



Dates of Interest

May 2016

- 3-5 [SGA Practical In-Line Inspection Workshop](#), Tulsa, OK
- 9 [Comments due on PHMSA Information Collection](#)
- 9-13 [NAPSR Western Region Meeting](#), St. George, UT
- 18 [2016 API/AFPM Spring Operating Practices Symposium](#), Chicago, IL
- 18-19 [PHMSA Public Workshop on LNG Regulations](#), Washington, DC
- 23-27 [NAPSR Eastern Region Meeting](#), Dover, DE
- 24-26 [SGA Advanced In-Line Inspection Workshop](#), Dublin, OH
- 25-27 [SGA DOT Compliance Workshop for Natural Gas Pipeline Operators](#), Dallas, TX
- 30 [Responses to PHMSA R&D Project](#) due

June 2016

- 7-9 [PHMSA Risk Modeling Work Group Meeting](#), Houston, TX



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Pipeline Safety Update

ISSUE NO. 108 – APRIL 25, 2016

[Susan Olenchuk](#), [Tyson Kade](#), [Frances Bishop](#), [Barbara Deathe](#)

House Transportation and Infrastructure Committee reports pipeline safety reauthorization bill. Jeff Wiese announces departure from PHMSA. New PHMSA Chief Counsel appointed. PHMSA places additional materials in gas rulemaking docket. PHMSA announces pipeline safety research and development project. Presentations from oil spill response planning and preparedness workshop are available. DOE and PHMSA form Interagency Task Force on Underground Natural Gas Storage Safety. PHMSA Rulemakings Update. House Transportation Security Subcommittee holds hearing on pipeline infrastructure security. Senate-approved FAA Authorization bill would allow use of unmanned aircraft for certain pipeline activities. Michigan Senators urge analysis of risk and assessment of alternatives to petroleum pipeline. NTSB issues report on 2013 Birmingham public housing project explosion. NEB issues Order requiring publication of emergency manuals. Shareholder files derivative suit in wake of Aliso Canyon leak. Select updates from states.

House Transportation and Infrastructure Committee Reports Pipeline Safety Reauthorization Bill

On April 20, the House Transportation and Infrastructure Committee unanimously [reported](#) H.R. 4937, Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016, reauthorizing appropriations for the Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline safety programs through FY 2019. Notably, the bill would provide PHMSA with authority to issue industry-wide emergency orders to address "imminent hazards" without engaging in a notice-and-comment rulemaking process. An amendment offered by Congressman Jeff Denham (R-CA) would more clearly define "imminent hazards" and establish procedures under which pipeline operators could challenge an order through an Administrative Law Judge process and in federal district court.

The bill also would require that PHMSA establish federal minimum safety standards for underground natural gas storage facilities, provide status updates to Congress every 60 days regarding outstanding statutory mandates, and require that operators receive timely post-inspection information.

The bill does not require the submission of oil spill response plans to congressional committees and does not lower the criminal liability standard under the Pipeline Safety Act from "knowingly and willfully" to "recklessly."

During the week of April 25, the [House Energy and Commerce Committee](#) is expected to resume its consideration of pipeline safety reauthorization. The two House committees will then merge their bills for a vote on the House floor.

Van Ness Feldman has created a redline of PHMSA's Part 191 and Part 192 regulations showing how the NPRM would affect the regulatory text. It is available upon request by contacting [Susan Olenchuk](#).

UPDATES FROM PHMSA

Jeff Wiese announces departure from PHMSA. On April 11, Jeff Wiese, the Associate Administrator for Pipeline Safety, [announced](#) that he is departing PHMSA for a position in the private sector. PHMSA Administrator Marie Therese Dominguez is expected name an interim Associate Administrator until a permanent replacement is found.

New PHMSA Chief Counsel appointed. On April 4, DOT Secretary Anthony Foxx [announced](#) the appointment of Teresa Gonsalves as the new Chief Counsel for PHMSA. Previously, Ms. Gonsalves worked at the Office of Personnel Management and the U.S. Postal Service.

PHMSA places additional materials in gas rulemaking docket. PHMSA has placed additional materials in the [docket](#) for the notice of proposed rulemaking (NPRM) on the Safety of Gas Transmission and Gathering Pipelines. The NPRM was published in the Federal Register on April 8. Comments are due June 7, however, multiple requests to extend the deadline have been filed.

PHMSA announces pipeline safety research and development project. On April 15, PHMSA [announced](#) that it is seeking proposals that address "innovation with Inspecting Unpiggable Natural Gas Pipelines." Responses are due May 30.

