

ALERTS

Pipeline Practice Alert - Environmental Groups Petition For Sweeping New Pipeline Rules For Diluted Bitumen

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On March 26, 2013, a coalition of environmental groups petitioned the Pipeline Hazardous Materials Safety Administration (PHMSA) and the U.S. Environmental Protection Agency (EPA) to initiate rulemaking to address pipeline safety and spill response risks related to the transportation of diluted bitumen (also known as “dilbit”), a substance derived from oil sands that is upgraded to form synthetic crude oil. The environmental groups’ petition argued dilbit and conventional crude should be regulated differently and proposed a number of new and costly requirements for pipeline owners and operators. The proposal would create significant economic and operational burdens on new and existing pipeline companies because dilbit derived synthetic crude oil constitutes a large share of the petroleum market and production is only increasing. Further, the proposal to shut down pipelines carrying dilbit if a safety defect is discovered, even if repairs are not immediately necessary, could cause significant operational difficulties.

EPA and PHMSA have a “reasonable” amount of time to respond to the petition under the Administrative Procedures Act, so there is no definite deadline for a response.

The environmental groups proposed PHMSA and EPA do the following:

- Issue new pipeline safety standards specific to dilbit, including safety requirements that are stronger than requirements for conventional crude transportation.
- Require industry reporting on whether dilbit or conventional crude is being transported through particular pipelines so that emergency responders are aware of the material they are dealing with in the event of a spill. As part of this reporting, environmental groups urged PHMSA and EPA to require companies to disclose the chemical composition of their diluted bitumen, including the composition of any diluents used.
- Require both agencies to work with communities to develop spill response plans and train community members to respond to potential dilbit spills.
- Subject spill response plans for dilbit to independent review and public comment.
- Impose new requirements related to dilbit for spill detection systems and put in place rules requiring pipeline shut downs as soon as there is any indication of a leak or other pipeline failure.

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Paul M. Drucker

Partner

Indianapolis, Chicago

P 317-231-7710

F 317-231-7433

paul.drucker@btlaw.com

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- Require the immediate shut down and repair of any pipelines carrying dilbit as soon as any safety defects are discovered, even if such defects would currently not require immediate shut down and repair.
- Place a moratorium on any expanded transportation of diluted bitumen, through either new or existing pipelines, until the new regulations proposed are put in place.
- Add additional inspection requirements and independent verification of operator reporting for pipelines transporting dilbit.
- Require PHMSA consultation for the approval or review of any proposed pipeline carrying diluted bitumen.
- Require rigorous pre-operation review of written integrity management programs for pipelines that may carry dilbit.

Petition of Appalachian Mountain Club, et al., Petition Before PHMSA and EPA at 4-5 (March 26, 2013) available at <http://www.documentcloud.org/documents/628610-nwf-dilbit-petition-march-2013.html>.

The environmental petitioners argued these changes are necessary because they believe dilbit is more volatile and corrosive than conventional crude oil. *Id.* at 21. However, the Congressional Research Service (CRS), a U.S. governmental non-partisan think tank that provides policy and legal analysis to Congress, concluded in a Feb. 21, 2013 report to Congress on oil sands that “whether or not [concerns over volatility and corrosivity] warrant concern is debatable.” U.S. Congressional Research Service, 7-5700, *Oil Sands and the Keystone XL Pipeline: Background and Selected Environmental Issues*, 32 (2013). For example, CRS noted that a study funded and authored by the Natural Resources Defense Council (NRDC) and other environmental groups stated, the “instability of DilBit can render pipelines particularly susceptible to ruptures caused by pressure spikes.” *Id.* at 33. However, CRS noted the Department of State “contacted the author [that NRDC cited to support the above statement] . . . to address this concern and determined that it would not be valid to infer from this research that dilbits are any more or less stable than other crude oils, or that they are more likely to cause pressure spikes during transport in pipelines or otherwise pose an increased risk to pipeline safety.” *Id.* (citation omitted). Regarding the potential for corrosivity, CRS noted Alberta’s Energy Resources Conservation Board, the quasi-judicial agency charged with regulating Alberta’s energy resources, and other stakeholders have “rejected the claims from the [NRDC’s] report, stating that ‘there is no reason to expect this product to behave in any substantially different way than other oil’” *Id.* (citation omitted).

PHMSA is already obliged under the Pipeline Safety, Regulatory Certainty and Jobs Creation Act of 2011 to provide Congress with a study by July 2013 regarding whether there is any increased risk of release for pipeline facilities transporting dilbit. The National Academy of Sciences was tasked with completing the study. While the study is unlikely to resolve the debate over pipeline safety and dilbit, it is likely to become an important driver for any new regulations PHMSA and EPA may propose in this area.

Barnes & Thornburg’s Pipeline Practice Team is continuing to monitor EPA and PHMSA’s response to the petition, PHMSA’s study of pipelines

transporting dilbit, and any rulemakings that may come as a result.

For more information, contact Paul Drucker, leader of Barnes & Thornburg's Pipeline Practice Team at paul.drucker@btlaw.com or 312-214-8806; or one of the following Pipeline Practice Team members, Tammy Helminski at tammy.helminski@btlaw.com or 616-742-3926.

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