safe transportation of hazardous materials and the specific requirements in the HMR, even when not enforced, because the requirement may cause offerors or transporters of hazardous materials to take actions that are not required by the HMR, or refrain from actions that are permitted under the HMR.

While it may not be necessary to look at the actual application of a non-Federal requirement, except when applying the ''obstacle'' test, the words in the requirement always set the scope of the requirement. In some cases, terms may be defined in the statute, regulation, or ordinance. Otherwise, those terms must be given their usual and customary meaning. But RSPA cannot accept efforts to interpret a non-Federal requirement in a manner that ''is in direct conflict with the plain language'' of the State, local, or tribal statute, regulation, or ordinance. PD–14(R), Houston, Texas, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials, 63 FR 67506, 67510 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999).

Here, both NTTC and Safco appear to support Kiesel's position that RSPA should consider the ''plain language'' of Missouri's prohibition against recontainerization of hazardous waste and find that the Missouri regulation is preempted because it is not substantively the same as Federal requirements on ''the packing, repacking, [and] handling * * * of hazardous material.'' 49 U.S.C. 5125(b)(1)(B). Kiesel also specifically refers to PD–12(R), where the applicant and other persons indicated, without contradiction, that New York's repackaging prohibition prevented a transporter ''from transferring the contents of rail cars into trucks.'' 60 FR at 62536.

To date, very few comments have been submitted on Kiesel's application. Neither Kiesel nor DNR has provided a copy of the ''written assurances'' explaining why the prohibition against recontainerization in 10 CSR 25–6.263(2)(A).10.h would not apply to Kiesel's planned operations, nor has DNR submitted any comments explaining its regulation and why it is not preempted by 49 U.S.C. 5125(b)(1)(B). Under these circumstances, it is appropriate to reopen the comment period rather than simply to proceed to a determination in this proceeding.

IV. Reopening of Comment Periods

The period to submit comments on Kiesel's application is reopened to allow a new initial comment period of 45 days, followed by a 45-day period for rebuttal comments.

All comments should address whether 49 U.S.C. 5125 preempts the prohibition against recontainerization in 10 CSR 25–6.263(2)(A)10.H, and, in the context of the preemption criteria discussed in the August 14, 2000 public notice:

(1) explain the meaning of the Missouri prohibition against recontainerization of hazardous wastes and the manner in which that prohibition is applied and enforced; and

(2) address the assertions in Kiesel's August 30, 2000 letter that the Missouri prohibition against recontainerization precludes a transfer of hazardous waste from a rail car to a motor vehicle and is preempted because it is not substantively the same as RSPA's regulations on the ''packing, repacking, [and] handling * * * of hazardous material.'' 49 U.S.C. 5125(b)(1)(B).

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on December 4, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 00–31477 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–00–8452; Notice 1]

Pipeline Safety: Intent To Approve Waiver and Environmental Assessment of Waiver for Duke Energy

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of Intent to Consider Waiver and Environmental Assessment of Waiver.

SUMMARY: The Office of Pipeline Safety (OPS) is conducting a Risk Management Demonstration Program with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. OPS selected Duke Energy (Duke) as a candidate for participation in the Demonstration Program; subsequently, OPS and Duke held discussions as part of a consultation process. During the consultation, Duke identified a portion of its system where it believed performing alternative risk control activities in lieu of compliance with current regulations would result in a comparable margin of safety and environmental protection. Duke submitted an application to OPS to temporarily waive certain regulatory requirements relating to class location changes for five locations in a 3-line system, ranging from 0.5 miles to 0.88 miles in length and totaling 12.2 miles in fifteen pipeline segments. Duke had previously reduced the operating pressure along the fifteen segments in accordance with these requirements and seeks to return the pipeline to its historical operating pressure. Duke has completed many of the proposed alternative risk control activities related to assuring integrity of the pipeline in the segments for which regulatory relief is sought. Discussions continue between OPS and Duke regarding programmatic aspects of the company's risk management demonstration project.

