



Dates of Interest

September 2018

- 11-12 [PHMSA Pipeline Safety R&D Forum](#), Baltimore, MD
- 18-20 [DOT Transportation Safety Institute Pipeline Safety Compliance \(Gas\)](#), Oklahoma City, OK
- 25-28 [AOPL Annual Business Meeting](#), Denver, CO

October 2018

- 1 Comments due on PHMSA's [Class Location ANPRM](#)
- 3 [PHMSA VIS Meeting](#), Washington, D.C.
- 9 Comments due on PHMSA [Proposed Changes to Forms](#)
- 9 [New England Pipeline Safety Seminar](#), Meredith, NH
- 10 [API Workshop on Pipeline SMS Industry Tools](#), Galveston, TX
- 17 Comments due on [PHMSA Risk Modeling Report](#)
- 18-19 [Pipeline Safety Trust 2018 Annual Conference](#), New Orleans, La
- 22-26 [AGA 2018 Fall Technical Committee Meetings](#), Fort Worth, TX
- 22-25 [AGA/EEI/INGAA Security Committees and Conference](#), Fort Worth, TX
- 30-11/1 [APGA Operations Conference](#), Chattanooga, TN

November 2018

- 9 [PHMSA VIS Meeting](#), Washington, D.C.

Pipeline Safety Update

ISSUE NO. 141 – SEPTEMBER 17, 2018

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PHMSA requests comments on alternative safety measures in response to class location changes. PHMSA and FERC execute Memorandum of Understanding to improve the processing of LNG facility applications. Jury returns verdict against Plains All-American regarding oil pipeline release in Santa Barbara. PHMSA Rulemakings Update. PHMSA announces user fee structure for underground natural gas storage facilities. PHMSA requests comments on Pipeline Risk Modeling Report. PHMSA requests comments to proposed changes to OPID Request and National Registry Forms. PHMSA Voluntary Information Sharing Working Group schedules new meetings. PHMSA appoints Deputy Associate Administrator for Policy and Programs. DOT OIG releases report addressing how DOT operating administrations refer potential criminal activity. Wildearth Guardians files complaint against PHMSA. Select Updates from States.

PHMSA Requests Comments on Alternative Safety Measures in Response to Class Location Changes

On July 31, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an [advance notice of proposed rulemaking](#) (ANPRM) seeking comments regarding actions an operator of a gas transmission pipeline is required to take when population growth near a pipeline causes its class location to change. The ANPRM does not propose any new regulatory initiatives, but continues the discussion about whether expanding integrity management (IM) requirements may provide an alternative to current requirements when a pipeline's class location changes. Comments are due by October 1.

Background

The class location of a transmission pipeline is based on the number and type of dwellings intended for human occupancy located near the pipeline. Class locations range from less populated rural "Class 1" areas to more densely populated "Class 4" areas containing taller buildings. Class location is used to determine a pipeline's design factor, which in turn, is used to calculate the pipeline's design pressure and maximum allowable operating pressure (MAOP). A pipeline's class location also affects other design, construction and operation and maintenance requirements. If the class location of a pipeline increases, the operator is required to perform a study of the design, construction, testing, condition, and operating and maintenance history of the segment. The operator must confirm that the hoop stress imposed by the MAOP is commensurate with the class location, and may be required to lower MAOP. Under the existing pipeline safety regulations, when the class location of a pipeline changes, an operator may be required to either reduce the line's pressure, perform a pressure test, or replace the line.

PHMSA has issued numerous special permits to operators of transmission pipelines waiving the pipeline safety regulations to avoid having to replace a pipeline or reduce its pressure as a result of a class location increase. Such special permits contain conditions to ensure safety, including the requirement that the pipeline be included in the operator's IM plan which requires enhanced measures for assessing, identifying and mitigating pipeline risks in "High Consequence Areas" (HCAs).

