

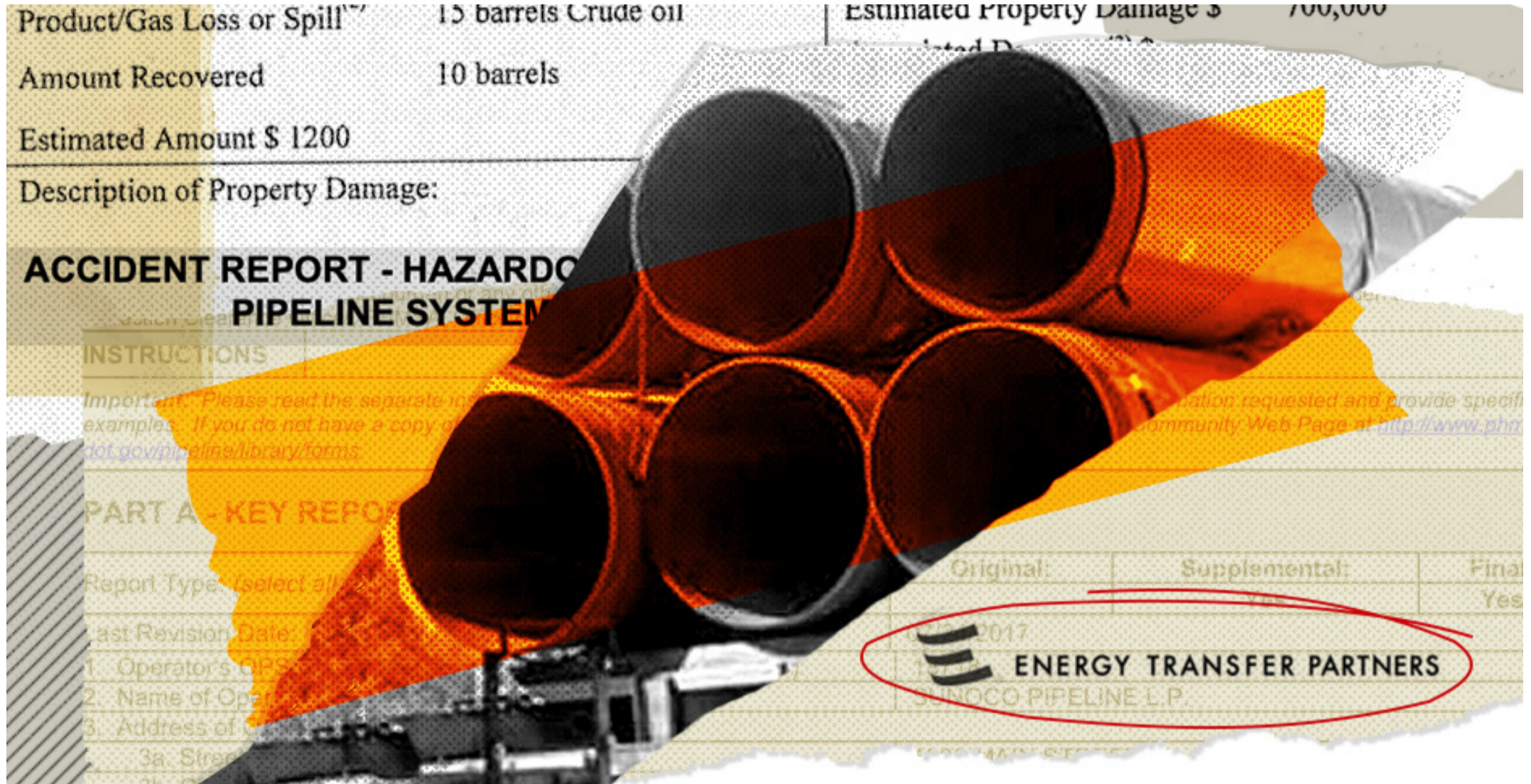
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Trail of spills haunts Dakota Access developer

By Mike Soraghan | 05/26/2020 07:09 AM EDT



Energy Transfer Partners LP is the pipeline giant behind the Dakota Access pipeline. The company's accident record may come under scrutiny now that a federal judge ruling in a Dakota Access case has ordered a deeper look at the company's environmental record. Claudine Hellmuth/E&ENews(illustration); Energy Transfer LP(pipes); Pipeline and Hazardous Materials Safety Administration, and the Oklahoma Corporation Commission(documents)

Federal pipeline inspectors didn't like what they found when they looked at construction of the Permian Express pipeline.

