

PHMSA Issues Advisory Bulletin Requiring Hazardous Liquid Pipeline Operators to Review Oil Spill Response Plans by July 28, 2010

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In response to the ongoing Deepwater Horizon oil spill in the Gulf of Mexico and the diversion of resources from across the Nation to the areas affected by the spill, on June 28, 2010, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an Advisory Bulletin reminding operators of onshore hazardous liquid pipeline facilities of the requirement to review and update mandatory oil spill response plans to ensure the necessary response to a properly calculated "worst case discharge." Operators must conduct such reviews and submit any response plan updates to PHMSA before July 28, 2010.

ALL HAZARDOUS LIQUID PIPELINES MUST HAVE OIL SPILL AND EMERGENCY RESPONSE PLANS

PHMSA's Part 194 regulations require operators of onshore oil pipelines that could reasonably be expected to cause significant or substantial environmental harm by discharging oil into any navigable water or adjoining shoreline to prepare and submit oil spill response plans designed to reduce the environmental impact of an oil discharge. Such plans must be individually tailored to the geographic location of the facility and contain detailed procedures for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge. Operators must calculate a worst case discharge scenario for the facility, develop procedures for responding to such a scenario, and identify and ensure necessary resources for the response. In addition, plans must contain immediate notification procedures, spill detection and mitigation procedures, training, and a drill or simulation program. Operators must review and update their oil spill response plans at least every five years, unless new or different operating conditions arise warranting more frequent review.

In addition, Section 195.402 of PHMSA's regulations requires operators of hazardous liquid pipelines to prepare and follow emergency response procedures to ensure safety when an emergency condition occurs, including procedures for having sufficient resources available at the scene, taking necessary action to minimize the volume of any hazardous liquid release, controlling released hazardous liquids, and minimizing public exposure to injury. Operators also must coordinate preplanned and actual emergency responses with emergency responders and appropriate public officials. These emergency response plans must be reviewed and updated annually.



PHMSA'S ADVISORY BULLETIN

The Advisory Bulletin reminds operators of these regulatory requirements and requires that operators perform an immediate review of their existing oil spill response plans and submit any updates to PHMSA by July 28, 2010. Operators must ensure that their plans properly calculate the worst case spill scenario for the facility, identify and ensure sufficient resources to respond to such a discharge, and evaluate the remaining capability of the identified response resources. PHMSA will not consider a plan to be in compliance with the “to the maximum extent practicable” regulatory requirement if the plan continues to list as “practicable” resources for responding to a worst case discharge if those resources are, or are requested to be, relocated to respond to the Deepwater Horizon oil spill, until such resources are returned.

Operators who indicate no need to update their plans must provide PHMSA with an explanation of why no updates are necessary.

PHMSA also reminds onshore hazardous liquid pipeline operators of their obligation to maintain their response plans on-site, to conduct regular drills of their plans, and to maintain the necessary liaison with emergency responders and other appropriate public officials.

IMPLICATIONS OF THE ADVISORY BULLETIN

The Advisory Bulletin reflects one aspect of the larger federal response to the Deepwater Horizon oil spill in the Gulf of Mexico. Although the oil spill in the Gulf did not involve onshore hazardous liquid pipelines, the magnitude of the event has prompted PHMSA to take measures to ensure that all operators of onshore hazardous liquid pipelines that could reasonably be expected to discharge oil into any navigable water of the United States or adjoining shorelines are prepared to respond to emergency circumstances involving pipeline discharges. The Advisory Bulletin puts operators on notice that their current oil spill response plans should not rely on resources that are responding to the Deepwater Horizon oil spill; therefore, may operators will likely need to reassess their response resources.

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 Advisory Bulletin, or any other energy-related federal activity, please contact Susan Olenchuk at (202) 298-1896, or Jonathan Simon at (202) 298-1932, or any member of the firm's Natural Gas or Oil and Products Pipeline practice groups.

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