In the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011, Congress required that PHMSA evaluate whether expanding IM requirements beyond HCAs would mitigate the need for class location requirements. In a report to Congress, PHMSA acknowledged industry's desire to expand IM measures when the class location of a pipeline changes, and acknowledged that improved assessment

Recent Van Ness Feldman Publications

[WOTUS Rule Reinstated in 26 States after Court Enjoins Delay](#) – August 27, 2018

[Van Ness Feldman Enhances Litigation and Environmental Capabilities with Five Lateral Partners, Adds San Francisco Bay Area Office](#) – August 23, 2018

[EPA Proposes Affordable Clean Energy Rule](#) – August 22, 2018

[FERC Raises the Threshold for Cyber Incident Reporting](#) – July 24, 2018

[EPA and Corps Seek Additional Comment on Proposal to Repeal Definition of WOTUS](#) – July 18, 2018

[OPPORTUNITY: CEO Requests Comments on Ways to Modernize NEPA Process](#) – June 21, 2018

technologies are important to mitigating and remediating risk. PHMSA stated, however that IM measures do not adequately address the safety role of class locations with respect to design and construction and some operation and maintenance requirements. PHMSA also described certain safety and documentation issues recently observed with respect the construction, operation and maintenance of pipelines and expressed hesitation to allow two-class bumps without requiring that the pipeline be replaced, especially for higher pressure pipelines. PHMSA committed, however, to further evaluating alternatives to pipe replacement and to seeking input from industry stakeholders.

The ANPRM

The ANPRM seeks comments on ten topic areas addressing the potential safety consequences of permitting an operator to implement IM measures in response to a class location change instead of having to replace pipe, reduce pressure, or perform a pressure test. After receiving comments, PHMSA may issue a proposal to amend current regulations.

PHMSA and FERC Execute Memorandum of Understanding to Improve the Processing of LNG Facility Applications

On August 31, PHMSA and the Federal Energy Regulatory Commission (FERC) signed a [Memorandum of Understanding](#) (MOU) establishing a framework for improved coordination and exchange of information when processing applications for proposed liquefied natural gas (LNG) facilities. The MOU provides that PHMSA will provide FERC a Letter of Determination addressing whether a proposed facility will comply with the safety standards in 49 C.F.R. Part 193. FERC will then consider PHMSA’s determination when deciding whether a project is consistent with the public interest. The MOU supersedes a [1985 MOU](#) between FERC and PHMSA, but does not supersede a [2004 MOU](#) among FERC, PHMSA, and the U.S. Coast Guard.

Jury Returns Verdict Against Plains All-American Regarding Oil Pipeline Release in Santa Barbara

On September 7, a California state jury found Plains All American Pipeline, L.P., (Plains) guilty of one felony for unlawfully discharging oil into state waters and eight misdemeanor charges related to the 2015 oil spill near Refugio State Beach in Santa Barbara, California. A mistrial was declared with respect to two other felony criminal charges and one misdemeanor criminal charge.

PHMSA Rulemakings Update. The tables below summarize the status of the PHMSA’s pending pipeline safety rulemaking initiatives as reflected in the Department of Transportation’s (DOT) August [Significant Rulemaking Report](#) and the Office of Management & Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA) Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions. The Unified Regulatory Agenda appears in two principal parts, [Current Agenda Agency Regulatory Entries for Active Actions](#) and [Current Long Term Actions](#). New information is highlighted in bold.

Pending Final Rules

| Proceeding | DOT Estimated Submission to OMB | DOT Estimated Publication | OIRA Estimated Publication |
|-------------------------------------|--|----------------------------------|-----------------------------------|
| Enhanced Emergency Order Procedures | Not Provided | October 24, 2018 | August 2018 |
| Plastic Pipe Rule | Not Provided | September 28, 2018 | August 2018 |



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|---|--------------|-------------------|----------------|
| Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments | Not Provided | March 14, 2019 | March 2019 |
| Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments | Not Provided | December 20, 2019 | Not Listed |
| Safety of Gas Gathering Pipelines | Not Provided | December 20, 2019 | Not Listed |
| Safety of Hazardous Liquid Pipelines | Not Provided | December 28, 2018 | September 2018 |
| Underground Natural Gas Storage Facilities | Not Provided | January 21, 2019 | September 2018 |

Pending Notices of Proposed Rulemakings

| Proceeding | DOT Estimated Submission to OMB | DOT Estimated Publication | OIRA Estimated Publication |
|--|--|----------------------------------|-----------------------------------|
| Gas Pipeline Regulatory Reform | Not Listed | Not Listed | February 2019 |
| Liquid Pipeline Regulatory Reform | Not Listed | Not Listed | February 2019 |
| Periodic Standards Update | Not Listed | Not Listed | Not Listed |
| Valve Installation and Minimum Rupture Detection Standards | Not Provided | January 17, 2019 | November 2018 |

Pending Advance Notices of Proposed Rulemakings

| Proceeding | DOT Estimated Submission to OMB | DOT Estimated Publication | OIRA Estimated Publication |
|--|--|----------------------------------|-----------------------------------|
| Class Location Requirements | N/A | Issued August 31, 2018 | N/A |
| Coastal Ecological Unusually Sensitive Areas | Not Listed | Not Listed | November 2018 |

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. The EO sets out deadlines for OMB evaluation, but review periods are often extended.

