Where Does the Oil Go?

The Yellowstone River is just one in a long list of rivers contaminated by oil from pipelines in this country. Spills that occurred in 2011 and again this year on that river have caught our attention.

We recently got the news that Exxon Mobil has completed state-required on-the-ground work related to a 2011 spill of the Silvertip Pipeline into Montana’s Yellowstone River near the town of Laurel. Federal proceedings in the case are still underway. The State settlement included projects to improve fisheries, new leak detection equipment for the state, training for local emergency responders, and a $300,000 payment. It did not include cleaning up all of the estimated 63,000 gallons of oil that fouled 85 miles of shoreline. Most of that oil flowed down the Yellowstone River, into the Missouri River, then into the Mississippi and on to the Atlantic Ocean at the Gulf of Mexico.

Work cleaning up the Bridger-owned Poplar Pipeline spill of approximately 51,000 gallons of crude oil that recently occurred (January 17) on the same river is also wrapping up one phase of the response amid icy conditions that have confounded the process. EPA spokesman Paul Peronard noted that a cleanup of about 50 percent of the oil is about average, as the water disperses large quantities of the oil in a short time. In the case of Bridger, about 20,000 gallons of recovered oil came from inside the damaged pipe itself, about 1,600 gallons have been recovered from the environment, and an estimated 29,000 gallons remain in the environment.1 A familiar story - most of that oil is flowing down the Yellowstone River, into the Missouri River, then into the Mississippi and on to the Atlantic Ocean at the Gulf of Mexico.

Initial news stories reported Montana officials were “unaware of any threats to public safety or health” and that drinking water contamination was “unlikely.” It wasn’t until two days after the spill that officials took samples and monitored taps along the water distribution system in the town of Glendive. As is too often the case, local emergency responders do not have the capacity or expertise to make decisions about safe levels of air and water contamination. In this case, the Dawson County Disaster and Emergency Services coordinator was quoted to say: “I am not saying the water is unsafe. I am not saying it is safe. We are waiting for officials to arrive who can make that decision.”

We know some of that oil made it into the Glendive water supply system. The primary contaminants of concern are volatile organic compounds (VOCs) and specifically benzene. In Glendive, the benzene trigger for water system shutdown is 2 parts per billion, but there is not uniform agreement on standards, or even if there is any “safe” level of exposure at all.3 While benzene is an immediate hazard from oil spills (mainly due to vapor), it can continue to leach through the ground for years. There are other contaminants, and other long-term problems that can arise as well. For example, the USGS recently released a study showing that oil contamination can release arsenic in groundwater.

PHMSA has issued a corrective action order to Bridger Pipeline that requires failure analysis, testing, and review of company records and actions, among other things. But PHMSA is not concerned with the oil that was already released. That job falls to EPA.

And yet EPA has few effective tools available for capturing and cleaning up oil that spills. In their initial description of the Bridger spill threat, EPA acknowledges “Crude oil released into the environment threatens downstream water users, including drinking water supplies and agricultural uses, and could impact wildlife along the river.” The response objective related to cleanup is to: “Identify and recover residual oil as appropriate.”4 Fish have been contaminated as shown through testing by the Montana Fish, Wildlife, and Parks Department, leading to a fish consumption advisory. The spilled oil is a problem. But as it continues downstream and is further diluted, the problem changes from a clean-up issue to an issue of higher and higher amounts of ‘background’ contaminants. That is where the oil goes – into our water, soil, and air.

1 See EPA POLREP#7 issued Jan 30, 2015
2 http://www.deq.mt.gov/yellowstonespill2015.mcpx
3 See information from the CDC-Agency for Toxic Substances and Disease Registry, and specifically: http://www.atsdr.cdc.gov/sites/toxzine/docs/benzene_toxzine.pdf
4 See EPA’s initial description of the Bridger pipeline spill.

Overview of the Yellowstone River, Jan. 19, 2015 (photo: http://www2.epa.gov/region8/bridger-pipeline-release#photos) is 2 parts per billion, but there is not uniform agreement on standards, or even if there is any “safe” level of exposure at all.3 While benzene is an immediate hazard from oil spills (mainly due to vapor), it can continue to leach through the ground for years. There are other contaminants, and other long-term problems that can arise as well. For example, the USGS recently released a study showing that oil contamination can release arsenic in groundwater.

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The most recent report available on the Bridger clean-up said this: 5

Current reconnaissance indicates that there is not much oil remaining in the operational theater. Given the unsafe working conditions and the limited oil recovered, the response is rapidly approaching the point of diminishing returns. This is especially relevant given the potential damage caused to the river system by the activity of the response crews and equipment.

