Six years ago, Enbridge’s Line 6b, part of the Lakehead Pipeline System, failed in Talmadge Creek, near Marshall, Michigan, resulting in one of the country’s largest-ever onshore oil spills, exceeding 20,000 barrels. The spill resulted in a billion dollar multi-year cleanup effort and a record-setting federal pipeline safety penalty. The Pipeline and Hazardous Materials Safety Administration (PHMSA) imposed a Corrective Action Order on the entire Lakehead system, and Line 6b was replaced with new, larger diameter pipe.

That spill was quickly followed by a separate Enbridge pipeline failure on Line 6a in Romeoville, Illinois, resulting in a spill of about 6,400 barrels into a tributary of the Des Plaines River. Now, a second-largest-ever Clean Water Act (CWA) penalty of $62 million ($61 million for the Michigan spill; $1 million for the Illinois spill) is being proposed in a consent decree between the Environmental Protection Agency (EPA) and Enbridge (in all its many personalities: Enbridge Inc., Enbridge Energy Partners, etc.).

The proposed consent decree also includes a number of operational constraints on the Lakehead system, including a permanent injunction from ever using “old” line 6b again, and a series of other measures intended to improve other parts of Enbridge’s system and the operator’s response capacity, like the production of a leak detection report following the testing of a set of leak detection methods. Some of the additional provisions unrelated to the pipeline spills in Michigan and Illinois, however, implicate separate state proceedings involving another Enbridge pipeline in Minnesota — Line 3. The decree’s affect on the Line 3 proceedings is not yet clear, but is of great concern to the public participants in the Minnesota state proceeding to determine whether and where Enbridge’s Line 3 pipeline should be permitted.

The CWA and its regulations establish the penalties available for spills and use the number of barrels spilled as a multiplier, along with other multipliers based on whether the polluter benefited financially from violating the law, whether and to what degree the polluter was negligent in causing the spill, etc. The amount of the proposed penalty in the consent decree, particularly the $1 million allocated to the Romeoville spill, has raised some eyebrows, being seen as significantly too low. Using the standard $1,100 per barrel as a measure, the $1 million attributed to the Romeoville spill is barely 15 percent of the basic penalty, without using any multipliers. The $60 million attributed to the Michigan spill does exceed the standard per barrel penalty, but not as much as some had expected, given the findings in the National Transportation Safety Board (NTSB) incident investigation citing Enbridge’s negligence, knowledge of the anomaly for a long time before the eventual failure, and the behavior of the control room staff after the failure occurred.

Like any monetary award for a non-monetary loss — whether the destruction of a river or the loss of a family member — financial penalties are by their nature always insufficient as recompense or punishment. They are, however, what our legal system allows injured individuals, families and society to extract from wrongdoers. The exception to that is in the context of negotiated settlements like consent decrees, where the parties can agree to certain changed behaviors or to pay for things that aren’t really the subject of the legal dispute.

And the proposed consent decree contains a number of those. Of note:

1) On the positive side, it includes some testing and reporting obligations on the part of Enbridge with respect to Line 5 — a pair of hazardous liquid pipelines running under the Straits of Mackinac in the Great Lakes — that may otherwise not have been accomplished for many months or years, if at all.

2) The decree also prohibits the future use of the “old” Line 6b, a resolution that lays to rest a nagging concern of hundreds of landowners along that route who have lived through the spill, the integrity digs, the new installation of a second, larger pipe, and the reclamation of their properties, many times in an unsatisfactory manner. It is a good thing for them and for the environment to ensure that the old line is not used again.

3) The decree also requires some leak detection testing and reporting, that if done correctly and with sufficient
Consent Decree
Continued from page 1

public access to the results, has the potential to move forward the creation of performance standards for leak detection in PHMSA's administrative rules, a process that seems otherwise at a standstill. Without public access to the reports and results, however, this provision loses significant value. It remains to be seen whether PHMSA will jump-start the effort to establish leak detection standards. The rulemaking is currently listed as one relating to “rupture detection,” that, while also important, does not capture the need for standards for leak detection systems.

