



Dates of Interest

July 2014

- 17 [One Call Systems International Committee Meeting](#) (part of Common Ground Alliance), New York, NY
- 20-23 [APGA Annual Conference](#), Lake Tahoe, CA
- 21-24 [NAPSR Central Region Meeting](#), Kansas City, KS
- 28-30 [Southern Gas Ass'n Operating Conference & Exhibits](#), New Orleans, La

August 2014

- 5 [PHMSA/NAPSR Public Meeting](#) on Managing Pipeline Cracking Challenges, Chicago, IL
- 6-7 [PHMSA/NAPSR Government/Industry Pipeline R&D Forum](#), Chicago, IL
- 12-14 [AGA Best Practices Roundtable](#), Salt Lake City, UT
- 14-15 [INGAA Foundation Planning & Strategy Meeting](#), White Sulphur Springs, WV
- 19-20 [Western Regional Gas Conference](#), Tempe, AZ
- 25-27 [NACE Central Area Conference](#), Tulsa, OK

Pipeline Safety Update

ISSUE NO. 80 – JULY 9, 2014

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PHMSA announces increase in LNG Facility User Fee, requests comments on revised forms and a Public Awareness information collection request, and releases updated guidelines for submitting data to the National Pipeline Mapping System. The Bureau of Transportation Statistics seeks approval of information collection request involving near misses on the OCS. Updates from California, Michigan, and Pennsylvania. Litigation updates and industry updates.

PHMSA Activities

PHMSA announces increase in LNG Facility User Fee. On July 3, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a [Notice](#) advising operators of liquefied natural gas (LNG) facilities that the LNG Facility User Fee will increase to 5 percent of PHMSA's total gas program costs. The adjustment is intended to align the fee more closely with PHMSA's allocation of resources under its gas program. PHMSA will implement the increase incrementally over a three-year period to reduce the financial impact. Comments on PHMSA's policies and practices in establishing the user fee are due September 2, 2014.

PHMSA requests further comments on forms. On July 1, PHMSA issued a [Notice](#) requesting additional comments on the revised the Operator Assignment Request Form (PHMSA F 1000.1) and the Operator Registry Notification Form (PHMSA F 1000.2). The revised Forms were previously [noticed](#) for comment in March 2014 and PHMSA received [comments](#) from the Pipeline Safety Trust expressing support for the proposal to collect information regarding the description of facilities and pipeline mileage on a state-by-state basis. PHMSA's current notice acknowledges this comment, provides 30 days for additional comments, and announces that the Information Collection will be submitted to the Office of Management & Budget (OMB) for approval. Comments are due on July 31, 2014. The forms and instructions can be found [here](#).

PHMSA requests comments on information collection request. On June 26, PHMSA issued a [Notice](#) requesting comments regarding the renewal of an existing information collection relating to operators' written Public Awareness programs. Comments are due August 25, 2014.

PHMSA announces updated standards for submitting data to the National Pipeline Mapping System. PHMSA has announced that the guidance document entitled, "[Standards for Pipeline, Liquefied Natural Gas and Breakout Tank Farm Operator Submissions](#)," has been revised. The standards provide guidelines to operators when submitting location and attribute data to the National Pipeline Mapping System (NPMS) Repository.

Did you miss PHMSA's July 2 public workshop on Pipeline Safety Management systems? Watch it [here](#).

PHMSA Rulemakings. The table below reflects information on the status of PHMSA rulemakings as reported in the Department of Transportation's (DOT) June Significant Rulemaking [Report](#). Additional information from the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is [here](#).

OIRA has received PHMSA's notices of proposed rulemakings for excess flow valves and the safety of onshore hazardous liquid pipelines. Under Executive Order (EO) 12866, OIRA will review these rulemaking proposals to ensure consistency with applicable law, the President's priorities, and the

Dates of Interest (continued)

September 2014

- 15-19 [NAPSR National Meeting](#), Springfield, IL
- 16-19 [AOPL Annual Business Conference](#), Coeur d'Alene, Idaho
- 18-19 [AGA Executive Safety Leadership Summit](#), Las Vegas, NV



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principles set forth in the EO. OIRA will also ensure the proposals do not conflict with another agency's policies or actions. Under the EO, OIRA is to provide PHMSA the results of the review within 90 days, unless that period is extended for an additional 30 days.