Unqualified welders were fusing the pipe together in central Texas, using unapproved methods. Regulators with the Pipeline and Hazardous Materials Safety Administration (PHMSA) were alarmed enough in May 2016 to seek a \$1.3 million fine against the builder, a subsidiary of Energy Transfer Partners LP.

Company attorneys, though, said the pipe was sound and the problems flagged by PHMSA were "insignificant deviations."

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Four months later, the new pipeline leaked more than 33,000 gallons of oil through a hole next to a weld. It took crews 12 days to find the leak.

It was one of 349 leaks, spills and other accidents since 2012 on pipelines operated by Energy Transfer and its subsidiaries.

That record could signal trouble ahead for Energy Transfer's most famous project, the Dakota Access pipeline. The company's accident history has taken on renewed importance after U.S. District Judge James Boasberg in March ordered a broad review of the pipeline giant's performance on safety and the environment.

His order was part of long-running litigation with tribes who oppose Dakota Access. Boasberg might even shut down the line while the review is done. His decision on whether he'll let it keep operating should come sometime after June 8, when briefs are due before the U.S. District Court for the District of Columbia ([Energywire](https://subscriber.politicopro.com/eenews/article/eenews/1062701917) (https://subscriber.politicopro.com/eenews/article/eenews/1062701917), March 26).

Energy Transfer's Sunoco subsidiary ranks eighth-worst for volume spilled per mile for the last three years on pipelines carrying hazardous liquids such as crude oil, according to PHMSA performance data. It's had more accidents harming people or the environment than any other operator in the last five years — 38 — but it has one of the largest pipeline systems.

"They're never the worst one," said Carl Weimer, executive director of the Pipeline Safety Trust, which worked with PHMSA and industry groups to develop performance rankings. "But they're always in the top 10."

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Sunoco, acquired by Energy Transfer in 2012 and now a wholly owned subsidiary, is listed as the operator of the Dakota Access line and the developer of the Permian Express 2 (PEX2) line.

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But the company's accident record has been improving, said Energy Transfer spokesman Lisa Coleman, who said the company's accident rate declined 50% from 2017 to 2019 amid an initiative to integrate Sunoco and Energy Transfer operations. For 2019, she said, the company's accident rate was below the industry average.

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"It is our priority to maintain and operate our assets to the highest safety standards, not just because it makes good business sense, but because it is the right thing to do," Coleman said.

Water concerns are paramount for the Standing Rock Sioux Tribe, which has led opposition to Dakota Access. The tribe says a pipeline spill fouling its water supply would be an existential threat. The company says chances of a catastrophic spill are "infinitesimal."

Energy Transfer and its subsidiaries, though, have reported causing water contamination. Of 313 spills reported since 2012 on liquid lines, 35 caused water contamination and one was linked to tainted drinking water in a private well.

On top of that, Dallas-based Energy Transfer and its subsidiaries are linked to 19 groundwater contamination sites in the most recent monitoring [report](https://www.tceq.texas.gov/publications/sfr/056) (<https://www.tceq.texas.gov/publications/sfr/056>) from the Texas Groundwater Protection Committee. Some of the facilities belonged to other companies before Energy Transfer acquired them.

Energy Transfer is one of the country's biggest pipeline companies, a sprawling empire of 86,000 miles of pipe and petroleum facilities. CEO Kelcy Warren co-founded the company in 1996 and built it up from a regional pipeline network in Texas. Much of the growth has come from acquisitions, and the company's official subsidiary list has more than 350 names.

