

ALERTS

A Look At 2017 PHMSA Enforcement Numbers And 2018 Trends

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This alert follows up on our [prior alert](#) discussing 2017 Pipeline & Hazardous Materials Safety Administration (PHMSA) enforcement trends and making predictions based on mid-year enforcement numbers. The July 2017 alert projected a sharp uptick in enforcement actions compared to previous years. Our projections indicated the increase in enforcement actions was attributable to substantial increases in Notice of Amendment and Warning Letter enforcement actions. Further analysis showed PHMSA increased oversight of hazardous liquid pipeline operators by policing “lesser violations.” Overall, these projections for 2017 held true when the year-end numbers were reviewed: Notices of Amendment increased by 77 percent from 2016 to 2017; Warning Letter filings increased by 89 percent; and overall enforcement actions increased by 40 percent.

Comparison of Total Enforcement Actions 2016-2017

	2016	2017	2016-2017 % Difference
Corrective Action Order	9	2	-78%
Notice of Probable Violation	63	61	-3%
Notice of Amendment	35	62	77%
Warning Letters	54	102	89%
Notice of Proposed Safety Order	3	2	-33%
Total	164	229	40%

In 2017, PHMSA focused its enforcement actions on hazardous liquid pipeline operators and lesser violations. Hazardous liquid pipeline operators received 61 percent of all Notices of Amendment, an enforcement action heavily utilized by PHMSA in 2017. The enforcement actions appeared to be designed to prevent lesser violations from developing into larger problems or contributing to catastrophic incidents over time. These actions have focused on: inadequacies in maintenance, inspections, and record keeping; failure to adhere to pipeline safety procedures; and a lack of adequate pipeline safety procedures in place.

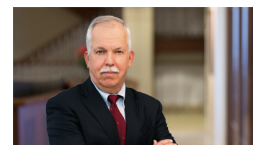
2018 Enforcement Actions to Date

According to its website, PHMSA has initiated 95 new enforcement actions from January to July 2018 (for a projected total of approximately 196 this year). The projected enforcement actions for 2018 represent a 14 percent decrease from 2017 and a less than 1 percent decrease from the prior three-year average. The 2018 enforcement actions to date indicate a continued emphasis on overseeing hazardous liquid pipeline operators.

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PHMSA has issued 43 Notices of Probable Violation, 60 percent of which have been directed at hazardous liquid pipeline operators. Similarly, 50 percent of all Notice of Amendment and Warning Letter filings have been directed at hazardous liquid pipeline operators.

Corrective Action Orders and Notice of Proposed Safety Orders in 2018 appear to be consistent with the low number of these actions initiated in 2017. Corrective Action Orders are typically filed later in the year, so these cases could still exceed prior years' numbers. However, Corrective Action Orders and Notice of Proposed Safety Orders make up a small percentage of the overall number of enforcement actions.

Total Enforcement Actions 2018 (Projected)

	2018 (Jan-July)	2018 Projected	2018 Projected %
Corrective Action Order	1	2	1%
Notice of Probable Violation	43	89	45%
Notice of Amendment	22	45	23%
Warning Letters	28	58	30%
Notice of Proposed Safety Order	1	2	1%
Total	95	196	100%

PHMSA continues to emphasize enforcement against hazardous liquid pipeline operators regarding lesser violations in 2018. More than 50 percent of all enforcement actions to date in 2018 have been directed at hazardous liquid pipeline operators. These actions have again focused on: inadequacies in maintenance, training deficiencies, failure to adhere to procedures, and a lack of adequate procedures. Similarly, many Notices of Probable Violation were filed against hazardous liquid pipeline operators who failed to maintain/update procedure manuals. For example, one pipeline operator did not have complete written procedures for operations, maintenance, and emergencies available for inspection. Another pipeline operator did not include adequate guidance on operating, maintaining, and repairing the pipeline system along with its firefighting equipment.

PHMSA has also increased its use of Notices of Probable Violations. Notices of Probable Violations are projected to rise 46 percent in comparison to 2017. These enforcement actions inform operators that PHMSA is charging them with probable violations of pipeline safety regulations. They are typically accompanied by a proposed compliance order, proposed civil penalties, or both. Operators have a right to respond and a right to an administrative hearing before a final decision is made.

Three Year Enforcement Trends by the Numbers

	2015	2016	2017	2018 (Projected)
Corrective Action Order	11	9	2	2
Notice of Probable Violation	52	63	61	89
Notice of Amendment	54	35	62	45
Warning Letters	76	54	102	58
Notice of Proposed Safety Order	4	3	2	2
Total	197	164	229	196

Enforcement Action Breakdown by Type 2015-2018

	2015	2016	2017	2018 (Projected)
Corrective Action Order	6%	5%	1%	1%
Notice of Probable Violation	26%	38%	27%	45%
Notice of Amendment	27%	21%	27%	23%
Warning Letters	39%	33%	44%	30%
Notice of Proposed Safety Order	2%	2%	1%	1%
Total	100%	100%	100%	100%

Summary

Although projections indicate PHMSA will file fewer enforcement actions in 2018 than 2017, the numbers indicate a consistent emphasis on policing “lesser safety violations” by hazardous liquid pipeline operators. PHMSA appears to be bringing such enforcement actions in an effort to prevent more sizable and dangerous violations down the road. Since 2015, the number of Corrective Action Orders filed has decreased by 80 percent. Corrective Action Orders are filed if “a particular pipeline facility is or would be hazardous to life, property, or the environment.” This decrease in Corrective Actions Orders may be perceived as a result of a successful enforcement strategy and indicates that PHMSA may not decrease its filings against hazardous liquid pipeline operators for lesser violations anytime soon.

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