



**Dates of Interest**

May 2017

- 10 [API/AFPM Spring Operating Practices Symposium](#), Las Vegas, NV
- 15-18 [International Oil Spill Conference](#), Long Beach, California
- 15-19 [NAPSR Central Region Meeting](#), Minneapolis, MN
- 16-18 [SGA Advanced In-Line Inspection Workshop](#), Dublin, OH
- 17-18 [SGA Pipeline Safety Management Systems](#), Boston, MA

June 2017

- 6-7 Gas Pipeline Advisory Committee [Meeting](#), TBA
- 12 Comments due on NEB [Draft Order](#)
- 13-14 [AGA Transmission Integrity Management Workshop](#)
- 13-15 [AGA Gas Utility Operations Best Practices Follow-Up Meeting](#), Boston, MA

# Pipeline Safety Update

## ISSUE NO. 124 – MAY 5, 2017

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*PHMSA announces increased maximum federal civil penalties. FY2017 Spending Bill increases PHMSA funding. PHMSA's proposed revision to information collection request for the National Pipeline Mapping System is not approved by OMB, leaving previous request unchanged. PHMSA posts FAQs about underground natural gas storage regulations. PHMSA posts responses to questions about new EFV regulations. DOT's Office of Inspector General announces audit of criminal referral procedures. PHMSA Rulemakings Update is unchanged. API and AOPL release annual pipeline report and strategic plan. INGAA releases analysis of how PHMSA's proposed MAOP reconfirmation requirements would affect releases of natural gas. House Subcommittee convenes hearing on PHMSA's regulatory process. NEB expands safety advisory on quality assurance programs. Select updates from states.*

### PHMSA Announces Increased Maximum Federal Civil Penalties

On April 27, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a [Final Rule](#) increasing maximum civil penalties for violations of federal pipeline safety laws to account for inflation. Effective immediately, the maximum civil penalty increases from \$205,638 to \$209,002 per violation per day, up to \$2,090,022 for a related series of violations. The maximum civil penalty for violating standards for LNG facilities increases from \$75,123 to \$76,352, and the penalty for violating standards or orders regarding employee discrimination increases from \$1,194 to \$1,214, in addition to other penalties which may apply.

### FY 2017 Spending Bill Increases PHMSA Funding

The [Consolidated Appropriations Act for FY 2017](#) which authorizes funding for government operations through FY 2017 provides a total of \$236 million for PHMSA, including \$156 million to fund pipeline safety programs, an increase of \$13 million over FY 2016. Up to \$136 million is to be funded by user fees, including \$8 million to be derived from the Underground Natural Gas Storage Facility Safety Account of the Pipeline Safety Fund which was created by section 12 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act (PIPES) Act of 2016 to fund federal and state oversight activities at underground natural gas storage facilities. In addition, PHMSA is directed to issue a final rule expanding the applicability of comprehensive oil spill response plans. The spending bill also provides \$56 million to fund PHMSA's hazardous materials safety programs. Congress has passed the spending bill and President Trump is expected to sign it.

*Van Ness Feldman has prepared a redline of PHMSA's regulations reflecting Final Rules that PHMSA has issued since October 2016. Please contact [Susan Olenchuk](#) or [Bryn Karaus](#) for a complimentary copy.*

### OTHER PHMSA UPDATES

PHMSA's proposed revision to information collection request for the National Pipeline Mapping System is not approved by OMB, leaving previous request unchanged. The Office of Management and Budget (OMB) has [declined](#) to approve PHMSA's revised [Information Collection Request](#) (ICR) that proposed to



**State-Specific Association Meetings**

**May 2017**

15-16 [Tennessee Oil & Gas Association Annual Convention](#), Gatlinburg, TN

**June 2017**

7 [Louisiana Gas Association Regulator and Relief Valve Training](#), Metairie, LA

7-9 [Kentucky Gas Association Annual Meeting](#), Gilbertsville, KS

8-11 [California Independent Petroleum Association Annual Meeting](#), Monterey, CA

11-14 [Alabama Natural Gas Association Annual Conference](#), Hilton Head, SC

19-21 [Tennessee Gas Association Annual Meeting](#), Savannah, GA

substantially expand the information that operators of pipeline facilities (except distribution lines and gathering lines) submit to the National Pipeline Mapping System (NPMS). According to its website, OMB approved without change the previously approved ICR.