Much of the river corridor hosts nesting sites used by bald eagles, least terns, piping plovers and great blue herons that are protected, threatened or endangered. Eagles have already returned to the area and it is expected that they will begin nesting as early as February. Other significant species include the endangered pallid sturgeon and the spiny softshell turtle. The UC is weighing the impacts of the response (airboats, helicopters and vehicular and foot traffic) along the shoreline versus the limited oil recovery and limited product remaining.

The Bridger Poplar cleanup approaches the point of diminishing returns, when it is necessary to compare the benefits of the potential cleanup of a few gallons of oil against the likely disruption of numerous significant species. And yet as the ice break-up continues, more VOCs are released into the river, reflecting a continued risk to wildlife and human health. The EPA message is clear: the damage has been done, and there is not much we can do about it except get out of the way and let the natural processes continue on, albeit with higher levels of environmental VOC contamination.

All of this leads us back to the tragedy of the Silvertip spill and many other pipeline incidents: they are preventable. River crossings are a known risk – one we have written about before (see most recently our Smart Pig Blog from February 6, 2015). No cause has as yet been assigned to the Bridger Poplar pipeline failure, but it looks like ice scour of the riverbed might be at least partly responsible. PHMSA has the primary regulatory role of enforcing the obligations of pipeline operators to design for and mitigate against risks before an incident occurs. PHMSA told ExxonMobil in the Final Order on the Silvertip Pipeline incident that the operator failed “to conduct a risk analysis of the Silvertip Pipeline that considered all risk factors relevant to the likelihood of a release on the Silvertip Pipeline and potential consequences affecting the Yellowstone River.”

Despite the 2011 Silvertip Pipeline incident and a great deal of attention having been paid to river crossings in Montana, another spill occurred, and at least at this point, it appears to have been preventable as well. It will take time for the industry to react to PHMSA’s decision in the Silvertip failure6, to review their risk assessments at river crossings and make the necessary improvements to better protect pipelines from foreseeable events. And it is important to note that PHMSA’s decision applies to all sorts of foreseeable risks, not just river crossings. Landslides, floods, changes in river channels, earthquakes, and other events that are foreseeable, if not predictable with exact certainty must be planned for, and the consequences of a failure avoided. Because the regulations are written to require risk assessments, with operator design and operations decisions based on identified risks, the operators must educate themselves about the extent of risk to pipelines from natural events, and PHMSA must do the same so that it can adequately review those risk assessments during inspections and enforce against operators whose assessments are inadequate, preferably before an incident occurs.

When the deterrents of the penalties under the pipeline safety statutes are inadequate to prevent oil spills, the larger penalties available under the Clean Water Act can be brought to bear, but only after a spill, and only if the Department of Justice is successful in prosecuting a case for Clean Water Act violations against the operator. We haven’t yet heard whether or when the Department of Justice will be filing CWA actions against either ExxonMobil or Bridger for their spills into the Yellowstone. Typically, those cases must be filed within 5 years of the incident - for ExxonMobil’s spill, that will be July of 2016.

5 See EPA POLREP#11 issued February 26, 2015.
6 The Final Order has been appealed by ExxonMobil, arguing that its risk assessment, that failed to include an assessment of the risk of riverbed scour, was adequate, and that just because a spill occurred does not mean that the pipeline regulations were violated.

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Technical Assistance to Local Communities

Communities across the US and Canada periodically ask the Trust to help them understand pipeline safety issues. The Trust staff can add a valuable perspective to the public dialogue about pipelines and pipeline safety, and we are often asked to do so as part of a conference or community meeting. We can also play a unique role in convening pipeline operators, regulators, local governments, and the public to discuss concerns surrounding the oil and gas pipelines in the community.

The community of Alamo in Contra Costa County, California, wanted to know more about a hazardous liquid pipeline in their area, and applied successfully for a Technical Assistance Grant (TAG) from PHMSA to 1) train local first responders in emergency response to a hazardous liquid pipeline accident, 2) educate the community about ‘Call 811 Before You Dig’ procedures to prevent pipeline accidents, and 3) bring in the Pipeline Safety Trust to facilitate open public meetings and write a report on pipelines in the region. The Trust will travel to Contra Costa County in June to meet with community members and facilitate these public education meetings that will include local government representatives, as well as representatives from the pipeline operator and state regulator.

To see the Alamo Improvement Association’s grant application summary, as well as those of other TAG award recipients, see the article below.

PHMSA Announces Grant Opportunity

Community Technical Assistance Grant Applications Due April 22, 2015

PHMSA has in the past extended this deadline, so be sure to check the full announcement to view the current due date.

