



Dates of Interest

August 2017

- 29-30 [2017 Western Regional Gas Conference](#), San Diego, CA
- 29-31 [AGA Gas Utility Operations Best Practices Leak Survey/Leak Management Roundtable](#), Newark, NJ

September 2017

- 5 Comments due on [TSA Information Collection Request](#)
- 12-15 [DOT Pipeline Safety Compliance Training – Gas](#), Oklahoma City, OK
- 14 Comments due on [BSEE ICR](#)
- 19-22 [AOPL Annual Business Conference](#), Seattle, WA
- 25 [SGA Webinar Leak Detection 1 – Gas Pipelines](#)
- 25-29 [NAPSR National Meeting](#), Columbus OH
- 27 Comments due on [TRC pipeline safety proposal](#)

October 2017

- 3 [API Pipeline Information Exchange](#), Houston, TX
- 23-26 [API Tanks, Valves, and Piping Conference & Expo](#), Seattle, WA
- 30 [SGA Webinar Leak Detection 2 – Gas Pipelines](#)



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Pipeline Safety Update

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Federal court of appeals vacates PHMSA enforcement decision. PHMSA Rulemakings Update. PHMSA Technical Advisory Committees will meet September 6-8. PHMSA transmits several reports to Congress. BSEE submits renewal of information collection request to OMB regarding oil and gas operations in the OCS. OMB approves revised Federal Drug Testing Custody and Control Form. Select updates from states.

Federal Court of Appeals Vacates PHMSA Enforcement Decision

On August 14, the United States Court of Appeals for the Fifth Circuit [vacated](#) most of an enforcement decision of the Pipeline and Hazardous Materials Safety Administration (PHMSA) regarding ExxonMobil's Pegasus crude oil pipeline which ruptured in March 2013 near Mayflower, Arkansas. PHMSA had found that ExxonMobil violated integrity management regulations leading to the rupture, and assessed \$2.6 million in civil penalties and imposed a compliance order requiring specific corrective actions. The court found that ExxonMobil appropriately "considered" risk factors as required by the unambiguous language of section 195.452(e)(1) of PHMSA's regulations. In addition, the operator's consideration of those factors, which included reliance on a PHMSA-endorsed industry standard, was adequate and did not compel a finding that the line was subject to seam failure.

The court rejected PHMSA's position that the line's construction of low-frequency electric resistance welded (LF-ERW) pipe precluded a conclusion that the line was not susceptible to seam failure, refusing to defer to an interpretation that dictated a specific outcome, regardless of the pipeline's consideration of the factors listed in the regulation. The court also refused to defer to PHMSA because the agency failed to provide ExxonMobil "fair notice" of how the agency interpreted the regulation.

The court vacated all but one of the counts against ExxonMobil, along with the associated civil penalties and compliance order. On the remaining count, the court remanded the civil penalty for reconsideration because PHMSA's determination that a regulatory violation was a causal factor in the pipeline release was contrary to the evidence.

PHMSA Rulemakings Update. In August, the Department of Transportation (DOT) released its first [Significant Rulemaking Report](#) (Report) since December 2016. The tables below summarize the status of rulemakings pending before PHMSA as reflected in the August Report and the Unified Regulatory Agenda, released in July by the Office of Management & Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). The Unified Regulatory Agenda now appears in two principal parts: [Current Agenda Agency Regulatory Entries for Active Actions](#) and [Current Long Term Actions](#).

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.

Dates of Interest (continued)

November 2017

- 2-3 [Pipeline Safety Trust Annual Conference](#), New Orleans, LA
- 7-9 [AGA Executive Leadership Safety Summit](#), Washington, DC
- 14 [Common Ground Alliance Best Practices Committee Meeting](#), Houston, TX
- 14-15 [AGA Natural Gas Odorization Workshop](#), Aurora, CO
- 15 [API/AFPM Fall Operating Practices Symposium](#), Dallas, TX

