

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

MARGUERITE GORMLEY as Special )  
Administrator of the Estates of THERESA )  
TOLEDO, ALEXANDER TOLEDO, AND )  
ANGELA MILLER, )

CASE NO. \_\_\_\_\_

Plaintiffs, )

vs. )

METROPOLITAN UTILITIES DISTRICT )  
OF OMAHA, a Political Subdivision of the )  
State of Nebraska, THERMAL SERVICES )  
OF OMAHA, LLC, f/k/a THERMAL )  
SERVICES OF OMAHA, INC., and )  
LENNOX INDUSTRIES, INC. )

JURY TRIAL REQUESTED

Defendants. )

**COMPLAINT AND JURY DEMAND**

**COMES NOW**, the Estates of Theresa Toledo, Alexander Toledo, and Angela Miller, by and through next of kin, Special Administrator, and Personal Representative, Marguerite Gormley (hereinafter collectively "Plaintiffs"), for their Complaint and Jury Demand, and state as follows:

**PARTIES**

1. At all times relevant hereto, Theresa Toledo resided at 4810 South 51<sup>st</sup> Street, Omaha, Nebraska (hereinafter "South 51<sup>st</sup> Street Home").
2. At all times relevant hereto, Angela Miller was the adult daughter of Theresa Toledo and resided at the South 51<sup>st</sup> Street Home.

3. At all times relevant hereto, Alexander Toledo was the adult son of Angela Miller and resided at the South 51<sup>st</sup> Street Home.

4. Marguerite Gormley is a resident of Colorado and was appointed Special Administrator for the estates of Alexander Toledo, and Personal Representative for the estate of Theresa Toledo, and Angela Miller by the County Court of Douglas County.

5. Marguerite Gormley is next of kin and the daughter of Theresa Toledo.

6. Marguerite Gormley is next of kin and sister to Angela Miller.

7. Marguerite Gormley is next of kin and aunt to Alexander Toledo.

8. Metropolitan Utilities District of Omaha (hereinafter "M.U.D.") is a Political Subdivision of the State of Nebraska with its corporate headquarters located at 7350 World Communications Drive, Omaha, Nebraska 68122.

9. Claims against M.U.D. are controlled by the provisions of the Political Subdivisions Tort Claim Act, Nebraska Revised Statutes § 13-901 *et seq.*

10. Thermal Services of Omaha, LLC, formerly known as Thermal Services of Omaha, Inc. (hereinafter "Thermal Services") is a limited liability company organized and existing pursuant to the laws of Nebraska with a principal office address located at 13330 I Street, Omaha, NE 68137.

11. On December 13, 2021, Thermal Services of Omaha, Inc. filed Articles of Conversion with the Nebraska Secretary of State, thereby converting Thermal Services of Omaha, Inc. into Thermal Services of Omaha, LLC.

12. Lennox Industries, Inc. (hereinafter "Lennox") is a corporation organized and existing pursuant to the laws of Delaware with a principal office address located at 2140 Lake

Park Blvd., Richardson, TX 75080 and a Nebraska registered agent office address located at 233 South 13<sup>th</sup> Street, Lincoln, NE 68508.

### **JURISDICTION AND VENUE**

13. Douglas County District Court has subject matter jurisdiction pursuant to Neb Rev Stat §§ 13-907 and 24-302, and by virtue of Defendants' operations and presence in Nebraska, by their transacting business in or directed at Nebraska, and/or by otherwise purposefully availing themselves of the benefits and privileges of Nebraska law by regular, continuous, and systematic contacts with Nebraska.
14. Plaintiffs' claims as against M.U.D. are made pursuant to the Political Subdivisions Tort Claims Act ("PSTCA"). Neb Rev Stat § 13-901, *et seq.*
15. Plaintiffs fulfilled every condition necessary to the filing of this lawsuit.
16. On December 3, 2021, Plaintiffs emailed a Notice and Proof of Claim. On that same date, Plaintiffs sent the Notice and Proof of Claim to M.U.D, via Federal Express. The Notice was delivered to M.U.D. on December 7, 2021.
17. More than six (6) months have passed since Plaintiffs' Notice and Proof of Claim was served.
18. The governing body of M.U.D. has not made a final disposition of the claim. Pursuant to the Political Subdivision Tort Claims Act, Plaintiffs have exercised their right to withdraw the claim from the governing body of M.U.D.
19. On December 1, 2022, Plaintiffs formally withdrew their claim with M.U.D. by emailing a notice of withdrawal. On that same date, Plaintiffs sent the withdrawal Notice, via UPS Express to M.U.D.

20. Venue is proper in Douglas County, Nebraska pursuant to Neb Rev Stat §§ 13-907 and 25-403.01, as Defendants are present in Douglas County, Nebraska and the cause of action arose in Douglas County, and all relevant transactions and occurrences arose in Douglas County.

**FACTUAL ALLEGATIONS – THE PIPELINE**

21. At all times relevant hereto, M.U.D. was a provider of natural gas to residents of Omaha.

22. At all times relevant hereto, M.U.D. provided natural gas to the South 51<sup>st</sup> Street Home.

23. On or about December 8, 2020, natural gas escaped from facilities owned and/or controlled by M.U.D. and collected within or adjacent to the South 51<sup>st</sup> Street Home.

24. On or about December 8, 2020, the aforementioned natural gas ignited and exploded (hereinafter “the Explosion”).

25. According to M.U.D.’s Incident Report to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, No. 20210006- 34701 (“Incident Report”), M.U.D. was notified of the Explosion at 8:25 AM on December 8, 2020.

26. According to M.U.D.’s Incident Report, approximately two thousand (2,000) cubic feet of gas leaked from within or adjacent to the South 51<sup>st</sup> Street Home.

27. According to M.U.D.’s Incident Report, there was no excess flow valve associated with the piping that supplied natural gas to the South 51<sup>st</sup> Street Home.

