



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

MAR 26 2010

Mr. Clark Conklin
Deputy Chief, Pipeline Safety Section
Nebraska State Fire Marshal
246 South Fourteenth Street
Lincoln, Nebraska 68508-1804

Dear Mr. Conklin:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) reviewed your letter of November 23, 2009, notifying us that the Nebraska State Fire Marshal's Office (NSFMO) approved, pending PHMSA's acceptance, a state waiver to NorthWestern Energy (NWE) granting modification of compliance with 49 CFR §192.285(c) as adopted by Nebraska pursuant to sections 81-542-552 of the Nebraska Revised Statutes. This regulation requires a person making plastic pipe joints to be requalified under an applicable procedure if that person has not made any joints under that procedure during the preceding 12-month period.

NWE requested a waiver to be allowed to qualify their employees that make plastic pipe joints once each calendar year but not to exceed 15 months to provide flexibility for scheduling qualification testing prior to the construction season. NWE stated that approval of the waiver would result in a superior level of safety as compared to the existing requirement.

The NSFMO's waiver would be conditioned on certain actions to be taken by NWE. These conditions include requiring NWE to establish written alternative qualification procedures to qualify their employees that make plastic pipe joints once each calendar year but not to exceed 15 months; and to requalify any gas service personnel who have produced one or more plastic joint(s) found unacceptable by testing under 49 CFR § 192.513 prior to making another field joint.

Given the conditions imposed by NSFMO, PHMSA has no objections to the waiver. PHMSA recommends, however, that NSFMO clarify its conditions by adding a requirement that NWE also establish an alternative requalification time frame for annual qualification of plastic pipe joining according to 49 CFR 192.285(c).

If you wish to discuss this or any other pipeline safety matter, my staff would be pleased to assist you. Please call John Gale, Director of Regulations at (202) 366-0434 for regulatory matters or Alan Mayberry, Director of Engineering and Emergency Support, at (202) 366-5124 for technical matters. Thank you for your continued efforts in pipeline safety.

Sincerely,

Jeffrey D. Wiese

Associate Administrator for Pipeline Safety

STATE OF NEBRASKA

PHP-10-0035



NOV 30 2009



Dave Heineman
Governor

STATE FIRE MARSHAL
John Falgione
Fire Marshal

November 23, 2009

Mr. Jeffrey D. Wiese
Associate Director of Pipeline Safety
U.S. DOT/PHMSA/PHP-01
1200 New Jersey Avenue, SE East Room E22-330
Washington, DC 20590

Dear Mr. Wiese:

Pursuant to the attachments from NorthWestern Energy and our response, the Nebraska State Fire Marshal's Pipeline Safety Section approved, pending your acceptance, a permanent waiver of 49 CFR 192.285(c) for NorthWestern Energy's natural gas operations in Nebraska.

Pursuant to 49 U.S.C. 60118, if the Nebraska State Fire Marshal's Office receives no objection from your office regarding this waiver, it will go into effect 60 days after your receipt of this notice.

Sincerely,

Clark Conklin, Chief Deputy
Fuels Safety Division, Pipeline Safety Section
Nebraska State Fire Marshal
(402) 471-9465
Clark.conklin@nebraska.gov

Attachments (2)

Cc: Ivan Huntoon, Central Region

Dori Quam, NorthWestern Energy

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DISTRICT B
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DISTRICT C
200 South Silber
North Platte, NE 69101-4219
(308) 535-8181

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TRAINING DIVISION
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STATE OF NEBRASKA



Dave Heineman
Governor



STATE FIRE MARSHAL
John Falgione
Fire Marshal

November 23, 2009

Dori Quam, ACP
Paralegal
NorthWestern Energy
3010 West 69th Street
Sioux Falls, SD 57108

RE: Waiver request from the requirements of 49 CFR 192.285(c) Plastic pipe: Qualifying persons to make joints

Dear Ms. Quam:

You have requested a waiver from the requirements of §192.285(c) which states:

"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, made by such person using the procedure during any 12-month period are found to be unacceptable by testing under §192.513."

The waiver, as requested, would require NorthWestern Energy to requalify each person making plastic pipe joints 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 waiver also requires NorthWestern Energy to requalify each person who has made one joint found unacceptable by testing under § 192.513, regardless of when the joint was made.

The Nebraska State Fire Marshal's Pipeline Safety Section does not object to your request for a waiver of 49 CFR 192.285(c) provided NorthWestern Energy establishes written alternative plastic pipe joining procedures as described in the above paragraph. Please consider this waiver request approved as of November 23, 2009 for all of NorthWestern Energy's Nebraska gas operations and modify your written procedures accordingly.

This waiver will go into effect 60 days after receipt by PHMSA, pending their acceptance.

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Please do not hesitate to contact me with any questions or concerns regarding this approval.