Recent Van Ness Feldman Publications

- [California Extends and Strengthens Cap-and Trade Program](#) – July 24, 2017
- [EPA Proposed Rule to Rescind Definition of "Waters of the United States"](#) – July 17, 2017
- [DC Circuit Hands Pipelines Roadmaps to Construct Projects over Delays by Local Permitting Agencies](#) – July 6, 2017
- [BSEE Issues Rule Extending Development Time for Offshore Oil and Gas Leaseholders](#) – June 16, 2017
- [D.C. Circuit Upholds Conditional Certificates for Natural Gas Pipelines](#) – May 24, 2017
- [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

Pending Final Rules

Proceeding	DOT Estimated Submission to OMB	DOT Estimated Publication	OIRA Estimated Publication
Enhanced Emergency Order Procedures	Not listed	Not listed	September 2017
Plastic Pipe Rule	Not listed	Not listed	December 2017
Safety of Gas Transmission and Gathering Pipelines	No Date Provided	No Date Provided	June 2018
Safety of Hazardous Liquid Pipelines	September 26, 2017	December 29, 2017	December 2017
Underground Natural Gas Storage Facilities	No Date Provided	January 31, 2018	January 2018

Pending Notices of Proposed Rulemaking

Proceeding	DOT Estimated Submission to OMB	DOT Estimated Publication	OIRA Estimated Publication
Class Location Requirements	December 26, 2017	April 9, 2018	Not Listed
Standards Update Rule – 2015 and Beyond	Not listed	Not listed	September 2017
Valve Installation and Minimum Rupture Detection Standards	Not Listed	Not Listed	September 2017

OTHER PHMSA UPDATES

PHMSA Technical Advisory Committees will meet September 6-8. PHMSA's Gas and Liquid Technical Advisory Committees will hold a joint meeting on September 6 to receive updates on PHMSA's regulatory initiatives. The Gas Pipeline Advisory Committee will meet on September 7 and 8 to continue its discussion of the proposed Safety of Gas Transmission and Gathering Pipelines rule. The meetings will be held in the Washington, DC, area. Information will be published on PHMSA's [meeting registration page](#).

PHMSA has transmitted several required reports to Congress:

- *Monitoring of flood events to address pipeline safety.* On July 20, pursuant to Senate [Committee Report 114-75](#), accompanying the 2016 Appropriations Authorization, PHMSA transmitted to Congress a report entitled "[PHMSA's Incorporation of Real-time Monitoring of Flood Events to Address Challenges to Pipeline Safety.](#)" The report describes measures PHMSA has taken to incorporate data from other governmental agencies and private entities that can be used by PHMSA and pipeline operators to gauge and address risks before a pipeline release occurs. The report identifies "incomplete regulatory specifications" addressing proactive measures as a continuing challenge to addressing threats from riverine flooding. To address specific pipeline

**State-Specific Association
Meetings**

September 2017

- 6-7 [Pennsylvania Public Utility Commission, Gas Safety Seminar](#), State College, PA
- 17-19 [Arkansas Gas Ass'n Annual Conference](#), Fort Smith, AR
- 19-22 [Texas Gas Ass'n PHMSA Pipeline Safety Training Seminar](#), San Antonio, TX

October 2017

- 12 [Indiana Oil & Gas Ass'n Annual Meeting](#), Evansville, IN
- 18-19 [Illinois Commerce Commission Pipeline Safety Conference](#), Effingham, IL
- 24-26 [Virginia State Corporation Commission Pipeline Safety Conference](#), Virginia Beach, VA

threats, however, PHMSA uses enforcement tools such as corrective action orders and safety orders that require individual operators to develop and implement proactive real-time monitoring measures at river crossings.

- *State-level policies affecting leaking natural gas pipelines.* On August 2, pursuant to section 30 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016, PHMSA transmitted to Congress a [Report on State-Level Policies That Encourage or Present Barriers to the Repair and Replacement of Leaking Natural Gas Pipelines](#). The report provides the results of PHMSA's a state-by-state review of policies addressing the repair and replacement of leaking gas distribution pipelines and sets forth the agency's recommendations for addressing them.
- *Damage prevention technology.* On August 3, pursuant to section 8 of the PIPES Act, PHMSA transmitted to Congress a [Study on Improving Damage Prevention Technology](#) providing results of its study on improving existing damage prevention programs through technological improvements. The report concludes that, despite the efforts of PHMSA and other stakeholder groups, and although the number of serious accidents caused by excavation damage is declining, it remains a leading cause of serious pipeline accidents. The report sets forth a number of recommendations to reduce the threat of excavation damage. The report's [Appendices](#) include a summary of recent PHMSA-supported R&D projects, a report on damage prevention by the Common Ground Alliance, and materials from other industry stakeholders.