28. According to M.U.D.’s Incident Report, a Supervisory Control and Data Acquisition (SCADA) based system was in place on the pipeline and/or facility involved in the Explosion.

29. According to M.U.D.’s Incident Report, the aforementioned SCADA-based information such as alarms, alters, events, and/or volume or pack calculations assisted with the indication of

the Explosion, yet such information failed to assist with the confirmed discovery of the Explosion.

30. Despite the fact that the Explosion resulted in three fatalities, M.U.D. chose not to perform any investigation of the controller(s) actions or control room issues because “[t]he incident was contained to the single residence.”
31. As a direct, proximate, and foreseeable result of the Explosion, Theresa Toledo, Alexander Toledo, and Angela Miller were killed.
32. Theresa Toledo and Angela Miller died at the scene of the Explosion.
33. Alexander Toledo was found alive at the scene of the Explosion and was transported to a burn unit in Kansas City before succumbing to fatal burn injuries one day later.
34. The Explosion was the type of event that ordinarily does not occur absent negligence.

#### **FACTUAL ALLEGATIONS – NATURAL GAS ODORIZATION**

35. Nebraska Fire Marshal Rules and Regulations at Title 155, Chapter 1, Rule 001 adopt by reference the federal pipeline safety standards, 49 CFR, Part 192, said regulations being applicable to natural gas pipeline distribution systems such as the one operated by M.U.D. within the State of Nebraska.
36. 49 CFR § 192.625(a) provides: “A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.”
37. 49 CFR § 192.625(f) provides in material part: “To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.”

38. Natural gas is odorized so that persons in the presence of escaped natural gas will detect the presence of escaped natural gas and take measures to evacuate and/or otherwise prevent the further escape of natural gas.
39. Natural gas becomes explosive when it reaches a concentration in air that is five times the level at which it must be detected.
40. The lower explosive limit of natural gas in air is approximately four to five percent (4-5%) in 95-96% air.
41. In order to comply with the requirements of 49 CFR § 192.625, the natural gas sold, transported, and delivered by M.U.D. to the South 51<sup>st</sup> Street Home was required to be odorized so that it could have been readily detectible by a person with a normal sense of smell down to a concentration of eight-tenths of one percent to one percent (.8-1%) in natural gas in a concentration of 99-99.2% air.
42. At all times relevant hereto, M.U.D. failed to properly odorize the natural gas it sold, transported, and delivered to its customers, including but not limited to residents of the South 51<sup>st</sup> Street Home.
43. At all times relevant hereto, M.U.D. failed to perform adequate periodic testing of its natural gas to determine whether the natural gas it was providing to its customers, including residents of the South 51<sup>st</sup> Street Home, was properly odorized.
44. None of the residents of the South 51<sup>st</sup> Street Home detected the presence of natural gas prior to the Explosion.
45. Upon information and belief, M.U.D. has purchased natural gas odorant blends or received written natural gas odorant information from Natural Gas Odorizing, Inc. ("NGO") for use as

odorant blends in the natural gas M.U.D. sold, distributed, and delivered to its natural gas customers, including but not limited to residents of the South 51<sup>st</sup> Street Home.

46. In conjunction with said purchases of natural gas odorant blends or receipt of written information from NGO, on information and belief, M.U.D. received a Natural Gas Odorant Warning Information sheet instructing that M.U.D. should confirm that all persons coming in contact with the natural gas odorant, including but not limited to M.U.D.'s customers, are adequately warned about the properties, characteristics, propensities, and limitations of the odorant when it is used as a warning agent in natural gas.
47. Upon information and belief, M.U.D. has purchased natural gas odorant blends from Chevron Phillips for use as odorant blends in the natural gas M.U.D. sold, distributed, and delivered to its natural gas customers, including but not limited to residents of the South 51<sup>st</sup> Street Home.
48. In conjunction with said purchases of natural gas odorant blends or receipt of written information from Chevron, on information and belief, M.U.D. received written warnings instructing that M.U.D. should confirm that all persons coming in contact with the natural gas odorant, including but not limited to M.U.D.'s customers, are adequately warned about the properties, characteristics, propensities, and limitations of the odorant when it is used as a warning agent in natural gas.
49. M.U.D. did not provide its natural gas customers, including but not limited to the residents of the South 51<sup>st</sup> Street Home, any of the aforementioned warnings.
50. 49 CFR § 192.616, which section is entitled "Public Awareness," provides in material part:
  - a. Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a

written public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see 192.7).

- b. The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.
- c. The operator must follow the general program recommendations, including baseline and supplement requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.
- d. The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:
  - (1) Use of one-call notification system prior to excavation and other damage prevention activities;
  - (2) Possible hazards associated with unintended releases from a gas pipeline;
  - (3) Physical indications that such a release may have occurred;
  - (4) Steps that should be taken for public safety in the event of a gas pipeline release; and
  - (5) Procedures for reporting such an event.
- e. The program must include activities to advise . . . residents of pipeline facility locations.



- f. The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.

51. The First Edition of API RP 1162, dated December 2003, provides in material part:

**4.3 LEAK RECOGNITION AND RESPONSE**

The pipeline operator should provide information in the following key subject areas to the affected public . . . .

**4.3.1 Potential Hazards of Products Transported**

Information about specific release characteristics and potential hazards posed by . . . gases should be included.

**4.3.2 How to Recognize a Pipeline Leak**

Information should address how to recognize a pipeline leak through the senses of sight, unusual sound, and smell and describe any associated dangers as appropriate to the product type.

**4.3.3 Response to a Pipeline Leak**

Information should address an outline of the appropriate action to take if a pipeline leak or release is suspected.