The decree falls short in three areas in particular, especially in explaining the reasons certain decisions were made and certain provisions were included:

1) At some point, the Department of Justice (Justice) and EPA chose not to file criminal charges under the CWA, a decision likely based on some assessment of the cost of litigation, but one that has not been explained by either agency. According to EPA's website, the elements of a criminal act under the CWA are met when someone negligently or knowingly discharges oil or a hazardous substance into a water of the United States/upon adjoining shorelines/into the contiguous zone in a harmful quantity. The Chairwoman of the NTSB described the Enbridge failure like this:

“This investigation identified a complete breakdown of safety at Enbridge. Their employees performed like Keystone Kops and failed to recognize their pipeline had ruptured and continued to pump crude into the environment,” said NTSB Chairman Deborah A. P. Hersman. “Despite multiple alarms and a loss of pressure in the pipeline, for more than 17 hours and through three shifts they failed to follow their own shutdown procedures.”

Sometimes decisions are made not to criminally prosecute and there are good reasons. Perhaps there are good reasons in this case. If so, EPA and Justice owe it to the public to tell us what they are, because otherwise the public is left to wonder how knowing or negligent does the next operator have to be before EPA and Justice decide to file criminal charges?

2) The decree “requires” the replacement of Line 3, a capital project that Enbridge has planned for several years, and that is the subject of significant controversy in Minnesota as to whether and where it should be built. The decree gives no background information to the public on why this requirement is included, but it certainly increases the nominal value of the total “penalties” to be paid by Enbridge under the decree, making it appear at first blush as if many tens of millions of dollars more is being required of Enbridge as a penalty than is the case.

It is possible that the line is in such condition that it can no longer be safely operated, in which case the public and Enbridge shareholders should be informed and the line taken out of service. The administrative processes underway in Minnesota to permit and site the proposed replacement should go on without interference or influence by the federal government except as a party to those proceedings. The inclusion of the replacement of Line 3 in the decree implies that the federal agencies have an interest in seeing it replaced. If that is the case, they should become parties to the proceedings in Minnesota and not appear to provide support for Enbridge’s proposed replacement in the context of this consent decree. If there is some other explanation for this provision, the EPA should provide it publicly so that the public can weigh that information in making their comments to the court on the proposed decree.

3) The third major failure of the decree is the failure to include any Supplemental Environmental Projects to benefit the community, the region or the river. All of the penalty money — all $60+ million — goes into the Oil Spill Liability Trust Fund of the federal treasury. The decree and its announcement did not mention any reason that the agencies and Enbridge could not identify a single project that might spend some of that money to benefit the community or the ecosystem most damaged.

The Department of Justice public comment period for the consent decree has been extended until October 21, 2016. The court will act on the proposed decree sometime after that date.
PG&E Convicted on 6 Federal Felony Counts

After a trial that lasted several weeks, a federal court jury convicted PG&E on five counts of violating the federal pipeline safety laws and on one count of obstructing the National Transportation Safety Board's investigation into the explosion and fire that followed the failure of the company's pipeline in San Bruno California in 2010. In addition to killing eight people, the explosion injured 58 more, destroyed 38 homes and damaged 70 others.

The penalties to be assessed will be determined in a separate court proceeding. The financial penalties from these convictions will not exceed $3 million due to a decision of the prosecutors not to seek enhanced penalties based on the profits accrued by the corporation from failing to comply with federal requirements. The utility has previously been fined a breath-taking $1.6 billion by the California Public Utilities Commission (CPUC) for pipeline safety violations.

In separate CPUC proceedings, tens of millions of dollars in additional penalties have been levied for record keeping and other failures.

The City of San Bruno — which has played a pivotal role in the incident investigation, in the proceedings before the California Public Utilities Commission, and in making public thousands of emails exposing an overly cozy relationship between the state regulator and regulated utilities, including PG&E — announced that it will ask the court to appoint a third party monitor to oversee the pipeline operations of PG&E going forward.

For its part, the utility announced mere days after the verdict that it would seek to have the verdict overturned by the judge. That motion is scheduled for hearing by the court on October 11. The sentencing hearing will be scheduled after the outcome of that hearing is known.

The Smart Pig
smartpig@pstrust.org

In pipeline parlance, a smart pig is a high-tech device designed to root around inside pipelines. These intelligent little beasts inspect every square inch of the line, calling attention to any needed repairs.

I try to do the same thing for our readers. Send me a question and I'll root through the labyrinth of modern pipeline prevarications to get you the best answer piggily possible: the straight scoop, as we say back in the sty.

Editor's Note: The views and opinions expressed by this pig do not necessarily reflect those of the Pipeline Safety Trust or any human being.

