



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, D.C. 20590

March 8, 2016

The Honorable Michael E. Capuano
Ranking Member
U.S. House of Representatives
House Transportation & Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials
Washington, DC 20015-2017

Dear Ranking Member Capuano:

This is in response to your letter to the Department of Transportation (DOT) Office of Inspector General (OIG) dated February 26, 2016, requesting our input on ways to enhance the implementation and oversight of DOT's Pipeline Safety Program. We greatly appreciate your concern for the enforcement of criminal pipeline safety laws. While the regulatory enforcement of pipeline safety is handled by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and State regulators, without effective criminal enforcement as well there is a danger that pipeline operators may treat the administrative enforcement of fines as nothing more than the cost of doing business. Unfortunately, although there have been thousands of pipeline incidents over the past twenty years, it has not been possible to bring a significant number of pipeline safety prosecutions under Title 49 U.S.C. Section 60123(a) which sets forth the criminal penalty for violation of pipeline safety laws, regulations and orders.

A significant obstacle to bringing more successful prosecutions is the language of section 60123(a) itself, which requires that the violation be committed "knowingly and willfully." A requirement of willfulness is fairly unusual in criminal statutes and is generally reserved for violations such as tax evasion where ordinary citizens are faced with complying with a complex set of rules. This is markedly different from the pipeline industry which is characterized by sophisticated entities with professional legal and regulatory affairs staff. The willful standard has led to numerous pipeline safety cases being declined for prosecution by the U.S. Department of Justice. More significantly, there are many cases that PHMSA does not refer to OIG for criminal investigation because PHMSA concludes there is insufficient evidence to establish a willful violation.

We have had far more success prosecuting cases under Title 49 U.S.C. Section 5124, which establishes the penalty for violating hazardous materials transportation laws and

regulations, than under section 60123(a). Prosecution under section 5124 originally required a showing of willfulness, but the standard was changed in 2005 to penalize reckless violations as well. In the past five years alone, we have brought Federal charges under section 5124 against 24 individuals and companies. By contrast, Federal charges under section 60123(a) have only been brought four times since 1996.

We believe that section 60123(a) should be amended by changing “knowingly and willfully” to “recklessly” to mirror section 5124. Persons and businesses shipping hazmat are required to know the rules even though in many instances they may only ship hazmat on an occasional basis and may never interact with PHMSA. For pipeline operators, the safe operation of pipelines is an integral part of their operations and they have frequent contact with regulators. We note that this would not result in criminal liability for companies that are making good faith efforts to comply with pipeline safety regulations. As defined in section 5124, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of their conduct.

Another obstacle to successful prosecution of criminal pipeline safety violations is that the employees of pipeline operators and other persons with knowledge of violations rarely come forward. Potential whistleblowers often believe that if they come forward they will be unable to find future employment in the industry. Although statutes exist to protect whistleblowers, this has not been enough to encourage insiders to come forward. It is unfortunately the case that DOT may not become aware of pipeline safety violations until a natural gas pipeline explodes or a liquid pipeline leaks significant amounts of oil or gasoline. We believe that a whistleblower incentive provision, such as the one recently enacted by the Fixing America’s Surface Transportation Act,¹ would greatly enhance DOT’s ability to identify safety violations and take appropriate action before a pipeline rupture or explosion occurs.

If you have any questions or wish to speak to us further regarding this matter, please do not hesitate to contact me at (202) 366-1959 or Nathan Richmond, Director and Counsel for Congressional and External Affairs, at (202) 493-0422.

Sincerely,



Calvin L. Scovel III
Inspector General

¹ P.L. 114-94 (December 4, 2015)