



Dates of Interest

June 2014

- 17-19 [AGA Gas Utility Operations Best Practices Follow-up Conference](#), New York, NY
- 18-19 [API 2014 Pipeline Emergency Response Forum](#), Houston, TX
- 27 [Comments due](#) PHMSA Revisions to Gas Distribution Annual Report

July 2014

- 2 [PHMSA Public Workshop on Pipeline Safety Management Systems](#), Alexandria, VA
- 7-11 [NAPSR Southwest Region Meeting](#), Bentonville, AR
- 17 [One Call Systems International Committee Meeting](#) (part of Common Ground Alliance), New York, NY
- 21-24 [NAPSR Central Region Meeting](#), Kansas City, KS
- 28-30 [Southern Gas Ass'n Operating Conference & Exhibits](#), New Orleans, La

Pipeline Safety Update

ISSUE NO. 78 – JUNE 11, 2014

[Susan Olenchuk](#), [James Curry](#), [Keith Coyle](#), [Tyson Kade](#), [Barbara Deathe](#)

House approves FY-2015 budget. Senate Appropriations Committee urges completion of gas rule. Senators urge PHMSA to improve oversight of state programs. PHMSA schedules workshop on pipeline safety management systems. Select legislative and regulatory updates from the States. Updates on industry activities.

House Approves FY-2015 PHMSA Budget

On June 10, the House approved the FY-2015 transportation, housing and urban development funding bill, which includes funding for the Pipeline and Hazardous Materials Safety Administration (PHMSA). The bill provides a funding increase for PHMSA's pipeline safety program of approximately \$12 million above the FY-2014 budget, but well below the increase sought in the President's FY-2015 request. The bill is [here](#) and the Committee Report is [here](#).

Senate Appropriations Committee Urges PHMSA to Complete Proposed Gas Rule

On June 5, the U.S. Senate Appropriations Committee approved a [provision](#) urging PHMSA to transmit its gas transmission pipeline proposed rule to the Office of Management and Budget for review as soon as possible. The proposed rule is expected to contain comprehensive revisions to safety standards applicable to gas transmission lines. PHMSA's advanced notice of proposed rulemaking was issued in August 2011.

Senators Urge PHMSA to Improve State Oversight

On May 28, U.S. Senator's Dick Durbin (D-IL), Debbie Stabenow (D-MI), and Carl Levin (D-MI) [urged](#) PHMSA Administrator, Cynthia Quarterman, to implement the recommendations contained in the recent [audit report](#) of the Department of Transportation's Inspector General regarding federal oversight of state safety programs. The audit report, issued May 7, found that PHMSA's guidelines, policies and procedures do not permit the agency to effectively manage its State Pipeline Safety Program and offered recommendations for improvement.

PHMSA Activities

PHMSA workshop on Pipeline Safety Management Systems. On July 2, PHMSA will convene a [public workshop](#) on Pipeline Safety Management Systems (PSMS) for the purpose of discussing an emerging PSMS national consensus standard and identifying how concepts explored at PHMSA's [previous PSMS workshop](#) are addressed in the new standard. Participants are expected to include industry representatives, state and federal regulators, the National Transportation Safety Board, and public safety advocates. The workshop will be held in Alexandria, Virginia, and will be webcast.

PHMSA Rulemakings. The table below reflects information on the status of PHMSA rulemakings as reported in the DOT's May Significant Rulemaking [Report](#). Additional information from the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is [here](#). New information in the table is reflected in bold.

OIRA has received PHMSA's notices of proposed rulemakings for excess flow valves and the safety of onshore hazardous liquid pipelines. Under Executive Order (EO) 12866, OIRA will review these rulemaking proposals to ensure they are consistent with applicable law, the President's priorities, and

the principles set forth in the EO. OIRA will also ensure the proposals do not conflict with another agency's policies or actions. Under the EO, OIRA is to provide PHMSA the results of the review within 90 days, unless that period is extended for an additional 30 days.

Dates of Interest (continued)