**PHMSA Gas Pipeline Advisory Committee will meet to discuss proposed rule for gas transmission and gathering pipelines.** On June 6 and 7, PHMSA’s [Gas Pipeline Advisory Committee](#) (GPAC) is planning to meet to resume discussion of PHMSA’s [notice of proposed rulemaking](#) that would extensively modify Part 191 and Part 192 of the federal pipeline safety regulations applicable to gas transmission and gathering pipelines. GPAC previously [met](#) on January 11 and 12.

**PHMSA posts FAQs about underground natural gas storage regulations.** PHMSA’s Pipeline Technical Resources website now includes information regarding new [safety standards](#) for underground natural gas storage facilities. In addition to [Frequently Asked Questions](#), available resources include rulemaking and guidance [documents](#) and access to American Petroleum Institute (API) Recommended Practice (RP) 1170 and RP 1171 which are incorporated into PHMSA’s Part 192 regulations by reference.

**PHMSA posts responses to questions about new EFV regulations.** PHMSA has posted [responses](#) to questions that were posed during February webinars addressing implementation of new regulations expanding the requirement to install excess flow valves (EFV) on service lines. The [final rule](#), which became effective April 14, requires that operators install either EFVs or manual service line shut-off valves on new or replaced service lines serving branched single family residences, multifamily residences and small commercial entities.

**PHMSA Rulemakings Update is Unchanged.** The tables below summarize the status of PHMSA’s rulemakings as reported in the Department of Transportation’s (DOT) [December Significant Rulemaking Report](#), and by the OMB’s Office of Information and Regulatory Affairs (OIRA) in the Fall 2016 [Unified Regulatory Agenda](#). DOT has not released a Significant Rulemaking Report since December because rulemakings are subject to evaluation in accordance with Executive Orders [13771](#) and [13777](#).

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.

**Pending Final Rules**

<b>Proceeding</b>	<b>DOT Estimated Submission to OMB</b>	<b>DOT Estimated Publication</b>	<b>OIRA Estimated Publication</b>
Enhanced Emergency Order Procedures (Interim Final Rule issued October 2016)	Not listed	Not listed	No Estimate Provided
Inflation Adjustment of Maximum Civil Penalties (Interim Final Rule issued July 2016)	Not listed	Not listed	February 2017
Plastic Pipe Rule (NPRM issued May 2015)	Not listed	Not listed	December 2016
Safety of Gas Transmission and Gathering Pipelines (NPRM issued April 2016)	August 29, 2017	December 11, 2017	Not listed
Safety of Hazardous Liquid Pipelines (NPRM issued October 2015)	Advanced copy released January 13; withdrawn from publication in the Federal Register on January 24, 2017.		

**Recent Van Ness Feldman Publications**

[Trump Issues Executive Order Aimed at Expanding Development of Offshore Oil & Gas Resources](#) – May 1, 2017

[California’s Cap-and Trade Program Wins in Court, Program’s Future Still Unclear](#) – April 10, 2017

[Trump Order Sets Up Rollback of Obama Energy and Climate Action](#) – March 30, 2017

[Tax Reform – The Big Picture](#) – March 3, 2017

[Trump Executive Order Starts Review and Potential Revision of the “Waters of the United States” \(WOTUS\) Rule](#) – March 1, 2017

[Administration Takes an Initial Step in its Regulatory Reform Agenda](#) – January 31, 2017

[Executive Actions May Impact the Future of Energy Infrastructure Projects and Domestic Manufacturing](#) – January 26, 2017

[Second Circuit Reinstates EPA’s Water Transfer Rule](#) – January 23, 2017

[Army Corps of Engineers Releases 2017 Nationwide Permits](#) – January 19, 2017

[House of Representatives Prioritize Actions to Reform the Regulatory Process](#) – January 18, 2017

