



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

October 18, 2016

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Foxx:

On February 3, 2015, I requested that the U.S. Department of Transportation (DOT) Inspector General (IG) conduct a full audit of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline and hazardous materials safety programs. I requested the audit because of my concerns with PHMSA's long history of failing to take appropriate regulatory action to address well-known pipeline and hazardous materials safety issues before a tragic accident occurs, such as establishing new design standards for DOT-111 tank cars or strengthening the safety of transporting lithium batteries by air.

Today, the IG released its audit and unfortunately the review is as expected. The IG found that, since 2005, PHMSA has failed to implement 90 statutory mandates and National Transportation Safety Board (NTSB), Government Accountability Office (GAO), and IG recommendations addressing significant pipeline and hazardous materials safety issues.

These unimplemented and overdue statutory mandates include:

- requiring installation of pipeline excess flow valves in multi-family facilities, like apartment complexes, and small commercial facilities, which stop the flow of natural gas when there is a leak;
- requiring the use of automatic or remote-controlled shut-off valves on certain pipeline transmission lines, which could have prevented the tragic natural gas explosion in San Bruno, California;
- requiring the use of leak detection on hazardous liquid pipelines; and
- a mandate as simple and crucial as requiring pipeline operators to report pipeline leaks within one hour of discovery to the National Response Center.

PHMSA has also failed to implement numerous NTSB, GAO, and IG recommendations. The IG found that PHMSA has completed action on only one-half of NTSB recommendations. As a result, 60 NTSB and 10 GAO and IG recommendations, issued since 2005, remain open. In addition, the IG found that PHMSA consistently and overwhelmingly missed deadlines mandated by Congress and the Department's own internal rulemaking deadlines established by your Office and agreed upon by PHMSA.

Contributing to these problems is the fact that PHMSA has not developed agency-wide policies or processes on how to promulgate rulemakings and other activities required to implement mandates and recommendations. Program offices often did not develop plans, establish priorities, identify team member roles and responsibilities, create timetables, or justify and document delays as required by Federal and DOT standards and policies. For example, a lack of planning and assignment of roles and responsibilities led to an 11-year delay in implementation of a 2004 NTSB recommendation removing an exemption in regulations that permitted pipe to be placed in natural gas service even though the pipe could have been damaged in transportation to pipeline construction sites.

I am also very concerned that PHMSA has repeatedly failed to appropriately coordinate with the operating administrations, including the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), and the Federal Motor Carrier Safety Administration (FMCSA), and heed their warnings of potential critical safety deficiencies in regulations and international standards. PHMSA's failure to address FAA's longstanding concerns with the safe transport of lithium batteries is a perfect example. In fact, during a briefing, the IG's Office informed Committee Democratic staff that there is a clear distinction between what FAA and PHMSA view as their agency missions: the FAA and the other operating administrations view safety as their top priority; whereas PHMSA views the fluidity of the transportation of hazardous materials, including oil and natural gas, through the modes of transportation as its top priority. This cultural distinction is a significant concern and one that makes me wonder whether the "Safety" in PHMSA's name has long been forgotten.

While I am pleased that PHMSA's reorganization plan (PHMSA 2021) addresses most of the IG's recommendations, the plan is dependent on how well it is implemented. In addition, PHMSA has not provided appropriate assurances that it will implement IG recommendation 3, requiring PHMSA to develop written agreements with the FAA, FRA, and FMCSA on appropriate coordination for rulemaking and the international standards development process. PHMSA has proposed instituting a "policy" rather than a more permanent memorandum of agreement with the operating administrations, which would not be implemented until December 2017. I find both PHMSA's approach and timeline unacceptable.

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I urge you to address these critical PHMSA statutory mandates and recommendations before another tragedy occurs. If you have questions or need additional information, please contact me or have your staff contact Jennifer Homendy of the Committee staff at 202-225-3274.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter DeFAZIO", is positioned above the printed name.

PETER DeFAZIO
Ranking Member