August 2014

- 5 [PHMSA/NAPSR Public Meeting](#) on Managing Pipeline Cracking Challenges, Chicago, IL
- 6-7 [PHMSA/NAPSR Government/Industry Pipeline R&D Forum](#), Chicago, IL

| Rulemaking & Next Action | Estimated Date to OMB | DOT Estimated Publication Date | OIRA Estimated Publication Date |
|---|------------------------------|---------------------------------------|--|
| Excess Flow Valves; NPRM | April 30, 2014 (actual) | August 13, 2014 | August 2014 |
| Issues Related to Use of Plastic Pipe in the Gas Pipeline Industry; NPRM | N/A | N/A | June 2014 |
| Safety of Gas Transmission Pipelines; NPRM | August 7, 2014 | November 19, 2014 | August 2014 |
| Safety of On-Shore Hazardous Liquid Pipelines; NPRM | May 1, 2014 (actual) | August 13, 2014 | July 2014 |
| Valve Installation and Minimum Rupture Detection Standards; NPRM | December 21, 2014 | May 1, 2015 | N/A |
| Enforcement of State Excavation Damage Laws; Final Rule | June 9, 2014 | September 19, 2014 | August 2014 |
| Miscellaneous Amendments to Pipeline Safety Regulations; Final Rule | April 25, 2014 | August 6, 2014 | August 2014 |
| Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments; Final Rule | N/A | N/A | September 2014 |
| Operator Qualification, Cost Recovery, Incident Reporting, CO ₂ , Special Permit Renewal, and Other Issues; NPRM | January 1, 2015 | April 30, 2015 | N/A |

Select Updates from the States

(Updated legislative information appears in italics; new bills are marked with an “*”)

CALIFORNIA

AB 1937 (*Gordon*): This bill would amend the California Public Utilities Code to require gas corporations to provide at least three working days’ notice before undertaking any non-emergency excavation or construction activity within 500 feet of a school or hospital. *AB 1937* passed the Assembly by unanimous vote on May 23, and has been referred to the Senate for consideration. *A Senate committee hearing is set for June 23.*

SB 1389 (*Hill*): This bill would prohibit a gas corporation from using the “grandfather clause” in the federal gas pipeline safety regulations to determine the maximum allowable operating pressure (MAOP) for an intrastate gas transmission line segment. The federal pipeline safety regulations currently allow operators to determine the MAOP for a gas pipeline by using the highest actual operating pressure that a segment experienced during the 5-year period preceding July 1, 1970. *SB 1389* would prohibit the use of that provision and require operators of intrastate gas transmission line to determine MAOP solely on the basis of the California Public Utilities Commission’s rules or orders. The bill unanimously passed the

Van Ness Feldman is seeking associate attorneys to join its FERC Pipeline Practice and PHMSA Pipeline Safety Practice

For more information, go [here](#) and link to “Careers.”

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

June 2014

9-13 Hawaii (Gas & Liquid)
24-27 Missouri (Gas)

July 2014

21-25 Louisiana (Gas)

PHMSA offers training on gas and hazardous liquid pipeline safety regulations. More information is available [here](#).

State-Specific Association Meetings

June 2014

23-25 [Alabama Damage Prevention Summit](#),
Montgomery, AL

July 2014

16-17 [Kentucky Oil & Gas Ass'n Annual Meeting](#), Louisville, KY
21-25 [Louisiana Gas Ass'n Pipeline Safety Conference](#), New Orleans, LA

August 2014

5 [Kentucky Gas Ass'n 2nd Annual Safety Summit](#), Lexington, KY

Standing Committee on Energy, Utilities and Communications on May 5 and is pending before the Senate Committee on Appropriations.

*[SB 1371](#) (*Leno*): The bill would require the Public Utilities Commission to adopt rules and procedures governing natural gas leakage abatement for regulated intrastate transmission and distribution lines in order to reduce emissions of natural gas. The regulatory proceeding would commence by January 15, 2015, and the rules and procedures would be required to meet the following objectives: (a) provide for the maximum technologically feasible and cost-effective avoidance, reduction, and repair of leaks and leaking components within a reasonable time after discovery; (b) provide for the ranking or recorded leaks and leaking components by volume or energy content; (c) evaluate natural gas leakage abatement practices to determine effectiveness; and (d) establish and require the use of best practices for leak surveys, patrols, leak survey technology, leak prevention, and leak reduction. On May 29, the Senate passed the bill and it is pending before the Assembly Committee on Utilities and Commerce.

CONNECTICUT

[Public Act 14-94](#): Governor Dannel Malloy signed new legislation that amends the state's damage prevention requirements effective October 1, 2015. Under the new law, the discharge of explosives and demolition activities are now subject to those requirements. The state's public utilities are also required to organize and operate a central clearing house for receiving and giving notice to public utilities of these and other excavation-related activities under the direction of the Public Utilities Regulatory Authority (PURA). The law removes the mandatory two-day timeframe for utilities to mark the locations of underground facilities, leaving any time restrictions up to regulations to be issued by PURA, and requires the use of hand- or soft-digging techniques in the vicinity of any facility that contains combustible or hazardous fluids or gases.

LOUISIANA

[HB 868](#) (*Ponti*): Governor Bobby Jindal has signed new legislation that reduces the civil penalties that can be imposed for violations of the Underground Utilities and Facilities Damage Prevention Law and allows an excavator and operator to extend the 48-hour deadline for beginning excavation activity by mutual agreement.

