



Dates of Interest

July 2016

- 22 Comments on [Proposed NPMS Information Collection](#) Due to OMB
- 27-28 [SGA Pipeline Safety Management Systems "Deep Dive" Workshop & Roundtable](#), Houston, TX

August 2016

- 16-18 [AGA Gas Utility Best Practices Emergency Response and ICS Roundtable](#), Columbus, OH
- 23-26 [SGA Pipeline Design Workshop](#), Houston, TX

September 2016

- 6-9 [NAPSR Southwest Region Meeting](#), Ruidoso, New Mexico
- 12-15 [AGA Operations Section Fall Committee Meetings](#), Nashville, TN
- 14-15 [SGA Pipeline Safety Management Systems](#), Atlanta, GA
- 15-16 [SGA Hazardous Liquids Pipeline Safety Regulations for Gas Operators](#), Houston, TX
- 26-30 [NAPSR National Meeting](#), Indianapolis, IN



**Know what's below.
Call before you dig.**

Pipeline Safety Update

ISSUE NO. 110 – JULY 21, 2016

[Susan Olenchuk](#), [Tyson Kade](#), [Bryn Karaus](#), [Frances Bishop Morris](#), [Barbara Deathe](#), and [John Clements](#)

President Obama signs the PIPES Act of 2016. PHMSA Rulemakings Update. PHMSA Revises Proposed Information Collection on NPMS. PHMSA seeks comments on report evaluating future safety standards for carbon dioxide pipelines. PHMSA issues advisory bulletin on corrosion of insulated coatings on buried pipelines and releases investigation report for crude oil pipeline release in California. PHMSA holds workshop on underground natural gas storage safety. PHMSA adjusts maximum civil penalty amounts for inflation. PHMSA issues public awareness report and holds public workshop on public awareness. PHMSA convenes technical advisory committees. PHMSA proposes revisions to incident and accident report forms. PHMSA awards grants to states. Motion to stay or extend effective date of compliance order. Grand jury issues criminal indictment for May 2015 crude oil pipeline release. Lawsuit challenges PHMSA's approval of Enbridge response plan. Select updates from states.

President Obama Signs the PIPES Act of 2016

On June 22, the President signed the [Protecting Our Infrastructure of Pipelines and Enhancing Safety \(PIPES\) Act of 2016](#) reauthorizing funding for federal pipeline safety programs through fiscal year 2019. Provisions of note include authorizing the Pipeline and Hazardous Materials Safety Administration (PHMSA) to issue industry-wide emergency orders to address "imminent hazards" and requiring that PHMSA issue minimum safety standards for underground natural gas storage. PHMSA also is required to publically post updates every 90 days on the status of statutorily required final rules that have not been published, study and report to Congress on measures to improve damage prevention, and report to Congress on lost and unaccounted for gas from distribution pipelines. In addition, the Comptroller General must review the effectiveness of pipeline integrity management programs. Van Ness Feldman has prepared a side-by-side [summary](#) of the PIPES Act of 2016.

State-Specific Association Meetings

August 2016

8-12 [Louisiana Gas Association Pipeline Safety Conference](#), New Orleans, LA

24 [Texas Railroad Commission Pipeline Safety Conference](#), San Antonio, TX

September 2016

7-8 [Pennsylvania PUC Gas Safety Seminar](#), State College, PA

11-13 [Arkansas Gas Association Annual Conference](#), Hot Springs, AK

26-28 [Michigan Pipeline Safety Conference](#), Mt. Pleasant, MI

Regulations and Code Compliance: Upcoming PHMSA State Seminars

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

More information is available [here](#).

August 2016

8-12 Louisiana, Alaska, Arkansas, Mississippi & Texas (Gas & Hazardous Liquid)

September 2016

12-16 New York (Gas & Hazardous Liquid)

19-23 Kentucky (Gas)

26-30 California (Gas)

26-30 Michigan (Gas)

26-30 Utah (Gas)

PHMSA Rulemakings Update. The tables below summarize the status of PHMSA’s rulemakings as reported in the Department of Transportation’s (DOT) [July Significant Rulemaking Report](#) and by OMB’s Office of Information and Regulatory Affairs (OIRA) in the Spring 2016 [Unified Regulatory Agenda](#). Revised dates appear in **bold**.