Community groups and local governments are eligible to apply for PHMSA Technical Assistance Grants (“TAG grants”) of up to $100,000 for technical advice on pipeline concerns, to enhance public involvement in official proceedings on pipeline safety, for production and implementation of local pipeline ordinances, or for a wide variety of other pipeline safety related projects. You can find an archive of the nearly 200 projects funded with these grants in past years here: [http://primis.phmsa.dot.gov/tag?nocache=7562](http://primis.phmsa.dot.gov/tag?nocache=7562)

Here is the link to the full announcement: [http://www.grants.gov/web/grants/view-opportunity.html?oppId=272688](http://www.grants.gov/web/grants/view-opportunity.html?oppId=272688)

From PHMSA:

The TAG program provides funding to communities for technical assistance and analyses of local pipeline safety issues. Technical assistance is defined as engineering or other scientific analysis of pipeline safety issues. The funding can also be used to help promote public participation in official proceedings. However, the funding may not be used for lobbying, in direct support of litigation, or for activities associated with regulatory compliance or typical operations and maintenance of pipeline facilities. Local projects can range from public awareness activities to technology solutions, such as the conversion of paper maps into electronic format. The awards have funded a broad range of activities, including:

- Improvement of local pipeline emergency response capabilities
- Improvement of safe digging programs
- Development of pipeline safety information resources
- Implementation of local land use practices that enhance pipeline safety

Community and pipeline awareness campaigns
Enhancements in public participation in official proceedings pertaining to pipelines

Background on the TAG Grants

When Congress began working to strengthen the nation’s pipeline safety laws in 2001, the forerunner of The Pipeline Safety Trust pushed for the creation of a federal program that would provide money to local governments and communities for hiring independent experts. These experts would help them obtain information so they could be informed and active participants in decision-making activities about pipelines running through—or proposed for siting in—their communities.

In the Pipeline Safety Improvement Act of 2002, Congress authorized the Technical Assistance Grant (TAG) program, which was based on a successful Superfund grant program that had been operating within the U.S. Environmental Protection Agency since 1988. However, Congress did not appropriate any program funds when it passed this law. Over the next four years, Congress failed to fund the TAG program, and the Office of Pipeline Safety (OPS), which is within the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), didn’t move ahead to implement it. Consequently, the Pipeline Safety Trust worked with supporters in Congress to break this “logjam” and a provision was inserted in the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 to withhold funding from other activities until PHMSA established procedures and criteria for initiating the TAG program. In 2008, Congress provided $1 million in the federal budget for funding this program and in 2009 the Pipeline Safety Trust helped OPS develop criteria for evaluating grant applications.

If you intend to apply for a grant, the preparation for doing so (obtaining online accounts and numbers and entering your proposal in the online system) takes quite a bit of effort and time, so plan accordingly to allow enough time before the deadline to get help if you need it.
In pipeline parlance, a smart pig is a high-tech device designed to root around inside pipelines. These intelligent little beasts inspect every square inch of the line, calling attention to any needed repairs. I try to do the same thing for our readers. Send me a question and I'll root through the labyrinth of modern pipeline prevarications to get you the best answer piggily possible: the straight scoop, as we say back in the sty.

Editor’s Note: The views and opinions expressed by this pig do not necessarily reflect those of the Pipeline Safety Trust or any human being.

Dear Smart Pig -

I’m an environmental consultant and have some clients who are interested in learning more about a large proposed crude oil pipeline planned through their community and they’ve asked me to help out. I am very familiar with the environmental impact statement/environmental assessment process required by the National Environmental Policy Act (NEPA) for other big federally-regulated projects like highway and dam construction, endangered species protection or federal land management questions. This pipeline crosses several sensitive rivers and the habitat of several sensitive species, goes through heavily developed areas, and will, if built, cross into another state. I’ve been trying to figure out how to get involved in the NEPA review process for this pipeline because my clients have information that should be considered by whatever agency makes the decision whether or where this pipeline should be built, but I can’t find any information. Can you help?

Desperately seeking,
Susan

Hey Susan,

I am so sorry to be the one to break it to you, but you’re not likely to find a comprehensive NEPA analysis of that proposed crude oil pipeline. The National Environmental Policy Act requires federal agencies to assess the environmental and socioeconomic impacts of their decisions if the decision is “a major federal action affecting the quality of the human environment.” The Pipeline and Hazardous Materials Safety Administration, the federal agency responsible for inspecting and regulating the safety of pipelines, takes the position that since under most circumstances there is no federal permit or license required for the construction of a hazardous liquid pipeline (unlike interstate gas lines that must obtain a certificate of companies before they build a pipeline that becomes part of the massive network of hazardous liquid pipelines in this country: no needs assessment, no federal agency oversight of route selection for safety or environmental reasons or to avoid conflicts with local economic priorities or future growth plans.

