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PHMSA Releases Policy Regarding Civil Penalty Calculations for Pipeline Safety Enforcement Cases

On October 11, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released a [policy statement](#) advising pipeline owners and operators that the agency has made the framework used for calculating civil penalties in pipeline enforcement available on its website. In addition, the policy announced:

- *Release of the Civil Penalty Framework.* PHMSA will make its “civil penalty framework” publicly available in order to provide greater transparency in how civil penalties are calculated. The current version of this framework document will be published as part of the policy notice in the Federal Register, and updates will be posted on PHMSA’s website. In the past, PHMSA has provided this civil penalty framework to operators upon request.
- *Detailed penalty calculations for individual cases.* For individual enforcement cases, PHMSA will make a more detailed civil penalty calculation available upon request to the operator, along with the Violation Report and the case file. Until now, PHMSA has always denied operators’ requests for the civil penalty calculations pertaining to their enforcement cases.
- *Increasing civil penalty amounts across the board.* PHMSA intends to assess higher civil penalties “across the board,” exercising the authority it received in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Act) to impose higher civil penalties for violations of the pipeline safety laws and regulations. The 2011 Act increased maximum federal civil penalties to \$200,000 per violation per day, with a maximum of \$2,000,000 for a related series of violations. In addition, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, for a violation that occurs on or after August 1, 2016, the maximum civil penalty limit was increased to \$205,638 per day and \$2,056,380 for a related series of violations. PHMSA announced that it will use this increased penalty authority as a deterrent, and will also give greater weight to the following factors when assessing civil penalties:
 - violations that cause or increase the severity of incidents, including those involving smaller hazardous liquid spills or resulting in methane releases;
 - violations that are repeat offenses within a 5 year window; and
 - multiple instances of the same regulatory violation.

The policy statement emphasizes that despite the increased transparency that the release of these civil penalty documents will provide to the regulated community, PHMSA retains broad discretion in its evaluation of the civil penalty assessment considerations outlined in the Pipeline Safety Laws and in 49 C.F.R. § 190.225.

The policy will become effective upon publication of the notice in the Federal Register in the next few weeks. The notice does not make clear how the agency will apply the new policy to pending

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enforcement cases, including those for which operators have already submitted written responses or which have already had a hearing under § 190.211.

FOR MORE INFORMATION

Van Ness Feldman counsels clients on pipeline safety compliance, enforcement, and litigation under the Pipeline Safety Laws and Regulations and related statutes. If you are interested in additional information regarding pipeline safety matters or any PHMSA or pipeline related matter, please contact [Susan Olenchuk](mailto:Susan.Olenchuk@vnf.com) at (202) 298-1896 or sam@vnf.com, [Bryn Karaus](mailto:Bryn.Karaus@vnf.com) at (202) 298-1821 or bsk@vnf.com, or any member of the firm's [Pipeline & LNG](#) practice group.

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