

following public notice and opportunity for comment the Administrator issue a formal determination of preemption. Specifically, NTTC believes that the El Paso regulation, as currently applied and enforced, would cause a motor carrier to violate 49 CFR 177.853(a).

A Brief Description of the Issue

On December 29, 1993, officials of the City of El Paso codified revisions of Chapter 9.56 of the city's Municipal Code. Certain provisions of the new Ordinance encompass "findings", various definitions, "minimum safety requirements", a routing scheme (including allowable circumstances for deviation), "permits and fees", "violations and penalties", etc. It would appear that the Ordinance is enforceable against any commercial vehicle laden with hazardous materials, regardless of configuration (e.g. cargo tank vs. van trailer, etc.). Moreover, via the Ordinance the city adopts certain portions of the Administrator's Hazardous Materials Regulations (HMR) as its own.

According to NTTC's interpretation of Chapter 9.56, virtually any transporter having cause to pick-up and/or deliver regulated quantities of any hazardous material (as defined within the HMR), at any time in a given year at any place in the City, would be required to present any and all vehicles used in such transportation at designated points within the city, between November 1 and December 31, each year, for inspection. We assume that the inspection would evaluate compliance with relevant Federal regulations. Presuming satisfactory completion of the inspection, the vehicle owner would pay a fee (for the inspection) and be issued a "permit". That permit would be valid for one year and must be "visibly posted" in the vehicle. Permits may not be transferred from vehicle to vehicle.

The permit is subject to revocation, suspension, modification or denial, and an appeal process is in place. The provisions of the 14 Ordinance are enforceable by designated city employees and the penalties for non-compliance are substantial.

Safety and Operational Considerations

From the standpoint of its impact on the tank truck industry, Chapter 9.56 is little more than a series of enforceable requirements rolled into one. Herein, NTTC will concentrate on two areas of concern; namely, the "permit" and the "inspection".

Historically, the Administrator has charged petitioners (in these disputes) to evaluate state and local restrictions in

terms of the "dual compliance test" and/or the "obstacle test".

Standing alone, neither the inspection program nor the permit scheme invite review. Certainly, NTTC would not question the efficacy of safety inspections conducted by trained personnel and aimed at measuring compliance with Federal safety regulations. Similarly (and beginning with IR#2), the Administrator has held that a permit, per se, is not necessarily preempted.

In the case of the El Paso law, however, the inspection and the permit are linked, inexorably. One cannot obtain a permit without an inspection and one cannot have a vehicle inspected unless he/she presents that vehicle before city officials at specific points and within a very narrow time frame.

Argument

NTTC believes that the Administrator need not go beyond his findings and ruling in the matter of PD-4(R); Docket No. PDA-6(R) "California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids; Decision on Petition for Reconsideration" to justify a ruling that the El Paso Ordinance is (similarly) preempted.

Perhaps unknowingly, the City of El Paso has taken the preempted provisions of the California Vehicle Code and added a new and sharply limiting twist. California required an inbound vehicle to remain in that state (whether loaded or empty) until a safety inspection had been performed. In the alternative, a carrier could "pre-notify" California officials of a shipment bound for its jurisdiction and "schedule" an inspection. El Paso, on the other hand, would not only replicate California's preempted "waiting" period, it would compound the felony by limiting inspection times to a time frame within November 1 and December 31.

As we noted in the California docket, "the call and demand nature of common carriage means that management may be unaware that a given vehicle, dispatched from a given terminal at a given time, is destined for California." Obviously, the same holds true for El Paso.

Even if the City amends its current procedures for performing inspections and issuing permits such must only be done within constraints clearly outlined by the Administrator, to wit: (a jurisdiction) may not require an inspection as a condition of travelling on (that jurisdiction's) roads when the inspection cannot be conducted without delay because an inspector must come to the place of inspection from another

location. (PD-4(R); Docket No. PDA-6(R); Decision on Petition for Reconsideration. Issued February 7, 1995).

We grant the fact that, in the case of El Paso's ordinance some circumstances differ from those explored in the California decision, but the burden is the same, to wit: the carrier is compelled to present its vehicle (whether laden or empty) for inspection at a specific place and within a narrow time frame. The net impact of the city's law replicates the opportunities (and actualities) for delay preempted in California.

Paraphrasing the Administrator's rationale in preempting the California regulations, we suggest that, ". . . (El Paso) is free, and is encouraged, to conduct inspections of cargo tanks and portable tanks at POEs, other roadside inspection locations, and terminals. However, it may not require an inspection as a condition of travelling on (El Paso's) roads when the inspection cannot be conducted without (unnecessary) delay. . . ."