To be sure, there are some exceptions to this general rule: Pipelines that cross an international border need a Presidential permit. The decision whether to issue that permit triggers the application of NEPA, and therefore a comprehensive environmental impact statement assessing the pipeline’s effects will be required. Perhaps you’ve heard of the proposed Keystone XL pipeline, proposed to cross the Canadian border?

Similarly, pipelines proposing to cross federal lands, like National Forests or National Parks or lands held by the Bureau of Land Management, will require some sort of crossing permit from the relevant management agency, which must prepare an analysis under NEPA of that decision (although the availability of NEPA’s “categorical exclusions” to avoid even this level of analysis for crossing permits is currently being litigated in Michigan, and at least some BLM lands are notably lax in their enforcement of permit terms - see BLM confirms True Oil trespassing at time of spill, found at http://www.buffalobulletin.com/news/article_baeb8420d337-11e4-9959-334073001f5d.html). It is important to note, however, that these NEPA documents typically only assess the effects of the pipeline crossing those federal lands - no comprehensive environmental assessment of the entire proposal is prepared.

I should also point out that at least one federal judge has referred to the United States’ defense of its position that no NEPA analysis is required for pipeline construction or reversal as “not only arbitrary and capricious, but ridiculous.” Spiller v Walker, 2002 U.S.Dist. Court LEXIS 13194 (citing its 1998 order). (We refer to this as “The Longhorn Case.”) The Longhorn litigants reached a settlement shortly thereafter, which ended the litigation and any other opportunities for that ruling to be upheld or rejected.

Some states require operators to get the permission of the state pipeline regulator or another state energy facility siting agency before constructing a hazardous liquid pipeline (either inter- or intrastate), or before being allowed to use the power of eminent domain to acquire rights of way. Those state processes vary widely. Some are fully public proceedings with lots of public notice, public meetings and hearings where public testimony and state resource agency recommendations can be presented. Some states have specific siting criteria that must be met. And some are little more than rubber stamps of approval for the operator to obtain the right of eminent domain under state law. The degree to which environmental issues are identified and assessed and publicly vetted in these processes varies just as widely.

In spite of the lack of a comprehensive federal review for the pipeline your clients are concerned with, please investigate the other permitting processes to which the construction might be subject, and the opportunities for public involvement in them. These may include the kind of state siting process I mentioned above, along with stream crossing permits, state lands crossing permits, local zoning and building permits for the pipeline and associated pump stations, and the like.

Also, our Local Government Guide to Pipelines (pstrust.org/lgg) includes more detailed information about what tools may be available to state and local jurisdictions if they’re interested in having more involvement in the pipeline review process.
Coming Soon, To a Town Near You  by Jeff Insko

A similar piece was published by VICE News to accompany their story “Pipeline Nation.” They also produced a video featuring, among others, our own Carl Weimer. You can find that story and video here: https://news.vice.com/video/pipeline-nation-americas-broken-industry.

Spring has finally arrived in Michigan, which for many of us means renewed hope that Enbridge, the company responsible for spilling over a million gallons of diluted bitumen into the Kalamazoo River in 2010, will finally leave us alone. Not long after that spill, Enbridge received state approval to “replace” 210 miles of their aging Line 6B pipeline across Michigan—including through my backyard. For more than three years now, those of us along the pipeline route have endured noise, nuisance, disturbance, and a lot of shabby treatment as Enbridge ripped up our front and back yards to install their shiny new pipe.1 The new Line 6B has been up and running for nearly a year, transporting thousands of gallons of tar sands oil every day and fueling Enbridge’s corporate profits. Meanwhile, landowners continue to wait for the day when our properties are fully restored and construction crews are gone for good.

Despite this painful experience, I confess to mixed feelings about the replacement of Line 6B. As a matter for the future—of national energy policy, of the health of the environment, and of climate danger—I’d rather have no tar sands pipelines at all, not in my backyard nor anywhere else. As a matter for the more immediate present, however, if there has to be a tar sands pipeline in my backyard or anywhere else, I want it to be as safe as it can possibly be. On the bright side, we are currently in the midst of a robust international conversation about our energy future, a conversation driven in no small part by the contentious Keystone XL project, a pipeline that has not yet been built. On the dark side, we aren’t making enough room in that conversation for some equally robust talk about the present, about the safety and health of the 2.5 million miles of pipelines in the United States that have already been built.

