



MURCHISON
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PHMSA Pipeline Safety Enforcement *In a Nutshell*

Energy Bar Association
Rocky Mountain Chapter
Fall Conference 2016

Vince Murchison, Murchison Law Firm, PLLC

September 8, 2016

The Pipeline & Energy Authority



Session Overview

- Setting the Stage – Why Should We Care?
- The Pipeline Safety Regulations
- PHMSA's Procedural Regulations
- The Enforcement Process
- Post-Hearing Procedure
- Agency Action
- Tips for First-Timers



**Setting the Stage
Why Should We Care?**



Deepwater Horizon

- Considered the largest accidental marine oil spill in the history of the petroleum industry
- A sea-floor open-flow well flowed for 87 days, until it was capped on July 15, 2010
- Is a “Riser Pipe” a pipeline?



Marshall, Michigan

- The July 25, 2010 rupture of Enbridge's Line 6B
- The most expensive onshore spill in U.S. history, with cleanup costs exceeding \$2 Billion





San Bruno



Eight deaths, dozens injured,
38 homes destroyed, 70 homes damaged

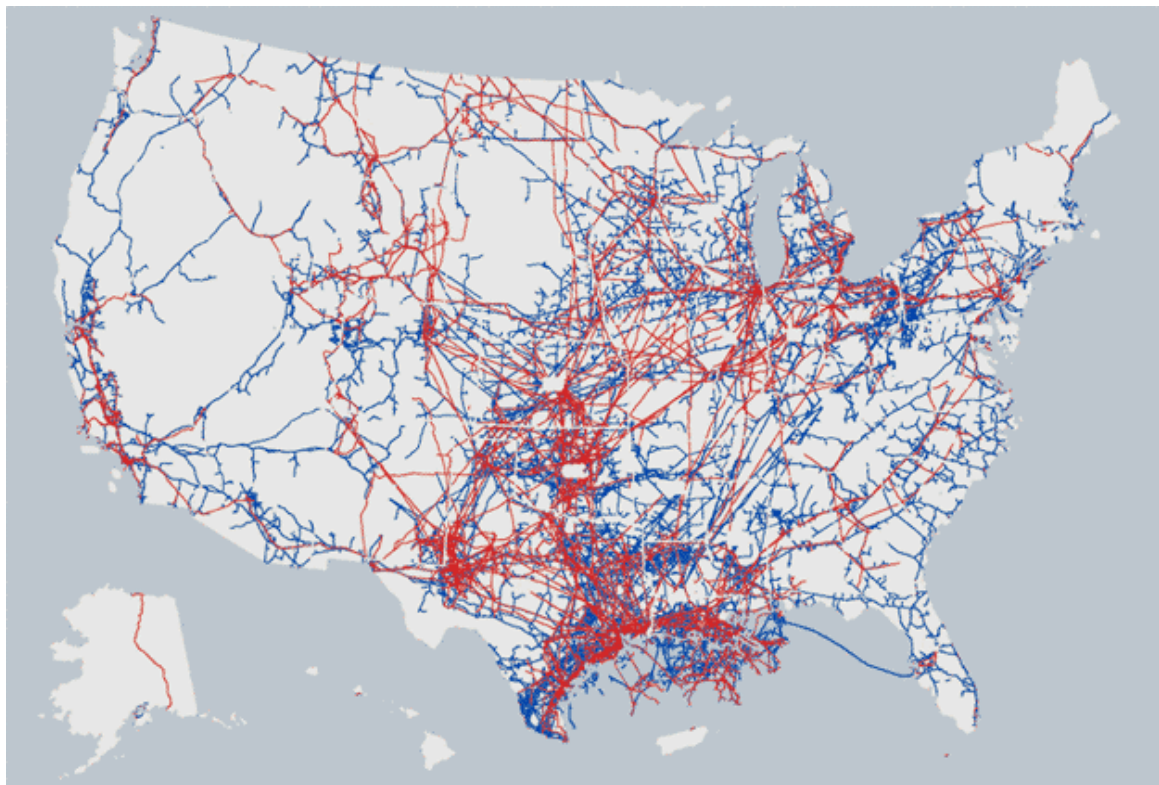


Low Probability, High Consequence Events





Opportunity Abounds



Map of major natural gas and oil pipelines in the United States. Hazardous liquid lines in red, gas transmission lines in blue.
Source: Pipeline and Hazardous Materials Safety Administration.