Additionally, and as noted by NTTC in other proceedings, should other state or local jurisdictions enact requirements replicating El Paso's the result would be chaotic. We foresee wandering parades of trucks, of all shapes and sizes, crossing the nation's landscape seeking safety inspections in the off-hand chance that sometime in the next 365 days they might required to pick up and/or deliver a load to one or more of the inspecting jurisdictions. We see the windshields of those trucks so plastered with "permits" that the driver's field of vision is through a "paper tunnel".

Frankly, we doubt that the City has any realistic idea of the tumult that would result from comprehensive enforcement of Chapter 9.56.

Summary

Chapter 9.56 of the El Paso Municipal Code imposes an inspection and permit scheme which, in substance and enforcement, replicates that of the State of California which was preempted by the Administrator. As such, it deserves (indeed, mandates) a similar fate.

(Note: A copy of this petition has been sent via first class mail to the Office of the City Clerk and the Office of the Mayor of El Paso, Texas).

Respectfully submitted:

Clifford J. Harvison,

President.

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[Docket No. PS-132; Notice 3]

Risk Assessment Prioritization (RAP) Program, Cycle 1 Completion

AGENCY: Office of Pipeline Safety, DOT.
ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration (RSPA), through its Office of Pipeline Safety (OPS) has just completed the first generation of the Risk Assessment Prioritization (RAP) program. The RAP program was developed to assist OPS in determining how to best apply federal resources to pipeline safety issues using a risk based approach. This public meeting is being held to discuss the RAP process, review the RAP results and outline recommendations for improving RAP for the next cycle.

DATES: The public meeting will be held on Thursday January 25, 1996. The meeting will begin at 9 a.m. and conclude at 3 p.m.

ADDRESSES: The public meeting will be held at the Embassy Suites, 7640 N.W. Tiffany Springs Parkway, Kansas City, Missouri 64154 in the Salon Room. The telephone number to the Embassy Suites is 816-891-7788.

Individuals not able to attend the public meeting can send comments and recommendations on the RAP program to the docket listed above. This docket will remain open for several months to ensure that all interested parties can comment. Send comments in duplicate to the Dockets Units, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 29590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Patrick J. Ramirez, (202) 366-9864 regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366-5046, for docketed material.

SUPPLEMENTARY INFORMATION:

I. Background

OPS began the RAP process two years ago with the goal of gaining better control of its agenda. OPS believes that having a structured method of prioritizing resources based on risk will help it better address Congressional mandates, National Transportation Safety Board (NTSB) recommendations and National Association of Pipeline Safety Representatives (NAPSR) resolutions. OPS began the RAP model

development by having several OPS meetings and one public meeting to solicit input and ideas on the model and its usage. In October 1993, OPS published the RAP model in the Federal Register (58 FR 51402, Oct. 1, 1993) along with a request for pipeline safety issues. The notice generated nearly 500 issues from the government, industry, states, public interests groups and the general public. OPS consolidated these 500 issues to 189 distinct issues and published a second Federal Register notice (60 FR 7620, Feb. 8, 1995) in February 1995 requesting solutions. This second notice generated 400 responses, again from a wide range of pipeline safety interests.

Each solution was evaluated and/or prioritized by three groups consisting of the OPS regional directors, NAPSR/National Association of Regulatory Utility Commissioners (NARUC) and OPS Technical Advisory Committee members. In addition to having a functioning risk model, OPS has a RAP database that holds all of the issues, solutions and prioritized ratings.

Government, industry and public representatives provided extensive input to the RAP process which resulted in the ranked solutions and recommendations that led to the action plan. The action plan represents a significant step for OPS as it continues applying risk based business methods.

II. OPS Risk Based Action Plan

The RAP results provide substantial validation for much of the FY-95 OPS agenda including the following areas, which will retain a high level of OPS attention during FY-96:

- **One-Call Systems.** OPS will continue efforts in support of passage of federal legislation applicable to all underground utilities and operators. In addition, OPS will work to promote industry training of employees responsible for one-call systems and increased awareness and training of excavators. OPS will also work, along with its State Representatives, to promote increased development and use of quick and effective administrative enforcement of penalties for one-call violations.

