

CHAPTER 20

The Federal Pipeline Safety Statutes: The Need for Increased Company Awareness

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§ 20.01. Introduction.

In a corner of the United States Department of Transportation (DOT) lies an agency with extensive authority over the operations of the nation's pipeline industry. This agency, the Office of Pipeline Safety (OPS), is responsible for the regulation and safety of oil, gas, and hazardous liquids pipelines and related facilities. It accomplishes its mission directly and through a cooperative regulatory program with the states, pursuant to two separate but parallel federal statutes, the Hazardous Liquid Pipeline Safety Act and the Natural Gas Pipeline Safety Act.

Recent amendments by Congress to these major federal statutes, and new rulemakings by OPS setting tougher safety standards for pipelines, make it essential for companies transporting oil and gas by pipeline to be aware of what these statutes require and of the potential liabilities they create. This Chapter will provide an overview of the two federal pipeline statutes and of their implementation by OPS.

The pipeline statutes raise several current issues of concern to pipeline operators. First, amendments to the statutes now give OPS the power to impose substantially more severe penalties for violations of the standards.⁽¹⁾ Second, the citizens' suit remedy in both statutes creates a source of liability above and beyond the sanctions available to OPS; liability that can include attorneys fees for parties who bring their own "private enforcement actions" against a pipeline operator.⁽²⁾

Third, OPS's enforcement regulations pose numerous difficulties for pipeline operators who are charged with a violation. OPS has the authority to develop and promulgate safety standards affecting the entire pipeline industry and the power to enforce those regulations through the imposition of civil or criminal penalties. The Associate Administrator for Pipeline Safety (Associate Administrator) has the authority to issue final orders imposing significant monetary penalties on pipeline operators or requiring them to modify the operation of their pipeline facilities. The enforcement regulations under which these agency actions can be taken were issued in final form without any advance notice or an opportunity for public comment. Because they can have a substantive adverse impact on operators, there is a serious question as to whether the rules were adopted in violation of the federal Administrative Procedure Act and are thus invalid.⁽³⁾

It also appears that persons subject to OPS enforcement actions may not be offered adjudicative procedures which afford them adequate due process protections. Although significant civil penalties can be assessed, in amounts as high as \$500,000 for a single occurrence, and a pipeline can be shut down, the enforcement procedures OPS has adopted are extremely informal and provide a minimal opportunity for the operator charged with a violation to develop a record.⁽⁴⁾

This Chapter will examine the OPS enforcement procedures in light of due process considerations that are found in other administrative proceedings. Congress and the courts have determined that agency adjudications which lead to significant civil penalties implicate due process rights, and that those rights must

be protected in the procedures which govern those adjudications. The Chapter concludes by proposing new procedures which will better protect operators' rights to a full and fair adjudication.⁽⁵⁾

The natural gas pipeline distribution system in the United States consists of more than 1.6 million miles of pipelines which are owned or operated by more than 2,000 entities. This includes approximately 37,000 miles of gathering lines, 290,000 miles of transmission lines, 812,000 miles of distribution mains, and 406,000 miles of service lines. In addition, approximately 81,000 master meter operators are regulated by OPS.⁽⁶⁾ DOT's jurisdiction over hazardous liquid pipelines, which currently transport mostly petroleum and petroleum products, extends to more than 208 operators and approximately 155,000 miles of pipelines.⁽⁷⁾

Fatalities and injuries do occur in conjunction with the operation of pipelines. For example, in 1988, the last year for which OPS has published figures, there were 258 reported incidents in natural gas transmission, gathering, or distribution pipelines.⁽⁸⁾ These incidents resulted in eighteen fatalities and eighty-seven injuries.⁽⁹⁾ With respect to hazardous liquid pipelines, in 1988 there were 196 incidents reported by operators which resulted in two fatalities and nineteen injuries.⁽¹⁰⁾

Beyond the safety of individuals, pipeline failures can also result in environmental damage to surrounding areas. For example, in 1988, more than 216,000 barrels of hazardous liquids, such as crude oil, diesel fuel, liquefied petroleum gas (LPG), and toluene were released as a result of pipeline failures.⁽¹¹⁾ Thus, while pipelines may be "one of the safest modes of transportation,"⁽¹²⁾ they do represent a risk to persons and property close to them. It is this risk that OPS attempts to reduce through regulation, enforcement, and research and development.

§ 20.02. The Office of Pipeline Safety.

OPS activities fall into six categories: (1) promulgation of pipeline safety regulations, (2) inspection of pipelines under federal jurisdiction, (3) enforcement of the regulations, (4) training of federal and state inspectors to inspect and enforce the regulations, (5) research and development projects to prevent pipeline failures, and (6) dissemination of data and educational materials to those involved in pipeline transportation. Of these, the two activities with the greatest direct impact on pipeline operators are the promulgation and enforcement of safety regulations.

[1]--Statutory Authority.

Pipeline safety jurisdiction has been vested in the DOT by Congress. The authority to enforce pipeline safety regulations has been delegated by the Secretary of Transportation to the Research and Special Programs Administration (RSPA)⁽¹³⁾ which in turn has designated OPS as the lead enforcement agency.⁽¹⁴⁾

Regulation of pipelines by OPS is governed by the following statutes: (1) the Natural Gas Pipeline Safety Act of 1968 (NGPSA),⁽¹⁵⁾ (2) the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA),⁽¹⁶⁾ (3) the Deepwater Port Act of 1974,⁽¹⁷⁾ (4) the International Bridge Act of 1972,⁽¹⁸⁾ (5) the Mineral Leasing Act,⁽¹⁹⁾ and (6) the Outer Continental Shelf Lands Act.⁽²⁰⁾ However, most of the regulatory activities associated with pipeline facilities are based upon the statutory requirements of NGPSA and HLPSA.

[a]--Legislative History of NGPSA and HLPSA.

NGPSA was originally enacted in 1968. It established minimum federal standards to govern the transportation of natural gas by pipeline and provided DOT with the statutory authority to regulate and enforce natural gas pipeline safety. DOT has exclusive federal jurisdiction over all interstate facilities, and