52. At all times prior to the Explosion, the residents of the South 51<sup>st</sup> Street Home were not aware of the release characteristics of a natural gas leak; were not aware of how to identify a natural gas leak by the senses of sight, unusual sound, or smell; and were not aware of the associated dangers in identifying a gas leak by sight, unusual sound, and smell, such as not being able to see a natural gas leak, not being able to hear any usual sounds associated with a natural gas leak, and not being able to smell the odor of odorized natural gas when there is a natural gas leak.

53. M.U.D. failed to provide the residents of the South 51<sup>st</sup> Street Home with adequate information concerning the associated dangers in identifying a gas leak by sight, unusual sound, and smell, such as not being able to see a natural gas leak, not being able to hear any unusual sounds associated with a natural gas leak, and not being able to smell the odor of odorized natural gas when there is a natural gas leak.

54. Prior to the Explosion, none of the residents of the South 51<sup>st</sup> Street Home smelled escaping natural gas because M.U.D. negligently failed to properly odorize that natural gas, negligently failed to adequately perform periodic testing of the odorized gas to determine whether it was sufficiently odorized, negligently failed to educate the residents of the South 51<sup>st</sup> Street Home as to how to identify a natural gas leak by the senses of sight, unusual sound, or smell, and negligently failed to warn the residents of the South 51<sup>st</sup> Street Home as to the dangers in identifying a gas leak by sight, unusual sound, and smell, such as not being able to see a natural gas leak, not being able to hear any unusual sounds associated with a natural gas leak, and not being able to smell the odor of natural gas when there is a natural gas leak.

**FACTUAL ALLEGATIONS – PIPELINE DESIGN AND MAINTENANCE**

55. M.U.D. was negligent in failing to install an excess flow valve in the natural gas line leading into the South 51<sup>st</sup> Street Home.
56. M.U.D. was negligent in failing to advise Plaintiffs as to the benefits associated with the installation of an excess flow valve.
57. M.U.D. was negligent in failing to advise Plaintiffs as to the dangers associated with the failure to install an excess flow valve.
58. The meter and regulator associated with the piping that supplied natural gas to the South 51<sup>st</sup> Street Home was located within the South 51<sup>st</sup> Street Home.
59. The meter and regulator associated with the piping that supplied natural gas to the South 51<sup>st</sup> Street Home was installed in 1959.

60. Service regulators are installed to a meter inlet to control the gas pressure into a building and are intended to reduce the high pressure used to transport natural gas through the delivery systems to the lower pressures used in homes and businesses.
61. Service regulators include a relief valve that opens if the pressure of the regulated gas exceeds a specified pressure to allow the excess gas to vent to the outside atmosphere.
62. On September 29, 2020, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration issued an advisory bulletin titled “Pipeline Safety: Inside Meters and Regulators” (“Advisory Bulletin”). See attached **Exhibit A**.
63. The Advisory Bulletin provides, “PHMSA believes that operators should ensure compliance with the applicable pipeline safety regulations and should evaluate each service installation to determine the appropriate location of the service regulators.”
64. Federal Pipeline Safety Regulations include requirements that operators conduct leakage surveys of their systems, including meter and service regulators located inside buildings. 49 CFR § 192.723.
65. M.U.D. was negligent in failing to adequately inspect and survey its gas system, including the service line, meter, and regulator providing natural gas to the South 51<sup>st</sup> Street Home.
66. The Advisory Bulletin further provides that PHMSA recommends that operators thoroughly review their current DIMP for the threat of the failure of inside meter and regulator installations and make any changes necessary to become compliant with the Federal Pipeline Safety Regulations. For example, based on the requirements in 49 CFR § 192.1007(a) for operators to know their systems, PHMSA would expect operators to know the location (inside or outside) of all meters and regulators installed on their distribution system.

Operators must evaluate the risks associated with these facilities, determine the relative importance of each threat, and rank the risks posed to their pipeline. 49 CFR § 192.1007(c)).

67. The Advisory Bulletin further provides that PHMSA urges operators to consider the points-of-failure identified in NTSB's accident investigation report as they relate to operators' inside meter and regulator installations and to adjust their DIMP accordingly.
68. On April 24, 2019, the National Transportation Safety Board ("NTSB") adopted its report, Building Explosion and Fire, Silver Spring, Maryland, August 10, 2016, NTSB/PAR-19/01, which recommended that all new service regulators be installed outside of occupied structures.
69. Despite the PHMSA Advisory Bulletin and NTSB recommendations, M.U.D. failed to relocate the meter and regulator to the outside of the South 51<sup>st</sup> Street Home, failed to adequately inspect the meter and regulator located at the South 51<sup>st</sup> Street Home, failed to adequately maintain the meter and regulator located at the South 51<sup>st</sup> Street Home, and failed to notify the residents of the South 51<sup>st</sup> Street Home as to the dangers associated with a 61-year-old regulator being located inside of the South 51<sup>st</sup> Street Home.

#### **FACTUAL ALLEGATIONS – THE LENNOX FURNACE**

70. In February of 2020, Theresa Toledo retained Thermal Services to replace the furnace in the South 51<sup>st</sup> Street Home.
71. On or about February 17, 2020, Thermal Services employee Steven Widhalm obtained a permit for the replacement of the existing furnace with a Lennox model no. ML180UH070E36A furnace.
72. At all times relevant hereto, Steven Widhalm acted in the course and scope of his employment with Thermal Services.

