose civil penalties on pipeline operators for failing to meet the federal pipeline safety standards adopted by chapter SDCL 49-34B. These rules shall apply only to those pipelines within the jurisdiction of the commission pursuant to SDCL Chapter 49-34B.

20:10:XX:XX. Commission's procedural rules to apply. Except as otherwise provided in these rules, the Commission's procedural rules set forth in chapter 20:10:01 shall govern proceedings under this chapter

20:10:XX:XX. Inspections. An inspector shall conduct periodic inspections and spot checks of records and property in the possession, custody, or control of the pipeline operator to determine compliance with applicable pipeline safety standards. Inspections may be conducted pursuant to routine scheduling by the inspector, upon a complaint received from a member of the public, upon information obtained from a previous inspection, or when there is cause to believe that a threat to public safety may exist.

20:10:XX:XX. Pipeline operator obligations. Each pipeline owner, operator, officer, employee, and representative shall cooperate with the inspector and the commission in the administration and enforcement of this chapter and in the investigation of violations or alleged violations involving pipeline operator or intrastate pipeline facilities owned or operated by the operator. Cooperation shall include, but not be limited to, making available all company books, files, records, reports, supplemental data, and making readily accessible all company plant, property, and facilities that the inspector may reasonably require in the administration and enforcement of this chapter.

20:10:XX:XX. Inspector reporting requirements. Regardless of the inspection type, the inspector shall complete a post inspection report within a reasonable time upon completion of the inspection itself. The report shall include a summary of probable noncompliance issues if any exist. As applicable, the inspection report may include a remediation plan wherein specific corrective action and a reasonable time frame for completion shall be stated when probable noncompliance issues exist. The completion time frame for remediation measures may be extended by the Commission.

20:10:XX:XX. Operator receipt of the inspector report. The inspector shall provide a copy of all inspection report materials to the pipeline operator. The report shall be provided to an authorized official of the operator including an officer, manager or governing board member if probable violations or warnings, as defined in ARSD _____, are believed by the inspector to exist.

20:10:XX:XX. Probable non-compliance inspection results. The inspector shall categorize potential noncompliance in one of the following three categories to be specified in the inspection report:

- (1) A notice of probable violation may be issued if the inspector has good cause to believe a serious or repeat violation of applicable pipeline safety standards has occurred. The written notice of violation shall include a statement of the statute, rule, or regulation allegedly violated by the pipeline operator and a description of the factual basis on which the allegation is based. If a civil penalty is proposed, the report shall state the amount of the proposed civil penalty. A warning in subdivision (2) may be elevated to a notice of probable violation by the pipeline program manager if warning items are not remedied in a timely fashion;
- (2) A warning may be issued for a potential probable violation of a less serious nature or a first time violation. The warning may include specific corrective actions that must be taken to correct the situation and the time frame within which such actions shall be completed; and
- (3) A notice of concern may be used to inform the operator where best industry practices are not being followed but no direct code violation exists. The notice of concern designation shall be used for informational purposes only to aid the pipeline operator in managing as safe and effective pipeline as possible. No pipeline operator action is required.

20:10:XX:XX. Pipeline operator inspection response. Upon receipt of a written notice of probable violation or warning, the pipeline operator shall respond to the inspector within 30 days in any one of the following ways:

- (1) Admit to the probable violation and agree to the proposed civil penalty or corrective action, or both, if they exist. Civil penalties shall be subject to commission approval;
- (2) A written dispute of the reported probable violations at which time the pipeline operator may request a hearing before the commission if the dispute cannot be resolved with the inspector; or
- (3) A written dispute of the proposed civil penalty or proposed corrective action, or both, at which time the pipeline operator may request a hearing before the commission.

20:10:XX:XX. Pipeline operator incident reporting requirements. At the earliest practical time following discovery of an incident but no later than two hours, the pipeline operator shall notify the commission by phone of any incident on the pipeline system owned or operated by the pipeline operator. The notification shall include, but not be limited to, the identity of the pipeline operator, the time and location of the incident, whether there are ascertainable fatalities, personal injuries requiring inpatient hospitalization, or property damage, or both, and any other significant facts and public dangers relevant to the incident. This reporting requirement does not relieve the pipeline operator of the federal reporting requirements as found in the Code of Federal Regulations, title 49, part 191. This reporting requirement requires personal notification to an inspector. Proper inspector contact information shall be provided by the Commission.