This Notice announces OPS's intent to approve a waiver to allow Duke to increase the allowable operating pressure in these fifteen pipe segments. OPS has reviewed the terms of this waiver and found them to be appropriate. Among the terms of the waiver that were crucial to OPS's decision to consider granting the waiver were Duke's selection as a candidate for the Risk Management Demonstration Program, Duke's subsequent participation in the consultation process with an OPS Project Review Team (PRT), the comparable margin of safety and environmental protection provided by the proposed activities, and the expectation that the continuing discussions with Duke may result in approval of their risk management demonstration project. In addition, OPS has found that the overall effect of the waiver is not inconsistent with pipeline safety. If granted, this waiver would expire upon either the approval or disapproval of Duke's risk management demonstration project.

OPS is considering whether or not additional regulations to enhance pipeline integrity in high consequence areas are warranted for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov. Within 90 days of OPS's adoption of new rules related to integrity management of natural gas pipelines,

Duke will be required to re-evaluate the effects of this waiver and report to OPS on whether the terms of the waiver continue to be appropriate and whether the overall effect of the waiver remains consistent with pipeline safety.

This Notice also provides an environmental assessment of Duke's Activities. Based on this environmental assessment, OPS has preliminarily concluded that this waiver will have no significant environmental impacts.

OPS seeks public comment on the proposed waiver and the environmental assessment, so that it may consider and address these comments before making a final decision on this matter.

ADDRESSES: OPS requests that comments to this Notice or about this environmental assessment be submitted on or before January 10, 2001, so they can be considered before a final determination is made whether to grant the waiver to Duke. Written comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number RSPA–00–8452. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. You may also submit comments to the docket electronically. To do so, log on to the DMS Web at http://dms.dot.gov. Click on Help & Information to obtain instructions for filing a document electronically.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this Notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION:

1. Background

The Accountable Pipeline Safety and Partnership Act of 1996 authorizes the Secretary of Transportation to establish risk management demonstration projects in partnership with operators of gas and liquid pipeline facilities, pursuant to U.S.C. § 60126. In 1997, OPS announced that Duke Energy (Duke) and eleven other pipeline companies would be candidates for participation in the Risk Management Demonstration Program.[1] [2] Following this announcement, a consultation process commenced, in which an OPS Project Review Team (PRT) and Duke held discussions on the potential participation of Duke in the Demonstration Program. The consultation process involved technical scrutiny by OPS of Duke's safety practices and pipeline integrity.[3]

During the course of the consultation process, Duke identified seven new Class 2 sites on their 3-line system, comprising twenty-one pipeline segments ranging from 0.5 to 2.7 miles in length where it proposed to conduct risk control alternative activities (the ''Activities '') in lieu of the class location change requirements in 49 CFR 192.611. Fifteen of these segments are located in Tennessee and six are in Kentucky. Operating pressure has already been reduced for the fifteen Tennessee segments, from 1000 psig to 936 psig, pursuant to the requirements of 49 CFR 192.611. Duke submitted an application on October 5, 2000, for a waiver of the requirements of 49 CFR 192.611 for the fifteen Tennessee segments (the ''waiver segments'') while consultative discussions regarding Duke's proposed risk management demonstration project continue. If the waiver is approved, Duke will return the operating pressure along the waiver segments, for which most of the proposed Activities have already been completed, to 1000 psig. This document summarizes OPS's review of the Activities and evaluates the extent to which the terms of this waiver are appropriate and the overall effect of the waiver is not inconsistent with pipeline safety, pursuant to 49 U.S.C. 60118(c).

2. OPS Evaluation of Duke's Proposed Alternative Risk Control Activities

Representatives from OPS Headquarters, OPS Southern Region, and the State of Tennessee evaluated Duke's proposed Activities. OPS has evaluated Duke's current risk assessment and risk control processes, the method Duke used to identify and define the Activities, and the analysis Duke performed when comparing the protection provided by 49 CFR 192.611 to the Activities. The OPS evaluation also included an environmental assessment, which is described in Appendix A of this Notice.

The Duke System transports pressurized natural gas, which is lighter than air and flammable. If released as a result of a pipeline leak or rupture, natural gas can potentially ignite causing fires or explosions, loss of life, and/or damage to property or the environment. Protecting the public and environment through the prevention of pipeline leaks and ruptures is the highest priority for OPS and Duke. A major review criterion for this evaluation was whether the Activities Duke proposes will achieve a margin of safety and environmental protection comparable to that achieved through compliance with 49 CFR 192.611. It is the preliminary opinion of OPS that implementing the proposed Activities will result in a comparable margin of safety and environmental protection.