Pending Notices of Proposed Rulemaking

Rulemaking	DOT Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Safety of Gas Transmission Pipelines	Published April 8, 2016 Comments Due July 7, 2016		
Valve Installation and Minimum Rupture Detection Standards	January 24, 2017	May 3, 2017	September 2016
Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments	Not listed by DOT	Not listed by DOT	July 2016
State Pipeline Safety Program Certification	Not listed by DOT	Not listed by DOT	August 2016

Pending Final Rules

Rulemaking	DOT Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
Safety of Hazardous Liquid Pipelines	September 12, 2016	December 20, 2016	October 2016
Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other than Single-Family Residences	August 19, 2016	November 30, 2016	January 2017
Underground Storage Facilities (interim final rule)	September 9, 2016	December 19, 2016	August 2016
Inflation Adjustment of Maximum Civil Penalties	Not listed by DOT	Not listed by DOT	Issued June 2016
Issues Related to the Use of Plastic Pipe in Gas Pipeline Industry	Not listed by DOT	Not listed by DOT	October 2016
Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes	Not listed by DOT	Not listed by DOT	October 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.

PHMSA Revises Proposed Information Collection on National Pipeline Mapping System

On June 22, PHMSA issued a [Notice and Request for Comments](#) announcing that PHMSA is submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) seeking approval of changes to the data that operators of pipeline facilities, except distribution lines and gathering lines, must submit to the National Pipeline Mapping System (NPMS). PHMSA also released draft revisions to the [NPMS Operator Standards Manual](#), which includes technical details regarding new data elements. The June 22 notice responds to comments received in response to revisions proposed on [August 27, 2015](#). PHMSA first requested comments on proposed changes to the NPMS data collection on [July 30, 2014](#). Comments on the current ICR must be filed at OMB by July 22.

PHMSA is modifying the information proposed to be collected regarding positional accuracy, highest percent operating specified minimum yield strength (SMYS), decade of installation, year of last corrosion, dent, crack, and other inline inspection (ILI), Coated/Uncoated and cathodic protection, year of last pressure test and its pressure, and gas storage fields. PHMSA also is withdrawing the request that operators specify whether pipe is “effectively” coated, requiring instead that operators specify whether the pipe is or is not coated. Operators also will not be required to specify the year of original pressure test and its pressure.

PHMSA will phase in the collection of the attribute data listed below. In addition, PHMSA proposes to consider certain attributes as Sensitive Security Information (SSI) that would be released only to “covered” persons with a need to know the information, as provided in 49 C.F.R. Part 15. In addition, certain attributes would be restricted to government officials by inclusion in the Pipeline Information Management and Mapping Application. Other attributes would be available to the public.

Phase I (to be collected in the first submission year after effective date):

- Pipe diameter
- Commodity detail
- Pipe material
- Pipe grade
- Wall thickness
- Pipe joining method
- MAOP/MOP
- Percent SMYS
- Seam type
- Onshore/offshore
- Inline inspection (yes/no)
- Class location
- Gas HCA segment
- Facility response plan control number

- Abandoned pipelines
- Pump and compressor stations
- Breakout tanks
- LNG plants

- Assessment method
- Assessment year
- Coated (yes/no)
- Gas storage fields
- Mainline block valves

Phase II (to be collected in the second submission year after effective date):

- Decade of installation
- Hazardous liquid “could affect” HCA segments
- Hazardous liquid pipeline pipe segments that “could affect” other areas

Phase III (to be collected in 2024):

- Positional accuracy (operators are encouraged to submit with the new accuracy as the data becomes available)

**Recent Van Ness Feldman
Publications**

[BOEM Unveils Significant New Supplemental Financial Assurance Requirements in NTL 2016-No1](#) – July 15, 2016

[Dollar General Shows a Path Forward for Tribal Law](#) – July 12, 2016

[Electric Reliability Update – July 8, 2016](#)

[D.C. Circuit Questions FERC's Income Tax Allowance Policy](#) – July 1, 2016

[Hydro Newsletter – Vol. 3, Issue 7 – July 1, 2016](#)

UPDATES FROM PHMSA

PHMSA seeks comments on report evaluating future safety standards for carbon dioxide pipelines. On June 27, PHMSA issued a [Notice](#) requesting comments on a report entitled "[Background for Regulating the Transportation of Carbon Dioxide in a Gaseous State](#)," which evaluates the potential for minimum safety standards for existing and future gaseous carbon dioxide (CO₂) pipelines. PHMSA prepared the report pursuant to section 15 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, which requires that PHMSA prescribe minimum safety standards for such pipelines. The notice states that PHMSA seeks to understand possible impacts of regulatory scenarios presented in the report, as well as locations and extent of gaseous CO₂ pipelines. PHMSA seeks comments on information considered and conclusions drawn in the report, as well as data regarding the scope and locations of existing and future gaseous CO₂ pipelines. Comments are due July 27, 2016.