20:10:XX:XX. Inspector's incident investigation. Every incident shall be docketed with the commission by an inspector upon initiation of an investigation. An incident investigation shall be conducted by an inspector and may include, but is not limited to, pipeline operator personnel interviews, the inspection of failed equipment or pipe, the issuance of a subpoena for failed equipment or pipe relating to the incident for independent preservation, order independent

laboratory tests of failed pipe or equipment, view related documents, and take other investigatory measures as needed to complete a comprehensive independent investigation. The pipeline operator has ten days to respond to inspector requests for information. Disputes shall be resolved by the commission.

As soon as reasonably possible after all information has been gathered and the investigation concludes, an inspector shall file an incident report to summarize the investigation and report on findings. The inspector's report shall be filed with the commission. An incident docket shall conclude upon the commission's acceptance or rejection of the inspector's report and determination of what pipeline violations occurred, if any, what corrective actions shall be required, if any, and what civil penalties are appropriate, if any.

20:10:XX:XX. Pipeline operator obligations upon completion of inspector's incident report. Upon filing of the inspector's incident report with the Commission, the pipeline operator shall respond, in writing, within 30 days and state whether the pipeline operator agrees with the report and recommendations or disputes any portion of the report and recommendations.

20:10:XX:XX. Pipeline operator failure to reply. A failure to reply to either an inspection report according to ARSD 20:10:XX:XX or an incident report according to ARSD 20:10:XX:XX shall be considered consent to the report in its entirety. Civil penalties shall remain subject to Commission approval.

20:10:XX:XX. Request for hearing. Either the pipeline safety program manager or pipeline operator may, at any time, request a hearing before the commission to resolve any issue within the jurisdiction of the commission.

20:10:XX:XX. Change of ownership. Each pipeline operator, upon finalization of an agreement to purchase or sell a jurisdictional gas pipeline facility subject to the provisions of the Code of Federal Regulations Title 49, Part 192, must, within ten working days, submit to the commission's pipeline safety program a written notification of this agreement. This rule shall not apply to transactions under SDCL 49-34A-35.

20:10:XX:XX. Notice requirements for transmission line construction. Each transmission pipeline operator within the jurisdiction of the pipeline safety program shall, prior to the construction of a new intrastate jurisdictional gas pipeline facility, or a relocation or replacement of a gas pipeline facility as defined in the Code of Federal Regulations, Title 49, Part 192:

- (1) Submit the information below to the commission's pipeline safety program no later than 60 days prior to the commencement of construction, relocation, or replacement:
 - a. Operator's name and mailing address;
 - b. Estimated dates construction is scheduled to begin and end;
 - c. Map showing location and proposed route of pipeline;
 - d. Identified gas transmission Integrity Management Program high consequence area, if applicable;

- e. Proposed steel pipeline specifications, including size, weight, grade, wall thickness, and coating.
 - f. Landfill gas plastic pipe specifications, including size and Standard Dimension Ratio;
 - g. Proposed design and maximum allowable operating pressure of pipeline;
 - h. Pressure test procedures and method of pressure test prior to operations;
 - i. Proposed type of cathodic protection;
 - j. Minimum burial depths of pipeline at time of construction;
 - k. Proposed location and type of pipeline safety equipment;
 - l. Proposed type of highway and water crossing, such as whether it will be bored and cased, bored only, or trenched;
 - m. Written construction procedures;
 - n. Name of construction company if known at the time of filing the Notice; and
 - o. Operator contact name and phone number.
- (2) In the event of an emergency, give telephonic notice of emergency construction, relocation, or replacement to the commission's pipeline safety program.
 - (3) Significant construction modifications shall be submitted to the pipeline safety program up until start of construction.
 - (4) Submit the information below to the commission's pipeline safety program no later than 60 days prior to the commencement of operation:
 - a. Operation and maintenance manual
 - b. Emergency procedures
 - c. Anti- drug and alcohol plan
 - d. Public Awareness plan
 - e. Damage prevention program
 - f. Abnormal operations
 - g. Operators qualification plan

20:10:XX:XX. Annual reports. Except as provided in below, each pipeline operator shall submit to the commission a copy of its United States Department of Transportation Form RSPA F 7100.1- 1 and/or Form RSPA F 7100.2-1 which are completed to meet federal regulatory obligations . A copy of the report must be submitted by March 15 each year for the preceding calendar year.

