CIVIL PENALTY FRAMEWORK FOR PHMSA ENFORCEMENT ACTIONS MADE PUBLIC

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On October 17, 2016, the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the Department of Transportation publicly issued a general policy statement concerning their civil penalty framework for violations, to help the public better understand how the PHMSA calculates and imposes civil penalties.

As the civil penalty framework was only available upon request prior to this issuance, relevant stakeholders could not account for the potential costs of violation.- With the framework now public, the PHMSA hopes that this new transparency will push relevant stakeholders to adopt preliminary safety and accountability measures (working in concert with California environmental lawyers), thus driving down the number of violations.

The Civil Penalty Framework at a Glance

After an inspection or investigation of a facility in which a violation – potential or actual – is revealed, the Office of Pipeline Safety drafts and executes a Violation Report.- Data from the Violation Report informs the civil penalty to be imposed on a violator (as the data helps to determine the civil penalty amount).

When a civil penalty is imposed on a violator, the PHMSA must consider several factors to determine the amount.- The following is a non-exhaustive list of factors.

Nature

Record violations (for example, incomplete records) will result in a lower penalty, while equipment or facility-based violations (for example, defective equipment) will result in a higher penalty.- Activity-based violations (for example, failure to follow procedure) fall somewhere in the middle.

Circumstances

The circumstances under which the violation was reported can affect the civil penalty.- Self-reported violations result in lower penalty amounts, while public reporting of the violation can result in a higher penalty amount.

Gravity

The gravity – in other words, the effect – of the violation on actual health/safety/integrity determines, to a large extent, the penalty amount (the potential penalty amount here is unlimited).- If the violation minimally affected pipeline safety, then the penalty amount will be lower.- More violations, and more severe violations, results in a higher penalty amount.

Culpability

If the owner/operator took steps to correct non-compliance and report the violation, this will result in a lower penalty amount.- Failure to correct and report non-compliance will result in a higher penalty amount.- Particularly evasive conduct (to hide non-compliance) will receive the highest penalties.

History of Prior Offenses

A history of prior offenses (in the preceding 5 years) can increase the civil penalty amount.

Good Faith

If the owner/operator acted wrongly, but did so based on a good-faith, reasonable interpretation of applicable regulation, then their civil penalty will be reduced accordingly.

Economic Benefit

If the owner/operator benefitted financially from non-compliance, the PHMSA is free to impose additional penalties.

Ability to Pay

If a civil penalty will threaten the ability of the owner/operator to stay in business, then the PHMSA has discretion to reduce the penalty amount accordingly.

Future Enforcement

The PHMSA's intention in publicly issuing their civil penalty framework is to increase transparency and encourage relevant stakeholders (pipeline facility owners/operators) to take steps to prevent future violations and avoid the costs of non-compliance.- If the number of violations does not go down in the coming years, the PHMSA has made it clear that it will impose higher penalties to further discourage non-compliance.