



# TransLaw

## Three Perspectives on Pipeline Transportation

*John E. Anderson, Sr.*

Foreign terrorism dominates the news today while the concern of domestic terrorism is on the minds of many. The nation's pipeline system is of critical importance and is a potential target for terrorists intent on producing great harm to the United States through mass casualties, significant economic destruction and environmental tragedies. Earlier in 2015, the Surface Transportation Committee of the FBA's Transportation and Transportation Security Law Section presented a program titled "Pipeline Transportation: Perspectives on Safety, Security and Economics." Panelists included Vanessa Sutherland, Chief Counsel, U.S. DOT's Pipeline and Hazardous Material Safety Administration (PHMSA); Jack Fox, Pipeline Industry Engagement Manager, Transportation Security Administration (TSA), and Nils Nichols, Director, Division of Pipeline Regulation, the Federal Energy Regulatory Commission (FERC). The program was moderated by Kathryn Gainey, co-chair of the Surface Transportation Committee.

Jack Fox spoke first for the panel. Mr. Fox is a Pipeline Industry Engagement Manager at TSA. Initially he provided a background on the TSA, explaining that the TSA was founded following the September 11, 2001 tragedy. Originally, the TSA was part of the U.S. Department of Transportation (DOT). In March 2003,

the Department of Homeland Security (DHS) was formed, and TSA was moved from the DOT to the DHS.

Fox explained that the United States has over 2.5 million miles of pipelines for transporting hazardous liquids and natural gas that are operated by over 3,000 companies. He stated that 85% of all energy is moved through pipelines operated by 100 companies and that it is the goal of the TSA to work with the "top 100" companies, although any of the 3,000 companies that ask for assistance will receive assistance from TSA.

Fox discussed two significant programs of the TSA. First, the Pipeline Corporate Security Review (PSCR) program conducts on-site security review of pipeline companies. These reviews help establish working relationships with key security representatives in the pipeline industry. Additionally the reviews provide the TSA with a general understanding of a pipeline operator's security planning and implementation. Fox described the reviews as no-fault reviews. Following each review, the TSA will make recommendations or suggestions on how to improve the company's operations. Second, the Critical Facility Security Review program was passed in 2007. In this program, the TSA conducts on-site visits to pipeline critical facilities and collects site-specific information from facility operators relating to facility

policies, procedures and physical security measures. Following these site-specific inspections, the TSA makes recommendations and subsequently conducts re-inspections within eighteen (18) months of the initial inspections to ensure compliance with the TSA recommendations.

Finally, Fox described the relationship between the TSA and the pipeline industry as one of a partnership marked by a spirit of cooperation. He described the partnership relationship as a friendly relationship as opposed to a more adversarial regulatory relationship. He noted that the partnership concept has worked out well with the TSA, commenting that it is less burdensome on the companies, and it results in resolution of issues much quicker than a regulatory relationship.

Vanessa Sutherland was Chief Counsel of PHMSA<sup>1</sup>. PHMSA is a United States Department of Transportation agency whose mission is to protect people and the environment from the risks of transportation of hazardous materials by pipeline and other modes of transportation. PHMSA establishes national policy, sets and enforces standards, and educates and conducts research to prevent incidents. Also it prepares the public and first responders to reduce consequences if an incident does occur. Its goals are to

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reduce the number of pipeline incidents involving death or major injury and to reduce the number of hazardous material incidents involving death or major injury.

Ms. Sutherland discussed new initiatives and programs of PHMSA, including the following.

**1. Research and development.**

PHMSA has initiated projects to improve the safety and reliability of hazmat transportation by all transportation modes, including pipelines. The research and development program conducts and supports research to support regulatory and enforcement activities and to provide the technical and analytical foundation necessary for planning, evaluating and implementing the pipeline safety program.

- 2. Outreach.** PHMSA has undertaken outreach programs including the "811 Call Before You Dig" hotline designed to create a public awareness of the presence of pipelines and the need to contact the appropriate authorities before beginning work involving digging. Additionally, PHMSA's website ([www.PHMSA.gov](http://www.PHMSA.gov)) is another method of public out-

reach incorporated by the PHMSA.

- 3. Enforcement.** PHMSA's Pipeline Safety Enforcement Program is designed to monitor and enforce compliance with pipeline safety regulations and confirm operators are meeting the agency's expectations for the safe and reliable operation of their facilities.
- 4. Rulemaking.** PHMSA's Office of Pipeline Security periodically issues rulemaking documents that propose changes to the regulations or adopt final amendments. The public is invited to participate in this process by filing written comments on any rulemaking document that asks for comments, attending a public meeting or by filing a petition for rulemaking that asks PHMSA to add, amend or delete a regulation.
- 5. Emergency response.** The purpose of PHMSA's emergency response program is to increase the abilities of emergency responders to safely and effectively plan and respond to pipeline emergencies. An important focus is establishing communication between the pipeline operators and emergency responders.

Finally, Nils Nichols, Director, Division of Pipeline Regulation of FERC addressed the audience. FERC is an independent federal agency, meaning that its activities "shall not be subject to further review by the Secretary (of Energy) or any officer or employee of the Department." As relevant to pipeline transportation, FERC has jurisdiction over interstate natural gas pipeline rates and services, and oil and product pipeline rates and services. FERC also reviews and authorizes liquefied natural gas import and export terminals, and interstate natural gas pipelines. FERC has statutory authority under the Natural Gas Act, the Federal Power Act, and the Interstate Commerce Act. FERC pays for its own operations by imposing annual charges and fees in the industries it regulates. ♦

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**Endnotes**

<sup>1</sup>Currently, Vanessa Sutherland is the Chairperson of the U.S. Chemical Safety Board.

## SAVE THE DATE: RESPONDING TO INSIDER THREATS AND OPEN CARRY LAWS

Save the date for the Transportation and Transportation Security Law Section's presentation of "Responding to Insider Threats and Open Carry Laws." This free event will take place on April 11 from 1:30-4:30 p.m. at TSA Headquarters, 601 S. 12th St., Town Hall, Arlington, VA 20598. Please RSVP to Marcellus Howard, [mhoward@fedbar.org](mailto:mhoward@fedbar.org), or (571) 481-9118, by April 10.