73. The Lennox model no. ML180UH070E36A furnace (hereinafter “Lennox Furnace”) was installed in the South 51<sup>st</sup> Street Home in February of 2020.
74. Pursuant to Neb. Rev. Stat. Ann § 14-2124, “...the board of directors of a metropolitan utilities district may adopt rules and regulations, in the interest of public health and safety and the conservation of gas, relating to the use, installation, and maintenance of piping, equipment, and appliances for gas on the premises of consumers.”
75. M.U.D.’s Board of Directors has adopted Natural Gas Rules and Regulations.
76. M.U.D.’s Natural Gas Rules and Regulations effective at the time of the Explosion require that M.U.D. be notified and perform an inspection subsequent to the installation of a furnace.  
*See Part VI.*
77. M.U.D. did not inspect the Lennox Furnace.
78. Thermal Services and/or Lennox failed to notify M.U.D. of the Lennox Furnace installation.
79. Thermal Services and/or Lennox failed to request that M.U.D. inspect the Lennox Furnace installation.
80. Thermal Services and/or Lennox failed to notify Plaintiffs that M.U.D. needed to inspect the Lennox Furnace.
81. On or about December 7, 2020, Thermal Services and/or Lennox performed service, repair, and/or maintenance work on the Lennox Furnace, which was located in the basement of the South 51<sup>st</sup> Street Home.
82. Upon information and belief, Thermal Services and/or Lennox failed to ensure that the Lennox Furnace was properly vented to the outside atmosphere so as to reduce and/or eliminate the potential ignition of combustible gases.

83. Upon information and belief, the Lennox Furnace was dangerous and defective by reason of its failure to properly vent to the outside atmosphere so as to reduce and/or eliminate the potential ignition of combustible gases.
84. Upon information and belief, Thermal Services and/or Lennox failed to ensure that the piping and connections supplying natural gas to the Lennox Furnace were free from leaks.
85. Upon information and belief, Thermal Services and/or Lennox damaged the natural gas regulator located in the basement of the South 51<sup>st</sup> Street Home during the performance of its work on or about December 7, 2020, mere hours before the Explosion.

### **DAMAGES**

86. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.
87. Alexander Toledo suffered conscious pain and suffering, fear, anxiety, ebbing consciousness, and awareness of his likely death from the time of the Explosion until his death one day later.
88. Theresa Toledo suffered conscious pain and suffering, fear, anxiety, ebbing consciousness, and awareness of her likely death from the time of the Explosion until her death.
89. Angela Miller suffered conscious pain and suffering, fear, anxiety, ebbing consciousness, and awareness of her likely death from the time of the Explosion until her death.
90. Plaintiffs' conscious pain and suffering, fear, anxiety, ebbing consciousness, and awareness of likely death were proximately caused by the negligent acts and omissions of the Defendants, jointly and severally.
91. Plaintiffs seek general damages for their conscious pain and suffering during their struggle for life and until their death.
92. Plaintiffs did nothing that constituted a proximate cause of their conscious pain or suffering.

93. Plaintiffs allege damages as follows as a direct and proximate result of each and every Defendants' individual negligent acts and omissions as well as any and every combination of multiple Defendants' negligent acts and omissions:

- a. Bodily injury resulting in the death of Plaintiffs Alexander Toledo, Theresa Toledo, and Angela Miller, in an amount to be determined at trial;
- b. Conscious pain and suffering and terror of Plaintiffs Alexander Toledo, Theresa Toledo, and Angela Miller, prior to their deaths, in an amount to be determined at trial;
- c. Actual burial and funeral expenses for Alexander Toledo, Theresa Toledo, and Angela Miller, the precise amount to be determined at trial;
- d. Loss of society, love, services, affection, comfort and companionship of Alexander Toledo, Theresa Toledo, and Angela Miller, in an amount to be determined at trial;
- e. Damage to the real property located at the South 51<sup>st</sup> Street Home; and
- f. Damage to personal property located at the South 51<sup>st</sup> Street Home.

**FIRST CAUSE OF ACTION – NEGLIGENCE**

**Plaintiffs v. M.U.D.**

94. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.

95. The distribution of natural gas is accompanied by many possible dangerous consequences and requires a higher degree of care and vigilance than in the ordinary affairs of life.

96. A natural gas distributor must exercise a degree of care commensurate with the hazards of natural gas as a dangerous commodity.

97. As a gas distribution company, M.U.D. owed Plaintiffs a nondelegable duty to exercise due care in the distribution of natural gas.

98. M.U.D. breached its duties in the manner described herein, including but not limited to the acts and omissions set forth in the above paragraphs 21-68.

99. As a direct, proximate, and foreseeable result of M.U.D.'s negligence, Theresa Toledo, Alexander Toledo, and Angela Miller lost their lives and the South 51<sup>st</sup> Street Home and all of its contents were destroyed.

## **SECOND CAUSE OF ACTION – NEGLIGENCE**

### **Plaintiffs v. Thermal Services**

100. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.

101. Thermal Services sold, delivered, and installed the Lennox Furnace without a sufficient warning.

102. Thermal Services owed a duty to provide a warning that informed Plaintiffs of any risk of harm not readily recognizable by an ordinary user while using the product in a manner reasonably foreseeable.

103. As the installer of the Lennox Furnace, Thermal Services had a duty to notify M.U.D. of the Lennox Furnace installation and obtain a permit and inspection pursuant to M.U.D.'s Natural Gas Rules and Regulations Part VI (May 2017).

104. Thermal Services failed to notify M.U.D. of the Lennox Furnace installation.

105. Thermal Services failed to notify Plaintiffs of the need to notify M.U.D. of the Lennox Furnace installation.

106. Thermal Services breached its duty to provide a warning that informed Plaintiffs of any risk of harm not readily recognizable by an ordinary user while using the product in a manner reasonably foreseeable.



107. Thermal Services' failure to warn about the Lennox Furnace rendered it defective, unreasonably dangerous, and unsafe for its intended use.
108. As a direct, proximate, and foreseeable result of Thermal Service's negligence, Theresa Toledo, Alexander Toledo, and Angela Miller lost their lives and the South 51<sup>st</sup> Street Home and all of its contents were destroyed.