The annual report is not required to be submitted for petroleum gas systems which serve fewer than 100 customers from a single source or master meter systems.

This reporting requirement does not relieve the operator of its federal reporting requirements as found in 49 C.F.R. §§ 191.11 and 191.17.

MEMO

TO: PUC Commissioners

From: PUC Pipeline Safety Staff

Date: March 9, 2009

RE: Pipeline Safety Rules

The PUC Pipeline Safety program staff (herein "Staff") appreciate the commission's consideration of the attached pipeline safety rules. Staff drafted a version of the attached rules and solicited comments from affected operators throughout January and February 2009. Staff modified the rules where applicable based on operator comments. Staff now respectfully requests the commission open a rule making docket and allow a 30 day formal comment period for operators and a 10 day staff reply opportunity prior to the scheduling of a hearing mid-summer 2009. Staff can work directly with operators and commission counsel to formalize a comment and hearing schedule.

The need for pipeline safety rules became apparent throughout the 2007-2008 inspection seasons. Staff is not satisfied with the process currently being used for regular inspections. Staff cannot efficiently complete its inspections without a more formal dialog and process. Currently, an informal process is being used that neither efficiently document both party's concerns nor does the current process provide a framework of accountability.

Additionally, several incidents have been docketed that also lacked process. The pipeline safety staff appreciates the cooperation offered by the operators, and attributes the fact all incident related cases settled as a result of such cooperation. With that being said, however, a rules structure will increase the effectiveness and efficiency of the pipeline safety inspectors. It took many months to resolve pipeline safety incident dockets. Staff believes the attached rules will decrease the time necessary to resolve an incident docket. Not only is it in the interest of the public to quickly and efficiently resolve safety related issues, but many times property damage or other damages cannot be resolved until completion of the PUC's investigation process.

Originally, the rules as drafted by Staff included a "small incident reporting" requirement. Small incidents were defined as an occurrence to result in significantly less damage and injury than a federally defined "incident." Small incidents have historically been voluntarily reported by operators. Throughout this rules discussion it appears the small incident reporting has minimal benefit to the pipeline safety program. Most pipeline small incidents are a result of excavator damage. The One Call System is the best mechanism to address excavator damages as it does

have direct jurisdiction over excavators. Staff urges operators to use the One Call System if applicable but agrees with operators the benefit of reporting such damage to the pipeline safety program does not equal the burden.

Attached you will find a clean version of Staff's proposed rules along with a version inclusive of explanation and Staff comment.

Thank you again for your consideration.

DEFINITIONS -

Staff Comments: Throughout the editing process the PUC rules definition of “incident” was inadvertently modified. Based on operator comments, the definition of “incident” below was changed to remain consistent with the federal definition.

20:10:XX:XX. Definitions. Terms defined in SDCL 49-34B-1 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

- (1) “Inspector,” a pipeline safety inspector employed by, or contracted as an agent of the commission;
- (2) “Incident,” is any of the following events:
 - (a) A release of gas from a gas pipeline facility or of liquefied natural gas or gas from an liquefied natural gas facility and
 - (i) A death, or personal injury necessitating in-patient hospitalization; or
 - (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more:
 - (b) An event that results in an emergency shutdown of a liquefied natural gas facility; or
 - (c) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subdivisions a and b above;
- (3) “Inspection,” a review of the books, files, records, reports, supplemental data, other documents and information, plant, property, and facilities of a pipeline operator to ensure compliance with applicable pipeline safety standards;
- (4) “Inspection report,” the report drafted by an inspector after an inspection of any type, except for an incident;
- (5) “Incident report,” the report drafted by an inspector after an incident;
- (6) “Pipeline safety program,” is the program administered by the South Dakota Public Utilities Commission with regulatory jurisdiction over the safety standards and practices of all jurisdictional intrastate natural gas and other gas pipelines within South Dakota.