Once OPS has considered comments it receives in response to this Notice, OPS will make a final determination regarding whether to grant a waiver to Duke to return the operating pressure along the waiver segments to 1000 psig and implement any remaining Activities in lieu of compliance with 49 CFR 192.611.

3. Alternative Risk Control Activity Locations

The proposed Activities focus on controlling risks along fifteen pipeline segments in Tennessee. These waiver segments are located on the three parallel lines 10, 15, and 25, downstream from the Mt. Pleasant Compressor Station. The waiver segments lie in Maury and Williamson Counties, Tennessee. The waiver segments are located at the following specific milepost (M.P.) locations on Line 10, and include the adjacent sections of Lines 15 and 25 in each location:

In Maury County, 1.2 miles southwest of Hollywood, TN—From M.P. 226.47 to M.P. 227.50

In Maury County, one-half mile north of Hollywood, TN—From M.P. 228.49 to M.P. 229.21

In Maury County, one mile east of Union Grove, TN—From M.P. 238.00 to M.P. 238.65

In Maury County, 2.5 miles northwest of Rally Hill, TN—From M.P. 247.78 to M.P. 248.27

In Williamson County, 3.5 miles east-northeast of Arrington, TN—From M.P. 264.03 to M.P. 265.42

[1] *Candidates for the Pipeline Risk Management Demonstration Program* (62 FR 40135, July 25, 1997).

[2] *Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program* (62 FR 53052, October 10, 1997).

[3] The consultation process is in its final stages and the proposed Duke Energy Risk Demonstration Project has been approved by the PRT. Documentation that will formally accept Duke Energy into the Risk Management Demonstration Program is currently being prepared. That documentation will include an order requiring completion of all proposed risk control activities and implementation of measures to evaluate their continued effectiveness.

4. Description of Waiver: Alternative Risk Control Activities Designed To Provide Comparable Margin of Safety

4.1 Current Regulatory Requirements

This section describes the current regulatory requirements in 49 CFR 192.611 governing actions that must be taken by a pipeline operator when population density increases along a pipeline.

OPS categorizes all locations along natural gas pipelines according to the population densities near the pipelines (see 49 CFR 192.5). Locations with the lowest population density (10 or fewer buildings intended for human occupancy within an area that extends 220 yards on either side of the centerline of any continuous one mile length of pipeline) are designated as Class 1. As the population along a pipeline increases, the class location increases. For example, Class 2 locations have more than 10 but fewer than 46 buildings intended for human occupancy. Class 3 locations have 46 or more buildings intended for human occupancy, or are areas where a pipeline lies within 100 yards of either a building or small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12 month period. Class 4 locations are any class location unit where buildings with four or more stories above ground are prevalent (*e.g.* large office buildings).

All of the Duke waiver pipe segments (identified in Section 3) have changed from Class 1 to Class 2.

Pipeline safety regulations impose more stringent design and operational requirements as the class location increases. When a class location changes to a higher class (*e.g.,* from class 1 to class 2), the operator must reduce the operating pressure on the pipeline to provide an additional margin of safety. The operator may be able to avoid a pressure reduction, in some cases, if a pressure test on the pipe has confirmed that a prescribed safety margin exists. In these cases, if a previous pressure test has not confirmed the prescribed safety margin, then the operator must test the pipe to confirm the margin. In other cases, the operator must reduce the pressure or replace the pipe with new pipe. In the case of the waiver segments, Duke has lowered the operating pressure from 1000 psig to 936 psig.

Duke has stated that in order to provide reliable natural gas service to its customers, it cannot maintain the current pressure reduction along the waiver segments. Consequently, in order to increase pressure and provide reliable service, Duke would be required to replace the pipe in the fifteen waiver segments. By replacing the existing pipe with new pipe that has the prescribed design factor, Duke could eliminate the possibility that defects in the original materials and construction, as well as corrosion that may have occurred since installation, would result in a failure.

