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April 2017

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PIPELINE



Pipeline Operators, Are You Prepared for NTSB Accident Investigations?

By Dane Jaques, Steptoe & Johnson LLP, Washington, D.C.

The aftermath of a liquid or natural gas pipeline accident can be chaotic and quite demanding for a pipeline operator and its employees. The effect on people, property and the environment can be dramatic.

The effort required to respond to a pipeline accident can be overwhelming, especially when combined with the need to continue running the company. Most pipeline companies and utilities are well-prepared to stop the flow of product and coordinate with emergency responders, but many are not prepared for a National Transportation Safety Board (NTSB) investigation.

Operators may struggle and make significant mistakes because they are not adequately prepared as the post-accident environment is hostile to learning and NTSB rules and practices are complex. Even a modest amount of advance preparation can significantly improve a company's response. This article outlines the basics of NTSB pipeline accident investigations and makes recommendations on preparing for an investigation.

Why Care?

The NTSB does not have regulatory authority over pipeline operators. It cannot assess fines. It cannot suspend or revoke operating authority. So why should you care about an NTSB investigation? The NTSB is held in high esteem by the public and media, and what the NTSB says about your company and how it is communicated can have a dramatic effect on your public relations, corporate reputation, regulator relationships and shareholder relations.

In addition, virtually all of the factual materials collected by the NTSB and most of its reports can potentially be used against you in civil and criminal litigation, as well as administrative proceedings. If nothing else, the NTSB final report is essentially a blueprint for future litigation against a pipeline operator, documenting relevant facts, analyzing those facts and determining probable and contributing causes of the accident.

Therefore, it is critical to pipeline operators that the facts documented during an NTSB investigation are accurate and complete, and that the analysis is fair and correct. This is the record you will be dealing with in all other matters.

NTSB Jurisdiction

The NTSB is an independent federal agency responsible for investigating transportation accidents, including those involving U.S. civil aviation, railroad, highway, marine and pipeline. Its pipeline jurisdiction extends to accidents involving "a fatality, substantial property damage, or significant injury to the environment." 49 U.S.C § 1131(a) (1) (D).

The NTSB's discretion is broad, however, and it can be difficult for a pipeline company or gas utility to predict when the NTSB will assume jurisdiction over a pipeline accident. For example, in the past the NTSB has assumed jurisdiction in relatively small leaks with no injuries or deaths, and

very modest environmental/property damage, while opting not to investigate pipeline accidents with fatalities or fairly significant environmental/property damage. Many factors figure into these decisions, but a fuller description is beyond the scope of this article.

There is also no formal definition of "pipeline" for NTSB jurisdictional purposes. For natural gas pipelines, the NTSB's practice is to consider gas transmission and distribution lines, including gas mains and service lines "upstream of the meter," to be pipelines subject to its jurisdiction. For liquid pipelines, the NTSB's practice is to consider any hazardous liquid pipeline associated with transporting the liquid (i.e., pipelines outside of production or storage facilities) as subject to its jurisdiction.

Party System

The NTSB relies on the "party system" to investigate accidents. In essence, the NTSB invites companies and organizations to participate in the investigation alongside its investigators. These outside parties must have expertise needed for the investigation and must assign individuals who are company employees with the necessary technical backgrounds. No one who holds a legal position or represents claimants or insurers can participate as a party representative in an NTSB investigation. 49 C.F.R. § 831.11(a) (3).

The types of companies and organizations invited to be parties will vary from accident to accident. The Pipeline & Hazardous Material Safety Administration and the pipeline operator are always invited to be parties. It is also typical to invite emergency response organizations, state environmental regulators (liquids) and state public utility commissions (natural gas). Less often, the NTSB will invite unions representing the pipeline operator's employee groups or manufacturers of failed components.

The party system can present significant challenges to pipeline operators for several reasons. Chief among them is the fact that anywhere from four to eight key technical employees will be occupied with the NTSB investigation at a time when the company is in crisis and is handling multiple emergency-response obligations, along with trying to conduct normal business operations.

Many pipeline operators do not select their party participants until after an accident has occurred, which also means those individuals selected may have little idea of how the NTSB operates, what they will be called on to do or how best to accomplish it. The post-accident environment can be emotional and personally challenging, which makes it hostile to learning. Failure to select and train your party participants can result in significant mistakes affecting the company and its employees.

There are also benefits of being a party to the investigation. As a party, you will participate in fact-gathering. This knowledge will allow you to confirm the accuracy and completeness of the record as it is being developed. It will also provide information needed to take corrective action, where necessary.