Rulemaking & Next Action	Estimated Date to OMB	DOT Estimated Publication Date	OIRA Estimated Publication Date
Excess Flow Valves; NPRM	April 30, 2014 (actual)	August 13, 2014	August 2014
Issues Related to Use of Plastic Pipe in the Gas Pipeline Industry; NPRM	N/A	N/A	June 2014
Safety of Gas Transmission Pipelines; NPRM	August 7, 2014	November 19, 2014	August 2014
Safety of On-Shore Hazardous Liquid Pipelines; NPRM	May 1, 2014 (actual)	August 13, 2014	July 2014
Valve Installation and Minimum Rupture Detection Standards; NPRM	December 21, 2014	May 1, 2015	N/A
Enforcement of State Excavation Damage Laws; Final Rule	June 9, 2014	October 20, 2014	August 2014
Miscellaneous Amendments to Pipeline Safety Regulations; Final Rule	April 25, 2014	November 3, 2014	August 2014
Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments; Final Rule	N/A	N/A	September 2014
Operator Qualification, Cost Recovery, Incident Reporting, CO ₂ , Special Permit Renewal, and Other Issues; NPRM	January 1, 2015	April 30, 2015	N/A

Updates from Other Agencies

Bureau of Transportation Statistics seeks approval of information collection request involving near misses on the OCS. The Bureau of Transportation Statistics (BTS) issued a [Notice](#) requesting comments on a proposed collection information collection entitled "Voluntary Near Miss Reporting in Oil and Gas Operations on the Outer Continental Shelf (OCS)." BTS would collect and publish aggregate information that can be used to improve the safety of oil and gas operations on the OCS. Comments are due September 2, 2014.

Select Updates from the States

(Updated information appears in italics; new items are marked with an "**")

CALIFORNIA

**The California Public Utilities Commission seeks comments on proposed pipeline safety rules.* On July 8, 2014, Administrative Law Judge Bushey issued an [order](#) establishing the comment deadlines for the California Public Utilities Commission's (CPUC) proposed safety and reliability regulations for natural gas transmission and distribution pipelines. The purpose of the regulations is to establish minimum requirements for the design, construction, quality of materials, locations, testing, operations and maintenance of facilities used in the gathering, transmission and distribution of gas and in LNG facilities for safety purposes and to provide for adequate service by gas operators. Comments on the proposed changes are due July 18, 2014; reply comments due July 25, 2014.

**The CPUC approves budget for natural gas pipeline safety research and development.* On June 26, 2014, the CPUC adopted [Resolution G-3495](#) approving the 2014-2015 fiscal year budget for the California Energy Commission, which administers the state's public interest energy research program. The \$24

million budget includes an allocation of \$2.5 million for natural gas pipeline safety research and development.

[AB 1937](#) (*Gordon*): This bill would amend the California Public Utilities Code to require gas corporations to provide at least three working days' notice before undertaking any non-emergency excavation or construction activity within 500 feet of a school or hospital. The bill passed the Assembly by unanimous vote on May 23, and was referred to the Senate for consideration. The Senate amended the bill on June 11 to include a 5-year recordkeeping requirement and a provision requiring excavators or operators to comply with the state's one-call notification requirements. *On June 30, 2014, the Senate amended the bill to delete a recently added provision regarding excavator or operator compliance with the one-call requirements.*

[SB 1389](#) (*Hill*): This bill would prohibit a gas corporation from using the "grandfather clause" in 49 C.F.R. Part 192 to determine the maximum allowable operating pressure (MAOP) for an intrastate gas transmission line. The federal pipeline safety regulations currently allow operators to determine the MAOP for a gas pipeline by using the highest actual operating pressure that a segment experienced during the 5-year period preceding July 1, 1970. SB 1389 would prohibit the use of that provision and require operators of intrastate gas transmission lines to determine MAOP solely on the basis of the CPUC's rules or orders. The bill unanimously passed the Standing Committee on Energy, Utilities and Communications on May 5 and is pending before the Senate Committee on Appropriations.