**Pending Notices of Proposed Rulemaking**

<b>Proceeding</b>	<b>DOT Estimated Submission to OMB</b>	<b>DOT Estimated Publication</b>	<b>OIRA Estimated Publication</b>
Standards Update Rule – 2015 and Beyond (formerly the “Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments”)	Not listed	Not listed	November 2016
State Pipeline Safety Program Certification	Not listed	Not listed	November 2016
Valve Installation and Minimum Rupture Detection Standards	January 24, 2017	May 3, 2017	May 2017

**UPDATES FROM OTHER AGENCIES**

**DOT’s Office of Inspector General announces audit of criminal referral procedures.** DOT’s Office of Inspector General (OIG) has initiated an [audit](#) to assess whether DOT and its operating agencies, including PHMSA, have policies and procedures in place to ensure that potential criminal violations are promptly referred to OIG for investigation. The audit was prompted by the concern that the operating agencies do not always refer potential criminal violations to OIG.

**UPDATES FROM INDUSTRY**

**API and AOPL release annual pipeline report and strategic plan.** On April 24, API and the Association of Oil Pipe Lines released their [Performance Report and Strategic Plan for 2017-19](#). The Report summarizes pipeline performance and improvement efforts during 2016, provides shared pipeline safety principles, and describes four major strategic goals to promote organizational excellence, improve safety through technology and innovation, enhance emergency response preparedness, and increase stakeholder awareness and involvement.

**INGAA releases analysis of how PHMSA’s proposed MAOP reconfirmation requirements would affect the release of natural gas.** In March, the Interstate Natural Gas Association of America (INGAA) released a [report](#) analyzing the amount of natural gas that would likely be released into the atmosphere as a result of PHMSA’s [proposal](#) to require reconfirmation of maximum allowable operating pressure (MAOP) of certain gas transmission pipeline segments in more populated areas. INGAA analyzed gas release estimates contained in the Preliminary Regulatory Impact Analysis (PRIA) that accompanied PHMSA’s notice of proposed rulemaking for gas transmission and gathering pipelines and a report prepared by M.J. Bradley & Associates, submitted to PHMSA by the Pipeline Safety Trust. INGAA estimated that the total volume of gas likely to be released under PHMSA’s MAOP reconfirmation proposal, before applying any mitigation measures, would be approximately 25 times more than amounts estimated in the PRIA and by M.J. Bradley. INGAA states that operators would be likely to use hydrostatic pressure tests to perform MAOP reconfirmations, which requires blowing down a pipeline to evacuate the gas releasing it into the atmosphere. The report states that the effectiveness of mitigation options are limited.

**UPDATES FROM CONGRESS**

**House Subcommittee convenes hearing on PHMSA’s regulatory process.** On April 26, the House Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Transportation and Infrastructure Committee held a [hearing](#) addressing the status of PHMSA regulations and opportunities for reforming the agency’s regulatory process. Representatives from API and INGAA testified regarding PHMSA’s recent rulemaking efforts, the regulatory process, burdens on industry, and ways to ease those burdens.

## UPDATES FROM CANADA

**NEB expands safety advisory on Quality Assurance Programs.** On April 17, the National Energy Board (NEB) issued [Safety Advisory SA 2016-01A](#) amending previous Safety Advisories and an Order requiring regulated companies to identify and report on purchased and installed pipeline components that contain substandard material properties. The amended Safety Advisory identifies pipeline fittings made by two companies in South Korea and India that did not meet required material specifications. In an accompanying [Draft Order](#), the NEB would require regulated companies to identify components not meeting required specifications, confirm they are safe, and take appropriate mitigation measures. Comments on the Draft Order are due June 12, 2017.

## SELECT UPDATES FROM STATES

### COLORADO

On May 2, The Colorado Oil & Gas Conservation Commission (COGCC) issued a [Notice to Operators](#) requiring that pipeline operators verify that existing flowlines not in active use are abandoned and either removed or disconnected from supply sources, purged, depleted, cut and permanently sealed. Operators also must document the location of all existing active flowlines located within 1,000 feet of a building unit and ensure and document their integrity. Flowlines include pipe segments carrying gas, oil, condensate, or other liquid or gaseous hydrocarbons that extend from the wellhead downstream through production facilities and end at certain defined points, depending on the product transported. Operators must complete inspections no later than May 30 and document the integrity of flowlines no later than June 30. The COGCC's Notice to Operators responds to a fatal April 17 house explosion caused by gas that seeped into the house through a nearby underground flowline that had been removed from service but not capped or disconnected from the well.