- **Continue Rulemakings.** OPS will continue the following rulemakings:

- **Installation of check valves or remote-operated valves on liquid pipelines in all high risk areas to provide for rapid shutdown of failed pipeline segments.**
- **Requiring periodic smart pigging in transmission pipeline segments situated in high risk areas.**
- **Require qualification of pipeline personnel.**

Through Regulatory Reinvention Initiatives (RRI), OPS will continue to identify ways of providing more flexibility within its regulations, and reduce or remove costly requirements with little or no risk-reduction benefits. RAP identified the following RRI areas where increased OPS attention is warranted:

- **Use of Industry Standards.** OPS will increase the use of industry standards within its regulations and will continue the trend of increased OPS participation on national consensus standard development committees. Specifically, OPS will increase its efforts in support of API committees addressing specification of pipeline toughness, and will examine for incorporation within its regulations API Standard 1117, Lowering In-Service Pipelines, and the API series of standards concerning corrosion protection for tanks.

- **Inspection procedures.** OPS will strengthen its inspection guidelines to properly evaluate the adequacy of cathodic protection design, installation and monitoring.

- **Drug and alcohol testing requirements.** OPS will reconsider current requirements and work to define the appropriate level of testing commensurate with the risks being addressed.

- **Requirements for clearing shorted casings.** OPS will develop more flexible guidance on the conditions and criteria for clearing shorted casings.

- **Plastic Pipe Technology.** OPS will review its regulations to ensure that they are consistent with current application of plastic pipe technology, especially in the areas of joints and tracer wire.

RAP outlined several technology advancement programs that OPS should continue addressing. The following broad-based efforts will include risk management programs and performance measures, pipeline mapping, research and technology, training and data development:

- **Risk Management Programs and Performance Measures.** OPS will continue to work closely with industry and other stakeholders to develop risk management programs that can demonstrate equal or greater levels of safety.

- **Mapping Initiatives.** OPS will continue its joint efforts with industry to obtain better information concerning the location of pipelines and their proximity to high risk population and environmental areas.

- **Research & Technology Development.** OPS will continue to promote the development of improved

and more cost-effective smart in-line inspection tools, leak detection systems, and line location technologies.

- *De-Centralized Training.* OPS will emphasize the use of computer-based training and other mechanisms to provide cost-effective training to state and regional inspectors.

- *Improve Usefulness of Incident Data.* OPS will work to improve the quality and usefulness of its incident database system, including facilitating collection of the data, making the data more widely available, improving on-line analytical capabilities, and developing ties to industry databases to support risk management demonstrations, which will include making the industry databases available to OPS and States.

OPS will strengthen its interagency cooperative activities through the following:

- *Regulatory Jurisdictional Authority.* OPS will increase efforts with the Coast Guard, the Environmental Protection Agency, the Minerals Management Service and others to clarify jurisdictions and authorities. Specifically, OPS will address jurisdictional issues on low stress lines pipelines and tanks.

- *Pipeline Casings.* OPS will work with the Federal Highway Administration and the Federal Railroad

Administration to investigate the requirements for casings at highway and railroad crossings.

The RAP process included all current mandates from the National Transportation Safety Board (NTSB), National Association of Pipeline Safety Representatives (NAPSR), and certain provisions of the FY88 and FY92 Pipeline Safety Acts. While the RAP results indicate that several of the mandates may require significant cost to implement, they also offer the opportunity to provide appreciable risk reduction. OPS will take a risk based approach to the following initiatives, allowing operators opportunity to determine the circumstances and extent to which these safety actions should be applied to mitigate consequences of accidents.

- Require qualification of pipeline personnel.
- Require periodic smart pigging in transmission pipeline segments situated in high risk areas.
- Install check valves or remote-operated valves on gas and liquid pipelines in all high risk areas to provide for rapid shutdown of failed pipeline segments.

On the mandate to issue regulations requiring operators of natural gas distribution systems to notify their customers with lines in which excess

flow valves (EFVs) are not required by law, but can be installed, OPS has thoroughly considered the issue and is taking steps to issue a rule requiring operators to notify customers about EFV availability and to offer to install EFVs if the customer pays for the installation. Additionally, OPS will be taking steps to develop performance standards for any EFV installed on a service line.

OPS will continue to develop and refine the RAP program through future cycles and will make the database available to State pipeline safety offices and other stakeholders upon request.

III. Public Meeting Topics

The public meeting will focus on the 5 following areas for discussions:

- Overview of the RAP process
- Overview of the RAP results (OPS Action Plan)
- How issues and solutions were gathered and consolidated
- Recommendations for the next cycle
- Introduction to the RAP database
Issues in Washington, DC on January 11, 1996.

Richard B. Felder,
Associate Administrator for Pipeline Safety.
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