LANDFILL CLASSIFICATION –

Staff Comments: This rules section is essentially an extension of the Definitions used to better define our jurisdiction over Landfill Gas Pipelines.

20:10:XX:XX Landfill Gas Pipeline Classification

Landfill gas pipelines shall be classified as gas transmission facilities unless they are operated at a hoop stress of less than twenty percent of specified minimum yield strength as defined by the Code of Federal Regulations, title 49, part 192.3 as of January 1, 2009, or plastic pipe and associated facilities which operate at less than fifty percent of the design pressure as determined by the formula specified in Code of Federal Regulations, title 49, part 192.121 as of January 1, 2009 and operate at an maximum allowable operating pressure of 50 pounds per square inch gauge or less. Landfill gas lines that are not gathering lines and not classified as transmission lines shall be classified as gas distribution pipelines.

SCOPE and APPLICATION –

Staff Comment: This rule is intended to clarify our jurisdictional limits

20:10:XX:XX. Scope and application. This chapter sets forth the procedures and standards to be used to enforce pipeline safety standards and impose civil penalties on pipeline operators for failing to meet the federal pipeline safety standards adopted by chapter SDCL 49-34B. These rules shall apply only to those pipelines within the jurisdiction of the commission pursuant to SDCL Chapter 49-34B.

PROCEDURAL RULES –

Staff Comment: The commission has extensive procedural rules that address, for example, confidentiality issues, exhibit issues, and evidentiary issues. Staff intends to put operators on notice that all PUC rules will apply unless otherwise specified in this section.

20:10:XX:XX. Commission’s procedural rules to apply. Except as otherwise provided in these rules, the Commission's procedural rules set forth in chapter 20:10:01 shall govern proceedings under this chapter

INSPECTIONS –

Staff Comment: This rule is intended to specify when operators can expect inspections.

20:10:XX:XX. Inspections. An inspector shall conduct periodic inspections and spot checks of records and property in the possession, custody, or control of the pipeline operator to determine compliance with applicable pipeline safety standards. Inspections may be conducted pursuant to routine scheduling by the inspector, upon a complaint received from a member of the public, upon information obtained from a previous inspection, or when there is cause to believe that a threat to public safety may exist.

OPERATOR OBLIGATIONS –

Staff Comment: This rule simply restates the obligation operators currently have to work with commission inspectors in his or her effort to administer the pipeline safety program.

20:10:XX:XX. Pipeline operator obligations. Each pipeline owner, operator, officer, employee, and representative shall cooperate with the inspector and the commission in the administration and enforcement of this chapter and in the investigation of violations or alleged violations involving pipeline operator or intrastate pipeline facilities owned or operated by the operator. Cooperation shall include, but not be limited to, making available all company books, files, records, reports, supplemental data, and making readily accessible all company plant, property, and facilities that the inspector may reasonably require in the administration and enforcement of this chapter.

INSPECTOR REPORTING REQUIREMENTS –

Staff Comment: The next set of rules was written as a result of the apparent lack of process used to effectively complete inspections. At the conclusion of an inspection this rule specifies the commission inspector shall complete a report. The report must specify areas of probable noncompliance and may (but is not required to) suggest a remediation plan to remedy such areas. Additionally, the commission currently has the ability to assess civil penalties. As a result, the inspector may connect a civil penalty to an area of probable noncompliance under the current statutory framework. The report will include a civil penalty recommendation, if one exists.