The fact is that while we fight over whether to build new oil and gas pipelines—as important as that conversation is—our existing ones continue to burst, rupture, and leak, devastating lives, homes, communities and the environment: in Allentown, Pennsylvania, in Tioga County, New York, in Laurel, Montana, and, sooner or later, in a town near you.

Consider this: five years after the Marshall disaster and, the same year, the terrible San Bruno, California pipeline explosion that killed eight people, federal regulators have done almost nothing to improve the safety of the nation’s hundreds of thousands of miles of existing pipelines. Partly in response to these incidents and others like them, in 2011 Congress passed the Pipeline Safety, Regulatory Certainty, and Job Creation Act. Yet the agency charged with implementing this law, the Pipeline and Hazardous Materials Safety Administration (PHMSA), has failed to finalize and institute any significant new regulations. After four long years, new rules are either in-progress or stuck in procedural limbo somewhere between industry nitpicking and bureaucratic cost-benefit bean-counting. Meanwhile, pipelines continue to burst, rupture, and leak: in Belton, South Carolina, in Mayflower, Arkansas, in Glendive, Montana, and, sooner or later, in a town near you.

Last week, I traveled to Washington, DC with my colleagues from the Pipeline Safety Trust2 to talk with regulators and legislators about this troubling state of affairs. We learned very little. We do know that several new rulemaking initiatives have been in the works at PHMSA for nearly four years now, though we don’t know much about what’s in them. We also know that some time this year Congress will review and, we hope, strengthen the federal pipeline safety program during its reauthorization. But since Congress doesn’t know anything about the new rules PHMSA is proposing than the public does, it’s hard to know how to help legislators prepare for productive discussions about reauthorization. Add to this the disturbing fact that this is the same Congress whose top legislative priority this year has been a bill specifically designed to benefit a single foreign pipeline company and you can see why we did not return from D.C. filled with optimism.

While we continue to wait for PHMSA’s new rules, pipeline operators could take it upon themselves to improve their safety records. Far too many incidents are caused by things that are entirely within operators’ control, from corrosion, to weld and equipment failures, to excavation damage caused by their contractors. One of the greatest horrors of the Marshall, Michigan spill (detailed in the 2012 National Transportation Safety Board report3) was the extent to which that failure and its consequences were entirely preventable. If only operators would invest as much energy in their integrity management systems and safety protocols as they do in burnishing their public images.

But based on my own three-year-long, first-hand experience with an oil pipeline company, I’m not prepared to trust the operators to do better voluntarily. For that reason, we need to demand more from our regulators and from our legislators. The evidence of the past four years suggests that both lack the will to impose stricter standards of safety and regulations that are easier to enforce before a pipeline fails. We need to insist upon more transparency in enforcing safety standards and greater public participation in rulemaking processes. The current system, essentially a friendly collaboration between regulators and industry, is clearly not working. It’s why pipelines continue to burst, rupture, and leak: in Harlem, New York, in Jackson, Wisconsin, in Salt Lake City, Utah, and, sooner or later, in a town near you.

Jeffrey Insko lives in southeast Michigan, where he is Associate Professor of English at Oakland University. He is on the Board of Directors of the Pipeline Safety Trust and writes and maintains the Line 6B Citizens’ Blog.

1 http://grangehallpress.com/Enbridgeblog
2 http://grangehallpress.com/Enbridgeblog
Are Old Pipelines Really More Dangerous?

This sentiment is heard frequently, and even more often turned into a statement of fact, that old pipelines are more dangerous. But the truth is that is not necessarily the case. While some types of old pipelines are well-known to be riskier, like cast iron pipes and pipes with seams welded using LF-ERW (low frequency electric resistance weld), in general we do not see older pipes failing much more than new pipes on a per mile basis. In fact, we recently analyzed pipeline incidents in relation to the decade those same failed pipes were installed – one analysis for onshore hazardous liquid (HL) pipelines, and one for onshore gas transmission pipelines. The results were surprising. Though they varied between hazardous liquid and gas transmission pipelines (all onshore), generally the very oldest pipes were more dangerous (pipe installed before the 1930s), and – here’s the surprising part – more dangerous still were the very newest pipelines – those installed since 2010. Is this a reflection of “getting the kinks out” when pipelines are first installed? Is it a pattern that will continue or change? Unfortunately, we don’t have the kind of data we would need to replicate this analysis in decades past, so it will only be in the future that we’re able to answer our questions. The graphs are concerning to us though, as one interpretation of the results is that some pipelines are initially installed with weak and vulnerable aspects which fail; and only after fixing these initial failures do the pipelines operate safely. There are surely other interpretations of the results, and we would love to hear from you if you have ideas of why this is occurring. The uncertainty surrounding the safety of new pipelines underscores the need to push for pipelines to be sited, installed, tested and inspected in the best way possible, and for the regulators to ensure that is the case through strong and enforced regulations. And all of this only works well when the public has the ability to be involved in the process and has access to the information needed to understand and review all aspects of pipeline safety. We still have a long way to go.

