



**Dates of Interest**

**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 [Comments due on PHMSA ICR](#)
- 6-9 [NAPSR Southwest Region Meeting](#), Ruidoso, New Mexico
- 12-16 [AGA Operations Section Fall Committee Meetings](#), Nashville, TN
- 13-16 [2016 AOPL Annual Business Conference](#), Chicago, IL
- 14-15 [SGA Pipeline Safety Management Systems](#), Atlanta, GA
- 15-16 [AGA Executive Leadership Safety Summit](#), Nashville, TN
- 15-16 [SGA Hazardous Liquids Pipeline Safety Regulations for Gas Operators](#), Houston, TX
- 26-30 [NAPSR National Meeting](#), Indianapolis, IN



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# Pipeline Safety Update

## ISSUE NO. 111 – AUGUST 10, 2016

*[Susan Olenchuk](#), [Bryn Karaus](#), and [Barbara Deathe](#)*

*Jury returns mixed verdict in PG&E criminal trial regarding San Bruno pipeline incident. PHMSA Rulemaking Update. PHMSA seeks comment on information collection request relating to hazardous liquid pipeline integrity management program. DOJ and Enbridge reach settlement for 2010 pipeline spills. Pipeline Association for Public Awareness releases Summer 2016 newsletter.*

### Jury Returns Mixed Verdict in PG&E Criminal Trial Regarding San Bruno Pipeline Incident

On August 9, the jury returned a mixed verdict against Pacific Gas & Electric (PG&E) in the criminal trial involving the rupture and explosion of a gas transmission line in San Bruno, California in 2010.

The company was found guilty on five counts of knowingly and willfully violating integrity management requirements under Part 192 of the federal gas pipeline safety regulations and not guilty on six counts of violating Part 192 recordkeeping requirements. The jury also found PG&E guilty on one count of obstructing the National Transportation Safety Board's (NTSB) investigation of the incident in violation of section 1505 of title 18 of the United States Code.

Specifically, the jury found PG&E guilty of knowingly and willfully violating the following integrity management regulations for covered segments of a gas transmission line:

- Section 192.917(a): Identifying and evaluating potential threats;
- Section 192.917(b): Gathering and integrating data and information regarding potential threats;
- Section 192.917(e)(3): Prioritizing covered segments as high risk after a changed circumstance rendered manufacturing threats unstable;
- Section 192.917(e)(4): Prioritizing covered segments as high risk after a changed circumstance rendered manufacturing threats unstable and failing to analyze such segments to determine the risk of failure from those threats; and
- Section 192.919: Including all potential threats in a baseline assessment plan and choosing the most suitable assessment method.

The jury found PG&E not guilty on 6 counts of knowingly and willfully violating regulations requiring the maintenance of repair records (Section 192.709(a)) and pressure test records (Section 192.517(a)).

Before the case was submitted to the jury, the judge instructed that the term "willful" under the Pipeline Safety Act requires only a finding that the company disregarded the statute and displayed an indifference to its requirements. The jury was not required to find specific intent to disregard or disobey the law to reach a guilty verdict.

The judge will determine the sentence for the convictions. Under the Alternative Fines Act, if a defendant financially gained or caused a financial loss to another person as a result of the offense, a defendant may be fined an amount that is twice its gross gains as a result of the offense, or twice the

**State-Specific Association Meetings**

August 2016

- 8-12 [Louisiana Gas Association Pipeline Safety Conference](#), New Orleans, LA
- 23-24 [Western Regional Gas Conference, Tempe AZ](#)
- 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](#).*

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)

victims' gross loss. However, on August 2, the United States Attorney withdrew the sentencing allegations under the Alternative Fines Act. Therefore, the maximum fine for each conviction is \$500,000, for a maximum total fine of \$3 million.

PG&E has until August 16 to request that the court set aside the verdict based on insufficiency of the evidence to sustain the conviction.

Van Ness Feldman has prepared an overview of the [Protecting Our Infrastructure of Pipelines and Enhancing Safety \(PIPES\) Act of 2016](#), and a redline showing how the PIPES Act modified the legislative text of the pipeline safety laws. For copies, contact Susan Olenchuk at [SAM@vnf.com](mailto:SAM@vnf.com) or Bryn Karaus at [BSK@vnf.com](mailto:BSK@vnf.com).

**PHMSA Rulemaking Update.** The tables below summarize the status of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) 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](#).

**Pending Notices of Proposed Rulemaking**

Rulemaking	DOT Estimated Submission to OMB*	DOT Estimated Publication	OIRA Estimated Publication
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
Safety of Gas Transmission Pipelines	Information Unavailable	Information Unavailable	Information Unavailable
Inflation Adjustment of Maximum Civil Penalties	Not listed by DOT	Not listed by DOT	<a href="#">Issued June 2016</a>

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[www.vnf.com/knowledgecenter.aspx](http://www.vnf.com/knowledgecenter.aspx)

**Recent Van Ness Feldman Publications**

[Little-Noticed Provision in BSEE’s Well Control Rule May Have a Major Impact on Risk Reduction](#) – August 8, 2016

[Northwest Land Matters Update](#) – August 1, 2016

[Hydro Newsletter](#) – Vol. 3, Issue 8 – July 29, 2016

[Electric Reliability Update](#) – July 27, 2016

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

**UPDATES FROM PHMSA**

**PHMSA seeks comment on information collection request relating to hazardous liquid pipeline integrity management program.** On August 4, PHMSA issued a [notice](#) announcing that it is submitting to OMB for review and approval, and requesting comments on, a proposed information collection request (ICR) pertaining to PHMSA’s hazardous liquid pipeline integrity management program. Comments are due September 6, 2016. PHMSA’s notice of this ICR was first published on [March 9](#) and PHMSA received no comments.

**UPDATE ON LITIGATION**

**DOJ and Enbridge reach settlement for 2010 pipeline spills.** The Department of Justice (DOJ) and Enbridge have lodged a proposed [Consent Decree](#) with the United States District Court for the Western District of Michigan to settle claims under the Clean Water Act and the Oil Pollution Act relating to two oil transmission pipeline failures that occurred in 2010. The proposed settlement includes \$62 million in civil penalties and requires Enbridge to reimburse the government for past and future removal costs, remove Line 6B from service, replace Line 3, and establish an inspection and spill prevention program across its Lakehead system. The Consent Decree is subject to a 30 day notice and comment period. The case is *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16-cv-914.

**UPDATES FROM INDUSTRY**

**PAPA releases Summer 2016 newsletter.** The [Pipeline Association for Public Awareness](#) (PAPA) released its Summer 2016 [newsletter](#) containing information about pipeline safety and awareness for public officials. PAPA is an organization that promotes communication and cooperation with local organizations to enhance public safety, improve emergency preparedness, protect the environment and prevent property and facility damage.

**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), or [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.

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