

Regulation of Oil Pipelines in the U.S. and the Enbridge Oil Spill

Selected Sources

By Jane Edwards

Issues surrounding the safety of oil production and transportation have been prominent in the news over the last year. The spring and summer of 2010 were marked by oil-related disasters including the oil spill in the Gulf of Mexico and, closer to home, the release of more than 800,000 gallons of oil into the Kalamazoo River near Marshall (commonly referred to as the Enbridge oil spill). Few people think about the legal aspects of oil pipelines until a disaster like the Enbridge oil spill occurs. As I watched these events unfold, I frequently wondered about the legal significance of these accidents, particularly in terms of regulation of oil production facilities and oil pipelines.

With this background, I thought it would be timely to write an article on the legal resources associated with oil pipelines in the United States and in Michigan. While this may seem like a very narrow topic for an article related to legal research, you may be surprised to find that there are many sources and multiple governmental agencies that deal with oil pipelines. Some sources and agencies focus exclusively on rates and tariffs, and others focus on safety issues.

In addition to discussing the general legal resources associated with regulation of oil pipelines, this article will also include information on the legal resources specific to the Enbridge accident.

Federal Agencies

Three federal agencies play a role in the regulation of oil pipelines: the Federal Energy Regulatory Commission (FERC), the U.S. Department of Transportation, and the Environmental Protection Agency (EPA). Each agency is responsible for specific aspects of oil pipeline regulation.

FERC is responsible for regulation of rates and charges for the transportation of oil by

pipeline. Additionally, it ensures that oil shippers have equal access to pipeline transportation systems.

FERC has an extensive website that includes a significant amount of material for legal researchers. The web page devoted exclusively to oil-pipeline-related legal materials is <http://www.ferc.gov/legal/fed-sta.asp?new=sc4>. It includes links to the Energy Policy Act of 2005, but more importantly, it includes links to specific oil pipeline regulations. Another FERC website of interest to legal researchers is the FERC Legal Resources page at <http://www.ferc.gov/legal/legal.asp>. This page is the general legal resources page and includes links to legislation, major orders and regulations, administrative decisions, court cases, and more.

The U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) is “the Federal safety authority for ensuring the safe, reliable, and environmentally sound operation of the Nation’s pipeline transportation system.”¹ The administration’s website at <http://www.phmsa.dot.gov/pipeline> provides a comprehensive listing of links to specific topics related to oil pipeline safety. Of significance to legal researchers are the links to enforcement, regulations, state programs, special permits and state waivers, and library (which includes forms).

Additionally, the PHMSA created a special website for the Enbridge accident in Marshall at <http://www.phmsa.dot.gov/pipeline/enbridge>. This website includes a brief sum-

mary of the spill along with forms and documents detailing the agency’s response to the spill. It also provides information on the corrective action being taken by Enbridge to ensure the safety of the pipeline.

The EPA is the third agency responsible for regulating oil pipelines. Its overarching mission is to “protect human health and the environment,” but its specific role in regulating oil pipelines focuses on accident prevention and emergency management. Given the EPA’s role in handling environmental emergencies, it’s not surprising that it has created a website devoted exclusively to environmental emergency management; see <http://www.epa.gov/emergencies/index.htm>. Like the FERC and PHMSA websites, the EPA Emergency Management website includes a page devoted to laws and regulations associated with environmental emergency management; <http://www.epa.gov/emergencies/lawsregs.htm> includes links to relevant statutes, regulations, and Federal Register notices.

Similar to the PHMSA, the EPA has set up a special website at <http://www.epa.gov/enbridgespill> to address its response to the Enbridge oil spill. The website provides a summary of the accident and a description of what the EPA is doing in terms of clean-up and restoration of the accident site. Of interest to legal researchers are the links to environmental data; links to EPA documents including reports, plans, and testimony transcripts; and a link for filing claims with Enbridge. The website also includes links to

Few people think about the legal aspects of oil pipelines until a disaster like the Enbridge oil spill occurs.

state- and county-specific resources related to the Enbridge spill.

Michigan Agencies

The Michigan Public Service Commission and the Michigan Department of Natural Resources and Environment are the two agencies that are responsible for the regulation of wells and some pipelines, but their authority does not extend to the regulation and inspection of interstate oil pipelines. Regulation and inspection of interstate oil pipelines is left to federal agencies; therefore, the state agencies will not be discussed in detail in this article. After the Enbridge accident, however, several legislators have proposed legislation that would, among other things, require more oversight by state agencies. These legislative efforts are discussed below in the section “Enbridge-Specific Sources—Proposed Legislation.”

Enbridge-Specific Sources— Informational Websites

Enbridge, Inc., the company that owns the pipeline that caused the oil spill, has created a website dedicated to providing the public with information about the spill at <http://response.enbridgeus.com/response/default.aspx>. The website is fairly comprehensive and includes status updates on the clean-up effort and a link for people who may be entitled to some form of claim against the company.

The state of Michigan has set up an Oil Spill News and Updates web page at http://www.michigan.gov/som/0,1607,7-192-45414_40885_56784--,00.html, which includes federal, state, and county information regarding the oil spill. While not the most comprehensive and organized website, it does contain a variety of documents and updates regarding the spill.

In addition to the websites created by the EPA and PHMSA, the U.S. Fish and Wildlife Service has also created a web page dedicated to the Enbridge spill at <http://www.fws.gov/midwest/oilspill/FAQS.html>. Interestingly, this website focuses on the health aspects of the oil spill and includes links to the Calhoun and Kalamazoo County health departments, among other things.

Enbridge-Specific Sources— Proposed Legislation

Legislators at the state and federal levels have introduced legislation designed to prevent or respond to oil-spill-related emergencies such as the Enbridge spill.² Bills at the state level can be accessed online at the Michigan legislature website at <http://www.legislature.mi.gov>, while bills introduced at the federal level can be searched on the Library of Congress Thomas website at <http://thomas.loc.gov>.

The regulation of oil pipelines is an interesting and complicated area of law. While the future of oil pipeline regulation is uncertain, it is likely that we will see more regulation and more attention being paid to ensuring the safety and integrity of oil pipelines and oil production systems. ■



Jane Edwards is the associate director for public services librarian at the John F. Schaefer Law Library—Michigan State University College of Law. She has worked as a librarian since 1997. Jane has a JD from the University of Detroit Mercy School of Law and a master's in library and information science from Wayne State University. She is a member of the State Bar and the Libraries, Legal Research, and Legal Publications Committee.

FOOTNOTES

1. U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration <<http://phmsa.dot.gov/pipeline>>.
2. Shepard, Pipelines Prompt Action: Bills Aim to Protect Against Oil Spills, *The Times Herald.com* (October 26, 2010) (“Michigan lawmakers have proposed changes to the way pipelines are regulated. The changes are outlined in state House Bills 6498 to 6507”); see also Csomor, *Oil Spill Raises Concerns about Pipeline Regulation*, Michigan Policy Network (September 29, 2010), available at <http://www.michiganpolicy.com/index.php?option=com_content&view=article&id=843:oil-spill-raises-concern-about-pipeline-regulation&catid=39:energy-and-environment-policy-briefs&Itemid=138> (Representative Marc Schauer introduced the Corporate Liability and Emergency Accident Notification (CLEAN) Act. H.R. 6008, 111th Cong (2010)). All websites cited in this article were accessed December 12, 2010.