



MURCHISON
LAW FIRM, PLLC

AMPP Corrosion Conference & Expo 2021
PHMSA Pipeline Safety Forum

Behavior [Still] Matters
Behavior [Always] Matters

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April 22, 2021

The Pipeline & Energy Authority



Overview

- **Fundamentals**
- **What Happens When An “Event” Occurs?**
- **Case Study**
 - **Real World Example**
 - **Behavior Matters**
- **Corrosion and Punishment**
- **How Can You Help Your Future Self?**



Fundamentals – What Authorities Apply?



Pipeline Safety Act – 49 U.S.C. 60101 et. seq. (2015) – THE LAW

- 60102(a)(2) – Minimum Safety Standards
- 60122 – Civil Penalties
- 60123 – Criminal Penalties
- 60112 – Greater Pain
- 60129 – Protection of Employees Providing Pipeline Safety Information



PIPES Act of 2020 – signed on Dec. 27, 2020

- Amends 60102 (by adding 60102(q)) – Leak detection and repair programs for (1) regulated gas gathering lines and (2) new and existing gas transmission and distribution pipeline facilities
- Amends 60122(b)(1) – Civil penalties and “self-disclosure and correction” consideration
- Amends 60129 – Extends whistleblower protections



The Regulations – How Do They Differ From the PSA?

49 C.F.R. 195 – Transportation of Hazardous Liquids by Pipeline

Subpart H – Corrosion Control

49 C.F.R. 192 – Transportation of Natural and Other Gas by Pipeline

Subpart I – Requirements for Corrosion Control

These subparts prescribe the minimum safety requirements for protecting against corrosion

- Which pipelines must have cathodic protection
- Determining adequacy of cathodic protection
- Monitoring corrosion control
- Remedial measures
- Atmospheric corrosion control
- Direct assessment
- Records maintenance



49 C.F.R 195 – Subpart G - Qualification of Pipeline Personnel

49 C.F.R. 192 – Subpart N - Qualification of Pipeline Personnel

Minimum Requirements for Qualification of Individuals Performing Covered Tasks on a Pipeline Facility

- Written operator qualification program
- Required recordkeeping

49 C.F.R. 195.452 – Pipeline Integrity Management in High Consequence Areas

49 C.F.R. Part 192 – Subpart O – Gas Transmission Pipeline Integrity Management

Minimum Requirements of an Integrity Management Program

- High Consequence Areas (Liquids and Gas) and Could Affect an HCA (Liquids)



NACE SP0169-2007 – Standard Practice for Control of External Corrosion

- CP criteria for achieving effective control of external corrosion. *Incorporated by reference at 49 C.F.R. § 195.571 (49 C.F.R. § 195.3)*

ASNI/NACE SP0502-2010 – Pipeline External Corrosion Direct Assessment Methodology

- *Requirements for performing external corrosion direct assessment. Incorporated by reference at 49 C.F.R. § 192.923(b) (49 C.F.R. § 192.7); 49 C.F.R. § 195.588(b) (49 C.F.R. § 195.3)*

ASME B31Q-2010 – Pipeline Personnel Qualification

- Requirements for developing and implementing an effective Personnel Qualification program

API RP 1161 - Recommended Practice for Pipeline Operator Qualification

- Guidance for developing and maintaining a compliant OQ program



Clean Water Act

Federal Water Pollution Control Act § 311

- Regulates discharge of oil or hazardous substances into or upon the waters of the United States.
- Generally, any person who is in charge of any onshore facility from which oil is discharged in violation of the CWA is subject to civil penalties up to
 - \$25,000 per day of violation or
 - \$1,000 per barrel
- Liability for actual costs of removal.





What Happens When An “Event” Occurs?



When An Event Occurs, Company Will ALWAYS Go To Engineer/Technician FIRST.

What Do I Mean By Event?

- Accidents and Incidents – only one kind...
- Investigations gone bad
- Audits gone bad
- Inspections gone bad



Why Does The Company Go To The Engineer/Technician First?

- Engineer/Technician has knowledge, skill, education, experience, training, and day-to-day familiarity
- Responsibility Flows Downhill – responsible for:
 - Record keeping
 - Safe operating procedures
 - Protect property and lives



When An Event Occurs, Company Will ALWAYS Go To Engineer/Technician FIRST.

