



Natural Gas & Oil

PIPELINE SAFETY

An Experienced Team to Manage Complex, Expanding Regulations

As an outgrowth of Van Ness Feldman's long-standing experience providing federal regulatory counseling to pipelines in managing their systems and achieving their business objectives, the firm advises pipeline owners and operators on pipeline safety matters including: regulatory interpretation and compliance, enforcement, litigation, the effectiveness of pipeline safety compliance programs, risk management, and obtaining Special Permits authorizing use of new materials and technologies. Recently, the firm enhanced its pipeline safety expertise by adding an attorney from the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) with a background in pipeline safety enforcement and compliance. Combining this PHMSA expertise and perspective with Van Ness Feldman's established industry knowledge and experience better equips us to help operators ensure that their safety programs satisfy PHMSA's requirements and meet the agency's expectations.

Charged with ensuring the safe operation of the nation's extensive network of pipelines that transport gas, hazardous liquids (including crude oil, petroleum products) and CO₂, the PHMSA has adopted minimum pipeline safety standards that apply to interstate and intrastate gas pipelines, gas distribution systems, and many hazardous liquid pipelines.

PHMSA's regulations are comprehensive. They address the design, construction, operation, maintenance, and inspection of pipeline facilities and specify requirements for, among other things, corrosion control, integrity management, control room management, public awareness and damage prevention programs, and recordkeeping.

Regulatory agencies in most states apply these requirements to intrastate gas pipelines and gas distribution companies and also can require operators of these facilities to comply with additional pipeline safety requirements. Some states also regulate intrastate hazardous liquids pipelines.

PHMSA is Undertaking a Comprehensive Review of its Safety Regulations

As part of a comprehensive review of its gas and hazardous liquid pipeline safety programs, PHMSA has issued advanced notices of proposed rulemaking (ANPRM) seeking public comment on a broad range of issues.

- *Hazardous Liquid Pipelines.* PHMSA's ANPRM sought comment on wide-ranging changes that could eliminate or modify existing regulatory exemptions, broaden the scope of the Integrity Management regulations, impose leak detection requirements for all regulated pipelines, change valve spacing requirements and require the installation of emergency flow restricting devices, specify repair timeframes for pipeline segments not subject to the Integrity Management requirements and impose requirements for stress corrosion cracking. The comment period has closed and PHMSA is preparing a proposed rulemaking to follow up on many of the issues raised in the ANPRM.
- *Gas Pipelines.* The ANPRM requests comments on whether changes are needed to numerous safety regulations. Specifically, PHMSA seeks input on the following areas: the definition of a high consequence area (HCA); Integrity Management requirements; repair criteria; data collection; validation and integration requirements; risk modeling requirements; applying knowledge gained through Integrity Management programs; assessment tool selection and use requirements; valve spacing and remote or automatic valves; corrosion control; longitudinal weld seams; underground gas storage requirements; management of change; quality management systems; the grandfather clause for establishing maximum allowable operating pressure on pre-1970 lines; and gathering lines. Comments are due on December 2, 2011.

In addition, PHMSA has expanded its regulatory programs in other important ways:

- Operators of gas distribution lines were required to develop and implement written Integrity Management programs for their systems by August 2, 2011. These programs must demonstrate the operator's knowledge of its gas distribution system, identify existing and potential threats, evaluate and rank the risks associated with those threats, and implement measures to address those risks.
- Operators of gas and hazardous liquid pipelines that have a controller in a control room who monitors and controls all or part of a pipeline through a SCADA system must develop control room management procedures designed to reduce risks associated with human factors and ensure that management of control room activities contributes to safe pipeline operations. PHMSA recently accelerated the dates for implementing these procedures to either October 1, 2011, or August 1, 2012, depending on the requirement.
- The Pipeline Inspection, Protection, Safety, and Enforcement Act of 2006 required PHMSA to adopt regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines. Through a phased rulemaking, PHMSA now requires that nearly all low-stress hazardous liquid lines comply with Part 195 regulations. Implementation deadlines for these pipelines extend through 2016.

Compliance Requirements are Extensive and Vigorously Enforced

PHMSA's regulations require that pipelines develop and implement detailed written programs and procedures for Integrity Management, operations and maintenance, public education and awareness, operator qualification, damage prevention, and other activities. Owners and operators of pipelines must demonstrate compliance by preparing and implementing written compliance procedures and the technical bases for their decisions and actions. Pipelines also must comply with reporting requirements.

Implementing safety compliance programs can be time-consuming and costly, but non-compliance can expose a pipeline company to enforcement actions and potential civil and criminal litigation.

New Technology has Created Opportunities

PHMSA recognizes that dramatic technological improvements in materials, metallurgy, controls, operations, and maintenance over the last 20 years present opportunities for using new types of materials in the design and construction of pipelines. Through the periodic incorporation of updated industry standards and via the special permit process, PHMSA has allowed the use of more cost-effective materials and techniques without compromising public safety.

Pipeline Safety Services

Compliance

We partner with clients and their expert consultants in developing and reviewing written compliance programs for all aspects of the regulations and implementing procedures to ensure thorough documentation of program compliance.

We provide guidance in interpreting regulatory requirements, agency policy and enforcement cases and in the preparation and review of documents to be submitted to state and federal agencies. We also monitor the issuance of new regulations and notify pipeline clients of developments affecting their operations.

Enforcement and Litigation Matters

We represent and advise pipeline owners in responding to PHMSA enforcement actions, including notices of probable violation and notices of amendment. We team up with our clients' technical and field personnel to develop effective case strategies and responses to enforcement actions. We also represent and advise in civil litigation matters involving pipeline safety issues.

Special Permits

We counsel owners and operators of pipelines in developing and prosecuting petitions for special permits on many topics, including enabling the use of new technology and improved materials in the design and construction of new pipelines. We also advise pipelines with compliance issues related to existing special permits.

Post-Incident Counseling

We provide assistance and strategic counseling involving environmental compliance and enforcement matters that may arise in connection with pipeline incidents, including corrective action orders, safety orders and investigations.