Presentations from Oil Spill Response Planning and Preparedness Workshop are available. On April 12, PHMSA held a public workshop regarding oil spill response planning and preparedness. Presentations from that workshop are [posted](#).

DOE and PHMSA form Interagency Task Force on Underground Natural Gas Storage Safety. On April 1, the Department of Energy (DOE) and PHMSA [announced](#) the formation of an Interagency Task force on Natural Gas Storage Safety. Formed in response to the Aliso Canyon underground natural gas storage leak, the task force will coordinate local and state-level efforts to inspect and conduct risk assessments of infrastructure to prevent future release incidents. The Task Force will include representatives from the Environmental Protection Agency, the Department of the Interior, the Federal Energy Regulatory Commission, the National Oceanic and Atmospheric Administration, and the Department of Health and Human Services.

PHMSA Rulemakings Update. The tables below summarize the status of PHMSA's rulemakings as reported in the Department of Transportation's (DOT) [April Significant Rulemaking Report](#) and by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) in the Fall 2015 [Unified Regulatory Agenda](#). Revised dates appear in **bold**.

Pending Notices of Proposed Rulemaking

Rulemaking	Submitted to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Safety of Gas Transmission Pipelines	Published April 8, 2016 Comments Due June 7, 2016		
Valve Installation and Minimum Rupture Detection Standards	May 26, 2016 (estimated)	September 7, 2016	October 2016
Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments	Not listed in report because deemed non-significant	Not listed by DOT	March 2016
State Pipeline Safety Program Certification	Not listed in report because deemed non-significant	Not listed by DOT	August 2016

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

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

More information is available [here](#).

May 2016

- 9-13 Oklahoma (Gas & Hazardous Liquid)
- 9-13 Puerto Rico (Gas)
- 16-20 California State Fire Marshall (Hazardous Liquid)

June 2016

- 7-8 Wyoming (Gas)
- 20-24 Alaska (Hazardous Liquid)

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Pending Final Rules

Rulemaking	Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Safety of Hazardous Liquid Pipelines	June 21, 2016	October 3, 2016	N/A
Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other than Single-Family Residences	September 30, 2016	January 17, 2017	N/A
Issues Related to the Use of Plastic Pipe in Gas Pipeline Industry	Not listed in report because deemed non-significant	Not listed by DOT	June 2016
Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes	Not listed in report because deemed non-significant	Not listed by DOT	June 2016

*Under Executive Order (EO) 12866, OMB reviews proposed significant rules to ensure they are consistent with applicable law, the President’s priorities, and the principles set forth in the EO, and to ensure the proposals do not conflict with another agency’s policies or actions. OMB also analyzes the cost-benefit analyses in support of the proposals. While the EO sets out deadlines for OMB evaluation, review periods are often extended.

UPDATES FROM CAPITOL HILL

House Transportation Security Subcommittee holds hearing on pipeline infrastructure security. On April 19, the House Subcommittee on Transportation Security held a hearing examining how the Transportation Security Administration (TSA) works with pipeline stakeholders to secure critical pipeline infrastructure. Witnesses included representatives from the TSA, the Congressional Research Service, and industry representatives. Testimony is available [here](#).

Senate-approved FAA Authorization bill would allow use of unmanned aircraft for certain pipeline activities. On April 19, the Senate passed [S. 2658](#), the Federal Aviation Administration Reauthorization Act of 2016, which contains provisions enabling pipeline operators to obtain authorization to use unmanned aircraft vehicles to conduct certain compliance and inspection activities of pipeline facilities.

Michigan Senators urge analysis of risk and assessment of alternatives to petroleum pipeline. On April 19, Senator Gary Peters (D-MI) and Debbie Stabenow (D-MI) sent a [letter](#) to the State of Michigan (1) requesting that the Michigan Petroleum Pipeline Task Force complete a risk analysis and alternatives assessment of Enbridge Energy, LLP’s (Enbridge) Line 5, a petroleum pipeline located in the Straits of Mackinac, and (2) encouraging an assessment of compliance with applicable laws and terms of the pipeline’s easement.

UPDATES FROM OTHER FEDERAL AGENCIES

NTSB issues report on 2013 Birmingham public housing project explosion. On March 30, the National Transportation Safety Board (NTSB) issued a [report](#) on the probable cause of the December 17, 2013 natural gas explosion at a Birmingham, Alabama public housing project, which destroyed an apartment unit, damaged adjacent units, and resulted in one fatality and several injuries. The NTSB determined the probable cause to be the release of natural gas through a large crack in the over 60-year old cast iron gas main, resulting from tree growth and corrosion. An active pilot light in the apartment ignited the gas, and residents were prevented from smelling the gas due to the soil’s absorption of the odorant.