The Pipeline & Energy Authority





Enforcement Trends 2010 – 2016

Year	CAO	NOPV	NOA	Warn	NOPSO
2010	11	45	41	99	3
2011	10	70	60	61	6
2012	10	77	102	83	4
2013	5	82	85	92	2
2014	6	46	34	66	2
2015	11	52	54	76	4
2016	3	30	21	24	3
Totals	125	916	1046	943	24

Source: PHMSA. As of Aug. 9, 2016.



Change Is REAL at the Pipeline and Hazardous Materials Safety Administration (PHMSA)

- **Incidents Incent The Public which Drives Political Pressure**
- **Political Pressure: Congress, the White House, DOT, Safety Advocates (There's Different Kinds...), and Industry**
- **New Regulations Taking Too Long!**
- **Congress Amps the Pressure – PIPES Act of 2016**
- **Entre Vous: Administrator Marie Therese Dominguez**
- **Limited Term (probably)**
- **Maximizing Opportunity**



The background of the slide features a photograph of several large, cylindrical industrial storage tanks. Each tank is equipped with an external metal staircase that spirals around its side, leading to a walkway at the top. The tanks are light-colored, and the sky is a clear, pale blue. The overall image has a slightly faded or semi-transparent appearance, allowing the text to stand out.

The Pipeline Safety Regulations



The Pipeline Safety Regulations

- **Natural Gas – 49 C.F.R. Parts 191, 192**
- **Hazardous Liquids – 49 C.F.R. Part 195**
- **Subjects Addressed –**
 - **Design and Construction**
 - **Operations and Maintenance**
 - **Emergency Response**
 - **Specific Processes**
 - **Pipeline Integrity Management**
 - **Corrosion Prevention**
 - **Operator Qualification**
 - **Control Room Management**
 - **And the Like**

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PHMSA's Procedural Regulations



PHMSA's Procedural Regulations – 49 C.F.R. Part 190

Subpart B – Enforcement Mechanisms

- **Warnings (Warning Letter)**
- **Amendment of Plans or Procedures (Notice of Amendment, NOA)**
- **Notice of Probable Violation (NOPV)**
- **Civil Penalties**
 - **Max \$200,000 per violation per day, Max \$2 Million per related series of violations**
- **Compliance Orders**
 - **Fix This, Fix That, By Date Certain, Report Back**



Specific Relief

- **Corrective Action Orders (CAO)**
 - Pipeline facility is or would be hazardous to life, property, or the environment
 - Corrective Action: Suspended or restricted use, physical inspection, testing, repair, replacement, or other appropriate action
 - May “waive” notice and opportunity for hearing if PHMSA determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment
 - In Real Life – Amazing Discretion (some might say “They Own You”)



Corrective Action Orders

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of)

Texas Eastern Transmission, LP,)

a subsidiary of Spectra Energy Corp,)

Respondent.)

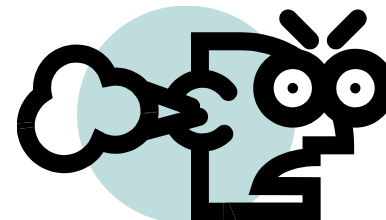
CPF No. 1-2016-1004H

CORRECTIVE ACTION ORDER

Purpose and Background:

This Corrective Action Order (Order) is being issued, under the authority of 49 U.S.C. § 60112, to require Texas Eastern Transmission, LP (TET or Respondent), to take the necessary corrective action to protect the public, property, and the environment from potential hazards associated with the recent gas transmission pipeline failure on TET's Penn Jersey System (PJS).