All data from PHMSA. Mileage data from operator’s annual reports, incident data from flagged incident reports. Contact us for more specifics.
A Call for Transparency in Pipeline Safety Enforcement - Ten years Later

“No government is perfect. One of the chief virtues of a democracy, however, is that its defects are always visible and under democratic processes can be pointed out and corrected.”

- President Harry Truman, 1947

Pipeline safety enforcement could benefit from President Truman’s philosophy. This article is about how the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) civil fine enforcement works and why OPS should make it more transparent. It is largely repeated from an article in our first newsletter published in 2005. While OPS has improved its percentage of assessed penalties collected since that time (as the updated numbers we include here reflect), the substance of the issues has not changed at all, and enforcement procedures still occur largely behind closed doors with only the regulators and industry present, and no public record of proceedings.

How It Is

OPS enforcement procedures are complex. In simple terms, there are three stages:

1. Investigating — reaching a preliminary conclusion whether a company violated the law. This can happen as a result of an inspection or an incident.
2. Proposing a fine — notifying the company of the allegation and what the fine could be.
3. Hearing/Assessing/Collecting — giving the company an opportunity to present its views; deciding what the fine will be; collecting it.

The time from the first to the last step may take more than a decade. Meanwhile, there is no public input and the availability of documents is limited. According to the enforcement statistics,1 over the past ten years OPS collected about 84 cents for every dollar of fines it proposed. These statistics leave out millions of dollars in fines that were proposed but never or not yet collected because cases either never made it to the final collection phase or still have unresolved compliance issues.2

What is most troubling to us is the way in which the operator’s response or request for a hearing and the final order on its enforcement web page (http://phmsa.dot.gov/pipeline/enforcement). However, between the time an operator requests a hearing on a penalty case and PHMSA issues a final order, none of the documents or arguments made in the enforcement hearing process are posted for public review, and PHMSA neither publishes notice of hearings nor allows the public or members of the press to attend if they happen to learn when a hearing is scheduled. Nor is there a requirement for a record of the hearing to be made, let alone made public. This is the stage where most of the reduction in proposed penalties occurs, and the public can only hope to be able to read between the lines of a Final Order to determine why the penalty was reduced and whether the reduction was legitimate.

The Need for Transparency

In this country, after the investigatory stage, law enforcement takes place in public for good reasons. Public scrutiny enhances credibility, accountability and fairness while preventing even the appearance of government corruption in the following ways:

- **Credibility** — seeing OPS expeditiously enforce its regulations would instill confidence that safe operation is a requirement rather than a guideline.
- **Accountability** — if companies successfully challenge fines because regulations are poorly crafted, the public could demand better rules.
- **Fairness** — secret proceedings deny the public an opportunity to question fines and permit operators to make one-sided arguments without fear of rebuttal.
- **Prevention of corruption** — while no one is suggesting that OPS is corrupt, any government agency that permits fines to be whittled down behind closed doors is just asking for trouble from a suspicious public.

How It Should Be

OPS should create an Internet accessible enforcement docket, like the existing DOT rulemaking docket, where the public could view enforcement as it progresses. The docket would include the OPS Notice of Probable Violation, Corrective Action Order or other enforcement documentation, the company’s responses, documents exchanged between the parties before and during a hearing, transcripts of hearings and the final decision. OPS should permit intervention by aggrieved parties. The hearing dates should be on the docket, and the hearings themselves should be open to the public and members of the press.

When pipeline operators violate the law, they endanger the public. Therefore, the public has an interest in seeing operators held accountable. Open and transparent enforcement procedures would enhance public confidence and permit the public to work with OPS to make pipelines safer.

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1. Data extracted from PHMSA-OPS website on March 26, 2015. See [http://primis.phmsa.dot.gov/comm/reports/enforce/CivilPenalty_opid_0.html](http://primis.phmsa.dot.gov/comm/reports/enforce/CivilPenalty_opid_0.html)
2. Only cases that have been closed by PHMSA with no outstanding compliance issues left unresolved from PHMSA’s Final Report are included in their statistics.
Where Have all the Rules Gone?  
Long Time Passing...