**Recent Van Ness Feldman
Publications**

[Electric Reliability Update –
April 25, 2016](#)

[Hydro Newsletter – Vol. 3, Issue
5 – April 22, 2016](#)

[Supreme Court Addresses
Limits on State Authority to
Promote New Generation
Development](#) – April 21, 2016

[BSEE Releases Final Well
Control Rule; Implications Still a
Concern for Stakeholders](#) –
April 22, 2016

UPDATES FROM CANADA

NEB issues order requiring publication of emergency manuals. On April 5, the National Energy Board (NEB) [announced](#) a new [Order](#) that will require regulated oil and gas pipeline companies to publish their emergency procedure manuals online. Companies will be permitted to protect from publication limited types of sensitive information, including personal information, such as names, medical and contact information; information that if disclosed could impair the security of a pipeline; and information relating to at risk-species, heritage resources, indigenous land sites, and other information that could lead to destruction or exploitation of species or culturally significant resources. The Order requires regulated pipeline companies to publish manuals on their publically available websites by September 30.

UPDATES ON LITIGATION

Shareholder files derivative suit in wake of Aliso Canyon leak. On April 19, a [stockholder derivative suit](#) was filed against officers of Sempra Energy and Southern California Gas Company alleging breach of fiduciary duty in connection with the Aliso Canyon underground natural gas storage leak.

SELECT UPDATES FROM STATES

ARIZONA

On December 11, 2015, the Arizona Corporation Commission (ACC) [proposed](#) to incorporate by reference federal pipeline safety standards and forms that have been adopted through October 1, 2015, and to make certain rules consistent with the federal pipeline safety regulations. On March 28, Spectrum LNG filed comments regarding the non-destructive testing of welds at liquefied natural gas (LNG) facilities and urged that the ACC defer revising LNG regulations until PHMSA completes its recently initiated [process](#) to examine and modify federal LNG safety regulations. ACC staff responded on April 15. More information, including status of the emergency NPRM currently in effect incorporating currently effective federal regulations, is available [here](#).

CALIFORNIA

[ACA11](#) (Gatto): This Assembly Constitutional Amendment would propose to the voters of California an amendment to the California Constitution which would authorize the Legislature to relocate or reassign all or a portion of the functions of the California Public Utilities Commission (CPUC) to other state agencies. The amendment would direct the Legislature to adopt structures to provide for greater accountability for state public utilities and to focus on safety, reliability, and ratesetting, and effective January 1, 2019, would repeal provisions of the California Constitution relating to the CPUC. The amendment was introduced on March 9 and referred to the Committee on Utilities and Commerce. A hearing was convened April 20.

INDIANA

On January 13, the Indiana Utility Regulatory Commission (IURC) issued an [NPRM](#) to reflect recent changes to the federal pipeline safety standards. The IURC approved the Final Rule on April 6 and it will be circulated to state signatories for final approval.

MICHIGAN

In an April 13 [letter](#) addressed to Governor Rick Snyder, Attorney General Bill Schuette, and officials at Michigan's Departments of Environmental Quality and Natural Resources, nearly two dozen environmental and tribal groups urged the termination of Enbridge easement allowing the company to operate its Line 5 pipelines under the Straits of Mackinac because of the risk and potential consequences to the Great Lakes in the event of a rupture. The letter also alleges that Enbridge's operations violate the easement's terms and conditions.

NORTH DAKOTA

On February 29, the North Dakota Industrial Commission issued a [Full Notice of Intent to Adopt and Amend Administrative Rules](#). Public hearings were held in April regarding proposed regulatory changes that will affect, among other types of facilities, underground gathering pipelines capable of transporting crude oil, natural gas, carbon dioxide, or produced water and salt water handling facilities. For pipelines, the [proposed revised rules](#) address information reporting, access to records, bonding, and a wide range of safety requirements, including construction, notification, design, installation, inspections, pipeline rights of way, geographic information system locational data, operations, leak detection, spill response, corrosion control, pipeline integrity, repairs, and abandonment. The proposed rules also contain a number of provisions affecting saltwater handling facilities.

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, or any member of the firm's [Pipeline & LNG](#) practice group.

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