



U.S. Department  
of Transportation

NOV 29 2007

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

**Pipeline and Hazardous  
Materials Safety  
Administration**

Mr. Donald J. Stursma, P.E.  
Manager, Safety & Engineering Section  
Iowa Utilities Board  
350 Maple Street  
Des Moines, IA 50319-0069

Dear Mr. ~~Stursma~~:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has reviewed your letter of November 15, 2007, notifying us that the Iowa Utilities Board granted the joint petitioners Iowa Association of Municipal Utilities, Allerton Gas Company, and Consumers Energy Cooperative a waiver of compliance with state regulation 49 CFR § 192.285(c) (as incorporated by reference in 199 IAC 19.5(2)"a" (2)) on November 9, 2007.

Under § 192.285(c) a person must be requalified to make plastic pipe joints using an applicable procedure if during any 12-month period that person has not made any joints using the procedure. A person must also be requalified if 3 joints or 3 percent of the joints, whichever is greater, the person made using the procedure during any 12-month period are found to be unacceptable by testing under § 192.513.

The waiver requires Allerton Gas Company, Consumers Energy Cooperative and the 49 municipal utilities listed in the waiver grant to establish alternate plastic pipe joint requalification procedures. The alternate procedures must require each person making plastic pipe joints to be requalified at least once each calendar year, but not to exceed 15 months, regardless of whether or not the person has made a plastic pipe joint within the calendar year. The alternate procedures must also require each person who has made one joint found unacceptable by testing under § 192.513 to be requalified as an initial qualification, regardless of when the joint was made.

PHMSA does not object to the waiver of 49 CFR § 192.285(c) if the Allerton Gas Company, Consumers Energy Cooperative and the 49 municipal utilities listed in the waiver each establish alternate plastic pipe joining procedures for their respective employees as described in the previous paragraph.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety



CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

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JOHN R. NORRIS, CHAIRMAN  
KRISTA K. TANNER, BOARD MEMBER  
VACANT, BOARD MEMBER

November 15, 2007  
File: OPS

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety  
U.S. Department of Transportation  
Pipeline and Hazardous Material Safety Administration  
East Building, Second Floor  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**RE: Grant of Waiver in Response to Joint Petition by the Iowa Association of Municipal Utilities, Allerton Gas Company, and Consumers Energy Cooperative. (Iowa Utilities Board Docket No. WRU-07-34)**

Dear Ms. Gerard:

By order issued November 9, 2007, in response to a joint petition by a municipal association (representing 49 municipal gas operators) and two other intrastate natural gas distribution operators, the Iowa Utilities Board (Board) granted a waiver of 49 CFR 192.285(c) to permit more efficient scheduling of the requalification tests for plastic pipe joiners.

The Iowa Utilities Board is the agency responsible for administering the pipeline safety programs of the State of Iowa, and for enforcement of the natural gas pipeline safety standards of 49 CFR Parts 192, 193 and 199 under certification granted by the U. S. Department of Transportation (DOT) pursuant to 49 USC 60105. The Board granted the waiver in accordance with the provisions of 49 USC 60118(d). Under that section, the Board must provide the Pipeline and Hazardous Material Safety Administration (PHMSA) with written notice of the waiver and allow at least 60 days for PHMSA review and opportunity for objection before the grant of waiver can become effective.

The petition for waiver met the requirements of Board rules at 199 IAC § 1.3, under the provisions of which notice and/or hearing were not required or necessary in this instance. The Iowa Attorney General, Office of Consumer Advocate, receives copies of all filings made with the Board and made no objection to the granting of a waiver. The filing of the waiver request was noted in the Daily Summary of Filings and Orders published by the Board, and no party expressed concern or sought additional information. Therefore it was not required or considered necessary for the Board to give other notice or hold hearing on the waiver request.