### **THIRD CAUSE OF ACTION – STRICT LIABILITY**

#### **Plaintiffs v. Lennox**

109. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.
110. Lennox manufactured, delivered, and sold the Lennox Furnace without a sufficient warning.
111. The Lennox Furnace was unsafe, unreasonably dangerous, and defective at the time it was installed at the South 51<sup>st</sup> Street Home.
112. The Lennox Furnace was not altered from the date of its installation to the date of the explosion.
113. The Lennox Furnace did not function as reasonably expected.
114. The Lennox Furnace was prone to gas leaks.
115. The Lennox Furnace did not properly vent combustible gases.
116. The Lennox Furnace was prone to causing explosions.
117. The Lennox Furnace was not accompanied by a warning informing Plaintiffs of any risk of harm not readily recognizable by an ordinary user while using the product in a manner reasonably foreseeable by the manufacturer.
118. The Explosion was the type of incident that would ordinarily occur as a result of a product defect.

119. The Explosion was not solely the result of causes other than a product defect existing at the time of sale or distribution.

120. As a direct, proximate, and foreseeable result of Lennox's manufacture and sale of the defective Lennox Furnace, Theresa Toledo, Alexander Toledo, and Angela Miller lost their lives and the South 51<sup>st</sup> Street Home and all of its contents were destroyed.

#### **FOURTH CAUSE OF ACTION – NEGLIGENCE**

##### **Plaintiffs v. Lennox**

121. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.

122. Lennox manufactured, delivered, sold, and installed the Lennox Furnace.

123. On December 7, 2020, Lennox performed service, repair, and/or maintenance work on the Lennox Furnace, which was located in the basement of the South 51<sup>st</sup> Street Home.

124. As the installer of the Lennox Furnace, Lennox had a duty to notify M.U.D. of the Lennox Furnace installation and obtain a permit and inspection pursuant to M.U.D.'s Natural Gas Rules and Regulations Part VI (May 2017).

125. Lennox failed to notify M.U.D. of the Lennox Furnace installation.

126. Lennox failed to notify Plaintiffs of the need to notify M.U.D. of the Lennox Furnace installation.

127. Lennox breached its duty to provide a warning that informed Plaintiffs of any risk of harm not readily recognizable by an ordinary user while using the product in a manner reasonably foreseeable.

128. Lennox's failure to warn about the Lennox Furnace rendered it defective, unreasonably dangerous, and unsafe for its intended use.

129. As a direct, proximate, and foreseeable result of Lennox's negligence, Theresa Toledo, Alexander Toledo, and Angela Miller lost their lives and the South 51<sup>st</sup> Street Home and all of its contents were destroyed.

#### **FIFTH CAUSE OF ACTION – WRONGFUL DEATH**

##### **Plaintiff v. All Defendants**

130. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.
131. As a direct and proximate result of the joint and several negligence of the Defendants, as set forth above, Plaintiffs were wrongfully killed.
132. As a direct and proximate result of the joint and several negligence of Defendants, the next-of-kin of Plaintiffs have and will suffer general damages including but not limited to the loss of care, comfort, love, services, affection, society, and companionship.
133. As an additional direct, proximate result of the Defendants' joint and several acts and negligence, Plaintiffs have suffered general damages including but not limited to the burial expenses for Alexander Toledo, Theresa Toledo, and Angela Miller.
134. Plaintiffs' deaths caused and will forever cause general damages to their next of kin.
135. Plaintiffs did nothing that constituted a proximate cause of their own injuries and death.

#### **CONSTITUTIONALITY**

136. With respect to Plaintiffs' claims against M.U.D. only, to the extent that Nebraska Revised Statute § 13-926 purports to limit any single claimant's ability to recover in excess of one million dollars and/or all claimants' ability to recover in excess of five million dollars for all claims arising out of the Explosion, Plaintiffs hereby assert that such limitations are unconstitutional and violate Plaintiffs' rights to substantive due process.

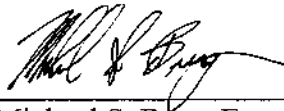
**REQUEST FOR JURY TRIAL**

137. Plaintiffs request a jury trial.

WHEREFORE, Plaintiffs request judgment against Defendants, jointly and/or severally, for the following:

- A. General damages;
- B. Damages in amounts to be determined at trial for health care, funeral and burial expenses;
- C. Punitive damages in an amount to be determined at trial;
- D. Other damages as are reasonable in the premises; and
- E. All costs, interest, and attorney fees and any other damages the Court finds just and reasonable.

Dated:



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# **EXHIBIT A**

operators must assemble this information to the extent necessary to support the development and implementation of their integrity management programs. Underlying procedures must also identify additional information necessary to improve their understanding and provide a plan for gaining that information over time through the normal activities of operating and maintaining pipeline systems (e.g., collecting information about buried components when portions of the pipeline must be excavated for other reasons). Operators must also develop a process by which the program will be periodically reviewed and refined, as needed. The outcome of the process should be that all affected departments of an operator's organization are aware of any planned construction work, have had the opportunity to review and provide comments on potential failure modes and to adopt a process for providing final approval of construction procedures.

**Identifying Threats and Ranking Risk (§ 192.1007(b)-(c))**

PHMSA reminds operators of their obligation under DIMP regulations (part 192, subpart P) to consider available information when identifying all potential and existing threats to the integrity of their systems (§ 192.1007(b)). In accordance with § 192.1007(b), operators are required to consider seven specific threats, including equipment failure and incorrect operation. Further, PHMSA reminds operators to evaluate the risks associated with their distribution pipelines, determine the relative importance of each threat, and rank the risks posed to their pipeline systems (§ 192.1007(c)). PHMSA reminds operators that consideration of consequences is important to help ensure that risks are properly ranked. A potential accident of relatively low likelihood but one that would produce significant consequences may be a higher risk than an accident with somewhat greater likelihood, but one that is not expected to produce major consequences.