PHMSA issues advisory bulletin on corrosion of insulated coatings on buried pipelines. On June 21, PHMSA issued an [advisory bulletin](#) recommending that operators take measures to ensure that (1) insulated and buried pipelines have effective cathodic protection systems, including coating that protects against cathodic protection shielding and moisture under coatings with higher operating temperatures; and (2) ILI tool findings are accurate, verified and appropriate for the pipeline threat evaluated. The advisory was prompted by PHMSA's [failure investigation report](#) of the May 2015 release from the crude oil pipeline operated by Plains All American. The May 2016 report found that the failure was caused by external corrosion that occurred under the insulated coating.

PHMSA holds workshop on underground natural gas storage safety. On July 14, PHMSA held a public workshop to address issues relevant to developing safety standards for underground natural gas storage facilities. Materials from the workshop are [available](#).

PHMSA adjusts maximum civil penalty amounts for inflation. On July 1 PHMSA issued an [Interim Final Rule](#) adjusting its monetary civil penalty to reflect inflation, to be effective August 1, 2016. The interim rule increases the maximum civil penalties for violations of the federal pipeline safety laws from \$200,000 to \$205,638 per violation per day, up to \$2,056,380 for a related series of violations.

PHMSA issues public awareness report. On May 16, PHMSA issued a report entitled, "[Pipeline Public Awareness: Strengths, Weaknesses, Opportunities, Threats \(SWOT\)](#)." Key findings of the report include: (1) stakeholder input influenced how pipeline operators implement public awareness programs and drive continuous improvement; (2) API Recommended Practice 1162 provides a framework for building and increasing pipeline safety awareness; (3) collaborative public awareness efforts among stakeholders could be effective with the public; (4) the national 811 "Call Before You Dig" number is a simple and effective consolidated message; (5) while some operators communicate well with emergency responders, some weaknesses remain in the effectiveness of operators' outreach efforts; (6) measuring the effectiveness of operator public awareness programs is challenging; (7) program documentation needs improvement; (8) differences between interstate pipelines and distribution systems affect the development and implementation of public awareness programs; and (9) affected stakeholders of small distribution pipeline operators, particularly municipal-owned systems, have unique awareness needs.

On July 13, PHMSA held a [public workshop](#) to discuss the SWOT findings. Presentations are [available](#).

PHMSA convenes technical advisory committees. On June 1-3, PHMSA convened [meetings](#) of the Gas Pipeline Advisory Committee (GPAC) and the Liquid Pipeline Advisory Committee (LPAC). The GPAC discussed PHMSA's [notice of proposed rulemaking](#) (NPRM) on the use of plastic pipe in gas systems, and both committees discussed PHMSA's [NPRM](#) addressing operator qualification, cost recovery, and other issues. PHMSA also briefed the committees on the [NPRM](#) proposing amendments to safety standards applicable to gas transmission and gathering pipelines. Presentations and transcripts from the meetings are [available](#).

PHMSA proposes revisions to incident and accident report forms. On May 13, PHMSA issued a [notice](#) requesting comments on proposed revisions to the following incident and accident report forms for: (1) gas distribution systems; (2) natural and other gas transmission and gathering pipeline systems; (3) liquefied natural gas facilities; and (4) hazardous liquid pipeline systems. Comments were due on July 12.

PHMSA awards grants to states. On July 1, PHMSA [announced](#) more than \$49 million in Pipeline Safety Base Grants to reimburse a portion of the operating costs states incur implementing their pipeline safety programs. On July 14, PHMSA [announced](#) that it had awarded nearly \$1.5 million in grants for state damage prevention programs.

UPDATES FROM CAPITOL HILL

On July 15, the President signed the [FAA Extension, Safety, and Security Act of 2016](#) which includes a provision (Sec. 2210) permitting applications to the Administrator of the Federal Aviation Administration (FAA) to operate an unmanned aircraft system (i.e. drone) out of the line of sight of the operator or at night for specific purposes, including the inspection, repair, construction, maintenance or protection of oil or gas production, refining, or processing activities.

UPDATES ON LITIGATION

Motion to stay or extend effective date of compliance order. On July 6, ExxonMobil Pipeline Company filed in the U.S. Court of Appeals for the 5th Circuit a motion to stay or extend the effective date of a PHMSA compliance order pending judicial review. The PHMSA orders subject to review found regulatory violations and assessed civil penalties on the Pegasus Pipeline that ruptured in 2013 near Mayflower, Arkansas. The [motion](#) was filed in *ExxonMobil Pipeline Co. v. DOT, No. 16-60448* (5th Cir.).

