

**H.R. 6008, THE “CORPORATE LIABILITY AND EMERGENCY ACCIDENT NOTIFICATION ACT”
(CLEAN ACT)**

INTRODUCED BY REPRESENTATIVE MARK H. SCHAUER

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SUMMARY

H.R. 6008, as amended, the “Corporate Liability and Emergency Accident Notification Act” (CLEAN Act), requires pipeline operators to report releases of hazardous liquid and gas to the Secretary of Transportation and the National Response Center within one hour of discovery. The bill also increases the maximum civil penalties per violation and incident, and requires the U.S. Department of Transportation (DOT) to maintain a searchable internet web site of all reportable incidents. Specifically, the bill:

- requires the owner or operator of a pipeline facility to provide immediate telephonic notice to the Secretary of Transportation (Secretary) and the National Response Center (NRC) at the earliest practicable moment following discovery of a release of gas or hazardous liquid and no later than one hour following the time of discovery;
- instructs DOT to issue guidance within 60 days of the date of enactment of this Act to clarify the meaning of the term “discovery” as it relates to the reporting requirement for a leak;
- requires the Secretary to maintain a database by December 31, 2010, of all reportable incidents involving gas or hazardous liquid pipelines on DOT’s web site to allow the public to search the database for incidents by pipeline owner or operator;
- increases the maximum civil penalty per violation from \$100,000 to \$250,000;
- increases the maximum civil penalty per incident from \$1 million to \$2.5 million; and
- expands the scope of civil penalties to include violations for acts that obstruct or prevent the Secretary from carrying out an inspection or investigations under this chapter.

SECTION-BY-SECTION OF THE LEGISLATION

Section 1. Short title.

Section 1 states that the Act may be cited as the “Corporate Liability and Emergency Accident Notification Act” (CLEAN Act).

Section 2. Notification of incidents.

Subsection (a) requires the owner or operator of a pipeline facility to provide immediate telephonic notice of a release of hazardous liquid or another substance regulated under 49 C.F.R.

§ 195 resulting in an event for which notice is required under section 49 C.F.R. § 195.50 or a release of gas resulting in an incident, as defined in 49 C.F.R. § 191.3. Immediate telephonic notice is defined as notice to the Secretary and the NRC at the earliest practicable moment following discovery of a release of gas or hazardous liquid and not later than one hour following the time of such discovery.

Subsection (b) directs DOT, no later than 60 days after the date of enactment, to issue guidance to clarify the meaning of the term “discovery” as used in this section.

Current regulations state that releases of hazardous liquid or gas resulting in an incident must be reported immediately and at the earliest practicable moment. In 2002, the Bush administration issued guidance to the hazardous liquid and gas pipeline industry stating that “earliest practicable moment” meant one to two hours upon discovery of a release. Questions remain about the definition of the term “discovery” and when reporting should be within one hour and when it should be within two hours.

On July 26, 2010, Enbridge, Inc. reported a release of 19,500 barrels (819,000 gallons) of crude oil one mile south of Marshall, Michigan, into Talmadge Creek and the Kalamazoo River to the NRC. The Kalamazoo River is a tributary to Lake Michigan. The Environmental Protection Agency (EPA) later estimated that the release exceeded one million gallons of oil. According to Enbridge, this was the largest spill that the pipeline operator had ever experienced.

The National Transportation Safety Board found that Enbridge experienced an abrupt pressure drop on July 25, 2010 – the day before Enbridge reported the incident – and multiple volume balance alarms over the course of 13 hours before a local utility worker notified Enbridge and the State that oil had filled Talmadge Creek. Enbridge started booming the creek and the river almost two hours before they reported the incident to the NRC. According to DOT, a spill of this magnitude should have been reported to the NRC at the earliest practicable moment and within one hour of discovery.

Section 3. Transparency of accidents and incidents.

This section requires DOT, no later than December 31, 2010, to maintain a database of all reportable incidents involving hazardous liquid or gas pipelines on DOT’s internet web site to allow the public to search the database for incidents by owner or operator of a pipeline facility. The DOT currently maintains an annual list of all reportable incidents involving hazardous liquid or gas pipelines on its web site; however, the public cannot search the database by operator.

Section 4. Civil penalties.

This section increases the maximum civil penalty per violation from \$100,000 to \$250,000. It increases the maximum civil penalty per incident from \$1 million to \$2.5 million. It also expands the scope of civil penalties to include violations for acts that obstruct or prevent the Secretary from carrying out an inspection or investigation under this chapter.

Section 5. Compliance with Statutory Pay-As-You-Go Act of 2010

This section ensures that the budgetary effects of H.R. 6008 will be recorded, for purposes of the Statutory Pay-As-You-Go Act of 2010 (P.L. 111-139), based on estimates of the Congressional Budget Office (CBO). CBO estimates that the civil penalty provisions of H.R. 6008 could increase revenues by less than \$500,000 per year.