[SB 1371](#) (*Leno*): This bill would require the CPUC to adopt rules and procedures governing natural gas leakage abatement for regulated intrastate transmission and distribution lines in order to reduce emissions of natural gas. The regulatory proceeding would commence by January 15, 2015, and the rules and procedures would be required to meet the following objectives: (a) provide for the maximum technologically feasible and cost-effective avoidance, reduction, and repair of leaks and leaking components within a reasonable time after discovery; (b) provide for the ranking or recorded leaks and leaking components by volume or energy content; (c) evaluate natural gas leakage abatement practices to determine effectiveness; and (d) establish and require the use of best practices for leak surveys, patrols, leak survey technology, leak prevention, and leak reduction. The Senate passed the bill in late May and referred it to the Assembly for consideration. *On July 1, 2014, the Assembly amended the bill, in part, to clarify that the CPUC's rulemaking is to give priority to safety, reliability, and affordability of service and to clarify that, unless expressly stated, the bill does not alter the CPUC's jurisdiction over greenhouse gas emission regulation.*

CONNECTICUT

[Public Act 14-94](#): Governor Dannel Malloy signed new legislation amending the state's damage prevention requirements effective October 1, 2015. Under the new law, the discharge of explosives and demolition activities are now subject to those requirements. The state's public utilities are also required to organize and operate a central clearing house for receiving and giving notice to public utilities of these and other excavation-related activities under the direction of the Public Utilities Regulatory Authority (PURA). The law removes the mandatory two-day timeframe for utilities to mark the locations of underground facilities, leaving any time restrictions up to regulations to be issued by PURA, and requires the use of hand- or soft-digging techniques in the vicinity of any facility that contains combustible or hazardous fluids or gases.

LOUISIANA

[HB 868](#) (*Ponti*): Governor Bobby Jindal has signed new legislation reducing the civil penalties that can be imposed for violations of the Underground Utilities and Facilities Damage Prevention Law and allowing an excavator and operator to extend the 48-hour deadline for beginning excavation activity by mutual agreement.

**Regulations and Code Compliance:
Upcoming PHMSA State Seminars**

July 2014

21-25 Louisiana (Gas)

PHMSA offers training on gas and hazardous liquid pipeline safety regulations.

More information is available [here](#).

State-Specific Association Meetings

July 2014

- 16-17 [Kentucky Oil & Gas Ass'n Annual Meeting](#), Louisville, KY
- 23 Texas Railroad Commission, [HB 2982 Gathering Workshop](#), Rockport, TX
- 30 Texas Railroad Commission, [HB 2982 Gathering Workshop](#), Cotulla, TX
- 21-25 [Louisiana Gas Ass'n Pipeline Safety Conference](#), New Orleans, LA

August 2014

- 5 [Kentucky Gas Ass'n 2nd Annual Safety Summit](#), Lexington, KY
- 26-27 [Montana Petroleum Ass'n Annual Meeting](#), Billings, MT

September 2014

- 8-10 [Oklahoma Gas Ass'n Annual Conference](#), Norman, OK
- 9-11 [RRC of Texas Pipeline Safety Seminar](#), San Antonio, TX
- 14-16 [Arkansas Gas Ass'n Annual Conference](#), Fayetteville, AR
- 29 –
- 10/2 [Virginia Pipeline Safety Conference](#), Virginia Beach, VA

HCR 143 (Stokes): This concurrent resolution urges the Commissioner of Conservation and the Secretary of the Department of Natural Resources, in consultation with the Attorney General and Legislative Auditor, to perform a comprehensive assessment of the hazards posed by pipelines that are inadequately marked, covered, buried, or protected in coastal areas and to make recommendations for any statutory, regulatory, or policy changes necessary to address these concerns.

