



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

MAR 17 2004

The Honorable John D. Dingell
Ranking Member, Committee
on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Dingell:

Thank you for your letter, dated February 20, seeking specific information about the collection of civil penalties by the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety. Your letter focused on three main topics: the two enforcement actions arising from the tragic events in Bellingham, Washington, and Carlsbad, New Mexico, and the basis for testimony that RSPA had increased its use of civil penalties.

We share your interest ensuring prompt and appropriate enforcement actions for the two catastrophic pipeline failures. In both cases, RSPA commenced investigations immediately. Both accidents caused an immense amount of human suffering. We hope our enforcement efforts in these cases will reduce the likelihood of similar tragedies in the future.

Within a year of the respective accidents, RSPA had issued Notices of Probable Violation (NOPV) indicating the violations that were believed to have occurred and proposing penalty amounts. After receiving an NOPV, a respondent may respond in writing, or request a hearing, or do both. The objective of the process is to arrive at a determination of the facts and to allow full consideration of the factors that go into determining the penalty amount. RSPA's administrative enforcement process has worked well in requiring pipeline operators to undertake corrective and remedial actions that cost the companies millions of dollars and in assessing civil penalties in relatively modest amounts. For example, using the administrative process, RSPA was able to compel the pipeline companies to undertake very costly corrective action programs following the Carlsbad and Bellingham accidents. (In the Bellingham case, those actions are estimated to have cost more than \$50 million.)

The administrative penalty enforcement process has been a very effective enforcement tool, particularly in routine cases in which the penalties need not be large. For the most egregious cases, it can be more effective to pursue punitive enforcement through a criminal prosecution, a civil enforcement action, or both. Congress recognized as much with the enactment of the Pipeline Safety Improvement Act of 2002, which enables the United States to seek civil penalties in a judicial action in federal district court. The availability of judicial action may have a great impact on violators and regulated community. Together with the

already-existing criminal and administrative enforcement options, this civil authority provides an important new enforcement tool.

RSPA exercised this new authority for the first time with respect to the case arising out of the accident in Carlsbad, New Mexico. On December 18, 2003, RSPA requested that the Department of Justice (DOJ) institute a civil proceeding against the El Paso Energy Pipeline Group to enforce pipeline safety regulations and assess civil penalties. That referral is under review at the Justice Department.

In the Bellingham case, RSPA was part of a broader Federal enforcement effort that focused on both of the companies involved – Shell Pipeline Co. (formerly Equilon) and Olympic Pipeline Co. RSPA began to develop an administrative penalty case shortly after the accident. At about the same time, DOJ and DOT began developing a criminal case under the pipeline safety law; and DOJ and the Environmental Protection Agency began developing a civil case under the Clean Water Act. In May of 2002, before RSPA could schedule a hearing on the NOPV, the United States Attorney's office asked RSPA to defer administrative action pending resolution of the criminal case. In order to avoid interfering with the criminal case, RSPA stayed its prosecution of the administrative penalty case. RSPA nevertheless continued working to require the companies to undertake corrective and remedial actions. RSPA also worked cooperatively with the Justice Department and the Environmental Protection Agency to prosecute the criminal and civil enforcement cases. The State of Washington also participated in these efforts.

The results of the coordinated efforts of these agencies are nothing short of extraordinary. In all, the Federal enforcement effort secured fines and injunctive relief totaling well over \$100 million. The companies were convicted of felony charges under the Pipeline Safety regulations, and misdemeanor charges under the Clean Water Act. In addition to criminal fines totaling \$21 million, and in civil penalties totaling \$15 million (half of which will be paid to the State of Washington), the effort secured more than \$75 million in injunctive relief in the civil judicial action and millions of dollars worth of corrective action obtained through RSPA's administrative case. These results represent a truly impressive enforcement outcome that RSPA, EPA, and DOJ can be proud of.

In light of the magnitude of the government's enforcement achievements in the Bellingham matter – penalties and injunctive relief well over \$100 million – it is unlikely that pursuing the last increment of an additional \$3 million penalty would appreciably increase the deterrent effect of the enforcement action. Such an action would not make the people of Washington State any safer and it would prevent RSPA from providing an equivalent level of safety for citizens in other parts of the country. Nevertheless, RSPA filed a proof of claim for the full amount of the proposed penalty with the Olympic bankruptcy court. And in December 2003, RSPA issued a consent order against Shell for \$250,000, which was paid in full in January of 2004. Further enforcement action could arguably be seen as excessive at a time when RSPA's finite resources can be better devoted to other matters.

Finally, you asked for a detailed breakdown of the \$9 million in proposed penalties that former Administrator Engleman cited in her testimony before the Subcommittee on

Energy and Air Quality on March 19, 2002. At that time, RSPA's pipeline enforcement database showed that OPS had issued 61 Notices of Probable Violation with proposed civil penalties totaling \$9,069,700 for the period between January 1, 2000 and March 6, 2002. Upon reviewing the information to confirm that testimony, we discovered duplicate records of two enforcement cases. As corrected, the database shows that OPS issued 59 Notices of Probable Violation with proposed civil penalties totaling \$8,969,700 for the period between January 1, 2000 and March 6, 2002.

If I can provide further information or assistance, please feel free to call me or James Wiggins, Director of Policy and Program Support, at 202-366-4381.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'S. G. BONASSO', with a stylized flourish extending to the right.

Samuel G. Bonasso
Deputy Administrator