BRACEWELL

Pipeline Safety Management Systems: Reflections on Implementation of API 1173

May 3, 2017

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The Pipeline Safety Management System (SMS) industry standard **API RP 1173** was published in July 2015 and developed by API with input from NTSB, PHMSA, states, and industry representatives, following the 2010 oil pipeline accident in Marshall, Michigan. The standard's purpose is to help pipeline operators create a framework for developing a comprehensive, process-oriented approach to safety, emphasizing continual assessment and improvement. As the industry and other stakeholders reflect on the almost 2 years since publication of the standard, there are several important takeaways.

Systematic Businesslike Approach to Safety

The general intent behind a SMS is to "provide a systematic way to identify hazards and control risks while maintaining assurance that these risk controls are effective," and it is meant to reflect a "businesslike approach to safety." API RP 1173's specific goals reflect the RP's process-oriented nature: enhancing the effectiveness of risk management and enabling continual improvement of pipeline safety performance. Each individual operator's SMS should be tailored to its current needs, with goals reflecting improved performance that are revised over time, as appropriate. The pipeline SMS process is different than Process Safety Management (PSM), required under OSHA regulations for certain facilities, and compliance with PSM is not sufficient for purposes of API RP 1173. Other industries, especially aviation, have used SMS extensively, but where it has been used the applicable law prescribes specific standards to meet. Given that PHMSA has not incorporated the standard into its regulations and the Agency's regulations are "performance based," not prescriptive, the pipeline SMS exercise is even more subjective for pipeline operators.

SMS is Not (Yet) Legally Required

While PHMSA and other agencies strongly support API RP 1173, it remains a "Recommended Practice." It is not a rule and it is not legally required. That said, PHMSA has indicated that the industry is "one bad accident away from Congress making [SMS] mandatory." In addition, the SMS "recommendation" is still new within the pipeline industry. No standard approaches to implementation have emerged or been endorsed by PHMSA, beyond general **implementation tools** prepared by industry trade groups API, AOPL, INGAA and AGA. PHMSA encourages operators to choose the implementation tool that best fits each operator and to build upon existing programs and break the process into manageable pieces.

PHMSA has Embraced SMS and Used it in Enforcement Orders

Even though it is not legally required and the Agency does not intend to incorporate API RP 1173 by reference, PHMSA has embraced the SMS process wholeheartedly. PHMSA has explained that it intends to use the "carrot" rather than the "stick" to encourage implementation of SMS systems. Since the industry standard was finalized, however, PHMSA has required pipeline operators to prepare a SMS plan as part of injunctive relief in several enforcement actions (either as a requirement under a Corrective Action Order, Safety Order, or as part of a Compliance Order). Under those circumstances where a pipeline SMS is required as part of Agency enforcement, PHMSA is likely to expect to have significant input.

In recent audits, operators have faced questions from PHMSA inspectors regarding the status of implementation of API RP 1173 and their SMS programs. Because preparation of an SMS plan is not a PHMSA requirement (unless included as part of an enforcement order or an operator makes SMS part of its written procedures required under Parts 192 or 195), it is beyond the scope of PHMSA's oversight and inspection authority and not part of the inspection protocol. There is no obligation to disclose detailed information or provide documentation regarding an SMS program during a PHMSA inspection. If faced with similar questions, operators should politely remind inspectors that SMS is not legally required, and consider providing a high level summary of their progress and implementation of the standard.

SMS is not Simply a Fad or Trend

The Agency has opined that SMS is not something that will go away with the change of White house administration. Pipeline operators would be wise to consider the use and adoption of a SMS, even though it is not yet a legal requirement. Further, agencies and the public (including shareholders, citizen groups, insurers and plaintiff attorneys) will closely watch operators' uses of the standard. A pipeline SMS will likely be used as a reference point for assessing an operator's performance—and potential liability—following any incident. Although it is not mandatory to adopt a pipeline SMS, under common law theories of negligence, an operator may be found negligent for not adopting and following a pipeline SMS consistent with RP 1173 in the event of an incident. An operator that does not have a pipeline SMS will likely be challenged as to whether having such a program in place would have been 'reasonably prudent' and may have helped prevent an incident.