MASSACHUSETTS

H 4164: The bill would incorporate into Massachusetts law the federal limitations on the amount of administrative civil penalties for pipeline safety violations. The bill would also: (a) establish uniform natural gas leak classifications for all gas companies; (b) require written notification to a gas company of a significant project on a public way that will expose natural gas infrastructure; (c) require the gas company to ensure that any shut off valve in the project area has a gate box installed or a reasonable alternative that would ensure public safety and that any critical valve is operational and accessible; (d) prioritize pipeline repairs for gas leaks detected in a school zone; (e) require annual reporting of gas leaks and repairs; (f) authorize implementation of a targeted infrastructure replacement program; (g) require operators to give notice of "incidents" at the earliest practicable moment following discovery; and (h) require that consideration be given to creating new standards for performing winter surveillance and patrols of cast iron pipe. *The Massachusetts legislature enacted the bill on June 16, and the governor signed it on June 26.*

MICHIGAN

**Michigan forms task force to review pipeline safety.* On June 26, 2014, Michigan's Director of the Department of Environmental Quality and Attorney General [announced](#) the formation of the multi-agency Great Lakes Petroleum Pipeline Task Force. In addition to reviewing a response expected to be submitted by Enbridge regarding the integrity of its pipeline under the Mackinac Straits, the Task Force will address the state's emergency management preparedness for spills; coordination of permitting issues for pipeline upgrades and replacement; and the creation of a state website to serve as an information clearinghouse for Michigan residents.

**The Michigan Public Service Commission proposes to incorporate federal safety regulations.* On July 1, the Michigan Public Service Commission [announced](#) a public hearing on proposed amended rules that adopt by reference the current federal gas safety standards as set forth in 49 CFR parts 191, 192, and 199. In addition, the proposed rules would adopt updated technical standards and include a provision that clarifies the disconnection or abandonment of indoor gas facilities. The public hearing is scheduled for July 17, 2014.

HB 5556 (Townsend): This bill would increase the administrative civil penalties that can be imposed for pipeline safety violations to \$20,000 per day, per violation, not to exceed \$800,000 for any related series of violations. It would also require any person who engages in the transportation of gas or who owns or operates pipeline facilities to annually communicate with county and municipal emergency coordinators to review the public education and awareness programs. The bill was introduced on May 8 and was referred to the House Committee on Energy and Technology.

MISSOURI

HB 1867 (Schatz): This bill proposes numerous changes to Missouri's damage prevention statute, including altering the definitions of "excavation" and a "pipeline facility" and adjusting the requirements for marking underground facilities. It also sets the failure to notify by an excavator and the failure to mark facilities by an owner or operator as a rebuttable presumption of negligence. *The bill was approved by the Governor on June 30.*

MINNESOTA

[HF 3172](#) (Carlson/Hausman/Cohen): Recently signed into law by Governor Mark Dayton, this legislation authorizes the state to collect \$2,500,000 in fees annually for the next three years from rail and oil pipeline operators to pay for the costs of conducting training and emergency preparedness programs.

NEW HAMPSHIRE

[HB 1376](#) (Hammon): The bill would establish a committee to study the safe delivery of oil and gas, including natural gas and propane, throughout the state of New Hampshire. The committee would be required to report its findings and any recommendations for proposed legislation by May 1, 2015. The bill would also make a technical correction regarding the submission of oil pipeline facility spill response plans. On June 4, the Conference Committee Report was adopted. The bill was enrolled on June 18 and is expected to be delivered to the Governor.

NEW JERSEY

[A 2711](#) (Handlin): This bill proposes to create the New Jersey Taskforce on Underground Utility Lines for the purpose of studying issues related to placing overhead utilities underground. The bill was referred to the Assembly Committee on Telecommunications and Utilities.

