



*AOPL Business Conference
Newport Beach, California
September 18, 2013*

STRATEGY ROUNDTABLE SESSION

Topic 5

RELEASE REPORTING ISSUES & DEVELOPMENTS

Jeff Weise recently denied a Petition for Reconsideration on a Final Order that held companies who have releases from oil pipeline systems must report the release even before the event meets the reporting criteria set forth in PHMSA's release reporting rules. This decision potentially has far reaching implications for all member companies.

DISCUSSION BY PANELISTS BOB HOGFOSS AND CATHERINE LITTLE:

Numerous reporting requirements may be triggered by a release of oil from a liquid pipeline system. Reports may be required to one or more federal, state or local entities. Reporting is typically required if there is a serious injury or fatality associated with the incident, if there is an explosion or fire, or if oil reaches waters of the U.S. PHMSA adds both volumetric and economic criteria to that list of requirements: PHMSA reports are required for any release of oil that is greater than 5 gallons or if total response costs exceed \$50,000 (but note on the volume trigger: releases up to 5 bbs are exempt from reporting if contained on facility property or ROW, part of a maintenance activity and cleaned up promptly). 49 C.F.R. Part 195.50, 52.

PHMSA last revised its release reporting requirements in 2002, by lowering the volumetric threshold from 50 bbls to 5 gallons (with the 'on site/maintenance' exception); prior to that, in 1994, the Agency increased the economic threshold from \$5,000 to \$50,000. Not surprisingly, the number of release reports increased because of these changes, particularly after 2002 with the lower volumetric threshold. *See attached charts.*

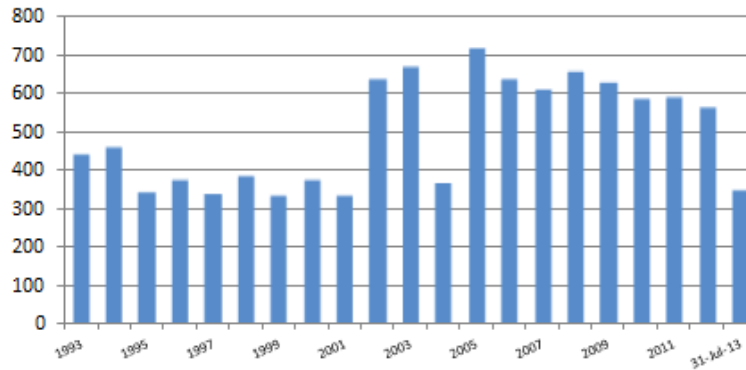
In a decision that has significance to hazardous liquid pipeline operators nationally, PHMSA has denied a Petition for Reconsideration of a matter involving an oil tank overflow incident at a Buckeye facility that occurred in 2005. The oil was contained within a diked area, and promptly cleaned up. The next day a state environmental official requested removal of some additional soil, which caused response costs to slightly exceed the \$50,000 reporting threshold established in PHMSA rules, at Parts 195.50 and 195.52. The operator promptly reported the incident to the National Response Center (NRC) as soon as these reporting obligations were met.

In 2010, just before the 5 year statute of limitations ran, PHMSA issued a NOPV alleging a violation of its release reporting rules. Following a Hearing, PHMSA issued a Final Order in 2012 maintaining the finding of violation for late release reporting. The operator filed a Petition for Reconsideration, noting how the Agency's interpretation essentially requires pipeline operators to report releases before they are reportable. On August 1, 2013, PHMSA issued a denial of the Petition for Reconsideration, stating that it intends to interpret its release reporting rules to apply within 1-2 hours of "*discovery of the release itself*, not the discovery or acknowledgement that the accident meets the reporting requirements listed in the regulation." Decision at p. 3 (emphasis in original).

Under Part 195.52, releases from hazardous liquid pipeline systems are to be reported to the NRC if they: (1) cause a death or injury requiring hospitalization; (2) result in an explosion or fire; (3) impact waters; or (4) exceed \$50,000 in total cost, including damage to equipment and cleanup costs (but note that releases of less than 5 bbls associated with a maintenance activity that is confined to company property or ROW and cleaned up promptly is not reportable. See Part 195.50(b)).

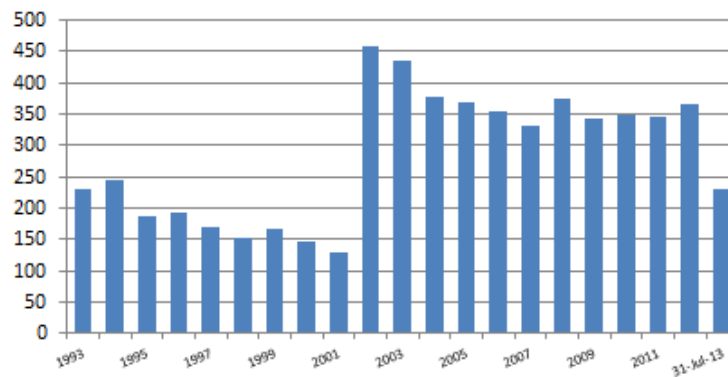
Section 9 of the 2012 Pipeline Safety Act amendments requires PHMSA to review and revise its release reporting rules at Part 195.52 (liquid) and Part 191.5 (gas), concerning timeliness of reporting. Congress gave the Agency 18 months for that undertaking, which expired on July 3, 2013. The Agency has not publicly addressed the July 3 deadline, but instead issued an Advisory Bulletin on January 25, 2013, stating that it intended to revise its reporting rules "at a later date." (see our related alert) No new rules have yet been proposed. Operators should be aware of the Agency's current interpretation that release reports must be made even before an incident meets reporting criteria, and be prepared to comment on proposed rules when they are eventually issued.

All Reported Pipeline Incidents 1993 - 2013



Source: PHMSA Significant Incident Files, July 31, 2013

All Reported Incidents: Oil Only 1993 - 2013



Source: PHMSA Significant Incident Files, July 31, 2013

DISCUSSION TOPICS WITH AUDIENCE

1. PHMSA challenges of release reporting practices.
2. Practices in reporting releases, including those that do not meet reporting criteria.
3. Consideration of impacts to operations and emergency response resources if operators have to report all releases, however minor, to the NRC.
4. Ideas on how best to respond to this decision, including consideration of judicial challenges, commenting on rulemakings, meetings with Agency leaders and industry representatives.

For more information on these topics and the discussion that occurred at the session, feel free to contact
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