4.2 Duke's Proposed Alternative Risk Control Activities

For each waiver segment, Duke proposes to perform the following alternative risk control activities, with the objective of providing a margin of safety and environmental protection comparable to pipe replacement:

1. Internally inspect the waiver segments using geometry and magnetic flux leakage in-line inspection tools, which are not required under current regulations. These tools identify indications of wall loss (*e.g.* corrosion), as well as dents and gouges from initial construction damage or third party excavators working along the pipeline right-of-way. These internal inspections have been performed and the OPS Southern Region has reviewed the inspection results.

2. Internally inspect approximately 166 miles of additional pipe on the three parallel lines in the Mt. Pleasant Discharge. These internal inspections have been performed and the OPS Southern Region has reviewed the inspection results.

3. Investigate dents upon completion of the dent inspections for an extended length of pipe (the ''extended segments'') bordering and including each waiver segment to further extend the benefits of the integrity analysis. The extended segments cover a length of pipe totaling 660 feet on both ends of each waiver segment. These internal inspections have been performed and the OPS Southern Region has reviewed the inspection results.

4. Repair indications of corrosion, existing construction damage, and existing outside force damage identified by the internal inspection using conservative investigation and repair criteria. The criteria used by Duke calls for investigation and repairs of small dents and anomalies that are well below the threshold where pipeline integrity might be compromised.

5. Perform hydrostatic tests of the portions of Line 10 which have not previously been tested to 100 percent (SMYS). This includes two of the waiver segments, 2.5 miles northwest of Rally Hill in Maury County and 3.5 miles east-northeast of Arrington in Williamson County. These hydrostatic tests have been completed.

6. Implement a Communications Plan designed to inform and educate appropriate stakeholders and Duke Energy employees about risk management concepts and the purposes and expected benefits of the Duke Energy Demonstration Project.

7. Perform enhanced damage prevention activities including implementing selected recommendations from a recent study of one-call systems and damage prevention programs best practice, ''Common Ground''. Duke will also install, for a trial period, the TransWave monitoring system covering all of the waiver segments. This system will be tested to determine its reliability and usefulness for detecting third-party encroachments (construction, excavation, etc.) in the pipeline right-of-way.

As part of the company's risk evaluation, Duke has compared the expected risk reduction produced by increasing the operating pressure and implementing the Activities to that which would be achieved by compliance with the current regulations. OPS has reviewed this evaluation and concluded that the Activities will likely achieve a margin of safety and environmental protection comparable to the margin which would be achieved through compliance with 49 CFR 192.611.

5. OPS's Proposed Action

Based on OPS's evaluation of Duke's proposed Activities, OPS is considering granting Duke a waiver from the pressure confirmation and pipe replacement requirements of 49 CFR 192.611. This waiver would accept Duke's implementation of the Activities in lieu of compliance with this requirement and will allow Duke to return the operating pressure in the waiver segments to 1000 psig. In addition, Duke along with OPS, would be required to monitor the Activities' effectiveness.

OPS is considering whether or not additional regulations to enhance pipeline integrity in high consequence areas are warranted for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov. No more than 90 days after OPS adopts new rules related to integrity management of natural gas pipelines, Duke will be required to re-evaluate the terms and effects of this waiver and report to OPS on whether the terms of the waiver continue to be appropriate and whether

the overall effect of the waiver remains consistent with pipeline safety. If, after reviewing the Duke evaluation and report, OPS determines that the terms of the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, OPS will revoke the waiver and require Duke to comply with 49 CFR 192.611 and all other applicable regulations. This waiver will expire upon approval of Duke's risk management demonstration project or in the event that the Duke risk management demonstration project is disapproved. If either of these actions occur earlier than 90 days after OPS adopts new rules related to integrity management of natural gas pipelines, then this re-evaluation will not be required.

6. Regulatory Perspective

Why is OPS Considering This Waiver?

OPS has determined that the terms of the waiver are appropriate and that the overall effect of the waiver is not inconsistent with pipeline safety. The following factors were considered when making this determination:

1. The proposed Activities will provide a comparable margin of safety and protection for the environment and the communities in the vicinity of Duke's pipelines.