The 1,172-mile Dakota Access pipeline, sometimes referred to as DAPL, was built to move crude oil from North Dakota's Bakken Shale oil field to refineries in the Midwest and the Gulf of Mexico.

The bitter protests that erupted during construction in 2016 thrust Energy Transfer and Warren into the national debate about tribal treaty rights and the costs of the United States' newfound abundance of oil.

Thousands of demonstrators camped out to protest the pipeline as construction moved closer to Lake Oahe, a dammed section of the Missouri River in North Dakota a half-mile from the Standing Rock Indian Reservation that supplies water to the Standing Rock Sioux.

In December 2016, with protests in the headlines, the Obama administration declined to grant a final permit for the pipeline to cross under the lake.

President Trump, who has business and political ties to Warren, reversed course ([Greenwire](https://subscriber.politicopro.com/eenews/article/eenews/1060048897) (<https://subscriber.politicopro.com/eenews/article/eenews/1060048897>), Jan. 24, 2017). Four days after his inauguration, to which Warren had contributed \$250,000, Trump issued an executive order accelerating Dakota Access ([Energywire](https://subscriber.politicopro.com/eenews/article/eenews/1060049071) (<https://subscriber.politicopro.com/eenews/article/eenews/1060049071>), Jan. 27, 2017).

Less than five months after Trump took office, the company was pumping oil through the line. It now carries nearly 5% of the oil produced every day in the United States.

Now that flow is at risk of being turned off.

Boasberg found the Trump administration's analysis of the environmental effects of the pipeline to be insufficient. He said the analysis, done by the Army Corps of Engineers, glossed over warnings from experts about "leak-detection systems, operator safety records, adverse conditions, and worst-case discharge."

He ordered the agency to take a more expansive look and prepare a more comprehensive report, called an environmental impact statement, or EIS.

Boasberg, a judge in Washington, has said he may order the pipeline temporarily shut down while the new analysis is being done.

If the EIS shows Energy Transfer to have a bad accident record, it would not spell doom for the \$3.8 billion pipeline. The tribes' lawsuit isn't about whether Energy Transfer and Sunoco are good or bad at operating pipelines. And it's not about whether the pipeline should be shut down.

Legally, it's about whether the Army Corps followed the National Environmental Policy Act in granting the permit for the pipeline. Boasberg found the agency didn't.

Above and beyond

But in the larger public debate about the pipeline, said Jan Hasselman, the Earthjustice attorney representing the Standing Rock Sioux, the company's record should matter.

"When you are determining risk, operator history and culture matters," Hasselman said. "If someone has 12 DUIs, their risk is different from the accountant mom with a perfect record."

A bad track record could push the government to demand stricter environmental and safety measures, said energy analyst Christi Tezak.

"If the [spill] response time is considered long — say, relative to industry average — perhaps additional requirements or other risk mitigation for the project should be required for such an operator," said Tezak, managing director of research at ClearView Energy Partners.

Energy Transfer says it went above and beyond federal standards during construction to make Dakota Access extra safe. Among other measures, Coleman said, the company used thicker-walled pipe in sensitive areas, buried the pipe deeper to prevent accidental strikes, added extra valves to restrict flow in the event of a leak and did far more testing than required before beginning operations.

"All of these things support the position that DAPL should continue to operate during the EIS to be conducted by the Army Corps of Engineers," Coleman said.

The fate of the pipeline will be in the hands of whoever gets elected president in November. The EIS is not expected to be completed until after the winner — likely either Trump or presumptive Democratic nominee Joe Biden — is sworn in next January.

As it fights to keep the pipeline open, Energy Transfer is also seeking permission from states to nearly double the capacity of the pipeline. That has drawn objections from environmentalists who say it only intensifies their concern about a disastrous spill ([Energywire](https://subscriber.politicopro.com/eenews/article/eenews/1061543857) (<https://subscriber.politicopro.com/eenews/article/eenews/1061543857>), Nov. 14, 2019).