What will you be asked?

- What did you know?
- When did you know?
- If you didn't know, when should you have known?
- What did you do about it if you did know?
- Where are your records, your notes, your emails...and texts?





Case Study



Anyone Recognize This?





Shell Pipeline Company – Milwaukee Airport Release

- Onshore corrosion coordinator responsible for Shell pipeline delivering jet fuel to the Milwaukee airport
- Responsibilities included rectifier reads and annual pipe-to-soil reads
- Did not conduct required reads for about a year
- PHMSA schedules an inspection
- Technician enters made-up data into computer
- Next month, jet fuel released from corrosion damage – 214 bbl of jet fuel released - \$19.3 million to respond and cleanup





Shell Pipeline Company – Milwaukee Airport Release

- Criminal charges brought against technician
- Three counts of violating the Pipeline Safety Act
 - Failure to conduct the required readings and making a false statement to PHMSA in the form of false data
- Technician felt overworked and overwhelmed in his role
- Pleaded guilty to all counts
- Sentenced to 5 years probation
- Ordered to pay \$19.3 million in restitution





Shell Pipeline Company – Milwaukee Airport Release

Behavior Matters:

- Um, do it well
- Keep thorough and precise records
- Stop and reflect – Have I met all requirements and all intents of regulations and company procedures?
- Little things can become disproportionately significant in a hurry
- History catches up with itself
- Significant liability is ready, ... waiting...





Corrosion and Punishment



Corrosion and Punishment

Assessment Consideration: NATURE

49 C.F.R. 190.225(a)	PHMSA Violation Report Part E4 Nature of Violation	Civil Penalty Range
<p>The Associate Administrator <u>will</u> consider the nature of the violation.</p>	<ul style="list-style-type: none"> • Records Examples: missing, inaccurate, or incomplete records • Activities Examples: performance or conduct of activities: inspections, tests, maintenance, meetings, not preparing procedures, not following procedures • Equipment/Facilities Examples: equipment not installed, missing, defective 	<p>\$1,440 → \$8,640</p>



Corrosion and Punishment

Assessment Consideration: **CIRCUMSTANCES**

49 C.F.R. 190.225(a)	PHMSA Violation Report Part E5 Circumstances of Violation	Civil Penalty Range
<p>The Associate Administrator <u>will</u> consider the circumstances of the violation.</p>	<ul style="list-style-type: none"> • Operator self-reported before discovery by PHMSA <ul style="list-style-type: none"> * <i>PIPES Act of 2020 adds the consideration of “self-disclosure and correction of violation, or action to correct violation prior to discovery” by PHMSA</i> • Circumstances and timing of self-report • PHMSA or State discovered violation • Public reported violation to PHMSA or State • <u>Description:</u> <ul style="list-style-type: none"> • Date violation started • Duration of longest violation in days 	<p>Variable credit → \$13,824</p>



Corrosion and Punishment

Assessment Consideration: **GRAVITY**

49 C.F.R. 190.225(a)	PHMSA Violation Report Part E6 Gravity of Violation	Civil Penalty Range
<p>The Associate Administrator <u>will</u> consider the gravity of the violation.</p>	<ul style="list-style-type: none"> • Violation was causal factor in an accident/incident • Violation increased severity of an accident/incident • Violation occurred in HCA or HCA “could affect” segment • Violation occurred not in HCA or HCA “could affect” segment • Violation occurred, however, pipeline safety was minimally affected 	<p>\$1,440 → Maximum</p> <p>The <u>number of instances</u> incrementally increases the penalty.</p> <p>Factor multipliers for:</p> <ol style="list-style-type: none"> 1. Reportable accident or incident 2. Unintentionally released Gas 3. Hazardous Liquid releases 4. Hospitalization injuries 5. Fatalities



