

Obama's pipeline safety agency waits for a leader

By Andrew Restuccia and Elana Schor | 5/5/15 6:50 PM EDT

<http://politico.pro/1PnCrYL>

President Barack Obama has blown past the legal deadline to name a permanent boss for the agency that oversees the safety of the nation's oil trains and fossil-fuel pipelines — while potentially life-or-death regulations continue to sit in limbo.

It's part of a pattern for the Pipeline and Hazardous Materials Safety Administration, where an internal structure that gives deference to industry has helped stymie safety initiatives for years, even as pipeline accidents have caused more than 170 deaths, 670 injuries and \$5 billion in property damage during the past decade. Critics say the agency is in dire need of an overhaul — and want Obama to appoint a leader who's willing to carry one out.

The White House's short list for administrator includes one insider — the acting PHMSA chief who has been filling in since October — and two outsiders: a state pipeline regulator from Rhode Island and a conservationist who has served on one of the agency's advisory committees.

The agency has been without a permanent boss for 213 days as of Tuesday, three days longer than federal law says an acting chief can serve unless the president has nominated a replacement. Before that, PHMSA spent nearly five years helmed by a former industry lawyer who did little to erase the agency's reputation for laxness. A growing number of fellow Democrats say Obama just needs to pick somebody — and soon, since the clock is ticking down on his administration's opportunity to make wholesale changes.

“PHMSA deserves a shakeup,” Sen. Maria Cantwell of Washington state, the top Democrat on the Senate Energy and Natural Resources Committee, told POLITICO. “I certainly want them to be aggressive, and if getting a new permanent administrator is key to that, then yes, that would be great.”

“Not having a permanent administrator removes the possibility of leadership for long-term changes,” said Carl Weimer, executive director of the nonprofit watchdog group Pipeline Safety Trust. Until then, he said, a short-term boss “doesn’t know if he really has the backing of the administration to move on issues, and all the PHMSA staff are in a holding pattern waiting to see which way the wind might change under a new administrator.” But Weimer also noted that it’s “hard to tell whether much long-term vision can be accomplished” during the time left in Obama’s presidency.

The agency, part of the Department of Transportation, oversees the regulation of 2.6 million-plus miles of oil and gas pipelines. It’s also one of two DOT agencies overseeing the nation’s record-high shipments of crude oil in rail cars, which have caused a series of fiery derailments during the past two years in states from North Dakota to Illinois and Virginia.

PHMSA and the Federal Railroad Administration released new safety rules for oil trains on Friday — nearly four months after a Congress-imposed deadline — but its major pipeline safety reform efforts have remained paralyzed for years. That delay is due in part to an internal structure that gives industry outsized influence compared with public watchdogs, as a POLITICO investigation showed last month.

And Obama has been slow to replace former PHMSA Administrator Cynthia Quarterman, who stepped down in October after nearly five years running the agency. Acting Administrator Timothy Butters has been filling her shoes since then.

In contrast to Quarterman, who frequently took heat for her previous work as a pipeline industry lawyer, Butters is a former assistant chief of operations at the Fairfax, Va., fire department — making him a potential voice for the emergency responders who bear the brunt of both pipeline and oil train accidents.

Sources familiar with the issue say the White House is also eyeing at least two other possible nominees for the post:

Paul Roberti, whose decades of experience on energy issues includes serving on the Rhode Island Public Utilities Commission since 2009; and Lois Epstein, director of the Wilderness Society's Arctic program, who spent 12 years on a PHMSA pipeline safety advisory committee.

Nominating Butters would indicate that the administration wants to stick with a PHMSA veteran with experience navigating the agency's inner workings, but it would risk provoking criticism that the status quo isn't enough. Meanwhile, Roberti and Epstein could bring an outsider's perspective.

Roberti and Epstein would not comment on their own potential nominations, but each has expressed concern about the state of the country's aging pipeline network.

"The biggest issue we face as states is dealing with aging infrastructure," Roberti said in a February interview with

POLITICO for another story. He formerly chaired the National Association of Regulatory Utility Commissioners' subcommittee on pipeline safety, and he hails from a region — the Northeast — that has some of the United States' oldest pipelines.

Roberti also spent nearly two decades in the Rhode Island attorney general's office, most recently as assistant attorney general and head of the office's regulatory unit, and he serves on an Energy Department advisory panel dealing with electric infrastructure.

Epstein, a veteran engineer, urged the administration to find a No. 1 for PHMSA who "can make a significant difference" by helping invigorate a long-paralyzed regulatory effort that has left multiple congressional safety mandates unfulfilled.

"Time is running out on this administration. They know that," Epstein said in an interview last week. "It's really unfortunate that they don't have an administrator in place who can push things forward with some force."

While she is no longer a PHMSA adviser, Epstein serves on the Interior Department's outside advisory panel for offshore drilling safety. Her decades of environmental engineering experience began at the Environmental Defense Fund, known as a more moderate green group, and she spent five years in private practice before she joined the Wilderness Society in 2010.

Butters has worked at PHMSA since 2010 but has still won praise from some in Congress for charting a different course than Quarterman. The House Transportation Committee's top

Democrat, Rep. Peter DeFazio of Oregon, said in an interview that Butters has been “a huge improvement over the last political hack” in charge of the agency.

Butters told members of a House Transportation subcommittee last month that he had not yet started the vetting process to be nominated as PHMSA’s permanent leader and declined to say whether he wants to stay on in that capacity. “I defer to the White House in terms of determining how they want to proceed,” he said.

No matter their policy know-how, acting administrators typically lack the political capital that Senate-confirmed agency leaders can wield. Still, acting leaders at times take the sort of assertive posture that raises the eyebrows of regulated industries — as witnessed by the comments that acting Federal Railroad Administration chief Sarah Feinberg made during last week’s announcement of the oil train regulations.

“We are not an agency with a goal of making things convenient or inexpensive for industry,” said Feinberg, who is believed to be seeking Obama’s nomination for the railroad post. “Our entire goal and mission is safety.”

The pipeline agency would benefit from “somebody who’s going to take charge and move these things forward, like Sarah Feinberg has at FRA, pushing and pushing and pushing,” said a Democratic congressional aide who spoke on condition of anonymity. “I don’t see the same thing going on at PHMSA — there needs to be significant leadership and changes.”

PHMSA did not respond to a request for comment about its lack of permanent leadership. A White House official

would say only that it has no personnel announcements yet.

Despite the 210-day deadline for acting administrators to remain on the job, those time limits become looser once the president submits a nomination, and the executive branch sometimes ignores the limits altogether. B. Todd Jones was acting director of the Bureau of Alcohol, Tobacco, Firearms and Explosives for nearly a year and a half before Obama nominated him to be the permanent leader in 2013. ATF nominees had for years faced opposition in the Senate.

PHMSA's unfinished pipeline safety work includes two long-stalled regulations — one for hazardous liquids and one for natural gas — that could make significant changes to existing rules by requiring new technology to catch pipeline leaks and prevent potential damage. The agency faces perennial staffing and enforcement challenges thanks to a pipeline safety budget that barely topped \$145 million this year, requiring any future PHMSA leader to be skilled at doing more with less.

The DOT's independent auditor confirmed on Tuesday that it is planning an audit of PHMSA's ability to comply with congressional and National Transportation Safety Board mandates, underscoring critics' longstanding concerns.

The ideal administrator "can put a priority on the issues that are really relevant, outline a plan and be fairly public about it," longtime pipeline safety consultant and independent PHMSA adviser Richard Kuprewicz said. But he added a significant caveat: "As long as that person can manage with the understanding that they'll never have the resources" they might want.