Dear Wanda:
Thanks for your question. The Pipeline Safety Trust has just recently published a new guide to help interested members of the public participate in state and federal pipeline safety rulemaking efforts. A Technical Assistance Grant (TAG) from PHMSA provided funding for this project. The "Guide to Pipeline Safety Rulemaking" is available as a download from our website, and we have a limited quantity of hard copies that we will mail out to those who request them. The Guide describes the entire process of Congress directing the creation of administrative rules, the required steps in the process of PHMSA making rules, and the points in the process where there are opportunities for public input. It also includes a table of state pipeline agencies so you can direct public inquiries and comments about state pipeline safety rulemakings to the appropriate place. And, for those who just have a quick question, the guide includes an FAQ section that we hope responds to the most common questions people have about the rulemaking process. You can find the Guide to Pipeline Safety Rulemaking at http://pstrust.org/rulemaking

Sincerely,
Wanda Participate

Guide to Pipeline Safety Rulemaking
Adventures in Canada

Earlier this year the Pipeline Safety Trust began a project to propose some high-level pipeline safety indicators that would provide a pipeline safety snapshot and track pipeline safety trends over time in Canada. An indicator is something that helps you understand where you are, which way you are going, and how far you are from where you want to be. A good indicator alerts you to a problem before it gets too bad, and helps you recognize what needs to be done to fix the problem. The Trust’s project also focused on what pipeline safety information needs to be made more easily available so anyone can verify, on their own, the results reported for all the indicators proposed.

One of the first things we learned was how differently pipelines are regulated in Canada. Unlike the U.S. where the federal government under PHMSA sets the minimum pipeline safety standards and then provides allowance for states to provide oversight for intrastate pipelines, in Canada there is a greater division of oversight. The Canadian National Energy Board (NEB) oversees the large transmission pipelines that cross provincial boundaries, but beyond that pipeline safety is left up to the individual provinces. Unlike the U.S. where PHMSA has authority over all 2.5 million miles of pipelines, in Canada the NEB only regulates about 45,000 miles out of the estimated 500,000 miles of pipelines in Canada.

In Canada, a few dashboard indicator sites have popped up over the years (see below) and industry groups in the U.S. have also been using indicators to tell their pipeline safety story. Public interest organizations like the Pipeline Safety Trust and environmental organizations have started to use the data now being made available to create indicators that help explain their concerns.

Unfortunately, each of these groups often use indicators to tell only a piece of the pipeline safety story, and that piece is usually meant to support a certain view or purpose. For example, the two charts to the right were used in a Congressional hearing this past February to indicate the trend in significant pipeline incidents in the U.S. They were both developed using PHMSA supplied data, and both are accurate. Can you guess which indicator the Association of Oil Pipelines developed and which was developed by the Pipeline Safety Trust?

Because of the frustration and lack of trust that such conflicting and confusing indicators create, some within the pipeline industry, and the regulatory and public interest communities, have come together to try to identify some agreed-upon indicators that tell a holistic and accurate picture of pipeline safety.

The Canadian Energy Pipeline Association (CEPA), the professional organization for pipeline operators in Canada, knew that the Trust was engaged with the federal regulators and industry on such an effort in the U.S. They approached us last year to see if we had any interest in helping get a meaningful indicator project started in Canada. They recognized that without significant public involvement in the creation of indicators meant for the public, the end product could suffer from a lack of trust and support. They challenged us to design a small number of high-level indicators based on public desires and not to feel constrained by the reality of available information or lack of harmonization between industry and regulators.

In essence they said to us, if you were king of the world, what kind of pipeline safety indicators would you track? After much discussion, since the Pipeline Safety Trust normally will not accept money from the pipeline industry, we decided this was an important enough project that we accepted a no-strings-attached donation from CEPA to cover our costs and to provide travel assistance funding so representatives from local governments and non-governmental groups across Canada could attend a forum to discuss the indicators we proposed.