The report will not be filed with the commission. A commission docket will not be opened unless it becomes apparent the inspector and the operator are at an impasse and cannot resolve the issues. The next rule, OPERATOR RECEIPT guarantees the operator's receipt of the report and a subsequent rule establishes a framework for operator/inspector dialog. The inspector's goals remain the same. The inspector will work to collect all necessary information to properly communicate his or her analysis regarding the status of the operator's strict adherence to pipeline safety rules. Finally, the inspector will record his or her observations and findings in the inspector's report. The inspector will allow the operator a response time with compliance as the ultimate goal. Substantively, this rule does not change current practice. The procedures surrounding compliance practice will, however, be more formal. The pipeline safety staff believes a more formal approach is necessary to bring the pipeline safety program into alignment with other commission programs.

20:10:XX:XX. Inspector reporting requirements. Regardless of the inspection type, the inspector shall complete a post inspection report within a reasonable time upon completion of the inspection itself. The report shall include a summary of probable noncompliance issues if any exist. As applicable, the inspection report may include a remediation plan wherein specific corrective action and a reasonable time frame for completion shall be stated when probable noncompliance issues exist. The completion time frame for remediation measures may be extended by the Commission.

20:10:XX:XX. Operator receipt of the inspector report. The inspector shall provide a copy of all inspection report materials to the pipeline operator. The report shall be provided to an authorized official of the operator including an officer, manager or governing board member if probable violations or warnings, as defined in ARSD _____, are believed by the inspector to exist.

NONCOMPLIANCE CATEGORIES –

Staff Comment: This rule is designed to bring additional structure to the inspectors report. Naturally, some violations are more worrisome than others. This rule will distinguish between those violations.

20:10:XX:XX. Probable non-compliance inspection results. The inspector shall categorize potential noncompliance in one of the following three categories to be specified in the inspection report:

- (1) A notice of probable violation may be issued if the inspector has good cause to believe a serious or repeat violation of applicable pipeline safety standards has occurred. The written notice of violation shall include a statement of the statute, rule, or regulation allegedly violated by the pipeline operator and a description of the factual basis on which the allegation is based. If a civil penalty is proposed, the report shall state the amount of the proposed civil penalty. A warning in subdivision (2) may be elevated to a notice of probable violation by the pipeline program manager if warning items are not remedied in a timely fashion;
- (2) A warning may be issued for a potential probable violation of a less serious nature or a first time violation. The warning may include specific corrective actions that must be taken to correct the situation and the time frame within which such actions shall be completed; and
- (3) A notice of concern may be used to inform the operator where best industry practices are not being followed but no direct code violation exists. The notice of concern designation shall be used for informational purposes only to aid the pipeline operator in managing as safe and effective pipeline as possible. No pipeline operator action is required.

OPERATOR RESPONSE –

Staff Comment: It is important to obtain information from the operator throughout the inspection process. This rule will provide for an organized “dialog” with the operator. At this point in the process the inspector’s report will communicate any areas, from the inspector’s perspective, of probable violations. Additionally, the inspector will use this opportunity to inform the operator of his or her recommendation regarding a civil penalty or corrective action. Neither the inspector’s report nor the operator’s response will be filed with the commission until it becomes apparent a resolution cannot be reached.

It is possible the inspector will not recommend either a civil penalty or corrective action. The three reply options below, however, cover all possible reply options. In the event the inspector recommends a civil penalty, regardless of whether the operator agrees or not, a docket will be opened. Commission inspectors do not have the authority to issue a penalty. Rather, the commission must hear both parties and render a decision after a hearing. If civil penalties are assessed, they will be in the form of a commission order after a hearing.

This rule is consistent with the Rules of Civil Procedure and allows the operator 30 days to reply to the inspector’s report and recommendations. It is foreseeable the inspector’s report and recommendations change based on the reply from the operator. Finally, the inspector has the discretion to waive the 30 day reply requirement and extend the reply timeline if so requested by the operator. As previously stated, this rule is not intended to substantively change the way the PUC pipeline safety program operates. Rather, it will merely add process currently used in other commission departments such as our consumer affairs and grain warehouse divisions.

20:10:XX:XX. Pipeline operator inspection response. Upon receipt of a written notice of probable violation or warning, the pipeline operator shall respond to the inspector within 30 days in any one of the following ways:

- (1) Admit to the probable violation and agree to the proposed civil penalty or corrective action, or both, if they exist. Civil penalties shall be subject to commission approval;
- (2) A written dispute of the reported probable violations at which time the pipeline operator may request a hearing before the commission if the dispute cannot be resolved with the inspector; or
- (3) A written dispute of the proposed civil penalty or proposed corrective action, or both, at which time the pipeline operator may request a hearing before the commission.