OTHER PHMSA UPDATES

PHMSA announces user fee structure for underground natural gas storage facilities. On August 9, PHMSA issued a [notice](#) announcing that it developed the user fee rate structure to fund the Underground Natural Gas Storage Facility Safety Account for fiscal years 2018 and 2019 based on the number of injection/withdrawal wells and monitoring/observation wells that operators reported in their underground natural gas storage annual reports for calendar year 2017. For fiscal year 2020, PHMSA intends to use calendar year 2018 data. The notice also explains how the fee was calculated. In response to a comment that well counts alone are not an appropriate measure for calculating the user fee because larger wells require more regulatory oversight, PHMSA explained that each well presents risk and that it intends to apply a consistent level of regulatory oversight to all wells, regardless of size.

PHMSA requests comments on Pipeline Risk Modeling Report. On August 16, PHMSA issued a [notice](#) requesting comments on a report developed to support improvements in gas and hazardous liquid pipeline risk models titled "[Pipeline Risk Modeling – Overview of Methods and Tools for Improved Implementation.](#)" The report, which is based on the results of PHMSA's Risk Modeling Work Group, provides an overview of the major types of pipeline risk models and their effectiveness in supporting risk assessments and pipeline operator decisions. Comments are due on [October 17](#).

PHMSA requests comments on changes to OPID Request and National Registry forms. On August 9, PHMSA issued a [notice](#) announcing that it would request OMB approval for a revised Operator Assignment (OPID) Request form (PHMSA F 1000.1) and National Registry Notification form (PHMSA F 1000.2). PHMSA proposes to revise both forms to add underground natural gas storage as a facility type. Additional revisions to the OPID Request form include collecting information about liquefied petroleum gas (LPG) facilities serving fewer than 100 customers and modifying the instructions to explain expectations for small LPG and master meter operators. Additional revisions to the National Registry Notification form include collecting additional information about types of construction projects and collecting county data for additional types of facilities. Comments are due by October 9.

PHMSA Voluntary Information Sharing Working Group schedules new meetings. PHMSA has announced that the Voluntary Information-Sharing (VIS) Working Group will convene public meetings in Washington D.C. on [October 3](#) and [November 9](#) to continue discussions regarding establishment of a voluntary information-sharing system. Topics addressed by the VIS Working Group include requirements of section 10 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016, integrity management, data types and tools, in-line inspection methods, geographic information system implementation, examples of existing information-sharing systems and safety management systems. Information on the meetings is [here](#).

PHMSA appoints Deputy Associate Administrator for Policy and Programs. On August 8, PHMSA announced the appointment of Massoud Tahamtani as the Deputy Associate Administrator for Policy and Programs with PHMSA's Office of Pipeline Safety. Tahamtani previously served as the Director of the Division of Utility and Railroad Safety with the Virginia State Corporation Commission.

UPDATES FROM OTHER FEDERAL AGENCIES

DOT OIG releases report addressing how DOT operating administrations refer potential criminal activity. On August 22, DOT's Office of Inspector General (OIG) released a report assessing DOT's policies and procedures for promptly referring potential criminal activity to OIG. With respect to PHMSA, OIG found that the Office of Pipeline Safety (OPS) requires that all referrals arising from enforcement activities involving a regulated entity be reviewed by the Office of Chief Counsel. According to OIG, OPS's Pipeline Safety Enforcement Procedures manual sets forth a multi-step process involving documenting evidence, conducting legal research, gathering records, and preparing a memorandum. OIG found that this process is inherently contrary to DOT's requirement that such referrals be made without delay. OIG recommended several measures to ensure that DOT and its operating administrations have policies and procedures to promptly refer potential criminal violations to OIG.

**State-Specific Association
Meetings**

November 2018

6-9 OK Corp. Commission
[2018 Pipeline Safety
Conference](#)

**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 2018

25-26 Mississippi

UPDATES ON LITIGATION

Wildearth Guardians files complaint against PHMSA. On August 14, Wildearth Guardians filed a [complaint](#) against PHMSA alleging failure to ensure that oil and gas pipelines and associated facilities on publicly-owned, federally-managed lands throughout the United States are annually examined and inspected. WildEarth Guardians claims that such inspections are required by the Mineral Leasing Act.