Given the catastrophic consequences of the Merrimack Valley accident, PHMSA considers the possibility of an overpressure protection system failure to be a high-risk threat for low-pressure distribution systems where there are not adequate provisions to protect such systems. Therefore, PHMSA recommends that operators consider the single point of failure that could lead to an overpressurization of a low-pressure system as a high-risk threat and to

review and adjust their DIMP plans accordingly. NTSB's Pipeline Accident Report sufficiently documents the occurrence of overpressurization of low-pressure distribution systems such that the threat of overpressurization should be considered a real and present threat. If the threat of overpressurization of low-pressure distribution systems is not considered an existing threat by an operator, justification for the elimination of this threat from consideration should be documented.

In performing a risk analysis required by DIMP (§ 192.1007), PHMSA recommends operators use a failure modes and effectiveness analysis (FMEA) model or an equivalent structured and systematic method to identify and mitigate risks. Failure modes and effects analysis (FMEA) is a generally accepted and recognized engineering practice used to identify and assess potential failures, including common mode failures. As NTSB concluded, a comprehensive and formal risk assessment, such as FMEA, would have identified the human error that caused the redundant regulators to open and over-pressurize the low-pressure system. Operators may already be leveraging FMEA or other similarly robust methodologies to perform the risk analysis and should continue to do so. PHMSA recommends that operators consider adopting FMEA or another qualitative tool that may help to identify possible failures or consequences of those failures that would not be identified otherwise.

**Identify and Implement Measures To Address Risk (§ 192.1007(d))**

PHMSA reminds operators that they must determine and implement measures designed to reduce the risk of failure on their pipeline systems (§ 192.1007(d)). If additional actions have not been taken to reduce risks, justification should be documented (e.g., current overpressure protection design was determined to be sufficient; risks were deemed to be low).

There are several ways that operators can protect low-pressure distribution systems from overpressure events. Some notable examples include:

- Installing a full-capacity relief valve downstream of the low-pressure regulator station, including in applications where there is only worker-monitor pressure control;
- Installing a "slam shut" device;
- Using telemetered pressure recordings at district regulator stations to signal failures immediately to operators at control centers; and

- Completely and accurately documenting the location for all control (i.e., sensing) lines on the system.

**Measure Performance, Monitor Results, and Evaluate Effectiveness (§ 192.1007(e))**

PHMSA reminds operators that they must monitor performance measures from an established baseline to evaluate the effectiveness of DIMP (§ 192.1007(e)). Section 192.1007(e)(vi) requires that these performance measures include any additional measures determined necessary to control identified threats. PHMSA reminds operators to modify their DIMP as appropriate, considering the potential failure of overpressure protection systems as a high-risk threat.

Issued in Washington, DC, on September 24, 2020, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,  
 Associate Administrator for Pipeline Safety.  
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 BILLING CODE 4910-60-P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA-2020-0115]

**Pipeline Safety: Inside Meters and Regulators**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice; issuance of advisory bulletin.

**SUMMARY:** PHMSA is issuing this advisory bulletin to alert owners and operators of natural gas distribution pipelines to the consequences of failures of inside meters and regulators. PHMSA is also reminding operators of existing Federal regulations covering the installation and maintenance of inside meter and regulators, including the integrity management regulations for distribution systems to reduce the risks associated with failures of inside meter and regulator installations.

**ADDRESSES:** PHMSA guidance, including this advisory bulletin, can be found on PHMSA's website at <https://www.phmsa.dot.gov/guidance>. You may also view this advisory bulletin and related documents at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

*Technical Questions:* Michael Thompson, Transportation Specialist, by phone at 503-883-3495.

*General Questions:* Ashlin Bollacker, Technical Writer, by phone at 202-366-4203.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 10, 2016, a natural gas-fueled explosion and fire caused the partial collapse of a 14-unit apartment building located at 8701 Arliss Street (Building 8701) in the Flower Branch Apartment Complex of Silver Spring, Maryland. The explosion and fire also heavily damaged an adjacent apartment building, which shared a common wall with Building 8701. As a result of this accident, 7 residents died, 65 residents were transported to the hospital, and 3 firefighters were treated and released from the hospital. The property damage from the accident exceeded \$1 million.

National Transportation Safety Board (NTSB) determined that the probable cause of the explosion was the failure of an indoor mercury service regulator with an unconnected vent line. The unconnected vent line allowed natural gas to flow into the meter room, where the gas accumulated and ignited from an unknown ignition source. A contributing factor to the accident was the mercury service regulator being located in a space where leak detection by odor was not readily available.

A "service regulator" is defined in § 192.3 as a "device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold." Service regulators are installed to a meter inlet to control the gas pressure into a building. They reduce the high pressure used to transport natural gas through the delivery systems to the lower pressures used in homes and businesses. Service regulators include a relief valve that opens if the pressure of the regulated gas exceeds a specified pressure to allow the excess gas to vent to the outside atmosphere. Mercury service regulators present an increased risk of failure due to their age.<sup>1</sup>

Building 8701 received natural gas from a distribution system owned and operated by Washington Gas Light Company (WGL). WGL delivers natural gas to more than one million residential, commercial, and industrial customers throughout Washington, DC, and the surrounding regions in Maryland and Virginia. According to WGL, the

mercury service regulators installed in Building 8701 were also installed in all 26 buildings of the Flower Branch apartment complex between 1955 and 1956. Since the accident, all of the mercury service regulators in the Flower Branch apartment complex have been removed and replaced.

