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Pending Pipeline Safety Regs ...

Law360, New York (June 15, 2011) -- Property insurers as well as pipeline operators can well attest to the catastrophic effect of pipeline failures. In 2010 alone, the Office of Pipeline Safety received 591 reports of pipeline-related incidents over the staggering 2.5 million-mile artery of underground pipe used to carry gas and liquids within the continental United States.

While pipeline incidents have been on a downward trend, fatalities and injuries related to such incidents are rising. Also on the rise: public concern. Fatal explosions like those that rocked residential San Bruno, Calif., in September 2010 and Allentown, Pa., in February have sparked widespread debate about the safety of the nation's subterranean pipeline.

Spurred on by incidents like these, the U.S. Department of Transportation has issued new pipeline safety regulations in conjunction with a public awareness campaign that calls for "transparency" regarding the pipeline network that runs beneath industrial and residential areas alike. The new regulations serve to enhance and expand existing safety procedures related to gas distribution pipelines.

Natural gas distribution pipelines — the smaller-diameter, lower-pressure lines that deliver natural gas directly to homes and businesses — will be required to comply with federal regulations that require similar programs for operators of the larger-diameter, higher-pressure gas transmission pipelines that transport natural gas between states, counties and cities.

The integrity management programs will combine periodic inspections and testing with ongoing monitoring for and ranking of threats to pipeline condition, as well as reports detailing the test results. Also required are improvements to pipeline system control rooms and adherence to National Transportation Safety Board recommendations on items such as controller training and alarm systems.

Although the new regulations would not affect pipelines such as the pipelines that ruptured in San Bruno and Allentown, which were required to comply with the existing regulations for distribution pipelines, the new regulations will increase the safety of distribution lines.

The new rules will also provide for the mandatory installation and utilization of excess flow valves in residential service, both on a new and replacement services. Excess flow valves are designed to halt the flow of gas immediately in the event that a service line breaks. This represents a departure from the old requirements, whereby operators were merely required to offer excess flow valves to homeowners.

Frequently, pipeline operators look to property insurers for coverage of costs resulting from compliance with government safety measures enforced in aftermath of a catastrophic event which are not related to the repair of the damaged pipeline, but are intended to detect and repair integrity threatening conditions.

Pipeline companies that would seek coverage under their property policies for the costs of complying with the new rules after a catastrophic incident will note decisions like that in MarkWest Hydrocarbon v. Liberty Mutual.

In MarkWest , the rupture of a pipeline resulted in government imposed requirements to hydrostatically test undamaged sections of the pipeline resulting in a delay in restart, increased costs of detecting and repairing other integrity threatening conditions and the extra expense resulting from transporting the gas through alternative means. The Tenth Circuit Court of Appeals agreed the policy did not cover the increased costs.

The court observed that after a rupture incident, "regulators may impose safety standards regarding the 'use' of the pipeline, and [the pipeline company] must absorb the expense of meeting those standards." The court further noted that "[s]uch expenses are the cost of doing business [and are] properly internalized by a business, not the sort of unexpected fortuity all-risk policies are designed to cover."

The court reaffirmed the principle that all risk insurance is not a maintenance plan and that to allow a pipeline operator to allocate the costs of repairing and modernizing the pipeline from the ordinary cost of doing business to property insurers would create “strange incentives.”

Given that many of the nation's pipelines may have outlived their practical life expectancies and integrity-threatening conditions are not always detected and repaired, pipeline incidents are not likely to disappear altogether any time soon.

Nevertheless, the implementation of the new integrity management requirements for gas distribution lines and the requirement for excess flow valves may make pipelines safer, reducing exposure for property insurers and pipeline companies alike.

Most important of all: Even those failures that may be inevitable with an aging pipeline should at least be more predictable and, therefore, less hazardous to human life.

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