

*Food for Thought:*  
**“Should You Be Worried? PHMSA’s  
New Enforcement Efforts”**

**2016 Pipeline Safety Trust Conference  
October 21, 2016**

**Teresa A. Gonsalves**  
Chief Counsel, PHMSA



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# Overview

- Emergency Order Authority
- Higher Civil Penalties
- Greater Transparency in Penalty Determinations
- Rigorous Tracking and Management of Enforcement Cases



# Emergency Order Authority

- 2016 PIPES Act granted PHMSA new emergency order authority
- An Emergency Order can be made applicable to several or all operators
- On October 14, PHMSA's interim final rule (IFR) implementing emergency order authority was published in the Federal Register.
- The IFR establishes interim regulations to implement the new authority



# Emergency Order Authority (cont'd)

## What Is an Emergency Order?

- A flexible enforcement tool to address time-sensitive, safety conditions affecting multiple pipeline owners/operators, facilities, or systems or industry-wide
- A written order that may only be issued under limited circumstances that imposes restrictions, prohibitions, or safety measures on affected entities.



# Emergency Order Authority (cont'd)

- Under What Conditions May an EO Be Issued?
  - An Imminent Hazard Must Exist. This means:  
“[T]he existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment of health, property, or the environment may occur before the reasonably foreseeable completion date of a formal administrative proceeding begun to lessen the risk. . . .”



# Emergency Order Authority (cont'd)

- Examples of circumstances that could warrant the issuance of an emergency order:
  - Where a natural disaster affects multiple pipelines in a specific geographic region
  - Where a serious flaw posing an imminent hazard has been discovered in pipe, equipment manufacturing, or supplier materials
  - Where an accident reveals a specific industry practice that poses an imminent hazard and needs immediate or temporary correction



# Higher Civil Penalties

- Pipeline Safety Act of 2011 increased maximum penalties to \$200,000 per violation per day, with a maximum of \$2 million for a related series of violations. This provision applies to violations occurring after January 3, 2012
- To account for inflation, PHMSA recently increased these maximums to \$205,638 and \$2,056,380. These new maximums apply to violations occurring after August 1, 2016





# Even Higher Civil Penalties

- Through a Federal Register notice dated October 17, 2016, PHMSA announced its most recent changes to its risk-based penalty structure, including:
  - Across the board increases in civil penalties
  - Enhanced civil penalties for violations that are causal to incidents or violations that increase the severity of incidents , including those involving smaller hazardous liquid spills or methane releases
  - Higher civil penalties for repeat offences and where there are multiple instances of the same violation



# Greater Transparency for Penalty Determinations

- As announced in the October 17 Federal Register notice, a civil penalty summary, showing the framework for PHMSA's risk-based penalty structure, is now available on PHMSA's website
- In the past, PHMSA provided a civil penalty summary to operators in lieu of a penalty calculation
- Now PHMSA will provide a penalty calculation to an operator in connection with its enforcement case



# Rigorous Case Management Can Add to Deterrence

- PHMSA has accurate and complete enforcement data
- Pipeline cases are tracked every step of the way
- Case-related information is posted on PHMSA's Enforcement Transparency Website
- PHMSA's penalty collection rate is close to 100% and the website highlights that fact
- Publicity relating to PHMSA's enforcement efforts can serve to deter future violations by the respondent as well as by other operators



# Average days for NOPV Enforcement Cases

(From Notice Letter to Case Closure)