##### NTSB Accident Investigation Findings and Recommendations to PHMSA

On April 24, 2019, NTSB adopted its report, "Building Explosion and Fire, Silver Spring, Maryland, August 10, 2016,"<sup>2</sup> determined the probable cause of the explosion, and issued safety recommendations. In its report, NTSB stated that several residents of Buildings 8701 and 8703 reported to investigators that they smelled gas in the weeks and months leading up to the explosion. On July 25, 2016, before the accident, several residents called the building manager, 9-1-1, and local fire personnel about gas odor. However, there was no evidence that residents, building management, or any emergency personnel notified the operator, WGL, of the gas odor. The investigation revealed that, had anyone notified WGL of a gas odor call made two weeks earlier, the accident may have been prevented. Notifying WGL would have allowed a service technician to enter the meter room of the building, identify the unconnected vent line, and remedy the situation. NTSB noted, however, that the use of gas odorants alone does not sufficiently mitigate the risk of death and injuries caused by gas system leaks, such as the leak that occurred in this accident.

As discussed above, NTSB determined that the probable cause of the explosion was the failure of an indoor mercury service regulator with an unconnected vent line. The unconnected vent line allowed natural gas to flow into the meter room, where the gas accumulated and ignited from an unknown ignition source. NTSB issued Safety Recommendations P-19-001 and P-19-002 to PHMSA based on the finding in the Silver Spring investigation that, had service regulators been located outside Building 8701, the explosion would have been avoided because gas would have vented to the atmosphere and dissipated. In light of these recommendations, PHMSA believes that operators should ensure compliance with the applicable pipeline safety regulations and should evaluate each service installation to determine

the appropriate location of the service regulators. If access is an issue to check and maintain inside regulators properly, operators should do what is necessary to have the customer provide access for the operator to check the regulator and conduct the leakage and atmospheric corrosion surveys.

##### Minimum Federal Safety Standards for Customer Meters, Service Regulators and Service Lines

The Federal Pipeline Safety Regulations prescribe minimum safety standards for customer meters, service regulators, and service lines. They require operators to take into consideration the possibility of corrosion, overpressure events, and physical damage in the design, installation, and maintenance of these facilities. The Federal Pipeline Safety Regulations at 49 CFR 192.353 require that each meter and service regulator, whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including vehicular damage. For regulators located inside a building, each service regulator must be located as near as practical to the point of service line entrance. Each meter must be located in a ventilated place and not less than 3 feet from any source of ignition or any source of heat that might damage the meter. Section 192.355(b) states: "[s]ervice regulator vents and relief vents must terminate outdoors, and the outdoor terminus must . . . [b]e located at a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building." Section 192.357(d) requires regulators that might release gas to be vented to the outside atmosphere.

Federal Pipeline Safety Regulations include requirements that operators conduct leakage surveys of their systems, including meter and service regulators located inside buildings (§ 192.723). In scheduling such surveys, operators must consider the nature of their operations and the local conditions. At a minimum, operators must conduct surveys: (1) In business districts at intervals not exceeding 15 months, but at least once each calendar year; and (2) outside business districts as frequently as necessary, but at least once every five calendar years at intervals not exceeding 63 months. The regulations also require that operators inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion in accordance with § 192.481. Further, if atmospheric corrosion is found during an inspection, the operator

<sup>1</sup> The design of mercury service regulators includes materials such as leather diaphragms and rubber valve seats that are subject to age-related deterioration.

<sup>2</sup> NTSB/PAR-19/01. The details of this accident investigation and the resulting safety recommendations may be accessed at <https://www.ntsb.gov/investigations/AccidentReports/Reports/PAR1901.pdf>.

must provide protection against the corrosion as required by § 192.479.

PHMSA is reminding operators of these existing requirements for inside meters and regulators. This advisory bulletin notes that, if access is an issue to check and maintain inside regulators properly, operators should endeavor to have the customer provide access for the operator to check the regulator and conduct the leakage and atmospheric corrosion surveys.

#### *Distribution Integrity Management Program (DIMP) Regulations*

In addition to these requirements for inside meters and regulators, PHMSA is also reminding operators of their obligation to continually assess risks to their systems and address those risks in accordance with DIMP regulations at § 192.1007. A DIMP program requires that operators demonstrate knowledge of their system (§ 192.1007(a)). Additionally, a DIMP program requires that operators identify existing and potential threats (§ 192.1007(b)). Identification of the threats that affect, or could potentially affect, a distribution pipeline is key to assuring its integrity. Knowledge of applicable threats allows operators to evaluate the risks they pose and to rank those risks, allowing safety resources to be applied where they will be most effective. Section 192.1007(c) requires that an operator evaluate the identified threats to determine their relative importance and rank the risks associated with its pipeline. Operators must consider the likelihood of threats as well as the consequences of a failure that might result from each threat. The integrity management programs must include measures designed and implemented to reduce the risk of failure from identified threats (§ 192.1007(d)). Measuring performance periodically and conducting a complete program re-evaluation at least every five years allows operators to determine whether actions being taken to address threats are effective, or whether different or additional actions are needed (§ 192.1007(e)–(f)). An operator should conduct a program evaluation any time there are changes in factors that would affect the risk of failure.

While the DIMP Regulations have been in place since 2009, some operators may not be sufficiently aware of their pipeline attributes, or may not be adequately or consistently assessing threats as part of their DIMP programs. For example, NTSB found that WGL's inadequate procedures led to the exclusion of the requirement that technicians verify the connection of vent lines for indoor service regulators during service and maintenance

activities, and as such, vent lines could be inadvertently left disconnected following service work. NTSB concluded that WGL relied on unvalidated information to determine the location and condition of mercury service regulators. Therefore, the NTSB recommended that throughout the WGL network, WG implement an audit program to verify the data on the service forms used to determine the location and condition of mercury service regulators to ensure the accuracy of this safety-critical data.

Because it is so essential that operators identify the conditions that can cause failures and address them before a failure can occur, PHMSA is reminding operators of their obligations to comply with DIMP regulations. This advisory bulletin serves as a reminder to operators to identify and evaluate the physical and operational characteristics of each pipeline system. Operators following these requirements should help to ensure the safety of customer meters and regulators.

