



PHMSA's Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011

**Oil & Liquids Pipeline Regulation Committee,
Natural Gas Regulation Committee and the
Compliance & Enforcement Committee
June 11, 2012**

*Vanessa Allen Sutherland
Chief Counsel, PHMSA*



Overview

- MAOP Verification - 7/3/2012
- Accident and Incident Notification – 7/3/2013
- Automatic and Remote-Controlled Shut-Off Valves – 1/3/2014
- Excess Flow Valves – 1/3/2014
- **Administrative Enforcement and Civil Penalties – 1/3/2014**
- Leak Detection - 1/3/2013
- IMP Expansion and Class Location Replacement - 7/3/2013
- CO₂ Pipelines - No deadline specified



Overview (Continued)

- Biofuel Pipelines
- Gathering lines - 1/3/2014
- Seismicity
- Cover Over Buried Pipelines - 1/3/2013
- **Pipeline Inspection and Enforcement Needs - 1/3/2013**
- Cast Iron Gas Pipelines - 12/31/2012 and every 2 yrs thereafter
- Diluted Bitumen - 7/3/2013
- Damage Prevention - 1/3/2014
- Pipeline Transportation R&D - No deadline specified/
ASAP and every 5 yrs



Overview (Continued)

- Non-Petroleum Hazardous Liquids - No deadline specified
- Public Education and Awareness - No deadline Specified/ASAP and every 2 yrs
- Cost Recovery for Design Reviews - No deadline specified
- **Limitation on Incorporation By Reference - 1/3/2013**
- Tribal Consultation - 1/3/2013
- Maintenance of State Efforts - FY12 and FY13
- Technical Correction (Gas IMP) - No deadline specified
- Data collection (flow lines, etc.) - No deadline specified



Overview (Continued)

- Training for State Personnel - No deadline specified
- Reports on Pipeline Projects & Report on Businesses - 1/3/2013
- Accident Notification - 7/3/2013
- IMP Expansion and Class Location Replacement - 1/3/2014



Enforceability of Guidance

- Statistics and Transparency
- Types of Guidance
- Enforceability
- Culture of Compliance



PHMSA

Office of Pipeline Safety



New Developments in Enforcement and Compliance at PHMSA

**Ben Fred, Presiding Official
Office of Chief Counsel**

June 11, 2012



Federal Pipeline Safety Regulations

- 49 C.F.R. parts 190 through 199
- §§ 190.201 – 190.239 – PHMSA procedures for compliance enforcement
 - Notice
 - Opportunity to respond
 - Agency decision
- Considered “informal” under the APA



Compliance Enforcement Process

- **Compliance inspections and audits**
- **Notice of Probable Violation**
- **Response options**
- **Right to counsel**
- **Notice and Response published on agency website**



Informal Hearing Process

- **Roll of the hearing officer**
- **Operator may present relevant information, facts, evidence, explanations, and arguments**
- **OPS may present rebuttal information and operator may respond**
- **Agency decision**



Process Refinement

- **General policy statement, 76 FR 40820 (Jul 12 2011)**
- **Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. 112-90 (Jan 3 2012)**
 - **Higher civil penalties for violations – §2(a)**
 - **Penalties for obstructing an investigation – §2(b)**
 - **Part 194 enforcement – §10**
 - **Admin. enforcement procedures – §20**



Implementation of Sec. 20

- **Presiding official definition and responsibility**
- **Hearing transcript availability**
- **Separation of functions**
- **Prohibition on ex parte communication**
- **“Expedited review” of corrective action orders**



Other Potential Changes to Part 190

- **Civil penalties maximum and criteria**
- **New enforcement for Part 194 and obstructing an investigation**
- **Use of NOPVs and consent orders**
- **Use of telephonic and video conference hearings**
- **General housekeeping**



Contact information:

Ben Fred

Presiding Official

PHMSA Office of Chief Counsel

U.S. Department of Transportation

202-366-4400



PHMSA's Pipeline Safety Enforcement

Pipeline Safety Brown Bag June 11, 2012

Rod Dyck
Director, Enforcement Division



Approaches to Promote Compliance

- Conduct physical and programmatic inspections (management systems, procedures, and processes)
- Clarify expectations through range of public communications (regulations, published protocols, guidance manuals, public meetings, enforcement transparency web site, outreach at conferences)
- Participate in consensus standards development
- Conduct accident investigations
- Conduct system-wide reviews
- Meet directly with operators
- Employ range of enforcement tools



Enforcement Tools

- Enforcement Actions That Allege an Operator Did Not Satisfy a Cited Requirement (in the sense of either violating a requirement or that a required procedure or plan is not adequate)
 - Notice of Probable Violation
 - Warning Item
 - Notice of Amendment
- Other Enforcement Actions
 - Corrective Action Order
 - Safety Order
 - Letter of Concern



What is a Notice of Probable Violation?

- A letter alleging existence of one or more probable violations
- A statement of the evidence upon which each allegation is based
- Proposes a civil penalty or a compliance order (or both) for at least one of the probable violations
- Informs the operator of its response options



What are Probable Violations?

- Circumstances or conditions not in compliance with:
 - Pipeline Safety Regulations (49 CFR 190 – 199)
 - Pipeline Safety Laws (49 US Code 601)
 - PHMSA Order
 - ✓ Corrective Action Order
 - ✓ Compliance Order
 - ✓ Order Directing Amendment
 - ✓ Consent Order
 - ✓ Safety Order
 - Special Permit



What are Probable Violations?

- *"Inadequate"* operator plans or procedures are not probable violations, but are instead addressed with Notices of Amendment
- However, problems with required plans or procedures judged to be more serious than *"inadequate"* may be probable violations
- Examples of problems with plans or procedures that may be more serious than *"inadequate"*:
 - Not in place before facility operation
 - Not available at work locations
 - Omit a specific requirement of a regulation or referenced standard



What are Probable Violations?

Possible examples (continued):

- Contain significant omissions, such that it is unlikely the procedure can be implemented with the intended results
- Contain procedural or technical errors or omissions (including lack of any technical basis) that result in a high likelihood that significant integrity threats may be overlooked or risks not addressed
- Contain procedural or technical errors or omissions (including lack of any technical basis) that result in a high likelihood that application of the procedure will create an unsafe condition
- Have not been implemented



How are Probable Violations Identified?

- Inspection at operator facilities
- Incident/accident investigation
- Safety-Related Condition Report follow-up
- Public complaint investigation
- “Whistleblower” allegation investigations
- Report or information from State or other Federal agencies
- Investigation, inspection, or other activity needed to determine the need for a Corrective Action Order or Safety Order
- Failure to submit required report, data, notification, or other submittal; or failure to provide complete, accurate, and current information



What Enforcement Actions are Taken When Probable Violations are Identified?

- Proposed civil penalty
- Proposed compliance order
- Both a proposed civil penalty and a proposed compliance order
- Warning



Probable Violations Likely to Result in a Proposed Civil Penalty

- Caused or contributed to a pipeline failure
- Significantly increased the likelihood of a failure
- Increased the consequences of a failure
- Significantly and adversely impacted an operator's pipeline safety program that is critical to assuring pipeline integrity
- Was a failure of operator to analyze and determine the root causes of a failure or to identify effective actions to prevent recurrence



Probable Violations Most Likely to Result in a Proposed Civil Penalty

- Was a failure to perform a required post-accident drug or alcohol test
- Was a failure to provide accurate, timely data to PHMSA (such as an incident or accident report, annual report, safety-related condition report, or a telephonic or written notification required by statute or regulation)
- Was a repeat violation or warning item, in a prior case



Civil Penalties

- In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress significantly increased maximum civil penalties:
 - From \$100,000 per violation per day to \$200,000
 - From \$1 million for a related series of violations to \$2 million
- We are working hard to achieve a penalty structure that effectively applies this increased penalty authority while rigorously generating risk-based and consistent penalties to help deter future violations
- We propose and assess higher civil penalties when, e.g. operators commit violations that contributed to pipeline accidents or increased their risk, commit repeat violations, or have a higher number of prior violations