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**Indicators in Canada**

Both the pipeline industry and the regulatory community in Canada have recognized the need for indicators and greater transparency of information, and in many cases have already developed and been using some indicators. Here are some examples:

- **Alberta Energy Regulator Compliance Dashboard** - [http://www1.aer.ca/compliancedashboard/index.html](http://www1.aer.ca/compliancedashboard/index.html)
Adventures in Canada
Continued from previous page

We learned many new things trying to find and review pipeline information available in Canada, dealing with the different groups, trying to think in cubic meters instead of gallons, and eating poutine. In the end, we produced a report that suggested the need for greater transparency, data collection and integration across regulators, and proposed a handful of indicators as a starting point for the public to better understand what is going on with pipeline safety in Canada. Those indicators fall into three categories:

- Indicators that show safety trends;
- Indicators that provide local information; and
- Indicators that show regulatory effectiveness

We held a public forum in Calgary in May, well attended by Canadian regulatory and pipeline industry leadership, as well as by representatives from many local governments and non-governmental organizations that have been engaged on pipeline issues across Canada. You can find a report of our findings, recommended indicators, and some of the presentations from the forum at: http://pstrust.org/trust-initiatives-programs/pipeline-safety-indicators/

Trust But Verify — Spill Recovery

In this edition of our recurring column “Trust But Verify,” we take on the issue of spill recovery figures and whether they are fact, fiction or somewhere in between. Like our last topic — spill drills — spill recovery amounts are one of those things that the public is asked to just trust, since we have no way to verify that what we are being told is accurate. How are we supposed to trust the numbers pipeline companies report in the media for spill recovery amounts, for example, when those numbers are vastly inconsistent with the numbers reported to regulators?

Take the Poplar Pipeline spill in January 2015. The pipeline, operated by Bridger Pipeline LLC, split at a weld seam at a section of the pipeline where it ran beneath the Yellowstone River and spilled approximately 758 barrels (31,836 gallons) or a little more than one railroad tank car) of Bakken crude oil. Clean up efforts were hampered by the freezing temperatures and the iced-over river.

If you take a look at the website designed to update the public on clean up efforts and impact to the City of Glendive’s water supply (poplarresponse.com), it seems like clean up efforts went very well. In fact, on Feb. 19 after the spill, the website claimed, “Total oil recovered to date remains about 23,000 gallons (548 barrels).”

The casual observer would think that about 72 percent of the oil spilled was recovered by Feb. 19 — a remarkably successful recovery effort in very challenging conditions. Unfortunately, that’s not exactly the case. Nearly 500 barrels of the recovered amount reported on poplarresponse.com reflected the amount sucked out of the pipeline before it even reached the water; oil that was never spilled. The final report submitted to the EPA shows that by Mar. 20, 2015, only 60 barrels had been recovered of the oil actually spilled into the river. Adding another layer of inconsistent accounting, Bridger reported to PHMSA that they spilled 758 barrels of oil and lost 693 barrels in that spill, indicating a total recovery of 65 barrels.

Fast forward 18 months to the July 2016 Husky Pipeline spill in Saskatchewan: How is the public supposed to trust that Husky has recovered half of the oil they spilled in the fast-moving North Saskatchewan River, less than two weeks after they spilled it, as Reuters reported on Aug. 1? How are they supposed to trust that Sunoco recovered almost all of the oil they spilled into a Louisiana Bayou in Oct. 2014? Sure, the numbers are reported to PHMSA or a Canadian regulator, but like the public, these agencies have to trust that the numbers they’re getting from the companies are correct.

The great tragedy of this Trust But Verify is that there is a pretty easy solution to our problem: transparent third-party verification by the relevant regulator — whether EPA, PHMSA, or a state or provincial environmental regulator — of the amount spilled and the amount recovered. An agency needs to verify the pipeline company’s math when spills occur and during cleanups, and make those accountings public. To some extent, EPA performed that function during the lengthy cleanup of the Enbridge Line 6b spill into the Kalamazoo River, but it needs to be a regular occurrence.

Certainly, government regulators can verify how much oil is being cleaned up compared to what the company asserts. Similarly, once investigations into the mechanics and timing of a spill, the pipeline shutdown, isolation and drain down are completed, agencies can verify the claimed spill amount. Without having an accurate measurement of the amount spilled, knowing how much is still out there to be recovered or how much may never be cleaned up is largely a guessing game.
## Transparency Review of Pipeline Safety Websites

The Trust has surveyed all the different state pipeline safety agency websites since 2011, and scored them based on the ease of finding what an interested citizen might want to find. Nearly all states have a regulatory body focused on some aspect of pipeline safety within their state, though the specifics vary a great deal.

Finding information does not need to be difficult — we use scoring criteria to review state agency websites on the transparency of their pipeline safety information. Our sixth annual review is presented here, and is on our website under “Transparency of Pipeline Information.”