#### **II. Advisory Bulletin (ADB-2020-01)**

**To:** Owners and Operators of Gas Distribution Systems.

**Subject:** Requirements for Inside Meters and Regulators.

**Advisory:** To further enhance PHMSA's safety efforts and implement NTSB's April 24, 2019, Recommendations P-19-001 and P-19-002, PHMSA is issuing this advisory bulletin to remind operators of the requirements for inside meters and regulators. PHMSA is also reminding operators of existing Federal DIMP regulations to reduce the possibility of the failure of inside meter and regulator installations. Further, PHMSA advises operators to review NTSB's report concerning the August 10, 2016, accident as it may serve as prudent guidance regarding potential safety problems that operators may need to act on if it addresses a relevant factor on their system. This advisory bulletin is intended to clarify and describe the existing pipeline safety standards for operators and the public. The contents of this advisory bulletin do not have the force and effect of law and are not meant to bind the public in any way. However, pipeline operators must comply with the underlying pipeline safety standards at 49 CFR part 192.

PHMSA is reminding operators of §§ 192.353, 192.355, and 192.357, which provide requirements regarding the location and safety of customer meters and regulators. While the regulations allow service regulators to be located inside or outside structures, the requirements for indoor regulators are

more stringent than those located outdoors. Section 192.353(a) requires that each meter and service regulator, whether inside or outside of a building, be installed in a readily accessible location and be protected from corrosion and other damage, including vehicular damage. Section 192.353(b) requires each service regulator installed within a building to be located as near as practical to the point of service line entrance, and § 192.353(c) requires that each meter installed within a building must be located in a ventilated place and not less than 3 feet from any source of ignition or any source of heat that might damage the meter. In addition, § 192.355(b) requires that the service regulator vents and relief vents must terminate outdoors, and the outdoor terminus must be located at a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building. Section 192.357(d) requires regulators that might release gas to be vented to the outside atmosphere.

The Federal Pipeline Safety Regulations include requirements that operators conduct leakage and atmospheric corrosion surveys of their systems, including service regulators located inside or outside a building (§§ 192.723 and 192.481). If access is an issue to check and maintain inside meter and regulators properly, operators should endeavor to have the customer provide access for the operator to check these facilities and conduct the leakage and atmospheric corrosion surveys.

PHMSA is also reminding operators of their obligation to continually assess risks to their systems and address those risks as required by the DIMP regulations (§ 192.1007). PHMSA reminds pipeline operators of their responsibilities to continuously improve their knowledge of their pipeline systems, identify integrity threats, evaluate and rank risks, and identify, evaluate, and implement preventative and mitigative measures as required by the Federal Pipeline Safety Regulations. PHMSA recommends that operators thoroughly review their current DIMP for the threat of the failure of inside meter and regulator installations and make any changes necessary to become compliant with the Federal Pipeline Safety Regulations. For example, based on the requirements in § 192.1007(a) for operators to know their systems, PHMSA would expect operators to know the location (inside or outside) of all meters and regulators installed on their distribution system. Operators must evaluate the risks associated with these facilities, determine the relative importance of each threat, and rank the



risks posed to their pipeline (§ 192.1007(c)). PHMSA urges operators to consider the points-of-failure identified in NTSB's accident investigation report as they relate to operators' inside meter and regulator installations and to adjust their DIMP accordingly. These measures must include an effective leak management program unless all leaks are repaired when found (§ 192.1007(d)). As part of their leak management program, operators must consider all risks, including the risk of failure or damage to inside meter and regulator installations. If risks are identified, risk reduction measures must be put in place to address them, or if additional actions have not been taken to reduce risks, justification must be documented.

Issued in Washington, DC, on September 24, 2020, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

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BILLING CODE 4910-60-P

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Anti-Money Laundering Programs; Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and for Private Banking Accounts

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, the regulations require banks, brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and mutual funds to establish due diligence programs that include risk-based, and, where necessary, enhanced, policies, procedures, and controls reasonably designed to detect and report money laundering conducted through or involving any correspondent accounts established or maintained for foreign financial institutions. The regulations also require that these same financial institutions establish due diligence

programs that include policies, procedures, and controls reasonably designed to detect and report money laundering conducted through or involving any private banking accounts established by the financial institutions. The due diligence programs are required to be part of the financial institutions' anti-money laundering programs. Although no changes are proposed to the information collection itself, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments are welcome, and must be received on or before November 30, 2020.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2020-0012 and the specific Office of Management and Budget (OMB) control number 1506-0046.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0012 and OMB control number 1506-0046.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107-56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 31 U.S.C. 5311-5314 and 5316-5332, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.<sup>1</sup> Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.<sup>2</sup>

Section 312 of the USA PATRIOT Act added subsection (i) to 31 U.S.C. 5318 of the BSA. Section 312 mandates that each financial institution that establishes, maintains, administers, or manages a correspondent account or a private banking account in the United States for non-U.S. persons subject such accounts to certain anti-money laundering compliance measures. In particular, a financial institution must establish appropriate, specific, and, where necessary, enhanced, due diligence (EDD) or enhanced scrutiny policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts. The regulations implementing the due diligence requirements for maintaining foreign correspondent accounts and private banking accounts are found at 31 CFR 1010.610 and 31 CFR 1010.620, respectively, and apply to covered financial institutions defined as banks, brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and mutual funds.<sup>3</sup>

(a) *31 CFR 1010.610—Due diligence programs for correspondent accounts for foreign financial institutions.*

Under 31 CFR 1010.610(a), covered financial institutions are required to establish due diligence policies, procedures, and controls that include each of the following for any correspondent account established, maintained, administered, or managed: (i) Determining whether any such foreign correspondent account is subject to EDD; (ii) assessing the money laundering risks presented by each such foreign correspondent account; and (iii) applying risk-based procedures and controls to each such foreign

<sup>1</sup> Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

<sup>2</sup> Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

<sup>3</sup> 31 CFR 1010.605(e).