

National Pipeline Safety Forum

Monday, April 18, 2011

9:00 am – 3:30 pm

U.S. Department of Transportation Headquarters, West Atrium

Contributions by:

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Code of Conduct

Improving pipeline safety

Introduction: Unfortunately over the past 10 years, compression fittings have been inappropriately attacked by certain gas company operators, Public Service Commissions (PSCs), NTSB and PHMSA. We have commented extensively in various venues to defend the integrity and reputation of not only NORMAC fittings, but also those of our competitors. Through all this, we have found that the vast majority of operators and regulators are competent and of the highest integrity. Our nation's piping system is truly an engineering marvel and natural gas is essential to our great country.

It is my opinion based on my in-depth experience that the pipeline industry lacks the appropriate level of enforcement of safety regulations. Further, not enough is being done to hold PSCs and their Staffs accountable when they do not enforce their regulations. State governments must develop mechanisms to audit actions by PSCs and their Staff, identify actions that are not in the best interest of public safety, and to impose sanctions on those who do not uphold the values and mission of DOT/PHMSA. To that end, I propose that a Code of Conduct be developed by DOT and adopted by state Governors to aid uniform enforcement of safety regulations.

Enforcement: PHMSA's regulations for pipeline safety are sound, but have not been consistently enforced. PHMSA has little power to enforce regulations, because responsibility for pipeline safety lies with the States through their individual PSCs. PSC Staff has triple responsibilities: It must collaborate closely with gas pipeline operators, but it must also investigate violations and then additionally recommend actions against those same operators. Staff must act as "good cop", "bad cop", but also serve as prosecuting attorney. These are undeniably difficult tasks to manage, requiring individuals to act with the highest level of integrity and impartiality.

Unfortunately, NORMAC has been witness to several instances where Staff and their PSCs, PHMSA and NTSB have taken actions that defy facts, data, logic and sound reasoning. I refer you to our most recent comments filed March 31, 2011 in docket DOT-OST-2011-0025 for a detailed discussion of these inappropriate actions.

Accountability for accuracy in reporting: In each of the cases referenced in our comments, rather than addressing compliance with state and Federal regulation, PSCs, certain operators, NTSB and PHMSA have mistakenly focused blame on a particular class of product – compression fittings. By identifying the fitting itself as problematic, they have in my opinion, not fulfilled their responsibility to adhere to or enforce regulations. I believe the resulting reports have

distracted attention and resources away from developing solutions to the root causes for leaks.

As explained in our DOT comments, despite the fact that two of these reports were discredited by FERC in 2006, PHMSA in 2008 issued an advisory bulletin that relied in part on those very discredited reports.

Clearly, mechanisms are needed at both the state and Federal levels for validating reports in advance of publication and for retracting reports later found to be invalid. The larger question is whether this problematic behavior is restricted to the compression fitting issue, or is this symptomatic of a larger problem? Does this type of behavior also exist in enforcement actions? Is the preparation, publication and blind acceptance of reports that are not based on factual data a common practice? If so, that practice must end.

Where a PSC fails to enforce their regulations, then by perception or reality, this problem is compounded and public trust is eroded, even permanently damaged.

Enforceable Code of Conduct: The entire pipeline community, indeed the entire country, needs to know the facts in each and every case so that we can effectively end the string of tragic incidents. Therefore, please consider the following recommendations:

PHMSA / DOT / NAPSRS should develop a Code of Conduct that could be adopted by each State. This Code should be aligned with DOT/PHMSA's emphasis on data-driven, risk-based decisions. Individual States could then develop policies and procedures to hold accountable those who do not uphold the code.

Key elements of this Code of Conduct would provide that:

- PSCs and their Staff must conduct themselves with the highest level of integrity.
- PSCs and their Staff must eliminate any hint of partiality from enforcement of safety regulations. The public has a right to expect that our regulators' integrity is beyond reproach.
- The State Attorney General, or other enforcement arms, must impose sanctions on violators if they do not act in accord with the Code of Conduct.
- Root causes for incidents must be clearly and transparently identified. Findings must be arrived at by logical, verifiable methods. Reports must include all information important to readers who might be investigating similar incidents.
- Reports must pass peer review before publication.

- Reports that are discredited must be recalled and any decisions based on those reports must be reevaluated.
- Consideration should be given to an appeal process that would permit persons adversely affected by PSC reports to challenge them before PHMSA and seek independent review of the PSC's findings.
- Where product is in question, prompt and direct input from manufacturers must be solicited. They have both the right to defend their product and a responsibility as an expert stakeholder in the pipeline community to assist in the investigation.
- Settlements or stipulated agreements entered into by PSCs with the gas operator should be transparent, permitting any affected party to review, and if necessary, challenge the controlling documents.

PHMSA needs to hold PSCs accountable: At present, other than withholding funding, there is no mechanism for PHMSA to effectively influence, guide, control, or impose sanctions on a PSC or its Staff when its actions fall short of appropriately enforcing regulations, enhancing pipeline safety or upholding the mission of DOT/PHMSA. DOT must find a way to enhance PHMSA's power to hold State PSCs accountable.

Conclusion: In order to provide optimal gas pipeline safety, regulations must be enforced. Current regulations are adequate but enforcement may be lacking. My experience has led me to the opinion that certain, not all, regulatory agencies have demonstrated an adequate level of data-based accountability and enforcement. Pipeline failure incidents are largely avoidable if regulatory procedures and standards are promoted with sufficient clarity, enforced with penalties for lack of compliance and communicated thoroughly and with conviction to all producers, installers and recipients of pipeline technology. The vast majority of regulators and operators have held themselves to a high standard of conduct and as a result, have not experienced problems. However, more needs to be done to ensure that all operators meet or exceed the minimum requirements laid out in the regulations. Therefore we ask that you consider developing and implementing a Code of Conduct as I've outlined today. I appreciate your time and will be present at the Forum to respond to any questions that you may have.

Respectfully Submitted,

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