Civil Penalties

- Facts, circumstances and judgments associated with the enforcement action are documented in the notice letter and Violation Report
- Violation Report's structure aligned with civil penalty assessment considerations (see 49 CFR 190.225)
- Violation Report's content directly results in the proposed civil penalty



Proposed Compliance Order Used to

- Bring operator into compliance
- Ensure similar non-compliance will not recur
- Promptly correct procedures to that are so serious that a substantial safety issue may result from application of the procedure
- Ensure any adverse safety impacts due to the probable violation are mitigated promptly and to the fullest extent possible



Warning Item Used When:

- When a probable violation is identified, but the circumstances do not warrant a proposed civil penalty or a Proposed Compliance Order
- Violation involves less risk



What is a Notice of Amendment?

- A letter alleging inadequate plans or procedures
- Advises operator to correct inadequate plans or procedures
- Informs the operator of its response options



What are Inadequate Plans or Procedures?

Examples of problems with plans or procedures that may be judged as *"inadequate"* are those that:

- Repeat or paraphrase the regulatory text, instead of providing instructions for how to implement regulatory requirements
- Provide instructions for compliance in a vague, general, or conflicting manner that offers little or no practical or meaningful guidance, and therefore increases the likelihood of error, confusion, or the exercise of poor judgment by the operator
- Contain procedural omissions or technical errors, but not so serious that implementing the procedure will likely result in noncompliance or a potentially unsafe outcome
- Do not provide an adequate basis for training



Enforcement Tools

- Enforcement Tools That Allege an Operator Did Not Satisfy a Cited Requirement (in the sense of either violating a requirement or not having an adequate required procedure or plan)
 - 3.1.1 - Notice of Probable Violation
 - 3.1.2 - Warning Letter
 - 3.1.3 - Notice of Amendment
- Other Enforcement Tools
 - 3.2.1 - Corrective Action Order
 - 3.2.2 - Notice of Proposed Corrective Action Order
 - 3.2.3 - Notice of Proposed Safety Order
 - 3.2.4 - Letter of Concern



What is a Corrective Action Order?

- Finds that a pipeline facility is or would be hazardous to life, property, or the environment
- Specifies corrective measures that must be taken
- Informs the operator of its response options



Corrective Action Order Used to:

- Notify an operator that PHMSA has determined that its pipeline facility is or would be hazardous to life, property, or the environment, and to take immediate corrective measures before evaluating operator's response
- Notify an operator that its facility, or a component of the facility, is or would be constructed or operated with equipment, material, or a technique that is hazardous to life, property, or the environment, and to take corrective measures
- Can be used on an in-service pipeline, a pipeline that has been shut down, or a pipeline that is under construction



What about Probable Violations at a Hazardous Facility?

If probable violations are discovered in the course of determining a hazardous condition, a Notice of Probable Violation or Warning Letter will be prepared



What is a Notice of Proposed Corrective Action Order?

- Proposes to find that a pipeline facility is or would be hazardous to life, property, or the environment
- Proposes corrective measures
- Informs the operator of its response options



Distinction Between a Corrective Action Order and a Notice of Proposed Corrective Action Order

Corrective Action Order

- Effective immediately to prevent serious harm
- Operator may request hearing after Corrective Action Order is issued

Notice of Proposed Corrective Action Order

- Not needed immediately to prevent serious harm
- Gives operator right to hearing before declaring facility hazardous and issuing the Corrective Action Order



What is a Notice of Proposed Safety Order?

- Newer enforcement tool
- Alleges the existence of a condition or conditions posing a pipeline integrity risk to public safety, property, or the environment
- States the facts and circumstances supporting the issuance of a Safety Order
- Informs the operator of its response options



Notice of Proposed Safety Order

- Used to notify an operator that a pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment
- Addresses pipeline integrity risks that may not constitute a hazardous facility requiring immediate corrective action
- Can be used to direct inspection, testing, repair, or other appropriate actions to remedy the identified risk condition



What Conditions Might Indicate a Notice of Proposed Safety Order is Needed?

