

DOT Inspector General Wants Law Changed to Allow More Prosecutions for Violations of Federal Pipeline Safety Laws

Article By:

Kurt L. Krieger

Shawn A. Morgan

Under current federal laws, a person or corporation must violate pipeline safety statutes “knowingly and willfully”^[1] to face criminal charges. When other types of violations occur, the ***Pipeline and Hazardous Materials Safety Administration (PHMSA)*** brings regulatory enforcement actions, for which offenders can face fines and civil penalties. Because the burden of proving a crime occurred is so high, the ***Department of Justice (DOJ)*** has prosecuted cases involving pipeline safety only four times since 1996. ***Department of Transportation (DOT)*** Inspector General Calvin L. Scovel, III (Scovel)^[2] thinks the current focus on PHMSA enforcement inadequately addresses pipeline safety, and that the number of prosecutions is too low. He advocates for Congress to toughen its approach by reducing the standard for prosecutions to “recklessness.”^[3]

[According to Scovel](#), “this [change] would not result in criminal liability for companies that are making good faith efforts to comply with pipeline safety regulations.” However, on March 8, 2016, he told Congress that the DOT needs it to more effectively implement its Pipeline Safety Program. Scovel stated that, “without effective criminal enforcement...there is a danger that pipeline operators may [otherwise] treat the administrative enforcement of fines as nothing more than a cost of doing business.” He also advocated for Congress to create a whistleblower incentive program to “greatly enhance DOT’s ability to identify safety violations and take appropriate action before a pipeline rupture or explosion occurs.”

To support his position, Scovel pointed to a prior amendment to the hazardous materials transportation laws and regulations. Since Congress changed that statute in 2005 to allow prosecutions for reckless, as well as willful, violations, the DOJ has prosecuted 24 individuals and companies in the past five years alone.

It remains unclear whether Congress will take the action requested by Scovel to increase scrutiny of those working in the pipeline industry. Pipeline operators and their employees should continue to exercise care and due diligence in meeting regulatory obligations for ensuring pipeline safety. Our firm’s Energy and Litigation Teams have experience with PHMSA enforcement actions, government investigations, emergency response, and white collar defense.

[1] 49 U.S.C. § 60123(a) (setting criminal penalties for violation of pipeline safety laws, regulations and orders).

[2] See March 8, 2016 letter from Scovel to Hon. Michael E. Capuano, ranking member of the House Transportation & Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials.

[3] Scovel suggested that Congress should adopt language used in similar statutes to define "recklessness" as "when the person displays a deliberate indifference or conscious disregard to the consequences of their conduct."

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