NEW YORK

[A 9336](#) (Rodriguez) / [S 7010](#) (Espaillat): These companion bills would require operators of gas distribution facilities to accelerate the repair or replacement of pipe segments that are leaking, are at "high risk of leaking," or may no longer be fit for service due to inferior materials, poor construction methods, lack of maintenance, or age. The bills also would provide a cost recovery mechanism for the accelerated repair or replacement program. Both bills have been referred to the respective energy committees.

[S 7430A](#) (Maziarz) / [A 9772-A](#) (Paulin): These bills would: (a) establish and implement a uniform system for classifying natural gas leaks; (b) require that each gas corporation annually report the location and classification of each reported leak, the date each such leak was classified, and the date each such leak is repaired; (c) require that such information be made available upon request to any municipal or state public safety official and to members of the legislature; and (d) require the investigation of the need for additional winter surveillance of cast iron or ductile iron pipelines and the effect of extended frost on such pipelines. The bills are currently in committee.

OHIO

[HB 483](#) (Amstutz): As recently enacted, this bill allows the Ohio Public Utilities Commission to waive the pipe design requirements in Subpart C of 49 C.F.R. Part 192 for operators of "gas gathering pipelines" or "processing plant gas stub pipelines." Note that an earlier version of the bill had proposed to increase the maximum civil penalties for pipeline safety violations to \$200,000 per day, per violation, not to exceed \$2,000,000 for any related series violations, but that this provision was removed prior to final passage.

OKLAHOMA

[HB 2533](#) (Watson): This bill designates the Oklahoma Corporation Commission as the agency responsible for enforcing the Oklahoma Underground Facilities Damage Prevention Act. It also sets forth the requirements for a Notice of Inquiry process to evaluate the state's pipeline safety programs, including addressing any findings or recommendations contained in the final report of the Pipeline Safety Task Force convened by Gov. Mary Fallin. The bill was approved by the governor on May 9.

RHODE ISLAND

[H 7714 Sub A](#) / [S 2450 Sub A](#): Effective July 1, 2014, these bills require excavators to provide specific information regarding the location of a planned excavation, including the specific street address for nearby buildings and any other information to assist a utility in determining where the excavation is

planned to occur. They also require that any contact with underground facilities be reported to the affected utility immediately, and that any potential violation of the damage prevention law must be reported to the Rhode Island Public Utilities Commission within 30 days.

PENNSYLVANIA

[H 7714 Sub A / S 2450 Sub A](#): Effective July 1, 2014, these bills require excavators to provide specific information regarding the location of a planned excavation, including the specific street address for nearby buildings and any other information to assist a utility in determining where the excavation is planned to occur. They also require that any contact with underground facilities be reported to the affected utility immediately, and that any potential violation of the damage prevention law be reported to the Rhode Island Public Utilities Commission within 30 days.

TEXAS

Texas Railroad Commission proposes rule changes. At a June 17 public meeting, the Texas Railroad Commission (TRRC) [proposed](#) to adopt by reference the latest versions of PHMSA's 49 C.F.R. Part 191, 192, 193, 195, and 199 pipeline safety and drug and alcohol regulations, as well as the Department of Transportation's 49 C.F.R. Part 40 drug and alcohol testing regulations. The adoption would incorporate changes made to PHMSA and DOT regulations since the prior TRRC adoption in October 2011. The TRRC also has proposed to clarify that farm tap odorizers are subject to odorization testing requirements, and further clarify that operators need not assign ID numbers to such odorizers or prepare equipment reports for wick-type odorizers. The proposed amendments were [published](#) in the July 4th Texas Register, and comments are due August 4th. More information is available [here](#).