UPDATES FROM OTHER AGENCIES

BSEE submits renewal of information collection request to OMB regarding oil and gas operations in the OCS.

The Bureau of Safety and Environmental Enforcement (BSEE) has submitted to OMB a [request](#) to renew approval of the paperwork requirements in BSEE's regulations applicable to operations conducted under a lease, right-of-way, or a right-of-use and easement on the OCS. BSEE has decided to discontinue use of Form-0011, *Internet Based Safety and Environmental Enforcement Reporting System*, but would continue to use forms BSEE-1832, *Incident(s) of Noncompliance (INCs)*, BSEE-0132, *Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics*, and BSEE-0143, *Facility/Equipment Damage Report*. Comments are due September 14.

OMB approves revised Federal Drug Testing Custody and Control Form. On August 8, 2017, the Office of Management and Budget [approved](#) a revised Federal Drug Testing Custody and Control Form (CCF), but authorized the continued use of the 'old' CCF until June 30, 2018. The revision accommodates testing for synthetic opioids which is now part of the U.S. Department of Health and Human Services [Mandatory Guidelines for Federal Workplace Drug Testing Programs](#) which become effective October 1, 2017. Regulated entities should continue to use the 'old' CCF until DOT issues a final rule authorizing testing for these substances.

SELECT UPDATES FROM STATES

COLORADO

On August 22, Governor John Hickenlooper [announced](#) policy initiatives in response to an April house explosion caused by a natural gas leak from an uncapped abandoned flow line connected to a nearby well. The proposed 7-point plan would (1) request regulatory review to identify gaps and need for new requirements; (2) explore establishing a pilot program for detecting ambient methane leaks; (3) require routine inspection of small, low-pressure flow lines; (4) create a voluntary nonprofit "orphan well fund" for plugging abandoned wells and buy methane detectors for homeowners; (5) seek to prohibit locating direct gas lines between a well and a home; (6) create a technical working group for oil and gas safety training; and (7) include oil and gas pipelines in the "call before you dig" program. Governor Hickenlooper also stated his desire for the state health department to work with the federal Occupational Safety and Health Administration and Colorado Oil and Gas Association to develop safety measures for oil and gas workers.

DISTRICT OF COLUMBIA

On August 11, the District of Columbia Public Service Commission issued an [NPRM](#) that would modify reporting requirements for gas outages and incidents; reporting and repairing requirements for gas leaks and odor complaints; reporting and responding requirements for gas emergencies; customer service standards and surveys; reliability standards; and compliance reporting. The proposal also would provide that remedies for violations may include forfeiture or civil penalties.

INDIANA

On August 11, the Indiana Utility Regulatory Commission [announced](#) a new, free online training system for excavation professionals on Indiana's 811 safe digging program.

PENNSYLVANIA

On August 15, State Representative Carolyn Comitta introduced [House Bill No. 1700](#) to establish a Pipeline Safety and Communication Board to collect and publicly disseminate information regarding the planning, siting, construction, operation, maintenance, management, inspection and safety of and emergency response procedures for pipelines and to coordinate communications about pipeline activities with federal, state and local government agencies and regulatory authorities, pipeline companies and the public. The Board would consist of state officials, legislators, and interstate or intrastate pipeline operators located in Pennsylvania. The bill was referred to the Committee on Environmental Resources and Energy.

TEXAS

On August 15, the Texas Railroad Commission (TRC) [proposed](#) to amend the Texas pipeline safety regulations to incorporate by reference federal requirements existing as of October 30, 2017. The proposal is expected to be published in the September 1 issue of the *Texas Register*. Comments are due September 27, 2017.

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

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