

ALERTS

Pipeline Law Alert - Hazardous Liquid Pipeline Stakeholders Beware: 2017 Shows Sharp Increase In PHMSA Enforcement Actions

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The Pipeline & Hazardous Materials Safety Administration (PHMSA) has made good on its promise of stepped-up enforcement in 2017, especially against hazardous liquid pipeline operators regarding their policies and procedures as well as “lesser” violations or programmatic deficiencies.

According to its [website](#), PHMSA initiated 144 new enforcement cases from January to July 2017 (for a projected total of approximately 248 this year). Compared to 164 cases in 2016, 197 cases in 2015, and 154 cases in 2014, this annual total would reflect a 44 percent increase over the prior three-year enforcement case average.

PHMSA tracks the following [enforcement case types](#):

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Case Type	Description
Corrective Action Order	Identifies the specific corrective actions an operator must take to address conditions that PHMSA considers hazardous to people, property, or the environment.
Notice of Probable Violation	Informs the operator that PHMSA is charging the operator with probable violations of pipeline safety statutes or regulations. These allegations are accompanied by either a proposed compliance order identifying actions the operator is required to take, proposed civil penalties for these alleged violations, or both. An operator has the right to respond and a right to an administrative hearing before a final decision is made by the Associate Administrator for Pipeline Safety. Only after a final order has been issued, and all compliance terms satisfied and civil penalties paid is a case considered "closed."
Notice of Amendment	Issued when PHMSA inspections, incident investigations, and other oversight activities discover that an operator's plans and procedures are inadequate. In these situations, PHMSA issues a Notice of Amendment letter requiring that the operator improve its plans and procedures. After an operator has been given an opportunity to respond to a Notice of Amendment, PHMSA determines whether or not the operator's plans or procedures are inadequate. To the extent the operator has not addressed all inadequacies identified in the Notice, PHMSA may issue an order directing that they be amended.
Warning Letter	Issued when PHMSA inspections or other oversight activities reveal what PHMSA deems "lesser violations" or program deficiencies of an operator. Warning Letters notify an operator that a probable violation of PHMSA's regulations has occurred and direct it to correct the violation or be subject to further enforcement action. PHMSA then follows up on these items during subsequent inspections.
Notice of Proposed Safety Order	Notifies an operator that a particular pipeline facility has a condition or conditions that pose a pipeline integrity risk to public safety, property, or the environment. The Notice also proposes actions the operator should take to address these risks.

As shown below, the sharp uptick in enforcement filings appears to be attributable to an increase in Notice of Amendment and Warning Letter enforcement cases in 2017. Notice of Amendment enforcement actions are up by 80 percent versus the previous three-year average, while Warning Letter actions have increased by 71 percent.

The number of Notice of Probable Violations and Notice of Proposed Safety Orders are also projected to increase above the three-year average by 6 percent and 15 percent, respectively. Finally, although Corrective Action Orders may appear down this year, PHMSA typically files these actions later in the year, and so these cases will likely meet, if not exceed, prior years' numbers. Notice of Proposed Safety and Correction Action Orders typically make up a small percentage of enforcement actions, however, so these projected increases are not as concerning as the increase in Warning Letters and Notices of

Amendment.

Total Enforcement Cases 2014–2017 (Projected)

	2014	2015	2016	2017 Projected	% Change
Corrective Action Order	6	11	9	2	-80%
Notice of Probable Violation	46	52	63	57	6%
Notice of Amendment	34	54	35	74	80%
Warning Letters	66	76	54	112	71%
Notice of Proposed Safety Order	2	4	3	3	15%
Total	154	197	164	248	

Enforcement Case Percent by Type 2014–2017 (Projected)

	2014	2015	2016	2017 Projected
Corrective Action Order	4%	6%	5%	1%
Notice of Probable Violation	30%	26%	38%	23%
Notice of Amendment	22%	27%	21%	30%
Warning Letters	43%	39%	33%	45%
Notice of Proposed Safety Order	1%	2%	2%	1%
Total	100%	100%	100%	100%

Further analysis of the 2017 Notice of Amendment and Warning Letter filings reveals the reason for the significant increase in these types enforcement activity: PHMSA's apparently increased focus on hazardous liquid pipeline safety.

From 2014–2016, PHMSA filed an average of 41 Notices of Amendment against pipeline operators. As of July 2017, PHMSA has already filed 43 Notices of Amendment enforcement cases. Of these Notices, 17 were for gas or liquid natural gas pipeline operators, while 25 were for hazardous liquid pipelines. Should this trend continue, PHMSA is projected to file 74 Notices of Amendment, 29 for gas or liquid natural gas operators and 43 for operators of hazardous liquid pipelines. Although this projected number would be an 80 percent increase over the past three-year period, when Notices of Amendment filed against hazardous liquid pipeline operators are isolated, the difference jumps to 108 percent.

Similarly, from 2014–2016, PHMSA issued an average of 65 Warning Letters. As of July 2017, PHSMA had already met this average. Even more striking, however, is the fact that PHMSA is projected to increase the number of warning letters sent to gas and liquid natural gas pipeline operators by 14 percent, but the number sent to hazardous liquid operators will likely increase by 109 percent, to an unprecedented 60 such enforcement actions.

It appears that PHSMA is increasing its oversight of hazardous liquid pipeline operators, specifically regarding Warning Letters for “lesser” violations of pipeline safety regulations and Notices of Amendment for these operators’ plans and procedures. Such “lesser” violations include inadequacies in maintenance, inspection, and record-keeping, failure to adhere to policies and procedures, and a lack of adequate policies and procedures. Similarly, the majority of Notices of Amendment are related to

failures by operators to maintain and/or adhere to adequate procedures for pipeline safety. The increase in PHMSA enforcement actions, therefore, appears to be directed at ensuring pipeline operators, particularly those who transport hazardous liquids, implement and follow required pipeline safety procedures, with the hope of preventing more significant – and potentially dangerous – violations in the future.

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