OPERATOR INCIDENT REPORT –

Staff Comment: This rule is intended to coincide with all federal reporting requirements. The rule specifies that personal contact with an inspector is required. The PUC will be responsible for providing operators with all proper contact information.

20:10:XX:XX. Pipeline operator incident reporting requirements. At the earliest practical time following discovery of an incident but no later than two hours, the pipeline operator shall notify the commission by phone of any incident on the pipeline system owned or operated by the pipeline operator. The notification shall include, but not be limited to, the identity of the pipeline operator, the time and location of the incident, whether there are ascertainable fatalities, personal injuries requiring inpatient hospitalization, or property damage, or both, and any other significant facts and public dangers relevant to the incident. This reporting requirement does not relieve the pipeline operator of the federal reporting requirements as found in the Code of Federal Regulations, title 49, part 191. This reporting requirement requires personal notification to an inspector. Proper inspector contact information shall be provided by the Commission.

INSPECTOR INCIDENT INVESTIGATION –

Staff Comment: Staff believes it is important to docket all incidents for several reasons. First, due to ex parte rules the commission cannot stay informed of an incident unless it is docketed. The formal docket process allows either party to communicate with the commission through written filed correspondence. Second, an incident can involve multiple parties due to extraneous property damage. Process becomes very important and can lead to disagreement. The commission resolution process is important to assist and protect all parties involved.

One of Staff's pipeline safety obligations is to completely investigate all incidents. Ultimately, Staff believes it is our responsibility to create a report based on our analysis of pipeline safety rules and whether any violations exist. The investigation process allows the inspector to collect all information necessary and to have all discussion with the operator as is necessary to make such a determination. Due to the seriousness of an incident rather than the traditional thirty day discovery reply period as is found in rules of civil procedure it was shortened to ten days in this rule.

Just as in any docket with the commission, the inspector will file his report. Also as in other commission dockets, civil procedure rules apply, and a filing must be served on all parties to a case. The pipeline operator is a party. The following rule PIPELINE OPERATOR OBLIGATIONS again provides for an organized dialog. This time, however, the dialog is docketed due to the elevated seriousness of an incident.

These rules comply with all rules of civil procedure and due process and allow thirty days for the operator to reply to the inspector's report. The operator has every right to disagree with the inspector's ultimate finding at which time formal commission procedures will be used to resolve the disagreement.

The rules of civil procedure call for an answer to a complaint in circuit court after a particular time frame. Commission rules call for an answer to a commission complaint after a particular time frame. Just like both civil rules of procedure and the commission's rules, we believe it is important to set structure to incident report and investigation obligations through the use of a reply time frame. Consistent with rules of civil procedure and due process then, the incident investigation process calls for pipeline operator reply to the inspector's report within thirty days.

20:10:XX:XX. Inspector's incident investigation. Every incident shall be docketed with the commission by an inspector upon initiation of an investigation. An incident investigation shall be conducted by an inspector and may include, but is not limited to, pipeline operator personnel interviews, the inspection of failed equipment or pipe, the issuance of a subpoena for failed equipment or pipe relating to the incident for independent preservation, order independent laboratory tests of failed pipe or equipment, view related documents, and take other investigatory measures as needed to complete a comprehensive independent investigation. The pipeline operator has ten days to respond to inspector requests for information. Disputes shall be resolved by the commission.

As soon as reasonably possible after all information has been gathered and the investigation concludes, an inspector shall file an incident report to summarize the investigation and report on findings. The inspector's report shall be filed with the commission. An incident docket shall conclude upon the commission's acceptance or rejection of the inspector's report and determination of what pipeline violations occurred, if any, what corrective actions shall be required, if any, and what civil penalties are appropriate, if any.