Explosions, negligence, prosecutions



Raw crude oil spewing from a broken 8-inch Sunoco pipeline in Oklahoma City in May 2018. Officials said the company had known of a problem with the pipe but didn't fix it. | Oklahoma City Fire Department

Energy Transfer's spill and safety problems reach beyond Dakota Access and the Permian Express. The company's 349 accidents in the past eight years include a maintenance operation in March on a Panhandle Eastern pipeline in Kansas that killed a worker. Other accidents suggest problems with construction or negligent operation.

In Oklahoma, state regulators issued a record \$1 million fine against Sunoco for a 2018 crude oil spill that sprayed a mist of oil over a neighborhood in the Oklahoma City suburbs. The company is negotiating to reduce the penalty. A state inspection [report](https://www.eenews.net/assets/2020/07/10/assessment_ew_06.pdf) (https://www.eenews.net/assets/2020/07/10/assessment_ew_06.pdf) indicates a contractor had alerted the company in 2017 to a problem with the system that is supposed to prevent corrosion but the company didn't fix it. [Daily](#), email publications, source documents, and more

In Pennsylvania, a newly built Energy Transfer pipeline called [Reynolds](https://subscriber.politicopro.com/eenews/article/eenews/1062641247) (<https://subscriber.politicopro.com/eenews/article/eenews/1062641247>), March 19). The incident led to a yearlong permit halt across Pennsylvania, a record \$31 million fine from the state and a federal grand jury investigation.

The permit construction halt on Energy Transfer projects in Pennsylvania included Sunoco's Mariner East natural gas liquids pipeline system, which is also linked to several criminal inquiries and prosecutions ([Energywire](https://subscriber.politicopro.com/eenews/article/eenews/1062205107) (<https://subscriber.politicopro.com/eenews/article/eenews/1062205107>), Jan. 30).

Construction on Mariner and the company's Rover gas pipeline in Ohio angered people living near them with sinkholes, spills and polluted groundwater. At one point in 2017, state and federal authorities had blocked construction of the pipelines in Ohio, Pennsylvania and West Virginia ([Energywire](https://subscriber.politicopro.com/eenews/article/eenews/1060081689) (<https://subscriber.politicopro.com/eenews/article/eenews/1060081689>), May 15, 2018).

'Sound and fit for service'

PHMSA formally scolded the company for the welding problems on the PEX2 project in May 2016. By then, oil had been pumping through the 340-mile pipeline in Texas for half a year.

Construction on the Dakota Access line was set to begin that summer, 1,000 miles to the north.

PHMSA had inspected company facilities around Texas in 2014 and 2015, finding a series of problems. Inspectors [connected](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165020/420165020_NOPV%20PCP%20PCO_06022016_text.pdf) (https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165020/420165020_NOPV%20PCP%20PCO_06022016_text.pdf), some of the problems to specific incidents, such as leaks caused by corrosion in pipes.

On PEX2, they had homed in on a 70-mile segment of the project called "spread 24-3" near Eastland, Texas.

Performance rankings for hazardous liquid pipelines

Operator name	3 year average (barrels spilled)	5 year accident count	2018 miles	2018 barrel miles
Belle Fourche Pipeline	343.62	2	758	13.1B
Crimson Pipeline	76.03	5	1,030	5.4B
BKEP Pipeline	76.03	7	601	4.4B
Centurion Pipeline	64.42	8	2,646	26.8B
Western Refining Logistics	58.32	3	864	5.3B
SFPP	52.53	7	2,845	70.5B
Enterprise Crude Pipeline	49.95	32	3,241	155.9B
Sunoco Pipeline	47.89	38	5,451	50.2B
Delek Logistics Operating	45.67	4	568	3.6B
Rose Rock Midstream Operating	40.7	10	612	4.2B

Federal performance rankings for hazardous liquid pipeline operators with 300 or more miles, measuring accidents affecting people or the environment. Source: PHMSA

The inspectors found welders using what they regarded as "unqualified procedures," intended for a different type of pipe. Pressed, company managers produced two other versions of the procedures to inspector David Eng, causing confusion over which was actually used. PHMSA [deemed](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Final%20Order_11152019_text.pdf) (https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Final%20Order_11152019_text.pdf) the problems "egregious."