Corrosion and Punishment

Assessment Consideration: CULPABILITY

49 C.F.R. 190.225(a)	PHMSA Violation Report Part E7 Culpability	Civil Penalty Range
<p>The Associate Administrator <u>will</u> consider the degree of the respondent's culpability.</p>	<ul style="list-style-type: none"> • Operator took egregious action that evidenced an effort to evade compliance or conceal non-compliance • Operator made deliberate decision not to comply with a requirement that was clearly applicable • Operator failed to comply with a requirement that was clearly applicable • After operator found non-compliance, took documented action to address cause of non-compliance, and was in process of correcting before PHMSA learned of violation • After operator found non-compliance, took documented action to address the cause of non-compliance, and corrected before PHMSA learned of violation 	<p>- \$25,920 → Maximum</p>



Corrosion and Punishment

Assessment Consideration:

HISTORY OF PRIOR OFFENSES

49 C.F.R. 190.225(a)	PHMSA Violation Report Part C Respondent's History of Prior Offenses	Civil Penalty Range
<p>The Associate Administrator will consider the respondent's history of prior offenses.</p>	<p>Prior violations in the <u>five years</u> that precede date of Notice.</p> <ul style="list-style-type: none"> • Include civil penalty or compliance order • May be the same, similar or different violations than alleged 	<p>\$0 → \$17,280</p>



Corrosion and Punishment

Assessment Consideration: GOOD FAITH

49 C.F.R. 190.225(a)	PHMSA Violation Report Part E8 Good Faith	Civil Penalty Range
<p>The Associate Administrator will consider any good faith by the respondent in attempting to achieve compliance.</p>	<ul style="list-style-type: none"> Operator had reasonable justification for non-compliance <u>Examples:</u> <ul style="list-style-type: none"> Operator's interpretation of requirement was reasonable. Operator failed to achieve compliance for reasons such as unforeseeable events or conditions that were partly or wholly outside its control. Operator did not have reasonable justification for non-compliance 	<p>- \$17,280 → \$0</p>



Corrosion and Punishment

Assessment Consideration:

ABILITY TO CONTINUE IN BUSINESS

49 C.F.R. 190.225(a)		Civil Penalty Range
The Associate Administrator <u>will</u> consider the effect on respondent's ability to continue in business.	Determination based on additional information that is presented later by operator.	Variable credit



Corrosion and Punishment

Assessment Consideration: **ECONOMIC BENEFIT**

49 C.F.R. 190.225(b)	PHMSA Violation Report Part E9 Economic Benefit	Civil Penalty Range
<p>The Associate Administrator may consider the economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages</p>	<p>Provide detail to support the dollar amount of any determined economic benefit gained from not complying with the regulation.</p>	<p>Variable addition</p>



Corrosion and Punishment

Assessment Consideration:

OTHER MATTERS AS JUSTICE MAY REQUIRE

49 C.F.R. 190.225(b)	PHMSA Violation Report Part E10 Additional Considerations	Civil Penalty Range
<p>The Associate Administrator may consider such other matters as justice may require.</p>	<p>Additional comments applicable to a proposed civil penalty.</p> <p><u>Examples:</u></p> <ul style="list-style-type: none"> • Operator’s written procedures for the cited violation exceeded the regulatory requirement. • Violation of Section 60129, protection of employees providing pipeline safety information • Repeat violation. • Repeat of a repeat violation. 	<p>- \$17,280 → Maximum</p>

You call that Justice? ...



How Can You Help Your Future Self?



Bottom Line –

1. Do What Ya Gotta Do
 2. First, Do What Ya Oughta Do
- Bad records – or no records to start with – present the agency with easy findings of violation
 - Detracts PHMSA attention from pipeline safety
 - Generally, better outcome with good records
 - Pencil-whipping is a dead-end road – “Don’t be that...”





Manage Risk

- There's a reason...
 - Not everything is within your control
 - Control very well those things that are within your control
- Create and maintain detailed and precise records
 - Including records of investigations of near loss situations
- Maintain an adequate document/record retention program
 - Records are there when you need them
- When in doubt – ask counsel





Manage Risk and the Social License

- Agency Rapport
 - Interact with PHMSA regularly, not just during inspections
 - Communicate and build relationships with PHMSA over time
- Pipeline Safety Management Systems – API RP 1173
 - Addresses a means to continually operate safely and methodically act to improve safety performance
 - Plan-Do-Check-Act – the cycle of continuous assessment and improvement
 - PHMSA participated in the development of SMS and promotes its implementation





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