- Incident trends or investigation results indicating repeated, similar, and/or related problems leading to failures
- Integrity assessment results indicating wide-spread problems with underlying causes that may not be fully addressed through pipe remediation alone
- In-line inspection or metallurgical results indicating previously unrecognized threats



What Conditions Might Indicate a Notice of Proposed Safety Order is Needed?

- Repeated Safety-Related Condition Reports for similar and/or related problems
- Inspection results and enforcement history showing repeated occurrences of similar and/or related violations indicative of broader safety management program deficiencies
- Operating practices which lead to repeated near-misses, could lead to an accident, or could aggravate an incident or its consequences once it occurred



What is a Letter of Concern?

- Letter that identifies areas of concern, but does not allege violations, nor cite code sections
- Requests (but does not require) operator address these concerns



What are “Concerns”?

- Aspects of safety program that do not conform to sound safety management and/or engineering practices – even though the operator is not out of compliance
- Issues with technical soundness of practices observed in the field
- Deteriorating conditions that although currently in compliance, could become out of compliance over time if not addressed



Enforcement Tools

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 - 3.2.4 - Letter of Concern



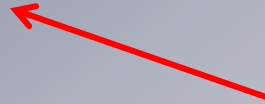
Enforcement Records – Data Quality

- Enforcement records (documents and data) kept electronically
- Records were inaccurate and incomplete
- Project initiated in 2008 to correct records going back to the year 2000
- Correction effort completed in 2009
- Enforcement Division ensures a continuing high degree of enforcement data quality
- Result: Accurate data now available and being used for analysis and performance metrics



Enforcement Transparency Web Site Overview

- Improve public, regulated community, and stakeholder access to enforcement records (documents and data)
- Drill down capability
- Web site updated monthly
- PHMSA home page
 - <http://www.phmsa.dot.gov/>









Enforcement Guidance

- In 2011, PHMSA completed new enforcement guidance in selected areas
- Clarifies enforcement authority, and expected to improve enforcement consistency, ability to win cases, and be particularly helpful where precedent exists (such as in Final Orders) for clarifying performance-based requirements
- Used by PHMSA and the States in initiating and resolving enforcement actions
- Posted to PHMSA's public web site (enforcement page)







III. Staff Manuals and Instructions

Administrative staff manuals and instructions to staff that affect a member of the public are included here.

- [O-M Enforcement Guidance Part 192 \(12 7 2011\)](#)
- [O-M Enforcement Guidance Part 195 \(12 7 2011\)](#)
- [Corrosion Enforcement Guidance Part 192 \(12 9 2011\)](#)
- [Corrosion Enforcement Guidance Part 195 \(12 9 2011\)](#)
- [Public Awareness Enforcement Guidance Part 192 \(7 27 2011\)](#)
- [Public Awareness Enforcement Guidance Part 195 \(7 27 2011\)](#)
- [Gas IMP Protocols with Guidance](#)
- [IM Enforcement Guidance](#)
- [OO Enforcement Guidance \(7 6 2011\)](#)
- [Liquid Pipeline Inspection Protocols](#)
- [Gas Pipeline Integrity Management Inspection Protocols](#)
- [Pipeline Operator Drug & Alcohol Inspection Forms](#)
- [Pipeline Operator Qualification Inspection Protocols](#)
- [Hazmat Enforcement Operations Manual](#)

Enforcement Guidance



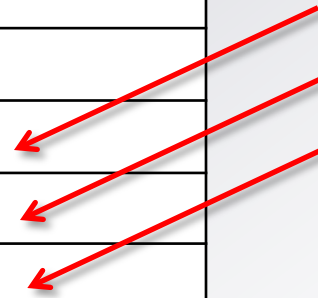
Speed Up Enforcement

- Timely enforcement ensures operators promptly correct non-compliances and provides timely feedback to operators
- Facilitates analysis of more current enforcement data



