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PHMSA Issues Advisory Bulletins Regarding Leak Detection on Hazardous Liquid Pipelines and New Incident and Accident Report Forms

The Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA") has recently issued two Advisory Bulletins affecting owners and operators of hazardous liquid pipelines and gas transmission, distribution and gathering systems.

On January 19, 2010, PHMSA issued an advisory bulletin reminding owners or operators of hazardous liquid pipelines of the importance of prompt and effective leak detection capability in protecting public safety and the environment, and recommending that operators perform engineering analyses to determine if computer-based leak detection systems are necessary to improve leak detection performance and line balance processes.

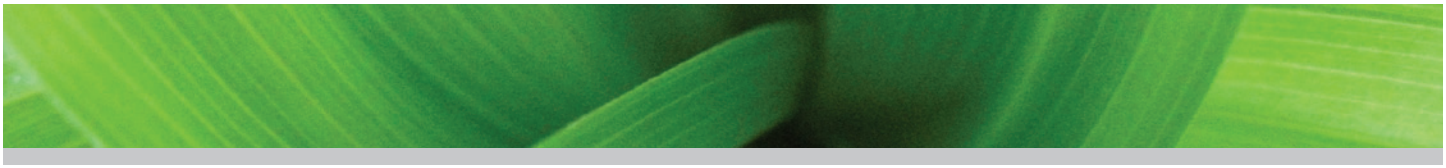
PHMSA issued a separate Advisory Bulletin on February 3, 2010, which notified owners and operators of gas pipelines and hazardous liquid pipelines that all incidents and accidents occurring on or after January 1, 2010 must be reported on newly revised forms.

HAZARDOUS LIQUID PIPELINES OWNERS/OPERATORS MUST ASSESS WHETHER COMPUTER-BASED LEAK DETECTION SYSTEMS ARE NECESSARY

Federal pipeline safety regulations require that operators of hazardous liquid pipelines implement multiple measures to identify and respond to leaks as promptly as possible, and to continually improve the performance of such measures. Recently, the National Transportation Safety Board ("NTSB") conducted a safety study of pipeline Supervisory Control and Data Acquisition ("SCADA") systems. This study was prompted by a number of hazardous liquid accidents investigated by the NTSB where leaks went undetected after indications of a leak appeared on the SCADA interface. The NTSB's study reinforces the importance of implementing effective monitoring systems, promptly recognizing leak accidents, and minimizing damage with quick response.

PHMSA requires that all hazardous liquid pipeline operators periodically patrol their pipeline right-of-ways to guard against potentially damaging third-party activity and to detect small leaks. PHSMA also requires that pipeline operators track product movement along the pipeline to ensure that all product arrives at interim storage points and at eventual destinations. Smaller pipelines often use manual calculations to track product movement. More complex pipelines with multiple sources and/or destinations may depend on computerized processes.

PHMSA issued the Advisory Bulletin to advise and remind hazardous liquid pipeline operators of the importance of prompt and effective leak detection capability in protecting public safety and the environment. PHMSA advises that each pipeline's operating plans and procedures should include provisions for performing an engineering analysis to determine whether a computer-based leak detection system is necessary to improve the pipeline's leak detection capabilities and line balance processes.



If an operator determines that a computer-based leak detection system would not improve leak detection performance and line balance processes, then PHMSA expects the operator to configure and staff its systems to ensure that routine, safe, and accurate manual calculations are performed at intervals of no less than one per hour when product is flowing through the line. Even if product is not flowing, Operators must promptly investigate all unexplained meter movements, pressure changes, and tank level changes. Operators also must ensure open and regular communication between all active source and delivery points along the pipeline either through verbal communication or through the use of SCADA or similar technology. During future PHMSA inspections, operators will be required to demonstrate the thoroughness of their reviews by producing documentation relating to engineering analyses performed to assess whether computerized leak detection systems are necessary to leak detection performance and line balance processes.

PHMSA's Advisory Bulletin places operators on notice that failure to assess current systems and to evaluate the need for computerized leak detection systems, and failure to perform manual calculations according to PHMSA's guidance will lead to findings of non-compliance and potential civil penalties.

NEW INCIDENT/ACCIDENT REPORT FORMS

PHMSA requires that operators of gas pipeline facilities and hazardous liquid pipelines file a written report within 30 days of certain adverse events, which are defined in the regulations as incidents for gas pipeline facilities and accidents for hazardous liquid pipelines. These reports must be submitted on one of three standardized forms, depending on whether the facility is a gas distribution line, a gas transmission or gathering system, or a hazardous liquid pipeline.

PHMSA has issued an Advisory Bulletin notifying owners and operators of hazardous liquid pipeline and gas pipeline facilities that revised report forms for incidents and accidents have been approved by the Office of Management and Budget. Incidents and accidents occurring after January 1, 2010 must be reported on the appropriate revised form. Forms must be submitted in hard copy until PHMSA implements its electronic online data entry system on about March 1, 2010. Copies of the new form and instructions are available on PHMSA's website at one of two locations: *http://phmsa.dot.gov/pipeline/library/forms* or *http://opsweb.phmsa.dot.gov/*

PHMSA states that the new incident/accident forms are necessary to make the information collected more useful and to provide additional, more detailed data for use in developing and enforcing PHMSA's risk-based regulatory programs.

FOR ADDITIONAL INFORMATION

Van Ness Feldman regularly counsels clients on issues related to pipeline construction, permitting, safety, and operation. Specifically, the firm has in-depth experience counseling clients on compliance with the Pipeline Safety Act and regulations. If you are interested in additional information regarding PHMSA's regulations, or any other energy-related federal activity, please contact Susan Olenchuk in our Washington D.C. Office at (202) 298-1800, or any member of the firm's Natural Gas practice group or Products Pipeline practice group.