In 2009-2011, PHMSA began a series of rulemakings, issuing Advanced Notices of Proposed Rulemakings to address: gas transmission pipeline safety, hazardous liquid pipeline safety, enforcement of excavation damage violations, and the use of excess flow valves beyond new single family construction. After the 2011 reauthorization, they added a proposed rule on operator qualifications, design review cost recovery, rupture detection and valve installations to that pile. The National Transportation Safety Board issued a number of recommendations to PHMSA after the San Bruno, Allentown and Marshall failures. Other potential improvements to rules are suggested in various GAO and Inspector General reports from the past few years, as well as from PHMSA’s own internal reviews and research and development program. It’s possible that some or all of those suggested improvements are included in the proposed rules awaiting publication. Unfortunately, no one knows, since all of the rulemakings in process, not a single final rule has been issued. In fact, some of them have not even made it to the stage of becoming a proposed rule.

Once PHMSA develops a proposed rule, it has to go through approval processes in the Office of the Secretary of Transportation and the Office of Management and Budget (White House) before it can be published in the Federal Register to begin the public comment period. Once the comment period is over, it will go through much the same process within the Administration to develop the final rule, which is then published and becomes part of the Code of Federal Regulations. With recent PHMSA rulemaking efforts, rules have sometimes made multiple visits to these other offices. The Office of the Secretary issues a monthly report showing the status of all rulemakings efforts in the Department. You can find that report here: [http://www.dot.gov/sites.dot.gov/files/docs/MARCH 2015 Internet Report 0.docx](http://www.dot.gov/sites.dot.gov/files/docs/MARCH 2015 Internet Report 0.docx) You can track all of the comments and other documents filed in the docket of a proposed rule online at [http://www.regulations.gov](http://www.regulations.gov) by using the docket number of each rule in the search function.

1) Safety of Onshore Hazardous Liquid Pipelines (Docket number PHMSA-2010-229) : Initiated 8/13/2010. Judging by what was in the Advanced Notice of Proposed Rulemaking (ANPRM) published in 2010, this proposed rule could consider: expanding areas considered as High Consequence Areas where additional assessments are required, whether leak detection standards will be required, whether valve spacing requirements will change, whether repair timeframes will be changed, and a variety of other possible improvements to the existing rules. After several rounds between PHMSA, the Secretary’s office and OMB, the proposed rule was returned to OMB for clearance on May 1, 2014, where it remains today.

2) Enforcement of State Excavation Damage Laws (Docket No. PHMSA 2009-0192) : Congress gave PHMSA authority to enforce excavation damage laws in states with inadequate enforcement, but it must adopt a rule establishing the standards and processes before taking over enforcement in those states. PHMSA initiated a rulemaking in March of 2009. This final rule, implementing a Congressional directive, went to the Office of the Secretary on July 29, 2013, where it remains.

3) Excess flow valves in applications other than single family residences in gas distribution systems (Docket number PHMSA-2011-0009): Excess flow valves are used in gas distribution systems on service lines to individual buildings and automatically shut off when there is a break between the valve and the building from excavation, frost heave, or any other reason. Rules currently require EFVs on all new single family service lines, and the NTSB has urged this requirement to be extended to buildings other than single family residences, like apartment buildings and commercial structures. This proposed rule would require the use of EFVs in all new and replaced gas service lines, for structures other than single family dwellings, “when the operating conditions are compatible with readily available valves.” The rulemaking was initiated in 2010, the ANPRM published in 2011, and the proposed rule went from the Office of the Secretary to OMB in April of 2014, where it remains.

4) Operator Qualification, Cost recovery, incident notification, and other changes (no docket number yet): This proposed rule includes changes to operator qualification rules, incident reporting requirements, sets up a system for recovering costs for design review of pipelines as permitted by the 2012 reauthorization act, and addresses the process for renewal of special permits. The proposed rule was initiated in 2012, and was sent to the Office of the Secretary in May of 2014, where it remains.

5) The gas transmission safety rule (Docket number PHMSA-2011-0023) was published as an Advanced Notice of Proposed Rulemaking (ANPRM) in 2011. It also has been to the Secretary’s office and back a couple of times, and has yet to make it to OMB as a proposed rule. According to PHMSA, the proposed rule will address integrity management principles, repair criteria for both HCA and non-HCA area, assessment methods, validating and integrating data, risk assessments, corrosion control, gathering lines and more. A proposed rule was sent to the Secretary’s office in June of 2014, where it remains.