In accordance with Chapter 3 of the “Guidelines for States Participating in the Pipeline Safety Program,” the following information is provided:

1. The name, address, and telephone number of the applicant.

As previously noted, this was a joint petition by a municipal association and two non-municipal distribution operators. The petitioners’ points of contact in this matter are below. The petitioners included a phone number only for the Iowa Association of Municipal Utilities (IAMU), which filed the petition on behalf of all the parties.

Jane Riessen  
Legal Counsel  
Iowa Association of Municipal Utilities  
1735 NE 70<sup>th</sup>  
Ankeny, IA 50021  
515-281-1999

Bill Buss  
Executive Director  
Allerton Gas Co.  
P.O. Box 825  
Centerville, IA 52544

Jim Kidd  
Executive Director  
Consumers Energy  
P.O. Box 1058  
Marshalltown, IA 50158

2. The safety regulation involved.

The petition requested waiver of 49 CFR 192.285(c).

3. A description of the pipeline facilities involved.

The waiver would not involve physical facilities directly, but would rather affect the timing of the requalification of operator personnel who make joints on plastic gas pipe.

4. The justification for approving the waiver, including the reasons why the regulations are not appropriate and why the waiver is consistent with pipeline safety.

As is more fully explained in the “Order Granting Waiver Request,” the regulation is not appropriate because it unrealistically “ratchets” the timing of requalification tests, and interferes with flexible and efficient timing of testing events. The waiver allows requalification tests to be conducted during the time of year when few joints are made, minimizing the arguable impact of any small delay in the timing. The “window” of time for action is consistent with the requirements of other regulations that require periodic action. The lower tolerance for joint failures, a condition of the waiver, sets a higher standard for quality production joints.

The waiver granted is consistent with similar waivers granted by the states of Kansas, Colorado, and Nebraska, which were accepted by PHMSA. Further, the Board granted a virtually identical waiver on April 19, 2007, in response to a joint petition by three Iowa investor-owned intrastate natural gas distribution operators. By letter dated July 20, 2007, PHMSA advised the Board it did not object to that waiver.

5. A copy of the State agency's order or letter to the applicant.

A copy of the Board's "Order Granting Waiver Request" is enclosed. Electronic copies of the letter and order have also been sent to your office.

If you have any questions, feel free to contact me at 515-281-5546, or at [don.stursma@iub.state.ia.us](mailto:don.stursma@iub.state.ia.us).

Sincerely;

A handwritten signature in black ink, appearing to read "Donald J. Stursma". The signature is written in a cursive style with a large, sweeping initial "D".

Donald J. Stursma, P.E.  
Manager  
Safety & Engineering Section  
Iowa Utilities Board

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA ASSOCIATION OF MUNICIPAL UTILITIES, ALLERTON GAS COMPANY, AND CONSUMERS ENERGY COOPERATIVE</p>	<p>DOCKET NO. WRU-07-34</p>
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**ORDER GRANTING WAIVER**

(Issued November 9, 2007)

On October 8, 2007, the Iowa Association of Municipal Utilities (IAMU), Allerton Gas Company (Allerton), and Consumers Energy Cooperative (Consumers Energy) (collectively, Applicants) filed a joint request with the Utilities Board (Board) for a waiver of the requalification requirements for persons making plastic pipe joints found in 49 CFR 192.285(c). Those requirements have been adopted by the Board in 199 IAC 19.5(2)"a"(2). The joint filing has been identified as Docket No. WRU-07-34. On October 12, 2007, Applicants requested that the Board also grant waivers of subparagraph 19.5(2)"a"(2) to the following municipal gas utilities: Bedford, Bloomfield, Brighton, Brooklyn, Cascade, Cedar Falls, Clearfield, Coon Rapids, Corning, Emmetsburg, Everly, Fairbank, Gilmore City, Graettinger, Guthrie Center, Harlan, Hartley, Hawarden, Lake Park, Lamoni, Lenox, Lineville, Lorimor, Manilla, Manning, Montezuma, Morning Sun, Moulton, Orange City, Osage, Prescott, Preston, Remsen, Rock Rapids, Rolfe, Sabula, Sac City, Sanborn, Sioux Center, Tipton, Titonka, Wall

Lake, Waukee, Wayland, Wellman, West Bend, Whittemore, Winfield, and Woodbine, Iowa (Municipal Utilities).

