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June 16, 2020

Comments of the Pipeline Safety Trust on
Regulatory Reform for Hazardous Liquid Pipelines

Docket: PHMSA-2018-0047

The Pipeline Safety Trust generally disagrees with the premise of this proposed rulemaking – that pipeline systems are overregulated and require relief from overly burdensome regulations. We also understand that the Administration’s views in this regard are not likely to change even though the total cost savings from these proposals are in the range of \$275,000 per year, an amount that is not even statistically significant when compared to the collective operational budgets of hazardous liquid pipeline companies, let alone their collective net profits.

That being said, we will provide comments on the substance of the proposed changes. There are some changes that we applaud, like the proposals that more closely tie PHMSA’s spill response planning regulations to those of the Coast Guard. We think that proposal not only adds clarity but will improve the quality of facility response plans and, hopefully, will improve the actual responses to pipeline failures. There are a few proposals that cause some concern, however.

Section 190.343 Information made available to the public and request for protection of confidential commercial information.

The proposed changes in the process for making documents available to the public where an operator claims that some of it is confidential commercial information raise concerns for members of the public and organizations who request information from

PHMSA. While it may not make sense to have operators provide a redacted version of every document to PHMSA even though that document may never be requested, it also doesn't make sense to slow even further the process of providing documents to the public or the news media by allowing operators to make those redactions after PHMSA begins the FOIA review process, notifies the operator giving it "a reasonable period of time" to make a claim of confidentiality, which then must be reviewed by PHMSA, with no publicly available standards, to determine whether the information should be released. PHMSA would then notify the operator of its intent to release the information (if it decided to do that), giving the operator yet another opportunity to object, after which, and only then, PHMSA might release it. The decision to make this proposed change does not appear to ascribe any value to the timely dissemination to the public the information required to be made public under FOIA, or the ability of PHMSA to comply with its time deadlines prescribed by FOIA. While some change in the current procedure might be warranted to avoid the need to redact documents that may never be requested, the change as proposed imposes all of the burden on the public requestor of the information to wait for PHMSA to ask for the redacted document, claim of confidentiality to be reviewed, decision on release, notice to the operator, resolution of any objection, etc. At the very least, PHMSA should consider imposing time limitations on this process that will allow them to respond to FOIA requests within their statutory timeframes, or consider the potential costs in changing the process caused by responding to litigation against it for failure to comply with the time constraints of FOIA.

Worst-case discharge §194.105

The elimination of the use of historic discharges as one of the ways to identify a potential worst case discharge seems unnecessary. For the same reasons PHMSA says it's not necessary to include it – that PHMSA "has access to" historic spills, and "can use" that information even if not provided by the operator to judge whether the WCD calculation is accurate/sufficient – there is very little burden on the operator to identify its own historic high discharge and include it in determining the potential future WCD. PHMSA has made a policy choice that the calculation of worst case discharge be entirely hidden from the public, including the operator's claimed "worst" time frame for identifying a spill, shutting valves, isolation time and draindown volume. The public can see none of that, nor can we see the location(s) the operator has identified for purposes of calculating its WCD - the definition refers to the largest volume of a potential spill in each response zone of its plan. Sometimes those zones can be very large, covering whole states or parts of multiple states, and covering areas with widely varying abilities to recover from a spill or with widely varying access for responders. We see no reason to remove the one publicly available criteria that might be used in calculating the potential WCD, the volume that is used for purposes of identifying the resources that must be available to respond to a spill in that zone. In fact, we will once again argue

that the calculations of a worst case discharge should be made entirely public so that the public can have confidence that the claimed times for identification of a spill, shut down and isolation are all in line with reality - where things go wrong and mistakes are made - and not magical thinking.