2. Duke's risk-based justification of the alternatives to the class location change regulations is technically sound.

3. The fifteen waiver segments have a good integrity history, with no leaks recorded during operation or hydrostatic testing.

4. Duke has internally inspected a total of 191 miles of pipe on the three parallel lines in the Mt. Pleasant discharge, including all of the waiver segments. These inspections provide added protection against pipeline failures from corrosion, manufacturing and construction defects, and outside third-party damage along the full 191 mile length. Compliance with 49 CFR 192.611 would require replacement of pipe within the waiver segments only (approximately 12 miles of pipe) with no added protection for the extended segments (approximately 181 miles of pipe). The proposed Activities provide added protection by including the additional pipe. Duke also conducted hydrostatic tests to 100% SMYS on Line 10. In addition, Duke has installed the TransWave system and will be evaluating it over the coming year.

5. Duke was selected as a candidate for the Risk Management Demonstration Program and has participated in a rigorous consultation process with OPS, which included an enhanced sharing with OPS of information related to the integrity Duke's pipeline. The consultation process is nearly complete and may result in acceptance of Duke into the Risk Management Demonstration Program including enforceable commitments for the additional risk control activities.

How Will OPS Oversee the Activities?

OPS retains its authority to enforce Duke's compliance with the pipeline safety regulations. OPS is only considering whether to grant a waiver from compliance with 49 CFR 192.611 at those fifteen segments where Duke has demonstrated that its proposed Activities achieve a comparable margin of safety and environmental protection. Should any information subsequently indicate that the terms of the waiver are no longer appropriate or that the overall effect of the waiver is inconsistent with pipeline safety, then OPS retains its authority to revoke the waiver and require Duke to again comply with 49 CFR 192.611 and all other applicable regulations.

This Notice is OPS's final request for public comment before OPS makes a final decision on granting the waiver to Duke.

Issued in Washington, DC, on December 5, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31340 Filed 12–8–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–8453; Notice 1]

Pipeline Safety: Intent To Consider Waiver and Environmental Assessment of Waiver for Tennessee Gas Pipeline Company

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of intent to consider waiver and environmental assessment of waiver.

SUMMARY: The Office of Pipeline Safety (OPS) is conducting a Risk Management Demonstration Program with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. OPS selected Tennessee Gas Pipeline Company (TGP) as a candidate for participation in the Demonstration Program; subsequently, OPS and TGP held discussions as part of a consultation process. During the consultation, TGP identified a portion of its system where it believed performing alternative risk control activities in lieu of compliance with current regulations would result in a comparable margin of safety and environmental protection. TGP submitted an application to OPS to waive certain regulatory requirements relating to class location changes for four pipeline segments. TGP's application stated that TGP would carry out the proposed alternative risk control activities in lieu of compliance with these regulations.

This Notice announces OPS's intent to consider granting a waiver to allow TGP to perform the proposed alternative risk control activities. OPS has reviewed the terms of this waiver and found them to be appropriate. Among the terms of the waiver that were crucial to OPS's decision to consider granting the waiver were TGP's selection as a candidate for the Risk Management Demonstration Program and TGP's subsequent participation in a consultation process with OPS. In addition, OPS has found that the overall effect of the waiver is not inconsistent with pipeline safety, because TGP's proposed Activities achieve a margin of safety and environmental protection comparable to the margin achieved by compliance with current regulations. Within 90 days of OPS's adoption of new rules related to integrity management of natural gas pipelines [1], TGP will be required to re-evaluate the effects of its proposed alternative risk control activities and report to OPS on whether the terms of the waiver continue to be appropriate and whether the overall effect of the waiver remains consistent with pipeline safety. This Notice also provides an environmental assessment of TGP's Activities. Based on this environmental assessment, OPS has preliminarily concluded that this waiver will have no significant environmental impacts.

OPS seeks public comment on the proposed waiver and the environmental assessment, so that it may consider and address these comments before making a final decision on this matter.

ADDRESSES: OPS requests that comments to this Notice or about this environmental assessment be submitted on or before January 10, 2001, so they can be considered before a final determination is made whether to grant

[1] OPS is considering whether or not additional regulations to enhance pipeline integrity in high consequence areas is warranted for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov.