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

2016 Pipeline Safety Trust Conference
October 21, 2016

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

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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)
THANK YOU