A Result of Action to Speed Up Enforcement

Year	Final Orders Issued
2002	45
2003	71
2004	64
2005	77
2006	90
2007	30
2008	41
2009	91
2010	88
2011	103





Average Days from Notice Letter to Final Order

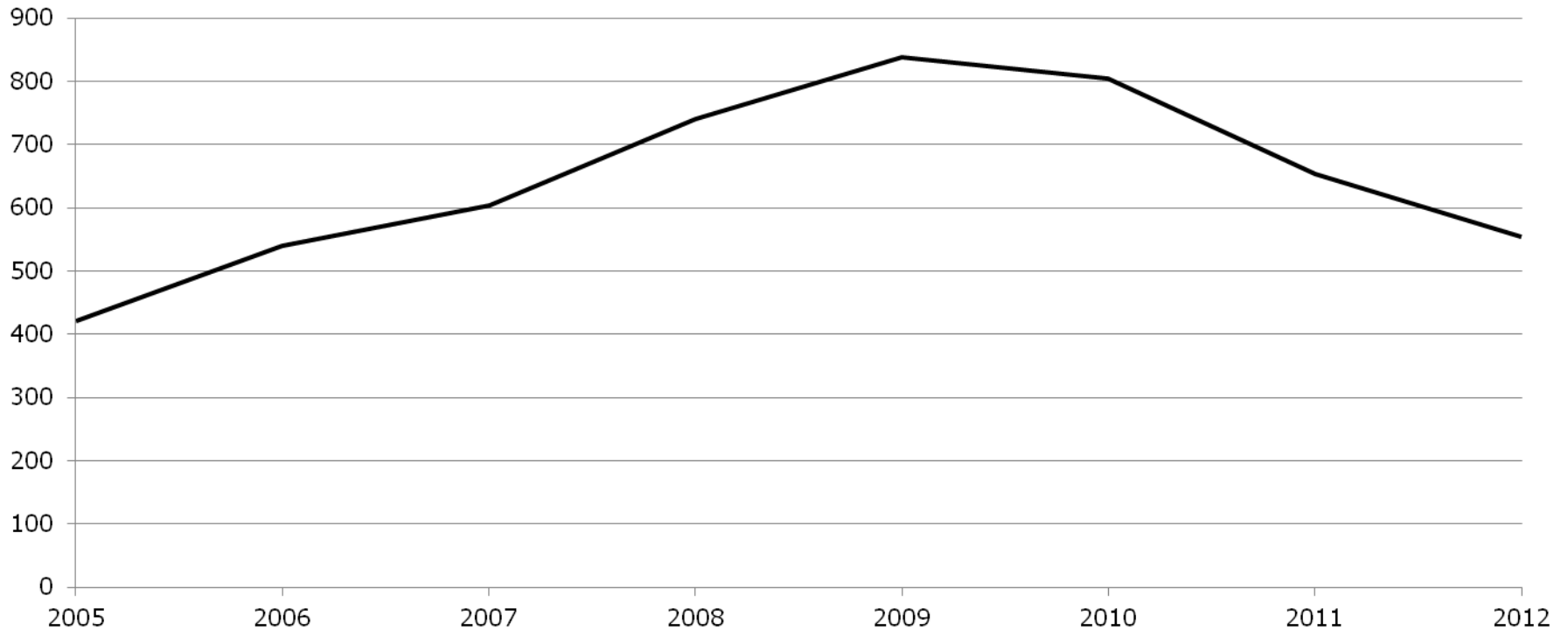
Include only Notices of Probable Violation. Years based on date of Final Order. Each year shows final orders issued that year and days pending for cases with no order at year's end. 2012 data as of 4/30/2012.





Average Days from Notice Letter to Case Closure

Contains Notices of Probable Violation, Corrective Action Orders, Notices of Amendment and Safety Orders. Years based on date of Case Closure. Each year shows cases closed that year and days pending for cases still open at year's end. 2012 data as of 4/30





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