



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUN 14 2011

Mr. Jason Montoya, PE
Bureau Chief
New Mexico Public Regulatory Commission
1120 Paseo de Peralta, Room 416
Santa Fe, NM 87504-1269

Dear Mr. Montoya:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated November 29, 2010, you requested an interpretation of the applicability of the incident reporting requirements for events involving the release of gas from a gas pipeline. Specifically, you requested clarification on how the definition of the word "incident" in 49 CFR 191.3 would apply with respect to three separate events that occurred in New Mexico in 2010 that resulted in fatalities or hospitalization. You described the incidents as follows:

The first fatality (Report No. 2010041-15053) involved a driver hitting a gas meter and continuing down the street where he ran into a tree; the second fatality (Report No. 2010078-15106) was identical except that the driver ran into a horse trailer; and the third fatality (Report No. 20100106-15140) was very similar as well. All incidents resulted in less than \$15,000 operator property damage, including cost of gas lost and repairs.

You stated your understanding that § 191.3 would require all three incidents to be reportable incidents because each of the events involved a release of gas and either a death or inpatient hospitalization. You further stated that PHMSA informed you that incident reporting was not required for incidents 2010041-15053 and 2010078-15106 but PHMSA did not mention the similar incident 20100106-15140 and this has caused uncertainty in making determinations on what is and is not considered a reportable incident.

You further asked PHMSA to clarify the manner in which operators are required to calculate estimated property damage costs for incidents similar to the ones you described. In particular, you asked whether the damage to the vehicles involved in these incidents needed to be included in estimating the costs.

At the time of these particular incidents, the definition of an incident in § 191.3 read:

Incident means any of the following events:

- (1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility, and
 - (i) A death, or personal injury necessitating in-patient hospitalization; or

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters. These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

- (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.
- (2) An event that results in an emergency shutdown of an LNG facility.
- (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

Since then, the agency modified the definition of incident in § 191.3 as follows (75 FR 72905, November 26, 2010):

Incident means any of the following events:

- (1) An event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
 - (i) A death, or personal injury necessitating in-patient hospitalization;
 - (ii) Estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;
 - (iii) Unintentional estimated gas loss of three million cubic feet or more;
- (2) An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.
- (3) An event that is significant in the judgment of the operator even though it did not meet the criteria of paragraphs (1) or (2) of this definition.

Under both definitions, each report describes a series of events, beginning with a vehicle striking a gas pipeline facility and gas being released. At that moment, there did not appear to be any injuries or fatalities. After the initial contact with gas pipeline facilities and the gas release, each vehicle struck other objects. The injuries and fatalities reportedly occurred in conjunction with these later events. That is, they did not happen as a result of the vehicle striking the gas pipeline. Since the initial event including the release of gas did not involve injuries, fatalities, or property damage exceeding \$50,000, the criteria in paragraphs (1)(i) and (ii) have not been met for any of the three incidents. Therefore, reporting was not required for any of these three incidents. If the operator elects to report one or more of the events under paragraph (3) of the incident definition anyway, it should exclude the injuries and fatalities from the report. Since PHMSA is no longer processing requests for rescinding telephonic notices to the National Response Center, no action is needed related to any telephonic notices associated with these events.

For the determination of the property damage calculation, the cost of the damage to a vehicle striking a gas pipeline facility would normally be included in determining whether the incident was reportable. In this case, however, it was acceptable not to include these costs in the calculations because it is unknown whether the vehicle damage was incurred as a result of striking the gas facility or as a result of subsequently striking structures elsewhere.¹

¹ An operator would, however, be expected to make a reasonable effort to ascertain the extent to which the damage was attributable to striking the gas pipeline facility.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at 202-366-4046.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale", is written over the typed name. The signature is fluid and cursive, with a large initial "J" and "A".

John A. Gale
Director, Office of Standards
and Rulemaking

PT-11-03

NEW MEXICO PUBLIC REGULATION COMMISSION

DEC 08 2010

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November 29, 2010

Office of Pipeline Safety
1200 New Jersey Ave SE, P-80
Washington, DC 20590

To Whom It May Concern:

This letter is requesting an interpretation from the Office of Pipeline Safety ("OPS") relative to the definition of the word "incident" in 49 C.F.R. § 191.3. Certain background information is provided below for reference.