[HCR 143](#) (*Stokes*): This concurrent resolution urges the Commissioner of Conversation and the Secretary of the Department of Natural Resources, in consultation with the Attorney General and Legislative Auditor, to perform a comprehensive assessment of the hazards posed by pipelines that are inadequately marked, covered, buried, or protected in coastal areas and to make recommendations for any statutory, regulatory, or policy changes necessary to address these concerns.

MASSACHUSETTS

[H 4164](#): The bill would incorporate into Massachusetts law the federal limitations on the amount of administrative civil penalties for pipeline safety violations. The bill would also: (a) establish uniform natural gas leak classifications for all gas companies; (b) require written notification to a gas company of a significant project on a public way that will expose natural gas infrastructure; (c) require the gas company to ensure that any shut off valve in the project area has a gate box installed or a reasonable alternative that would ensure public safety and that any critical valve is operational and accessible; (d) prioritize pipeline repairs for gas leaks detected in a school zone; (e) require annual reporting of gas leaks and repairs; (f) authorize implementation of a targeted infrastructure replacement program; (g) require operators to give notice of "incidents" at the earliest practicable moment following discovery; (h) require that consideration be given to creating new standards for performing winter surveillance and patrols of cast iron pipe. The bill has been referred to the Committee on House Steering, Policy and Scheduling, and has been placed in the Orders of the Day for the next sitting.



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

Climate, Energy, & Air Update

Catch up on the latest EPA developments by subscribing to Van Ness Feldman's bi-weekly Climate, Energy & Air Update. [Click here to read the latest issue.](#)

MICHIGAN

[HB 5556](#) (Townsend): This bill would increase the administrative civil penalties that can be imposed for pipeline safety violations to \$20,000 per day, per violation, not to exceed \$800,000 for any related series of violations. It would also require any person who engages in the transportation of gas or who owns or operates pipeline facilities to annually communicate with county and municipal emergency coordinators to review the public education and awareness programs. The bill was introduced on May 8 and was referred to the House Committee on Energy and Technology.

MISSOURI

[HB 1867](#) (Schatz): This bill proposes numerous changes to Missouri's damage prevention statute, including altering the definitions of "excavation" and a "pipeline facility" and adjusting the requirements for marking underground facilities. It also sets the failure to notify by an excavator and the failure to mark facilities by an owner or operator as a rebuttable presumption of negligence. *The bill was delivered to the Governor on May 30.*

MINNESOTA

[HF 3172](#) (Carlson/Hausman/Cohen): Recently signed into law by Governor Mark Dayton, this legislation authorizes the state to collect \$2,500,000 in fees annually for the next three years from rail and oil pipeline operators to pay for the costs of conducting training and emergency preparedness programs.

NEW HAMPSHIRE

*[HB 1376](#) (Hammon): The bill would establish a committee to study the safe delivery of oil and gas, including natural gas and propane, throughout the state of New Hampshire. The committee would be required to report its findings and any recommendations for proposed legislation by May 1, 2015. The bill would also make a technical correction regarding the submission of oil pipeline facility spill response plans. On June 4, the Conference Committee Report was adopted.

NEW JERSEY

A2711 (Handlin): This bill proposes to create the New Jersey Taskforce on Underground Utility Lines for the purpose of studying issues related to placing overhead utilities underground. The bill was referred to the Assembly Committee on Telecommunications and Utilities. Track the bill here.

NEW YORK

[A 9336](#) / [S 7010](#): These companion bills would require operators of gas distribution facilities to accelerate the repair or replacement of pipe segments that are leaking, are at "high risk of leaking," or may no longer be fit for service due to inferior materials, poor construction methods, lack of maintenance, or age. The bills also would provide a cost recovery mechanism for the accelerated repair or replacement program. Both bills have been referred to the respective energy committees.

*[S 7430A](#) (Maziarz) / [A 9772-A](#) (Paulin): The bills would: (a) establish and implement a uniform system for classifying natural gas leaks; (b) require that each gas corporation annually report the location and classification of each reported leak, the date each such leak was classified, and the date each such leak is repaired; (c) require that such information be made available upon request to any municipal or state public safety official and to members of the legislature; and (d) require the investigation of the need for additional winter surveillance of cast iron or ductile iron pipelines and the effect of extended frost on such pipelines. The bills are currently in committee.