On April 29, 2016, a reportable accident occurred on Line 27 of the PJS, resulting in the release of an as-yet-undetermined quantity of natural gas which ignited, destroying one home and causing severe injuries to one individual (Failure). The PJS transports natural gas from the discharge of the Delmont Compressor Station near Delmont, Pennsylvania, to Lambertville, New Jersey, a distance of approximately 263 miles. Near the site of the Failure, the PJS consists of four pipelines (Lines 12, 19, 27, and 28) between 24 and 36 inches in diameter. The cause of the Failure has not yet been determined. Pursuant to 49 U.S.C. § 60117, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), initiated an investigation of the accident. The preliminary findings of the ongoing investigation are as follows.





Specific Relief

- **Safety Orders (Notice of Proposed Safety Order, NOPSO)**
 - Pipeline facility has a condition ... that poses a pipeline integrity risk to public safety, property, or the environment; or
 - Pipeline facility or a component [contains] any equipment, material or technique with a history of being susceptible to failure
 - Notice and opportunity for a hearing
 - Informal consultation
 - Hearing
 - Testing, evaluation, integrity assessment or other actions – work plan and schedule

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The Enforcement Process



The Enforcement Process

- Notice (email counts...)
- 30 Days to Respond (*see Tips for First-Timers*)
- Response Options –
 - Avoid the Conflict and the Cost – Pay the Civil Penalties and Be Done
 - Written Response
 - Request a Hearing and Submit Statement of Issues
 - One HUGE Difference Between Written Responses and Hearings
 - The Impact of Violation History
- Setting the Hearing
- Pre-Hearing Submissions (PHMSA ... Hello?)





The Players

- **Presiding Official**
- **Region Counsel**
- **Respondent's Counsel**
- **Region Director**
- **Region Personnel**
- **Respondent's Representatives**
- **Respondent's Witnesses**
- **[Separation of Functions]**



The Hearing

- Informal
- The Setting
- Typical Proceeding
- Formalizing the Informal
- Need It Be Contentious?
- PHMSA's Usual Bearing



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Post-Hearing Procedure



Post-Hearing Procedure

- **Post-Hearing Submissions –**
 - **Content**
 - **Timing**
- **The “Region Recommendation” –**
 - **The Director’s “written evaluation of response material submitted by the respondent and recommendation for final action”**
- **Respondent’s Response to Region Recommendation**
- **Presiding Official’s Recommended Decision**

The background of the slide features a photograph of several large, cylindrical industrial storage tanks. Each tank is equipped with an external metal staircase that spirals up to a walkway at the top. The tanks are light-colored, and the sky is a clear, pale blue. The text 'Agency Action' is overlaid in the upper right quadrant of the image.

Agency Action



Agency Action

- **Final Order**
 - **Decision of the Associate Administrator for Pipeline Safety**
 - **Reviews Allegations, Respondent's Responsive Materials**
 - **Reaches a Decision, Alleged Violation by Alleged Violation**
 - **Respondent Prevails: Withdrawal**
 - **Agency Prevails: Finding of Violation**
 - Civil Penalties if Proposed**
 - Compliance Order if Proposed**
- **Disappointed?**
 - **Get in Line (Just Sayin')**
 - **Consider Petition for Reconsideration**
 - **Rejected on Reconsideration?**
 - **Petition for Review – U.S. Court of Appeals**
 - **The History on That Front....**



Tips for First-Timers



Tips for First-Timers

- **Request the Violation Report – Immediately**
 - Violation Report Contains PHMSA's Entire Supporting File
 - Contents – Or Lack Thereof – Often Surprising
- **Very, Very Seriously Consider Requesting an Extension of Time to Respond**
- **Request a Hearing (But, ... [wringing of hands])**
- **Gather the Data – All the Data – Then Go Find the Rest of the Data**
- **Rally the Troops**
- **Call Your Favorite Pipeline Lawyer (*hint*: 214-716-1923)**
- **Research, Research, Research**
- **Consult with Industry Colleagues**
- **Consult with Industry Experts**
- **Attempt Settlement (Consent Order)? No Harm, Unless Unworkable**
- **Request to Receive Region Recommendation and to Respond**





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