Some of the welders themselves were also unqualified, PHMSA said. Those welders had passed a test, but it was the wrong test. PHMSA said Sunoco then tried to "back-qualify" 45 welders with an after-the-fact test. But seven still failed.

About 3,000 welds had been made on the pipeline when inspectors discovered the problem. Sunoco made a "limited attempt" to test the welds holding the line together before the enforcement action was issued, PHMSA said, including cutting 14 welds out of the line. It's not clear how many, but some failed.

"All of the welds on spread 24-3 of the Permian Express II project are suspect," wrote Rod Seeley, director of PHMSA's Houston-based Southwest Region.

PHMSA directed the company to test more welds on that 70-mile segment and review the records of all the welders who worked on the project. But Sunoco and Energy Transfer officials [challenged](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Operator%20Pre%20Hearing%20Supplemental%20Letter_10312016.pdf) (https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Operator%20Pre%20Hearing%20Supplemental%20Letter_10312016.pdf). PHMSA's demands and almost every aspect of the agency's enforcement action.

They said that the problems with the welder qualifications were paperwork mistakes and that construction practices had not violated regulations. Officials also hired an industry consultant and did other tests that they said showed the 24-inch-wide pipe was safe.

"Production welds on PEX II were sound and fit for service," David Chalson, Sunoco's senior vice president for operations, [wrote](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Operator%20Response%20to%20Notice%20and%20Request%20for%20Hearing_05272016.pdf) (https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Operator%20Response%20to%20Notice%20and%20Request%20for%20Hearing_05272016.pdf) in May 2016 in response to Seeley.

At least one spot on the line, though, wasn't "sound and fit" by late August 2016.

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The leak appears to have started Aug. 29, 2016. That's when company officials started trying to figure out an "imbalance" in the Permian line. Twelve days later, they [found](https://www.eenews.net/assets/2020/05/19/document_ew_05.pdf) (https://www.eenews.net/assets/2020/05/19/document_ew_05.pdf) the source of the leak was a weld in the west of Dallas, between the town of Sweetwater, Texas, and a nearby reservoir called Lake Sweetwater.

Daily email publications, source documents, and more

The time it took to find and fix the problem could raise questions about whether leaks would be quickly detected and stopped.

Energy Transfer says its control room for Dakota Access can shut down valves remotely and employs a computational pipeline monitoring system (CPM), which analyzes deviations in the flow of liquids and can detect leaks as small as 1% of flow.

But in the 12 days it took to find the spill near Lake Sweetwater, company officials said the imbalance was never so large that it "exceeded established, normal operating tolerances."

Sunoco started pumping oil through PEX2 again 13 days after finding the spill, operating at a reduced pressure under PHMSA [orders](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H_Corrective%20Action%20Order_09142016_text.pdf) (https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H_Corrective%20Action%20Order_09142016_text.pdf).

It took more than three years, but the top career pipeline safety official at PHMSA, Alan Mayberry, largely upheld the original welding violations last fall, although he dismissed some as redundant. He reduced the fine from \$1.3 million to \$882,000.

As for ensuring the safety of the potentially "suspect" welds, his decision upheld the requirement for the company to review the qualifications of its welders and retest the welds.

The company said it had already done so, according to Mayberry's decision [document](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Final%20Order_11152019_text.pdf) (https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_Final%20Order_11152019_text.pdf). But agency officials said they still hadn't received written proof.

The Permian Express case remains open as PHMSA awaits testing results and Boasberg, the judge, weighs the future of Dakota Access, 1,000 miles away.

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