The proposal to allow the use of spill modeling programs is another issue. At its most simple, a spill model could simply do the calculations in 194.105(b)(1). The use of a model is not necessarily bad. It's a question of whether the nature and quality of the model inputs are sufficient to avoid a "garbage in, garbage out" problem. Because the public NEVER sees these calculations, PHMSA's review of these calculations and modeling is the only check on the operator's assertions of shut down time, release time, drainage volume (which involves an assessment of the topography of the line at the location of the possible WCD), etc. The proposed change refers only to "detection and shutdown times", without any qualifier like maximum, or slowest, or remotely realistic. At the very least, these times need to be qualified by some adjective that will make the spill model outputs be consistent with the WORST-case discharge, and not the we-really-hope-it-won't-be-any-worse-than-this-discharge. Also, given the recent federal court decision that describes the limits on PHMSA's discretion in reviewing these plans, the regulations need to be improved with much more prescriptive requirements, so that PHMSA has a specific basis for rejecting or requiring changes to submitted plans based on faulty or overly optimistic WCD calculations and response times that are clearly not based in reality. Right now, the proposed spill model section is exceptionally vague, could be open to rampant abuse, and could put PHMSA in a position of not having sufficient regulatory language to require the operator to improve its plan before approval.

Adverse Weather § 194.107.

PHMSA is proposing to remove the phrase "in adverse weather conditions" from the definition of worst case discharge and put it instead into §194.107 as a consideration for operators when developing their plans. While it certainly makes sense for operators to include adverse weather conditions of all sorts in their response planning, there may be a problem in removing weather conditions from the definition, since the statutory definition in the Clean Water Act includes adverse weather conditions - "the largest foreseeable discharge in adverse weather conditions". Rather than removing it from the definition, we suggest PHMSA include adverse weather conditions in both places, ensuring that the regulations are consistent with the statute and that operators must include adverse weather conditions in the response planning.

Response Resources §194.115

We support the proposed changes recommended by the NTSB following the Enbridge failure in Marshall Michigan to align the requirements of this section with the equivalent Coast Guard and EPA regulations. Using the Coast Guard guidelines for identifying and

quantifying adequate response resources should improve operator plans and ability to respond to spills.

Section 195.50 Reporting accidents and § 195.52 Immediate Notice of Accidents

In the notice of proposed rulemaking, PHMSA includes this sentence: "Operators would still be required to report any accident that caused a death or a personal injury requiring hospitalization; that resulted in either a fire or explosion not intentionally set by the operator; **that resulted in pollution of any stream, river, lake, reservoir, or other similar body of water**; or that is otherwise significant in the judgment of the operator." The phrase in bold has created some confusion and PHMSA should clarify in any final rulemaking what is intended by that sentence and its implications for current and proposed changes in reporting requirements. A common reading of the existing rule is that spills less than 5 gallons that cause water pollution must be reported telephonically to the NRC, but don't require a written accident report to PHMSA as long as they don't meet any other reporting criteria. The sentence highlighted above seems to contradict that reading **if it is referring to reports to PHMSA**. PHMSA should clarify this in the final rule.

PHMSA is proposing to change the threshold requirements for reporting a spill. PHMSA is proposing to change the dollar amount of property damage (including cleanup, cost of the product, damage to the property of the operator or others) from \$50,000 to \$118,000. PHMSA's assessment is that this will reduce overall incident reports by 1%, and those reported only because of property damage by one-third. Our view is that failures of a magnitude that causes \$50,000 in damage are failures that should be reported. PHMSA should be seeking to obtain more information about pipeline failures, not less. They can only make regulatory decisions about design, manufacture or operating conditions they know cause problems. If they are told about fewer problems, they will not be in a position to determine whether they need to regulate certain safety issues, or even to know whether a safety condition exists. A 1% overall change in incident numbers reported, if that is correct, does not warrant this change, which will also disrupt any trend analyses of spills over time because of the definition change. PHMSA and the industry have all committed to pursuing a goal of zero incidents. We should not seek to reach that goal by defining our way out of reporting incidents, nor should we provide fodder to those who would mislead the public into believing that safety records are improving in circumstances when the only change is to redefine reportable failures.

We appreciate the opportunity to comment on these proposals.