Sincerely,



Clark Conklin, Chief Deputy
Fuels Safety Division, Pipeline Safety Section
Nebraska State Fire Marshal
(402) 471-9465
Clark.conklin@nebraska.gov

attachment

Cc: Ivan Huntoon, PHMSA Office of Pipeline Safety Central Region

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In regards to:

A request by NorthWestern Corporation d/b/a NorthWestern Energy for a permanent waiver from 49 C.F.R. § 192.285(c)

**Request for Permanent Waiver from
49 C.F.R. § 192.285(c)**

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) respectfully requests a permanent waiver from 49 C.F.R. § 192.285(c), as adopted by Nebraska. In support of its request, NorthWestern states as follows:

- 1) NorthWestern is a public utility providing natural gas utility services to four Nebraska communities.
- 2) 49 C.F.R Part 192 consists of federal safety standards for the transportation of natural gas by pipeline.
- 3) 49 C.F.R. § 192.285(a) requires persons making plastic pipe joints be qualified under applicable joining procedures. 49 C.F.R. § 192.285(c) further requires:

A person must be requalified under an applicable procedure, if during any 12-month period that person:

- (1) Does not make any joints under that procedure; or
 - (2) Has 3 joints or 3 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under § 192.513.
- 4) NorthWestern requests a waiver of 49 C.F.R. § 192.285(c) to allow it to requalify its employees by an alternate means of assuring qualifications for persons making joints.

NorthWestern proposes the following procedure:

- ◆ A person must be requalified under an applicable procedure at least once per calendar year, but at intervals not exceeding 15 months.

- ◆ In addition, if a person has made 1 joint found unacceptable by testing under 49 C.F.R. § 192.513, that person must requalify under that procedure as an initial qualification.

5) NorthWestern requests a permanent waiver since the requirements for testing will be required for the foreseeable future.

6) Application of 49 C.F.R. § 192.285(c) poses an undue hardship on NorthWestern. NorthWestern will not be able to perform the tests at the most advantageous time from a cost and quality perspective. The current 12-month retest requirement will result in testing about every 11 months, which will eventually result in testing being performed in the middle of the construction season or at the end of the construction season.

7) Approval of the waiver will not prejudice the legal rights of any person since employees making joints will continue to be tested prior to the start of each construction period. Approval of the waiver would still require ten qualifications of a person over ten years.

8) 49 C.F.R. Part 192 contains provisions for requesting a waiver of pipeline safety provisions. Therefore, the rule subject to the petition for waiver is not specifically mandated by statute or another provision of law.

9) Approval of this request for waiver will result in superior safety compared to what can be achieved under the current requirements of 49 C.F.R. § 192.285(c).

10) NorthWestern believes that requalification of joining personnel just prior to the construction season provides the highest quality workmanship, as it is at the end of the time period when the fewest joints are made and at the beginning of the time period when the most joints will be made.

11) Because of scheduling considerations, travel, illness, group size, and vacations, qualification is a long process and can take up to a month. The existing 12-month provision requires

NorthWestern to establish evaluation schedules on an 11-month basis to account for these scheduling conflicts. Completing requalifications on an 11-month schedule ratchets back the requalification date, putting the requalifications into the end of the construction season and eventually during the construction season.

12) NorthWestern submits that annual testing provides the most accurate and consistent means of promoting joint quality. To comply with the current 12-month requirement and be able to continue testing just prior to the construction season, NorthWestern could no longer use a small group of testers but would have to use several qualification teams and conduct several make-up sessions to accommodate for vacations and illnesses. This would result in less consistency in evaluation and more administrative costs.

13) The U.S. Department of Transportation has already recognized the negative implication of following a “not to exceed 12 months” requirement. Other similar joining qualification requirements have established schedules that allow the operator more flexibility in establishing schedules that do not ratchet schedules into the construction season. As an example, 49 C.F.R. § 192.229(d)(1) sets the requalification of welders to “[w]ithin the preceding 15 calendar months, but at least once each calendar year.”

14) By testing joints using the same group of testers in the same time frame, there is less chance that a records error would result in a joint being made by a non-qualified person. In NorthWestern’s proposal, there is general knowledge of when qualification is required as well as knowledge obtained by a records review. This redundant knowledge will result in less opportunity for error.

15) The granting of this request for waiver would be consistent with other waivers of the 49 C.F.R. § 192.285(c) scheduling requirements that have been granted by state regulatory commissions in other jurisdictions after appropriate state and federal reviews of safety impacts. Of specific note, the South Dakota Public Utilities Commission granted a request for waiver from 49 C.F.R. § 192.285(c) to NorthWestern in its order issued September 9, 2008, for Docket PS08-002. The PHMSA had no objection to South Dakota's waiver if NorthWestern established written alternative plastic pipe joining procedures for its employees as described in Paragraph 4 above. A copy of the PHMSA's letter to the South Dakota Public Utilities Commission is attached.

16) Approval of this request for waiver will enable NorthWestern to implement the same testing schedule in all of its operating areas, thereby promoting administrative efficiency and a proper allocation of resources.

17) NorthWestern is not aware of any persons who may be adversely impacted by the granting of this request for waiver.

NorthWestern welcomes the opportunity to respond to any questions concerning this request.

WHEREFORE NorthWestern respectfully requests the Nebraska State Fire Marshal's office grant NorthWestern a permanent waiver from 49 C.F.R. § 192.285(c).

Dated at Sioux Falls, South Dakota, this 30th day of June, 2009.

NORTHWESTERN CORPORATION d/b/a
NORTHWESTERN ENERGY

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