



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

April 20, 2023

**NOTICE OF LIMITED ENFORCEMENT DISCRETION FOR CERTAIN ONSHORE
GAS TRANSMISSION PIPELINES CONDUCTING REMEDIAL ACTIONS UNDER 49
CFR 192.473(c)(4)**

Re: Limited Enforcement Discretion for Operators Delayed in Certain Good-Faith Efforts to Complete Remedial Actions under 49 CFR 192.473(c)(4).

On August 24, 2022, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) published in the *Federal Register* a final rule titled “Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments.”¹ This Final Rule responds to recommendations of the National Transportation Safety Board in the wake of the deadly 2010 incident on a Pacific Gas & Electric gas transmission pipeline in San Bruno, California. The Final Rule introduces an amended 49 CFR 192.473(c), which requires interference surveys to ensure pipeline integrity from stray electrical currents that can accelerate external corrosion. After identification of deficiencies from those surveys, subparagraph (c)(4) of that provision of the Final Rule requires operators to complete remedial actions no later than the earlier of (1) 15 months (measured from the completion of the interference survey), or (2) as soon as practicable, but not to exceed 6 months following acquisition of permits necessary for those remedial actions.

PHMSA expects that 15 months following completion of an interference survey is sufficient time to complete any remedial actions from deficiencies identified from that survey, and notes that § 192.473(c)(4) requires operators to conduct remedial actions “promptly.” However, PHMSA understands that there may be certain situations in which, due to no fault of its own, an operator attempting in good faith to remediate promptly is unable to complete the remedial actions within the 15-month period prescribed in the Final Rule. These include: (1) an operator which timely applies for, and diligently pursues, permits to conduct remedial actions but does not receive one or more necessary permits from the pertinent regulatory authority(ies) allowing them to complete remedial actions within the 15-month period; (2) notwithstanding an operator’s timely and diligent efforts, where a third-party delays an operator in acquiring access to rights-of-way necessary to conduct remedial action; or (3) where, during or after initial remediation efforts, the operator receives further interference current survey findings that require further remediation, and that may delay completion of ongoing remediation actions. In each of

¹ 87 FR 52224 (Aug. 24, 2022) (“Final Rule”).

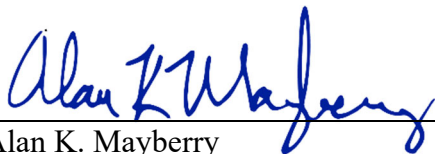
these three scenarios, action outside the operator's control may impede an operator in meeting the Final Rule's 15-month timeline for completing remediation actions. PHMSA expects these scenarios for exceeding the 15-month remediation action timeline to be exceedingly rare and reminds operators that § 192.473(c)(4) requires that they apply for any permits necessary for remedial action no later than "6 months of completing the interference survey that identified the deficiency."

Nonetheless, in those circumstances in which an operator has undertaken good faith, diligent efforts to complete remediation action, and where such good faith efforts are documented by the operator, PHMSA will not enforce the 15-month compliance deadline under § 192.473(c)(4) for completion of remedial actions that is delayed due to: (1) obtaining necessary permits notwithstanding timely applications and diligence in pursuit, (2) acquiring access to necessary rights-of-way notwithstanding timely and diligent efforts, or (3) subsequent survey findings requiring further remediation. Operators that do not complete remediation within the 15-month period and who are availing themselves of this enforcement discretion notice must notify PHMSA, which they can do using procedures similar to those found in § 192.18. Following receipt of any necessary permits and/or access to rights-of-way, PHMSA expects operators to (consistent with § 192.473(c)(4)) complete any remedial actions "promptly" and "as soon as practicable, but not to exceed 6 months" from the date of receipt of any such (delayed) permits or access rights.

PHMSA will memorialize this enforcement discretion within implementation material for PHMSA inspectors and recommends that its state partners conform to the contents of this limited enforcement discretion. PHMSA will consider in a future rulemaking a similar allowance for good faith delay, with § 192.18 notification, as a narrow exception to § 192.473(c)(4). This limited enforcement discretion will remain in effect until such time as that future rulemaking is completed.

Regulated entities may rely on this notice as a temporary safeguard from PHMSA regulatory enforcement as described herein. To the extent this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way. Nothing herein prohibits PHMSA from rescinding this limited exercise of its enforcement discretion and pursuing an enforcement action if it determines that a significant safety issue warrants doing so. Nothing herein relieves operators from compliance with any other applicable provisions of Federal regulations or other law, and PHMSA reserves the right to exercise all of its other authorities.

Issued April 20, 2023, in Washington, D.C.



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