On May 29, 2010 (2010041-15053), September 2, 2010 (2010078-15106) and October 23, 2010 (20100106-15140), similar "incidents" occurred in New Mexico which resulted in fatalities or in-patient hospitalization. The "incidents" involved a vehicle striking a gas meter causing a release of gas from the pipeline. However, the cause of death or hospitalization did not result from the release of gas, and an OPS interpretation would be appreciated.

The first fatality involved a driver hitting a gas meter and continuing down the street where he ran into a tree, the second fatality was identical, except that the driver ran into a horse trailer, and the third was very similar as well. All "incidents" resulted in less than \$15,000 operator property damage, including cost of gas lost and repairs.

49 CFR Part 191.3 defines a reportable incident as:

- (1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG Facility **and**
 - (i) A death, or personal injury necessitating in-patient hospitalization; or
 - (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.
- (2) An event that results in an emergency shutdown of an LNG facility.
- (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

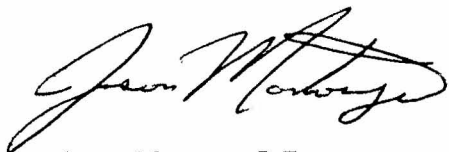
This regulation would require all three incidents to be reportable because of the presence of either a death or in-patient hospitalization in combination with a release of gas due to the word "and" following paragraph (1) above. Per the attached email, PHMSA has requested 2010041-15053 and 2010078-15106 be rescinded but not 20100106-15140 and has caused confusion on how operators shall determine what is and isn't considered a reportable "incident".

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It would also be helpful if OPS could clarify how operators shall calculate estimated property damage costs for "incidents" similar to these in question above. For example, does the damage to the vehicles involved in these incidents need to be included?

We look forward to your response and feel free to contact me with any questions at (505) 946-8314.

Sincerely,



Jason Montoya, P.E.
Bureau Chief

IL: il

Montoya, Jason N, PRC

From: Chris.Mclaren@dot.gov
Sent: Tuesday, November 30, 2010 6:52 AM
To: Montoya, Jason N, PRC
Cc: Blaine.Keener@dot.gov; joseph.elmer@dot.gov
Subject: Request for rescinding of incident reports GD20100041 & GD20100078 by New Mexico Gas Company
Attachments: GasDistrIncidentInstructionsPHMSA_F7100-1.pdf; GasDistribution_20100078_15106_10.04.2010.pdf; GasDistribution_20100041_15053_06.28.2010.pdf

Jason,

I need some support in asking New Mexico Gas (NMG) to formally ask PHMSA to rescind two (2) Gas Distribution Incident reports. NMG can email the link below with the request. These two significant incidents are not reportable (based on the data reviewed), and the two significant incidents are really affecting our data analysis at HQ adversely. PHMSA is appreciative of Operators reporting incidents in a thorough and comprehensive manner and realizes that their lack of reporting can be a compliance issue. However, in these 2 cases, we respectfully request that these reports be rescinded. The two reports are as follows (see attachments):

1. GD20100041 in NM from New Mexico Gas Co. Event involved a car hitting, among other things, a gas meter. ~7-9-2010 all parties agree the event was not reportable and the report should be rescinded.
2. GD20100078 in NM from New Mexico Gas Co. Event involved a car hitting, among other things, a gas meter. Narrative states that the release of natural gas was not the cause of the fatality or associated damage. At a minimum, fatality should be removed. Based on property damage less than \$50,000, report could be rescinded.

(from page 4 of instruction attachment)

RESCINDING A REPORT

An operator who reports an incident and upon subsequent investigation determines that the event did not meet the criteria in 49 CFR 191.3 may request that their report be rescinded. Requests for rescission should be submitted on company letterhead and mailed or faxed to the Information Resources Manager at the address/fax number above. Requests may also be submitted by email to InformationResourcesManager@dot.gov. Requests should include the following information:

- a. Operator name,
- b. PHMSA-issued operator ID number,
- c. The number assigned by the National Response Center when telephonic report was made in accordance with 49 CFR 191.5,
- d. Date of the incident,
- e. Location of the incident (city, county, state), and
- f. A brief statement as to why the report should be rescinded.

Thanks, Chris.

Chris McLaren

US DOT PHMSA Southwest Region

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Houston, Texas 77074

chris.mclaren@dot.gov

713-272-2847 office number

281-216-4455 cellular