



OSHA Proposes Change In Penalty Authority

Pushed by a decision by a federal appeals court, the Occupational Safety and Health Administration (OSHA) wants to make changes in its respirator and training standards which will allow it to assess a penalty on a company on a per-employee violation basis. A decision by the U.S. Court of Appeals for the Fifth Circuit in 2005 said OSHA went beyond the language of those two standards in fining a Houston construction company for 11 violations of the asbestos standard, based on the fact that the company did not provide 11 employees with respirators or training for removing asbestos. The court affirmed an earlier decision by the agency's own Occupational Safety and Health Review Commission which stated OSHA had to assess an "aggregate" penalty against the Houston company called Ho Ho Ho Express Inc. With its new proposed rule, the agency wants to make it "unmistakably clear" that each instance when an employee, subject to a personal protective equipment (PPE) or training requirement (e.g. in construction rules, for example, such as, confined spaces, trenching, etc.), does not receive the required PPE or training, may be considered a separate violation. OSHA proposes separate "per instance" penalties in cases where the resulting heightened aggregate penalty is appropriate to deter flagrant violators and increase the impact of OSHA's limited resources.

Some Dissatisfaction With DIMP

While distribution companies and state regulators seem to be satisfied with the general outlines of the proposed distribution integrity management program (DIMP) announced on June 25 by the Pipeline and Hazardous Materials Safety Administration (PHMSA), a number of questions are being raised by both groups about some of the proposal's murky details. The American Gas Association held a workshop in Chicago on the DIMP on Aug. 12-13. About 120 people attended, including PHMSA officials and representatives of the National Association of Pipeline Safety Representatives (NAPSR). There were rumblings in the corridors. Subsequently, both the AGA and NASR asked PHMSA to extend the comment deadline, which PHMSA did, from Sept. 23 to Oct. 23.

PHMSA's proposed DIMP is an effort to force state regulators and intrastate pipelines to beef up their integrity management programs. To the extent that the proposed rule follows the recommendations in a 2005 report PHMSA published, which was based on ideas of stakeholders, it contains few

surprises and its outlines are acceptable. However, there are more than a few sticking points among the details of the proposed rule. Philip Sher, program manager of Connecticut's pipeline safety program and chairman of the NAPSR DIMP task group, says, "Questions about application of requirements can be tricky. Details can take a good rule and make it burdensome. We shouldn't be looking at procedures that are 150 pages long."

Chief among the concerns for state regulators and industry is PHMSA's intention to require mandatory reporting of plastic pipe and associated fittings failures to the agency within 90 days. Currently, the Plastic Pipe Data Committee, of which the American Gas Association is the administrator, gets voluntary reports from owners of 83 percent of the plastic pipe miles in the United States, according to Phil Bennett, the senior managing counsel for the AGA. However, not all distribution companies have access to that data. Moreover, in the proposed rule, PHMSA wonders out loud whether the PPDC is "adequately objective to evaluate and report to the industry" or whether the agency should seek an independent third party to do the number crunching. PHMSA, which is a member of that committee, is concerned that companies without access to the PPDC data would lack the information necessary to do the kind of thorough risk analysis required by the DIMP. Bennett says AGA members oppose setting up a parallel, mandatory federal data base.

Sher says NAPSR has not taken positions yet on any of the issues raised by the proposed rule. However, speaking for himself, and based on his informal discussions with some state regulators, he wonders what PHMSA is trying to accomplish by requiring mandatory pipe and fitting failures. He questions whether there is a national problem that needs to be addressed and, if so, what that problem is; or are there simply several localized problems that have occurred that do not warrant new reporting requirements.

Sher also has some of the same questions that Bennett does about another somewhat controversial aspect of the proposed DIMP: its requirement that operators establish a "Prevention through People" program. Here, an operator would be required to include in its written IM program a separate section on "Assuring Individual Performance" in which they would identify risk management measures to evaluate and manage the contribution of human error and intervention to risk (e.g., changes to

the role or expertise of people). Distribution pipelines already must comply with a significant operator qualifications rule, and drug and alcohol testing requirements. "It is unclear what additional steps they want taken," states Sher.

Bennett adds, "We thought the proposal was so vague it would cause problems at this point, plus industry believes we already address human factors through the current PHMSA requirements."

Gas Infrastructure Commission Legislation Prompts Worries

With Congress almost certain to pass a bill revising or eliminating its longstanding ban on offshore oil and gas drilling, interstate natural gas pipelines are trying to insure that any bill does not include an amendment setting up a national commission which would examine the adequacy of current federal policies governing the siting of natural gas infrastructure. Such an amendment is lurking in the background, being promoted by Reps. Tim Bishop (D-NY) and Elijah E. Cummings (D-MD) who call their bill (H.R. 6720) the Natural Gas Strategy Act.

"Placement of natural gas infrastructure should not be run like a deli counter, where it's first come, first served," says Bishop, vice chair of the House Coast Guard and Maritime Transportation Subcommittee, part of the Transportation and Infrastructure Committee.

Cummings chairs that subcommittee, although the bill was referred to the Energy & Commerce Committee, which neither man sits on. That could complicate the bill's movement forward. Rep. Rick Boucher (D-VA), is chairman of the energy and air quality subcommittee in the Energy & Commerce Committee. He will be the major decision maker on the Natural Gas Strategy Act, if he keeps that position in 2009.

While passage of the Bishop/Cummings bill in 2008 is probably a long shot, its odds of passage would increase in 2009. INGAA opposes the bill. "Unfortunately, H.R. 6720 attempts to fix a process that isn't broken," says INGAA President Donald F. Santa, Jr. "The direction signaled by this legislation would be to turn the clock back decades to an era of excessive government regulation and energy shortages. Such a policy will not result in natural gas infrastructure getting built on a timely basis; rather, it will lead to delay, litigation, supply constraints and higher natural gas prices."