The Board enforces the federal natural gas pipeline safety regulations under a certificate granted by the U.S. Department of Transportation, Office of Pipeline Safety (OPS) pursuant to 49 U.S.C.A. § 60105. A certificated state such as Iowa may grant a waiver of provisions of the federal safety regulations in 49 CFR Part 192; however, pursuant to 49 U.S.C.A. § 60118, the grant must be submitted to OPS for review, and OPS has 60 days to stay the waiver if it finds it objectionable.

Qualification requirements for persons making plastic pipe joints are established in 49 CFR 192.285(a) and requalification requirements are established in 49 CFR 192.285(c). Persons must be requalified under an applicable procedure if, during a 12-month period, the person does not make any joints under that procedure or has three joints or three percent of the joints made under that procedure, whichever is greater, that are found to be unacceptable.

Applicants request a waiver of the requirements in 49 CFR 192.285(c) to allow them to requalify their employees under an alternate procedure. Applicants propose that a person requalify at least once each calendar year, but at intervals not exceeding 15 months, and if a person has one joint made under the procedure that is found to be unacceptable by testing under 49 CFR 192.513, that person must requalify under that procedure as an initial qualification. Applicants request the waiver be made permanent, since the requirements for testing will be required for the foreseeable future.

Subrule 199 IAC 1.3 establishes four criteria that must be met by clear and convincing evidence for the Board to grant a waiver. The criteria are: (1) the application of the rule would pose an undue hardship on the person for whom the waiver is requested, (2) the waiver would not prejudice the substantial legal rights of any person, (3) the provisions of the rule are not specifically mandated by statute or another provision of law, and (4) substantial equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule.

Applicants state that compliance with the existing requalification requirements poses an undue hardship by mandating requalification times that are not the most advantageous from a cost and quality perspective. Applicants contend the 12-month retest standard effectively requires Applicants to establish evaluation schedules on an 11-month schedule in order to be certain of completing all requalifications in a timely manner. Over time, completing requalifications under an 11-month schedule will push the requalification date back into the end of the construction season and eventually into the regular construction season. Applicants suggest that their proposed procedure requiring requalification just prior to the construction season provides the highest quality workmanship since requalification will precede the time when the most plastic joints are made and the testing can be performed by the same qualified testers.

The Board recognizes that the requalification rule can create practical difficulties for utilities. Almost all other areas of the federal standards that require a periodic action provide a window of opportunity during which the action can be performed during the same general time period every year. The Board has recognized and approved a waiver

of the requalification requirements with the same alternate procedure for three rate-regulated natural gas utilities in Docket No. WRU-07-8, In re: MidAmerican Energy Company, Interstate Power and Light Company, and Aquila, Inc., d/b/a Aquila Networks. In that order, the Board indicated that other natural gas utilities in Iowa could face the same or similar problems with the existing requalification requirements as the three rate-regulated utilities. The Board indicated it would consider favorably other waiver requests that demonstrate similar hardships in complying with the existing requalification requirements.

Applicants have described the same problem with the requalification requirements that the Board addressed in Docket No. WRU-07-8. A denial of the waiver would create the same type of hardship on these utilities as it would have for the three rate-regulated utilities. By letter dated July 20, 2007, OPS stated that it did not object to the waiver for the three rate-regulated utilities.

Applicants state that the waiver, if granted, will not affect the substantial legal rights of any person. The employees making plastic pipe joints will continue to be tested prior to the start of each construction season under Applicants' proposed procedure and the employees would still require ten qualifications over ten years with the tests occurring approximately every 12 months. The Board agrees that any legal rights involving the safety of the operations of gas pipelines will be protected by the alternate requalification procedure.