Grand jury issues criminal indictment for May 2015 crude oil pipeline release. On May 17, the California state attorney general announced that a grand jury had indicted Plains All American Pipeline on criminal charges relating to the 2015 crude oil pipeline release near Santa Barbara. The charges include four felony violations of state laws regarding the spilling of oil and hazardous substances into state waters and 42 misdemeanor charges relating to timely reporting the release to the Office of Emergency Services (OES) and the spill's impact on wildlife. One employee also was charged with three misdemeanor violations for failing to provide timely notice of the spill to OES. The Attorney General's press release is available [here](#) and the indictment is available [here](#).

Lawsuit challenges PHMSA's approval of Enbridge response plan. On May 16, the National Wildlife Federation (NWF) filed a [complaint](#) in the U.S. District Court for the Eastern District of Michigan challenging PHMSA's approval of Enbridge Inc.'s spill response plan for a pipeline that transports oil from Wisconsin to Canada under the Straits of Mackinac. The complaint seeks declaratory and injunctive relief based upon alleged violations of the Clean Water Act, the National Environmental Protection Act, and the Endangered Species Act.

SELECT UPDATES FROM STATES

MICHIGAN

Michigan Senators request greater oversight of pipelines that cross the Great Lakes. On May 17, Michigan Senators Gary Peters (D-MI) and Debbie Stabenow (D-MI) [requested](#) that Secretary of Transportation Anthony Foxx establish specific regulatory requirements for inland offshore pipeline facilities that cross the Great Lakes. In particular, the senators request that pipelines in the Great Lakes be classified as offshore facilities, making them subject to higher liability caps for cleanup costs and more detailed oil spill response plan requirements.

NORTH DAKOTA

On June 29, the North Dakota Industrial Commission issued an [order](#) adopting new rules principally aimed at reducing spills by the oil industry. The new rules include revised requirements for underground

gathering pipelines for crude oil, natural gas, carbon dioxide, and produced water, including: (1) prior notice of construction and pressure testing; (2) design and construction; (3) crew training; (4) inspections; (5) environmental protection; (6) sharing of data; (7) corrosion control; and (8) abandonment. The requirements are also revised for above ground facilities associated with underground gathering lines. All oil storage, production, and treating sites are required to have dikes unless a waiver is granted. In addition, there are new permitting requirements for saltwater handling facilities pertaining to siting, construction, operation, abandonment, & reclamation. Finally, the revised rules require bonding, subject to certain exceptions, for new facilities and for existing facilities not already bonded as an appurtenance to another facility. To become effective, the rules must be approved by the Legislature's Administrative Rules Committee. Additional information is [here](#).

OKLAHOMA

[HB 2444](#). On April 26, Governor Mary Fallin signed HB 2444, increasing from \$10,000 per day to \$100,000 per day the maximum daily civil penalty for violation of any rule, regulation, or order issued by the Oklahoma Corporation Commission related to pipeline safety, and for violation of any provision of the Hazardous Liquid Transportation System Safety Act or rule, regulation, or order issued pursuant to that act. The increase became effective July 1.

PENNSYLVANIA

[SB 1235](#) (Baker). This bill would amend Pennsylvania's Underground Utility Line Protection Law by transferring enforcement authority from the Department of Labor to the Pennsylvania Public Utility Commission. The bill would revise a number of One Call requirements, including those relating to payment, reporting, and mapping. The bill also provides for the formation of a damage prevention committee to review violations and issue warning letters and informal determinations imposing administrative penalties. The bill would authorize penalties of up to \$2,500 per violation or, if the violation results in injury, death or property damage of \$25,000 or more, a penalty of not more than \$50,000. The bill was introduced on May 25, and referred to the Appropriations committee on June 14.

WASHINGTON

Washington Department of Ecology proposes amendments to Oil Spill Contingency Plan Rule. On June 1, the Washington Department of Ecology [proposed](#) amendments to its Oil Spill Contingency Plan Rule. The proposed rule would: (1) update definitions for clarity and consistency with existing federal regulations; (2) clarify the calculation of Worst Case Discharge for pipelines; (3) create a new pipeline geographic information planning standard which will use geo-referenced data to support preparedness planning and initial decision making during pipeline oil spills; (4) modify existing air monitoring requirements for pipelines; (5) enhance the spills to ground requirements to facilitate rapid and well-coordinated responses to spills that could affect ground water; (6) update pipeline planning standard requirements to ensure that equipment required is appropriate for the environment a pipeline may affect; and (7) expand the Best Achievable Protection Review Cycle to facilities and pipelines. Comments are due by July 22.

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.