Texas Railroad Commission hosting gathering line workshops. The TRRC is hosting a series of workshops to discuss the regulation of gas and hazardous liquid gathering lines. Last year, the Texas Legislature enacted a new law, HB 2982, providing the TRRC with the authority to establish safety standards for hazardous liquid gathering lines in rural areas and gas gathering lines in Class 1 locations. While the law includes a provision that limits the ability of the TRRC to exercise all of its new authority before September 1, 2015, the agency is allowed to collect information from pipeline operators before that date. The [gathering line workshops](#) are being held from May 21 to July 30, 2014, in San Antonio, Amarillo, Midland, Fort Worth, Rockport, and Cotulla, Texas. TRRC also announced that it will be hosting a [Pipeline Safety Seminar](#) with PHMSA staff in San Antonio from September 9 to 11, 2014.

VERMONT

[Act No. 132](#): On May 20, Governor Peter Shumlin signed legislation increasing the civil penalty limit for violations of the Gas Pipeline Safety Program from \$100,000 to \$200,000 per violation per day, not to exceed \$2,000,000 for any related series of violations (consistent with federal caps). These amounts are identical to the federal limits imposed under the Pipeline Safety Act.

WASHINGTON

Washington Proposes Civil Penalty Cap Increase. In May, the Washington Utilities and Transportation Commission (WUTC) proposed amending its gas pipeline safety rules for intrastate facilities to increase the maximum civil penalties for pipeline safety violations. The proposed amendment would increase the maximum per-violation penalty from \$100,000 to \$200,000 per violation, and the maximum penalty for a related series of violations from \$1,000,000 to \$2,000,000. The amendment would make the state penalty caps consistent with federal limitations in the Pipeline Safety Act. The WUTC will convene a hearing on the proposed amendment on July 2 in Olympia. More information is [here](#).

Litigation Updates

PEER v. PHMSA. In April 2013, the Public Employees for Environmental Responsibility (PEER) filed a lawsuit against PHMSA under the Freedom of Information Act (FOIA), the federal law that provides the

public with the right to obtain access to federal agency records. The lawsuit suit, pending in the U.S. District Court for the District of Columbia, alleges that PHMSA failed to comply with the statutory deadline for responding to a pair of FOIA requests that PEER sent to PHMSA in October 2012. PEER's requests sought the release of agency records relating to the onshore oil spill response plan program requirements in 49 C.F.R. Part 194. PHMSA is responsible for administering that program under the Oil Pollution Act of 1990.

PHMSA submitted a status report in April 2014. The report indicated that PHMSA had 102 FOIA requests pending; that PHMSA's FOIA program manager and two senior attorneys who participated in processing FOIA requests had recently retired; and that the combination of these factors had undermined PHMSA's ability to process FOIA requests. Nonetheless, the report stated that PHMSA has responded to PEER's first request, and that the agency produced 59,000 pages of documents, including 108 onshore oil spill response plans, in response to its second FOIA request. The report went also explained that PHMSA would provide PEER with 94 additional onshore oil spill response plans by October 1, 2014, and produce the 65 remaining plans after finishing the review, approval, and redaction process.

According to the court's docket, PHMSA's next status report is due on or before August 1, 2014.

Industry Updates

API RP 1173 on Pipeline Safety Management Systems open for balloting and public comments. The American Petroleum Institute (API) and American National Standards Institute (ANSI) have initiated the balloting and public comment process on the final draft of API Recommended Practice 1173 addressing recommended practices for Pipeline Safety Management Systems. Only members of the API Standards Committee can vote, but public comments are accepted online until August 1, 2014 via the [API ballot site](#).

FOR MORE INFORMATION

Van Ness Feldman counsels clients on pipeline safety compliance, enforcement, and litigation under the Pipeline Safety Laws and Regulations and related statutes. If you are interested in additional information regarding pipeline safety matters or any PHMSA or pipeline related matter, please contact [Susan Olenchuk](#) at (202) 298-1896 or sam@vnf.com, [Jim Curry](#) at (202) 298-1831 or jbc@vnf.com, [Keith Coyle](#), at (202) 298-1811 or kjc@vnf.com, or any member of the firm's Pipeline & LNG practice group.

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