6) Rupture Detection and Valves (no docket number): After studies of remote control and automatic shutoff valves, leak and rupture detection efficacy, PHMSA indicates that the proposed rule would propose installation of automatic shutoff valves or remote control valves and establish metrics for rupture detection systems for gas and liquid transmission pipelines. Interestingly, the description of this proposed rule suggests a focus on large uncontrolled releases from full ruptures - instances where the speed with which valves are closed makes big differences in the consequences of the failure. It does not appear to deal with leak detection requirements specifically for liquid lines where large amounts of product can be released over a long period of time from a small leak. This proposed rule is planned to be forwarded to the Secretary’s office this spring, according to the current status report, having already slipped many months from the original proposed submission date.
The new rule is a bit of a hodge-podge of miscellaneous rule changes affecting both hazardous liquid and gas systems. Here are the items covered by the new rule in addition to some editorial changes:

1) Construction inspections and who can conduct them
2) Leak inspections on type B gathering lines
3) Qualifying plastic pipe joiners
4) Using hydrostatic tests at mill for pipe to operate at alternative maximum operating pressure (MAOP).
5) Regulating the transport of Ethanol by pipeline
6) Limiting indirect costs in state grants
7) Transportation of pipe
8) Threading copper pipe
9) Offshore pipeline condition reports
10) Calculating pressure reductions for hazardous liquid pipeline integrity anomalies
11) Testing components other than pipe installed in low pressure gas pipelines
12) Alternative MAOP notifications
13) National Pipeline Mavpping System
14) Welders vs. Welding Operators
15) Components fabricated by welding
16) Odorization of gas

Many of these are small technical changes to the regulations, but there are a couple that are worth further discussion.

The new rule on construction inspection stems from a petition for rulemaking filed by NAPSR (the National Association of Pipeline Safety Representatives), which sought a rule that those contractors who construct and install a pipeline should be prohibited from inspecting their own work for compliance purposes. The new rule clarifies that “an operator must not use operator personnel to perform required inspection if the operator personnel performed the construction task that requires inspection.” 49 CFR § 192.305. Similar language is adopted for hazardous liquid construction inspections in § 195.204.

The rule also amends the definition of “hazardous liquid” to include ethanol, so pipelines carrying ethanol will now be covered by the regulations in Part 195 along with other hazardous liquids. The regulations will now require leak surveys on a small subset of regulated gathering lines (Type B), the regulations governing the conditions under which pipeline segments may be transported were amended, and new rules were put in place for qualifying plastic pipe joiners and welders, and clarifying the requirements for odorization of gas in lateral lines. For those of you interested in seeing the original proposal, the comments that were filed, and the final rule explaining what changes were made through the process, you can track all of that through the http://www.regulations.gov website, searching for docket number: PHMSA-2010-0026. The new rules take effect October 1, 2015.

Meanwhile… PHMSA issues a FINAL rule!

The Trust currently has a Request for Qualifications (RFQ) open and advertised for pipeline safety technical experts to provide independent technical assistance to local governments and communities related to onshore oil and gas pipelines in the US and Canada. The results of this RFQ will be edited, compiled, and made publicly available as a resource directory; the directory will be posted on the Pipeline Safety Trust website and specifically made available to people looking to hire such technical experts.

Communities frequently ask the Trust for suggestions of independent technical experts with experience in pipeline engineering who can provide technical assistance in a broad variety of areas – from general to specific advice on everything from pipeline conceptual design, construction methods, corrosion, pressure cycling, materials, electrical interference, air quality, mechanics, chemical impacts, siting safety, inspection techniques, leak detection, repair methods to a host of other topics.

Please help us spread the word so the Resource Directory of Pipeline Safety Experts can be as complete as possible. More information is available and submissions are accepted through our website: pstrust.org/rfq.

Cleanup of the March 29, 2013 rupture of the ExxonMobil Pegasus pipeline in Mayflower, Arkansas. The pipeline remains closed following this rupture, making it one of the longest post-incident closures. No restart date has been announced, nor has any plan for replacement of the 1940s vintage pipe with LF-ERW long seams, a type of pipe known to be more prone to ruptures.
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**Sometimes a picture is worth a 1000 words**

This gathering line near Canyonlands National Park is not regulated by any state or federal pipeline safety agency, and the Bureau of Land Management (BLM) who protects this public land seems ill-equipped for any oversight. For more information about the BLM’s oversight of such pipelines check out these two articles: [http://www.deseretnews.com/article/865600869/Natural-gas-pipeline-is-a-line-in-the-sand.html?pg=all](http://www.deseretnews.com/article/865600869/Natural-gas-pipeline-is-a-line-in-the-sand.html?pg=all) and [http://www.buffalobulletin.com/news/article_89d6a31a-d87d-11e4-ad48-756556f81ae.html](http://www.buffalobulletin.com/news/article_89d6a31a-d87d-11e4-ad48-756556f81ae.html)