

## E&E Energywire

### PHMSA staff concerned about agency-industry ties — IG

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Published: Tuesday, January 19, 2021

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A new federal audit of the Pipeline and Hazardous Materials Safety Administration finds that workers think the agency is too close to industry. Government Accountability Office

A significant portion of the staff at the Pipeline and Hazardous Materials Safety Administration thinks the federal agency is too close to industry, according to an audit that echoes long-standing criticism from safety advocates and some members of Congress.

Overall, PHMSA has a positive "safety culture," said the inspector general of the Department of Transportation, which houses the federal pipeline safety agency.

But the IG report said a "broad theme" of survey responses from employees was a perception that "industry and PHMSA are not sufficiently separate."

"Whether true or not, such perceptions may have an unintended impact on oversight and indirectly influence how an employee takes on their regulatory role," the [report](#) said.

It found that 35% of employees who responded to a survey disagreed with the statement that "PHMSA makes decisions free of undue influence." Of the remainder, 36% agreed with the statement, and 29% were neutral.

According to the report, some inspectors also questioned the purpose of documenting violations because they think agency leaders and attorneys in Washington are too reluctant to seek penalties against companies for violations.

The audit said some employees complained of a "lack of transparency" about meetings with pipeline companies regulated by the agency.

In a statement to E&E News, a PHMSA spokesperson said that "first and foremost, PHMSA's number one priority is safety. As such, we welcome the DOT OIG report and look forward to implementing its recommendations."

The report has no recommendations about addressing any industry influence within the agency.

Some pipeline trade groups have objected in the past to the idea that the agency is too lenient, and stress that pipeline accidents remain relatively rare.

Asked about the findings in the report Friday, the groups emphasized the safety culture in their own sectors and stressed the inspector general's finding of a positive safety culture. C.J. Osman, vice president for government affairs at the Interstate Natural Gas Association of America, said the industry works closely with PHMSA on enhancing safety culture and management systems.

"The pipeline industry collaborates with PHMSA in many areas to promote pipeline safety, including in research and development, implementation of newer technologies and leading practices," Osman said.

John Stoodly of the Association of Oil Pipe Lines highlighted the report's finding that 73% of agency employees said it has a positive impact on industry's safety culture.

"The data shows what interaction is occurring between PHMSA and industry is clearly benefiting pipeline safety," Stoodly said.

## **A handcuffed agency?**

Accusations of lax oversight and industry "capture" have dogged the agency for its 16 years of existence. Agency leaders have said it would be impossible to regulate such a highly technical industry without engaging closely with it. Companies say the regular audits of their operations and control room procedures can be extensive to the point of being exhaustive.

Some agency critics blame Congress for handcuffing the agency with sharp limits on its authority compared with other agencies. But others say agency leaders could find ways to be tougher.

Sen. Ed Markey (D-Mass.) compared PHMSA fines to a "parking ticket" after a string of gas explosions in 2018 damaged more than 100 homes and left an 18-year-old dead in his home

state ([Energywire](#), April 11, 2019). Rebecca Craven of the safety advocacy group Pipeline Safety Trust said, "They've never been a particularly aggressive enforcement agency" ([Energywire](#), Nov. 15, 2018).

The National Transportation Safety Board criticized the agency's oversight after two high-profile accidents in 2010: a large oil spill in Michigan that fouled the Kalamazoo River and a deadly gas pipeline explosion in San Bruno, Calif. The board said PHMSA's rules had unjustified loopholes for older pipelines and its policing of repairs was weak.

PHMSA officials announced a "record" fine of \$3.7 million against Enbridge Energy Partners for the spill that fouled the Kalamazoo River. EPA officials, who fumed that PHMSA had undercut their enforcement effort, later negotiated a \$61 million fine ([Energywire](#), April 3, 2018). California officials levied a \$1.6 billion fine after the San Bruno explosion, which killed eight people.

PHMSA's own data reflects a reluctance to fine companies. A E&E News review of enforcement data in 2018 showed that in 90% of explosions and fires on pipelines since 2010, the agency sought no fine. In the remaining 13 cases, fines totaled \$5.4 million, less than the compensation of many pipeline company chief executives.

PHMSA was created with a uniquely strict cost-benefit balancing test that, critics say, makes it easier for industry to challenge the cost of regulations. Maximum fines are set by Congress. Courts have rebuked agency officials as unduly harsh. When the agency tried to fine Exxon Mobil Corp. \$2.6 million for a 2013 oil-sands crude spill in Mayflower, Ark., the 5th U.S. Circuit Court of Appeals cut the fine by 90%, saying the agency's action was excessive.

"The fact that the Mayflower release occurred, while regrettable, does not necessarily mean that Exxon Mobil failed to abide by the pipeline integrity regulations," the judges wrote at the time ([Energywire](#), Nov. 15, 2018). The company wound up paying \$275,000.

The cumbersome nature of regulation and enforcement has many people on different sides saying industry measures, rather than action by PHMSA, are the key to improving pipeline safety.

National Transportation Safety Board officials say they're increasingly turning to recommending voluntary measures to industry after major accidents, because new rules take too long ([Energywire](#), Sept. 28, 2017).

And the Trump administration's PHMSA director, Howard "Skip" Elliott, recently wrote in an op-ed for *The Hill*, on the cusp of his departure, that research and innovation are better ways to advance safety than regulation.

"We need to find faster ways to realize the benefits of technological advancements for safety," Elliott **wrote**. "Regulation is time consuming, taking years if not decades. A better way to advance safety is through research and innovation."

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