20:10:XX:XX. Pipeline operator obligations upon completion of inspector's incident report. Upon filing of the inspector's incident report with the Commission, the pipeline operator shall respond, in writing, within 30 days and state whether the pipeline operator agrees with the report and recommendations or disputes any portion of the report and recommendations.

20:10:XX:XX. Pipeline operator failure to reply. A failure to reply to either an inspection report according to ARSD 20:10:XX:XX or an incident report according to ARSD 20:10:XX:XX shall be considered consent to the report in its entirety. Civil penalties shall remain subject to Commission approval.

REQUEST FOR HEARING –

Staff Comment: Nothing in these rules prevents any party from requesting a hearing at any time.

20:10:XX:XX. Request for hearing. Either the pipeline safety program manager or pipeline operator may, at any time, request a hearing before the commission to resolve any issue within the jurisdiction of the commission.

CHANGE OF OWNERSHIP --

Staff Comment: Inspectors must be aware of contact information and ownership information to facilitate the inspection process. SDCL 49-34A-35 requires the commission approve of some large ownership changes. Small transfers are, however, exempt. This rule will assure the pipeline safety program is aware of such a small transfer.

20:10:XX:XX. Change of ownership. Each pipeline operator, upon finalization of an agreement to purchase or sell a jurisdictional gas pipeline facility subject to the provisions of the Code of Federal Regulations Title 49, Part 192, must, within ten working days, submit to the commission's pipeline safety program a written notification of this agreement. This rule shall not apply to transactions under SDCL 49-34A-35.

TRANSMISSION LINE CONSTRUCTION –

Staff Comment: This rule was modified based on operator comments, to apply to transmission lines only.

20:10:XX:XX. Notice requirements for transmission line construction. Each transmission pipeline operator within the jurisdiction of the pipeline safety program shall, prior to the construction of a new intrastate jurisdictional gas pipeline facility, or a relocation or replacement of a gas pipeline facility as defined in the Code of Federal Regulations, Title 49, Part 192:

- (1) Submit the information below to the commission's pipeline safety program no later than 60 days prior to the commencement of construction, relocation, or replacement:
 - a. Operator's name and mailing address;
 - b. Estimated dates construction is scheduled to begin and end;
 - c. Map showing location and proposed route of pipeline;
 - d. Identified gas transmission Integrity Management Program high consequence area, if applicable;
 - e. Proposed steel pipeline specifications, including size, weight, grade, wall thickness, and coating.
 - f. Landfill gas plastic pipe specifications, including size and Standard Dimension Ratio;
 - g. Proposed design and maximum allowable operating pressure of pipeline;
 - h. Pressure test procedures and method of pressure test prior to operations;
 - i. Proposed type of cathodic protection;
 - j. Minimum burial depths of pipeline at time of construction;
 - k. Proposed location and type of pipeline safety equipment;
 - l. Proposed type of highway and water crossing, such as whether it will be bored and cased, bored only, or trenched;
 - m. Written construction procedures;
 - n. Name of construction company if known at the time of filing the Notice; and
 - o. Operator contact name and phone number.
- (2) In the event of an emergency, give telephonic notice of emergency construction, relocation, or replacement to the commission's pipeline safety program.
- (3) Significant construction modifications shall be submitted to the pipeline safety program up until start of construction.
- (4) Submit the information below to the commission's pipeline safety program no later than 60 days prior to the commencement of operation:
 - a. Operation and maintenance manual
 - b. Emergency procedures
 - c. Anti- drug and alcohol plan
 - d. Public Awareness plan
 - e. Damage prevention program
 - f. Abnormal operations
 - g. Operators qualification plan

20:10:XX:XX. Annual reports. Except as provided in below, each pipeline operator shall submit to the commission a copy of its United States Department of Transportation Form RSPA F 7100.1- 1 and/or Form RSPA F 7100.2-1 which are completed to meet federal regulatory obligations . A copy of the report must be submitted by March 15 each year for the preceding calendar year.

The annual report is not required to be submitted for petroleum gas systems which serve fewer than 100 customers from a single source or master meter systems.

This reporting requirement does not relieve the operator of its federal reporting requirements as found in 49 C.F.R. §§ 191.11 and 191.17.