This year we had a first. Not only is there a three-way tie for first place, but three states achieved a perfect score. Arkansas and Washington are joined at the top by Nevada who took great steps to improve their site this year. Want to improve your state’s score next year? Contact Kate Blystone, Outreach Manager, at kate@pstrust.org for tips.

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<tr>
<th>Finding agency web site</th>
<th>Contacts for agency staff</th>
<th>Access to statutes, regulations</th>
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<th>Transmission pipeline maps</th>
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* California is the only state that has different agencies for natural gas and liquid pipelines.

** Puerto Rico was not evaluated in previous transparency reviews.
Administrator Dominguez Visits Trust HQ

This August, the Trust had the pleasure of hosting PHMSA Administrator Marie Therese Dominguez, Director of Governmental, International and Public Affairs Artealia Gillard, and Western Regional Pipeline Safety Office Director Chris Holdal. Administrator Dominguez is entering her second year as the head of PHMSA and had great information to share with Trust staff about the future of the organization. The agency is in the midst of a re-structuring — PHMSA2021 — that will include addition of a career executive director to the agency to ensure organizational continuity in a changing political climate. The Administrator intends to discuss this and other pending changes at PHMSA during her keynote at the Trust’s Pipeline Safety Conference in October.

Trust staff also discussed the regional hazardous material transportation situation in the northwest, the upcoming conference and ways PHMSA could be a better resource for the public. The Administrator and her staff also joined Executive Director Carl Weimer on a tour of the site of the 1999 Olympic Pipeline explosion that killed three boys and led to the forming of the Pipeline Safety Trust. More than 17 years has healed much of the damage along Whatcom Creek, and the effects of the explosion are reflected in the stronger pipeline safety regulations in place as a result of the Trust and other safety advocates’ work.

PHMSA2021: Strategic Framework

VISION

PHMSA: The most innovative transportation safety organization in the world

MISSION

Protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives

GOALS

- Promote continuous improvement in safety performance
- Invest in safety innovations and partnerships
- Build greater public and stakeholder trust

VALUES

Trust, Honesty, Respect, Integrity, Valuing People, Effective Communication

Pursue excellence in our operations

Carl Weimer, Executive Director of the Pipeline Safety Trust, introduces Administrator Dominguez to the site of the 1999 Olympic pipeline explosion in Bellingham.
New Faces at the Trust

We’ve had a few changes here at the Pipeline Safety Trust in 2016. We said goodbye to Samya Lutz, our outreach manager, as she took a job with a local municipal planning department. This summer, we welcomed Kate Blystone who comes to the Trust with fifteen years of experience in public engagement, land use planning and issue advocacy. Kate will primarily focus on responding to public requests for help and information, reviewing and commenting on proposed rules and regulations, and building programs to increase community engagement with pipeline issues. Kate has a liberal arts degree from Western Washington University and a Master’s in Urban and Regional Planning from Eastern Washington University.

Paul Blackburn left the Trust’s board of directors due to other professional demands earlier this year and we welcomed a new board member, Alexis Bonogofsky, a native of Montana. Alexis became engaged in pipeline issues when the 2011 Exxon oil spill along the Yellowstone River affected her family ranch. In response to that spill, she organized her fellow landowners to demand that ExxonMobil properly remediate the lands they damaged. For ten years, as the manager of the Tribal Lands Partnership Program for the National Wildlife Federation, she worked on developing support for alternative energy systems and built coalitions among indigenous groups, ranchers and hunters and anglers who are concerned with potential development of new coal mines in the Otter Creek Valley.

Both Kate and Alexis will be at the conference in October. Be sure to say “hello” and don’t miss Alexis and Carl’s “Food for Thought” session about the “keep it in the ground” movement on day one of the conference.

Thanks!

We would like to thank Pacific Gas and Electric Company, the American Gas Association, PROP Systems, National Grid, Cyera Strategies, Spectra Energy and Marathon Pipelines for their generous donations over the past year to our Citizen Travel Fund. These donations provide money to cover the costs of travel so more members of the public can participate in our annual conference and other important pipeline safety meetings. We believe that greater public involvement in pipeline safety discussions leads to better outcomes and builds trust in the nation’s pipeline system. Thanks again to these companies for supporting our public involvement efforts.

If you or your company would also like to support greater public participation visit our website at: http://pstrust.org/travel-assistance-donations.