Structure of Investigation

An NTSB pipeline investigation is broken down into several technical groups, each with an NTSB investigator as the group chairman and representatives from one or more of the parties as participants. Typically, there will be technical groups formed for operations (control room and SCADA), integrity management, materials/metallurgy, emergency/environmental response and perhaps others.

Each technical group acts independently, under the direction of the NTSB investigator-in-charge (IIC), to collect documents, interview witnesses, examine physical components and summarize what is learned in field notes and Group Chairman Factual Reports. Participants to an investigation will have an opportunity to review and comment on draft field notes and Group Chairman Factual Reports.

There may be a public hearing at which the NTSB will call witnesses and further develop the factual record. The types of witnesses called can vary widely depending on the nature of the accident, but typically include witnesses from the pipeline operator, regulators, emergency responders, eyewitnesses and sometimes industry experts. The parties, or sometimes a subset of the parties, are allowed to attend the hearing and have an opportunity to question witnesses. Public hearings are held at the NTSB Boardroom and Conference Center in Washington, D.C.

Following the public hearing (if one is held) and after completion of the factual inquiry, each party to the investigation is invited to make a submission to the NTSB, setting forth that party's view of the facts, analysis, conclusions, safety recommendations and probable/contributing causes. The NTSB staff then prepares a final report which is presented to Board members during a "sunshine meeting" where it is sometimes modified and ultimately approved. Parties are not allowed to review a draft of the NTSB final report, which is typically issued a few weeks after the sunshine meeting.

Disclosure Rules

NTSB regulations preclude parties from disclosing "information concerning the accident or incident" without permission of the IIC. 49 C.F.R. § 831.13(b). This restriction applies to communications within the company as well as communications outside the company.

Only a company's participants in the NTSB investigation are allowed access to this information. Even company management is denied access to accident information unless the IIC gives permission. There is an exception that allows disclosure within the company "for purposes of prevention or remedial action," but again, permission of the IIC is needed prior to disclosure. 49 C.F.R. § 831.13(b).

The most common violation of NTSB regulations is improper disclosure of accident information. Intentional violation of the disclosure rule may result in the NTSB revoking a party's status in an investigation.

The NTSB disclosure rule is also one of the biggest surprises for pipeline operators that are not adequately prepared. Most companies have communications protocols that normally apply when responding to media and social media content. Those

protocols are disrupted by the NTSB disclosure rule, so the company is generally unable to provide substantive responses to many media inquiries and cannot comment on or defend itself against harmful news media and social media content, even if it is inaccurate or unfair. This can be extremely difficult for a company to deal with, especially if it has not learned the rules and prepared for post-accident communications.

Being Prepared

There are several things every pipeline operator should do to prepare for an NTSB investigation:

Investigation procedures: Pick up your emergency-response documents. Is there a discussion of NTSB investigations? If not, you may have a problem. Every pipeline operator should have established procedures to ensure proper and effective participation in an NTSB investigation. It is difficult for a company to "muddle through" such an investigation without procedures and checklists.

Participant selection: Pre-selecting the right employees to participate in an NTSB investigation is the single-most important thing you can do. Pipeline investigations will virtually always have investigative groups for operations (control room and SCADA), integrity management, materials/metallurgy and emergency/environmental response.

There might be groups formed for human performance, public awareness, survival factors, fire scene investigation, meteorology and other areas. Select a primary and alternate employee for each of these technical groups.

Also select a "party coordinator" to interface with the IIC and lead the company's investigation team. The people selected for the technical groups must have expertise in the relevant subject matter, but should also be well-respected, have good interpersonal skills and be persuasive when necessary. Keep in mind these people will be fully occupied with the NTSB investigation for the duration of the on-scene activities – several days to two weeks – and partially occupied for a year or so as the investigation progresses.

Training: Train designated employees to understand NTSB regulations, the investigative process and their responsibilities to the company and the NTSB. Training needn't be extensive, but should cover all the basic issues. Failure to train representatives could lead to mistakes during the investigation, some of which may have significant consequences for the company and its employees.

Conclusion

Every pipeline company and gas utility should be prepared for a possible NTSB pipeline accident investigation. The rules are complex and difficult to learn as you go. Even modest preparation can significantly improve a company's handling of an NTSB pipeline accident investigation. **P&GJ**

Author: Dane Jaques is a partner with the law firm Steptoe & Johnson LLP, based in its Washington, D.C. office. He has over 30 years of experience in energy and transportation law. He focuses on NTSB accident response, pipeline safety, transportation regulation, aviation law, litigation, appeals, and administrative proceedings.