February 4, 2013

U.S. Department of Transportation
PHMSA FOIA Officer, PHC-30
Office of Chief Counsel
East Building, 2"nd Floor, E23-306
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Document Request 2012-0092

Ms. Burke:

In January of last year, Congress enacted provisions of 49 USC 60138, requiring the Department to maintain a copy of the current facility response plan for each pipeline facility, and to make those plans available to the public upon written request. On April 16 of last year, I submitted a written request for facility response plans for all facilities located in Washington and Michigan (Request 2012-0092). Two weeks later, on May 1, 2012, you replied, granting my request for a fee waiver under FOIA and indicating that it may be several months before all of the “reports” might be made available, because you had several pending requests from members of the media and congressional requests that must take priority under departmental regulations. You further indicated that the “reports” would be made available on a rolling basis.

When I heard nothing further for five months, I emailed you on October 10, 2012, inquiring about the status of my request, and you replied indicating that you had not yet received the documents from the program office, and again offering the caveat that all media and congressional requests must be processed first, regardless of the order in which the requests were received. Today, ten months following my initial request, I am writing again to inquire about the status of my request. Having reviewed the Department’s 2011 and 2012 Annual reports on FOIA Administration, I am aware that the failure to provide these documents for this long is well beyond the average time that PHMSA takes to respond to a FOIA request, whether simple, as I view this one, or complex.

During her testimony to the Senate Commerce Committee’s field hearing on January 28, 2013, specifically with respect to this mandate that facility response plans be made available to the public, the Administrator made these representations: “The final mandate from this section
required PHMSA to maintain the most recent oil facility response plans (FRPs), which are currently collected from operators and provide copies of those FRPs to any requester through the FOIA process. The copies can exclude sensitive information. **PHMSA has implemented this mandate** and continues to improve the FRP program.” There was no indication in her testimony that the agency was having any difficulty filling these requests, no indication that there might be records missing, no indication that there were perfected requests outstanding for more than 10 months. In light of the statutory mandate and this testimony to the Senate Committee, the failure to provide these documents within ten months is inexplicable. It causes me to wonder whether it true that, as our organization has been told, PHMSA routinely failed to maintain a copy of facility response plans it approved and simply sent them back to the operators, resulting in the agency being unable to provide me the requested documents because it doesn’t have them. In any event, there is a major disconnect between the Administrator’s testimony that the mandate has been implemented and our ten month old request as yet unfulfilled. The difficulty in obtaining these documents from PHMSA is particularly difficult to understand when we have no difficulty obtaining CD copies of FRPs from the Washington Department of Ecology within a few days of our requests.

Whatever the reason for the delay until now, please notify me of the status of my request on or before February 8, including: an indication of whether the agency is in possession of each of the documents requested, the status of the processing of each of the documents, and a date certain when I can expect to receive the documents (in CD format as originally requested, if possible). If you are unable to fulfill this request, a FOIA appeal will be forthcoming.

Please contact me if you have any questions. You can reach me at rebecca@pstrust.org or at the phone number above.

Sincerely,

/s/

Rebecca Craven
Program Director
Pipeline Safety Trust