SELECT UPDATES FROM STATES

CALIFORNIA

On June 29, the California Department of Conservation Division of Oil, Gas, and Geothermal Resources announced that new [final regulations](#) for underground gas storage projects have been finalized to replace emergency rules that have been in effect since early 2016. The new regulations include standards, specifications, and requirements for well construction, mechanical integrity testing, risk management plans, emergency response plans, project data, monitoring, inspection, and project decommissioning. The regulations become effective October 1.

COLORADO

[SB 167](#) went into effect on August 8, 2018, enhancing enforcement of the excavation damage prevention law and creating the Underground Damage Prevention Safety Commission (Commission). The commission has rulemaking and enforcement authority regarding specified portions of the excavation damage prevention law. Under current law, certain underground facilities are considered “tier 2” members of the notification association, and excavators must contact them directly to request marking of their facilities. Effective January 1, 2021, all underground facility owners and operators will be full members of the notification association, and excavators will no longer need to contact the owners or operators directly to arrange for marking of underground facilities. The law requires all new underground facilities installed after January 1, 2020, to be electronically locatable.

ILLINOIS

On August 17, the Illinois Commerce Commission (ICC) published a [proposed rulemaking](#) which would incorporate by reference Parts 192 and 199 and select provisions of Part 191 of the federal pipeline safety regulations that were in effect on July 1, 2018, and would clarify that reports required by Part 191 that pertain only to the downhole portion of an underground natural gas storage facility need not be filed with the ICC. A companion [proposed rule](#) would remove several obsolete references to PHMSA’s report forms, allow for electronic filing of certain reports to the ICC, and update several statutory citations. Comments are due October 1.

MINNESOTA

On August 20, the Minnesota Public Utilities Commission issued an [order](#) requiring that natural gas utilities provide and pay for excess flow valves (EFVs) and curb valves upon customer request, modify customer notices regarding EFVs, and report the status of EFV and curb valve installation. The order also requires that utilities develop plans to discuss installations of EFVs and manual service line shutoff valves with schools, hospitals, and multi-unit residential and nursing facilities that do not have them installed yet.

NEVADA

In May, the Nevada Public Utilities Commission proposed to [amend](#) its regulations regarding One Call. The amendment would require an excavator to call emergency 911 services if the excavator causes or observes any damage to a subsurface installation that causes the release of certain gases or hazardous liquids.

NORTH DAKOTA

The North Dakota Public Service Commission has [amended](#) its rules to adopt by reference Part 193 and to update the adopted versions of Parts 190, 191, 192, 194, 195 and 199, to those that were in effect as of December 31, 2017.

OKLAHOMA

On June 18, the Oklahoma Corporation Commission [amended](#) the gas and hazardous liquid pipeline safety regulations to adopt the versions of 49 CFR Parts 192, 195, 198, and 199 that were in effect on January 1, 2018. The updated rules are effective on October 1.

PENNSYLVANIA

[HB 2605](#) was introduced on September 5 and would impose an impact fee on operators that utilize oil and gas pipelines, including gathering lines. The fee will be based on the acreage of linear feet plus right-of-way width using the county average land value in an "affected area," which is defined as an HCA, and will not be imposed on pipelines in existence on the new law's effective date. Funds will be remitted to counties and municipalities containing affected areas. The bill was referred to the Committee on Environmental Resources and Energy.

[House Resolution No. 1034](#), introduced on September 5, would, among other things, direct the Department of Environmental Protection and the Pennsylvania Public Utility Commission to prepare a comprehensive assessment of the construction and operation risks associated with the Sunoco Pipeline L.P. Mariner East 2 natural gas liquids pipeline project and address public concerns about enforcement of permit protections and safety standards. The proposed resolution also would direct the DEP to require that Sunoco submit a detailed plan addressing spills of drilling fluid. The resolution was referred to the Committee on Environmental Resources and Energy.

SOUTH DAKOTA

[HB1024](#) was signed by the Governor on February 22, establishing the Statewide One-Call Notification Board through which a person can notify operators of underground facilities of plans to excavate and request the marking of the facilities. It requires all operators to become members of the one-call notification center and submit the locations of their underground facilities to the center. The law becomes effective on July 1, 2019.

VIRGINIA

On June 12, the Virginia State Corporation Commission issued an [order](#) adopting proposed regulations outlined in a January 23 petition for rulemaking by Columbia Gas of Virginia. The rule provides greater flexibility when conducting trenchless excavation that crosses gravity fed sewer mains and combination storm/sanitary sewer system utility lines. The new rules became effective on July 1, 2018.

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.