Applicants state that although the safety standards are mandated in 49 CFR Part 192 the federal statute contains provisions for requesting a waiver of the



safety standards and the third waiver requirement is therefore satisfied. The Board agrees. The requirement is satisfied when a federal or state statute that establishes a requirement such as requalification provides for a waiver of the statutory provisions and the waiver is granted pursuant to the approved waiver process. In this instance, the waiver is required to be approved by the Board and OPS.

Applicants state that substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested since both the Board and OPS must approve the waiver. In addition, Applicants contend they are proposing an alternate procedure that meets the safety requirements of the federal regulations and ensures persons making pipe joints are properly qualified. The Board agrees that substantially equal protection of public health, safety, and welfare will be afforded by the proposed alternate procedure.

The alternate procedure proposed by Applicants will require requalification of persons after one joint failure, rather than three as allowed by the rule. This was an additional requirement adopted when waivers similar to the one now requested were granted by OPS in the states of Kansas, Colorado, and Nebraska and for the three rate-regulated utilities in Iowa.

Based upon the satisfaction of the four criteria discussed above, the Board will grant the waiver of 49 CFR 192.285(c) that has been adopted by the Board in 199 IAC 19.5(2)"a"(2). The waiver will be granted to Allerton, Consumers Energy, and the Municipal Utilities. The Board is not granting a waiver to IAMU since it is an organization comprised of municipal utilities and does not own, operate, or maintain

natural gas pipelines. The Board has also adopted the federal natural gas pipeline safety regulations in 199 IAC 10.12(1)"b" and the Board will also grant the Municipal Utilities, Allerton, and Consumers Energy a waiver of the requalification requirements in that rule in this order.

Rule 192 CFR § 192.285(d) requires that each operator establish a method to determine that joining personnel are properly qualified. If a waiver is granted, the Municipal Utilities, Allerton, and Consumers Energy will have to modify their existing requalification schedule and the requirements of each Operating and Maintenance Plan, or other procedural document where this material is contained, to reflect the change in requalification scheduling and the reduction in unacceptable joints allowed.

The 49 Municipal Utilities represent all of the municipal gas utilities in Iowa. IAMU has requested that the waiver apply to all of these utilities even though IAMU has not indicated whether all these utilities have plastic pipe in their systems or employ persons who join plastic pipe. Regardless of whether all of the Municipal Utilities have plastic pipe at this time, the Board will grant the waiver since the utilities could install plastic pipe in the future and granting the waiver will allow all of the Municipal Utilities listed to utilize the more practical joiner requalification requirement.

The waiver of 49 CFR 192.285(c) will not become effective until it has been reviewed by OPS. OPS will either approve the waiver, stay the waiver, or if 60 days lapse without action by OPS, the waiver becomes effective pursuant to 49 U.S.C.A. § 60118(d). The Board will send a copy of this order to OPS.

**IT IS THEREFORE ORDERED:**

1. Allerton Gas Company, Consumers Energy Cooperative, and the 49 Municipal Utilities listed in this order, are granted a waiver of the requalification requirements in 199 IAC 10.12(1)"b," 19.5(2)"a"(2), and 49 CFR 192.285(c). The waiver will continue in effect for so long as the circumstances supporting the waiver are not changed.

2. Allerton Gas Company, Consumers Energy Cooperative, and the 49 Municipal Utilities listed in this order, shall revise their written procedures to comply with the alternate requalification procedures and the requalification requirement for joint failure as described in this order prior to implementing the provisions of the waiver.

3. The waiver granted in this order shall not become effective until review of the waiver has been performed by the U.S. Department of Transportation, Office of Pipeline Safety, pursuant to 49 U.S.C.A. § 60118(d).

4. The Safety & Engineering section shall send a copy of this order to the U.S. Department of Transportation, Office of Pipeline Safety.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 9<sup>th</sup> day of November, 2007.