

Mr. Jeffrey Wiese  
Associate Administrator for  
Pipeline Safety  
PHMSA  
U.S. Department of Transportation  
1200 New Jersey Ave., SE  
Washington, DC 20590

November 14, 2013

Dear Mr. Wiese:

Relative to your letter of October 30, 2013, you appear to be laboring under a fundamental misimpression, although I believe the umbrage you expressed in this letter to be utterly disingenuous. PEER does not in any way intend to demean the work of “inspectors, investigators and enforcement personnel” working within the Pipeline & Hazardous Materials safety Administration (PHMSA). To the contrary, our criticism has been directed at you and PHMSA leadership – not your line staff.

PEER is a service organization for public employees addressing challenges in better protecting our environment and public safety. In this instance, we are working with and on behalf of the very PHMSA professionals on whose behalf you claim to speak. In fact, as the material to which you have objected has appeared in media reports, PEER has been contacted by still other PHMSA staff to endorse the accuracy of this material and to thank us for our interest.

The root issue is whether PHMSA is fulfilling its mission “to ensure that pipelines operate safely”, in your words. Based upon your published remarks, it appears that you share our doubts.

As reported by *InsideClimate News*, at a conference held in New Orleans this July 24<sup>th</sup>, you said –

- The regulatory program for PHMSA is “kind of dying...Getting any change through regulation, which used to be a viable tool, is no longer viable.”

- Your program’s enforcement is toothless because you have “very few tools to work with. Do I think I can hurt a major international corporation with a \$2 million civil penalty?”
- A major problem is “an under-informed populace highly dependent on fossil fuels” is prone to negative perceptions of the industry egged on by media coverage that promotes a “gang warfare” dynamic.

Instead of inspections, safety exercises and enforcement actions, you are touting the creation of a YouTube channel to sway industry into making voluntary safety improvements. “We’ll be trying to socialize these concepts long before we get to regulations,” you were quoted as saying.

Given these remarks, it is hard to take your profession of a rigorous approach to oversight of pipeline safety seriously.

Regarding the two issues you raise in your letter (inspections and conference travel), the conclusions we drew were based upon data PHMSA provided us under the Freedom of Information Act (FOIA). The basis of any calculations we made were posted on our website for all to examine.

Rather than “clearly” refuting the agency statistics PEER displayed, your letter appears to be designed to deliberately obfuscate rather than elucidate.

With respect to inspections and incident response –

- The statistics we cite take into account, and separately display, state activity;
- You admit that many incidents (what you call “minor” leaks) do not trigger inspections. Paradoxically, since the tally supplied by PHMSA of incidents which drew no immediate inspection did not provide a state/federal breakdown it is disingenuous that you “must object” to your own numbers; and
- You deliberately and repeatedly mix apples and oranges into a sophistic fruit salad. For example, you do not dispute the statistics we point to showing the number of pipeline miles inspected. Instead, you state “PHMSA has inspected *pipeline companies that operate virtually all (99%) of its jurisdictional miles*” (emphasis added). Your statement does not refute our point but merely obscures it.

With respect to travel to industry conferences, your letter speaks out of both sides of the mouth. On one hand, you state that the 850 conferences were “critical to influence industry standard development” but do not point to a single concrete safety result from this veritable deluge of meetings.

On the other hand, you seek to minimize the overall commitment of resources in sending staff delegations to approximately 170 conferences a year by citing how “pipeline safety regional personnel” spend their time. We do not doubt that these undefined and un-enumerated regional specialists are not the PHMSA staff attending conferences.

Where I think we can agree, however, is that too little of PHMSA operational information is easily available to the public. To avoid future methodological bickering, PEER proposes that PHMSA place much more of the useful safety information on its web site. Specifically, we suggest that PHMSA –

- 1) Make all facility response plans publically available on publicly accessible portions of its website by March 2014. PHMSA should also commit to routinely replace the old facility response plans with new ones as they are approved.

This straightforward step will help state and local partners, responding agencies and affected publics better prepare in the event of future incidents.

- 2) Make publically available all reports of investigation.

There is no credible reason why PHMSA should not publish these reports as soon as they are finished.

- 3) Implement the recommendation made in the Department of Transportation Office of Inspector General audit report issued June 18, 2012 that PHMSA create a database of pipeline physical characteristics, accidents, and inspections of individual pipeline units in order to identify and monitor at-risk pipelines. This database should be on a publicly accessible part of your website.

This database can provide interested publics with “one-stop-shopping” for information about the factors affecting how PHMSA deploys its resources.

- 4) Publish information (location, size, type of material, etc.) on all oil and hazardous material spills reported to PHMSA and/or state regulators immediately after the spill is reported. We would urge that PHMSA continually update the webpage as more information about the cause and clean-up plans as they develop and publish communications to and from the company regarding the spill and clean-up. In states where a state agency implements PHMSA programs, require the state to publish such information as a requirement for being the primacy agency.

This information will provide interested parties the real-time knowledge they need to ensure their land and interests are being appropriately taken care of. This would also keep PHMSA in line with states, like North Dakota, that are seeking to implement such disclosures themselves.

- 5) Travel information, including expenses, should be posted quarterly on the PHMSA website.

This will allow the public, regulatory partners and the Congress know how PHMSA staff members are spending their time, including breakdowns between regional safety professionals versus headquarters personnel.

- 6) Identify publically and implement five tools that would help make enforcing safety regulations easier.

Publicly prioritizing five critical steps will help the public and Congress better understand where PHMSA believes it can make headway in the near term.

Implementing these simple steps will better educate the public and eliminate the need for PEER to FOIA reams of information (or to sue PHMSA to compel production). Failure to improve meaningful transparency will only lead to more testy and unproductive disputes.

If you are interested in implementing these suggested measures and would like more specificity from us, please let me know.

Sincerely,

Jeff Ruch  
Executive Director