OHIO

[HB 483](#) (Amstutz): The Senate-passed version of this bill had proposed to increase the maximum civil penalties for pipeline safety violations to \$200,000 per day, per violation, not to exceed \$2,000,000 for any related series violations (consistent with federal caps). It would also allow the Ohio Public Utilities

Commission to waive the pipe design requirements in Subpart C of 49 C.F.R. Part 192 for operators of “gas gathering pipelines” or “processing plant gas stub pipelines.” While including the latter provision, the House-passed version of this bill did not authorize an increase in the maximum civil penalties that can be imposed for pipeline safety violations. *The conference committee report was agreed to on June 4. The enrolled bill does not include a provision for increasing pipeline safety civil penalties.*

OKLAHOMA

[HB 2533](#) (Watson): This bill designates the Oklahoma Corporation Commission as the agency responsible for enforcing the Oklahoma Underground Facilities Damage Prevention Act. It also sets forth the requirements for a Notice of Inquiry process to evaluate the state’s pipeline safety programs, including addressing any findings or recommendations contained in the final report of the Pipeline Safety Task Force convened by Gov. Mary Fallin. The bill has been passed by both houses of the Oklahoma State Legislature and was approved by the governor on May 9.

RHODE ISLAND

[H 7714 Sub A / S 2450 Sub A](#): These bills would require excavators to provide specific information regarding the location of a planned excavation, including the specific street address for nearby buildings and any other information to assist a utility in determining where the excavation is planned to occur. It would also require that any contact with underground facilities be reported to the affected utility immediately, and that any potential violation of the damage prevention law must be reported to the Rhode Island Public Utilities Commission within 30 days. The Rhode Island Senate passed its bill on April 3. The House of Representatives passed its version on May 20 and referred the bill to the Senate Committee on Commerce for consideration two days later. The bills were transmitted to the Governor on June 10.

TEXAS

Texas Railroad Commission Hosting Gathering Line Workshops. The Texas Railroad Commission (TRRC) is hosting a series of workshops to discuss the regulation of gas and hazardous liquid gathering lines. Last year, the Texas Legislature enacted a new law, HB 2982, which provides TRRC with the authority to establish safety standards for hazardous liquid gathering lines in rural areas and gas gathering lines in Class 1 locations. While the law includes a provision that limits the ability of the TRRC to exercise all of its new authority before September 1, 2015, the agency is allowed to collect information from pipeline operators before that date. The [gathering line workshops](#) are being held from May 21 to July 30, 2014, in San Antonio, Amarillo, Midland, Fort Worth, Rockport, and Cotulla, Texas. TRRC also announced that it will be hosting a [Pipeline Safety Seminar](#) with PHMSA staff in San Antonio from September 9 to 11, 2014.

VERMONT

[Act No. 132](#): On May 20, Governor Peter Shumlin signed legislation that increased the civil penalty limit for violations of the Gas Pipeline Safety Program from \$100,000 to \$200,000 per violation per day, not to exceed \$2,000,000 for any related series of violations (consistent with federal caps). These amounts are identical to the federal limits imposed under the Pipeline Safety act.

WASHINGTON

Washington Proposes Civil Penalty Cap Increase. In May, the Washington Utilities and Transportation Commission (WUTC) proposed amending its gas pipeline safety rules for intrastate facilities to increase the maximum civil penalties for pipeline safety violations. The proposed amendment would increase the maximum per-violation penalty from \$100,000 to \$200,000 per violation, and the maximum penalty for a related series of violations from \$1,000,000 to \$2,000,000. The amendment would make the state penalty caps consistent with federal limitations in the Pipeline Safety Act. The WUTC will convene a hearing on the proposed amendment on July 2 in Olympia. More information is [here](#).

Updates from Industry

SGA forms Pipeline Safety Council. In April, the Southern Gas Association (SGA) formed a new Pipeline Safety Council. The Council will encourage members to share learning associated with incidents as well their experiences with new technologies and processes. The Council has committed to the expansion of integrity management, and will promote best practices and educate stakeholders on risk reduction. More information is [here](#).

Report calls for new norm for gas pipeline leak management. Last month, Pricewaterhouse Coopers LLP, released a report titled, "[Beyond Compliance: Creating a New Norm in Gas Pipeline Leak Management.](#)" The report describes how the use of advanced leak detection technologies the report asserts can improve pipeline integrity management and enhance pipeline safety. The report also includes a case study analysis that discusses CenterPoint Energy's efforts to employ advanced leak detection technologies as part of a pilot program in Texas and Minnesota.

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, [Jim Curry](#) at (202) 298-1831 or jbc@vnf.com, [Keith Coyle](#), at (202) 298-1811 or kjc@vnf.com, or any member of the firm's Pipeline & LNG practice group.

© 2014 Van Ness Feldman, LLP. All Rights Reserved. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.