### LOUISIANA

[HB 389](#) (Carmody). This bill would increase maximum civil penalties for pipeline safety violations to \$200,000 per violation per day and \$2 million for a series of related violations, and would give the Commissioner of Conservation of the Louisiana Department of Natural Resources exclusive authority to enforce the state's Underground Utilities and Facilities Damage Prevention (OneCall) law. The bill was referred to the Committee on Appropriations.

### MICHIGAN

[SB 292](#) (Jones). This bill would prohibit the Department of Natural Resources (DNR) from granting easements in the Great Lakes for pipelines carrying crude oil or liquid petroleum products. Owners of existing pipelines transporting these products in the Great Lakes would be required to provide to the Governor and Legislature: 1) within 90 days, a preliminary analysis of risks from a spill; and 2) within 120 days, an analysis of risks from a worst case spill and an Environmental Impact Statement containing an analysis of risk and alternatives. The analyses must be conducted by an independent third party. If DNR determines, based on the preliminary analysis, that the public trust in the waters of the Great Lakes is at risk of impairment or substantial adverse impacts, the operator would be required to shut down the pipeline pending a full analysis. If the operator does not cure the risks identified in the analysis, the easement for the pipeline would be terminated. Introduced on March 30, the bill was referred to the Committee on Natural Resources.

[HB 4569](#) (Sowerby). This bill would establish that a discharge of petroleum into state waters is *prima facie* evidence of a violation, subjecting the responsible person to civil penalties of up to \$500,000 per day. The penalty for failing to report a release would be increased from \$2,500 to \$50,000. Introduced on May 2, the bill was referred to the Committee on Energy Policy.

HB [4570](#) (Cochran). This bill would require that operators of pipeline facilities comply with the new provisions introduced in HB 4572. Introduced on May 2, the bill was referred to the Committee on Energy Policy.

HB [4571](#) (Pagan). This bill would require a pipeline that will carry petroleum products or carbon dioxide substances to obtain a permit from the Michigan Public Service Commission (MPSC) and require that the MPSC ensure that siting the pipeline will not adversely affect public health, safety or welfare or the environment. Pipeline operators would be required to submit inspection reports and remit an impact fee. Introduced May 2, the bill was referred to the Committee on Energy Policy.

HB [4572](#) (Rabhi). This bill would require that a pipeline located in the Great Lakes be operated without posing a threat to public health, safety, welfare, or the environment. DNR would be required to regularly inspect pipelines located in the Great Lakes and may impose operational conditions, such as requiring sufficient anchors. Pipeline owners or operators would be required to submit emergency response plans and conduct release response drills. Introduced May 2, the bill was referred to the Committee on Energy Policy.

### PENNSYLVANIA

[SB 604](#) (Rafferty). The bill would transfer regulatory authority for gas and hazardous liquid pipeline safety from the Pennsylvania Public Utility Commission (PAPUC) to the Department of Transportation (PennDOT) and require PennDOT to apply for designation as an interstate agent with respect to the inspection of interstate pipelines in Pennsylvania. The bill would also require the PennDOT to adopt rules for interstate pipelines that are no less stringent than the Commonwealth's laws for intrastate pipelines. In this respect, the proposed legislation could conflict with preemption provisions of the Pipeline Safety Act. Introduced on April 13, the bill was referred to the Senate Committee for Consumer Protection and Professional Licensure.

[SB605](#) (Rafferty). The bill would require the PAPUC to collect an "impact fee" from operators of transmission and gathering lines transporting gas or oil and deposit the fees collected into a Pipeline Impact Fund that will be used by the PAPUC for administration and for annual payments to counties and municipalities affected by pipelines. Introduced on April 13, the bill was referred to the Senate Environmental Resources & Energy Committee.

### 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](mailto:sam@vnf.com), [Bryn Karaus](#) at (202) 298-1821 or [bsk@vnf.com](mailto:bsk@vnf.com), or any member of the firm's [Pipeline & LNG](#) practice group.