

Recent Developments in Pipeline Safety

PHMSA focuses on proposed rule for gas transmission and gathering pipelines.

Key Points:

- GAO has released a report assessing the adequacy of PHMSA odorization requirements.
- PHMSA will split the forthcoming Gas Transmission and Gathering Rule into three separate final rules to be published in the first, second, and third quarters of 2019.
- Paul Roberti has been named as PHMSA Chief Counsel.

This *Client Alert* provides a brief update on recent developments involving the Pipeline and Hazardous Materials Safety Administration (PHMSA). (Latham & Watkins' previous analysis of PHMSA's regulatory actions and likely agenda can be found in an [August 14, 2017 White Paper](#), a [June 29, 2017 Client Alert](#), and a [June 29, 2017 White Paper](#).)

Update #1: GAO Releases Stakeholder Report on Odorization Requirements

On April 18, 2018, the Government Accountability Office (GAO) released a report required by the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016, which included a provision ordering review of the impact of requiring that all pipelines be odorized. A broad array of experts, stakeholders, and industry leaders participated in the much-anticipated study. The GAO report was submitted to Congress, as required by the statute. (A copy of the report is available here [\[https://www.gao.gov/assets/700/691319.pdf\]](https://www.gao.gov/assets/700/691319.pdf).) The GAO report does not create any obligations on the part of PHMSA but may be used to inform future regulatory action.

In sum, the report found that officials and stakeholders disagreed on the need to modify existing requirements for certain pipelines. The report noted: "[B]ecause distribution pipelines run through populated areas, everyone GAO contacted generally agreed that these pipelines should be odorized for safety, as currently required. For gathering pipelines, the majority of officials and stakeholders did not see a need to modify regulations because these pipelines would be technically challenging to odorize and are primarily located in rural areas. However, about two-thirds of state officials and about half of stakeholders said that additional transmission pipelines should be odorized for public safety."

In the report, PHMSA personnel expressed the view that while odorants could be added to help address pipeline safety, such a measure should also be considered a complement to pipeline integrity management requirements. That is, PHMSA officials expressed the view that "integrity management more effectively helps assure an acceptable level of safety for transmission pipelines than an odorant could

because the risk assessments focus on the potential causes of leaks and ruptures for these types of pipelines and, therefore, are more preventative than odorizing.”

Update #2: PHMSA Will Separate Gas Transmission and Gathering Rule Into Three Final Rules for Release in 2019

According to the most recent [Significant Rulemaking Report](#), PHMSA will separate its long-pending proposed rule for gas transmission and gathering pipelines into three final rules, to be released sequentially in 2019. PHMSA announced the decision — which signifies a significant near-term development in the agency’s rulemaking process — at the most recent Gas Pipeline Advisory Committee (GPAC) meeting in late March.

PHMSA noted that the first rule, “Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments,” is scheduled for release in mid-March 2019. This rule will, among other objectives: (i) address Maximum Allowable Operating Pressure (MAOP) testing and pressure reconfirmation of certain untested gas transmission pipelines and pipelines with inadequate records, (ii) require the reporting of MAOP exceedances, (iii) enhance verification of pipe materials, and (iv) expand integrity assessments outside of “high consequence areas” (HCAs).

The second rule, “Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments,” which also addresses gas transmission lines, is scheduled for release in mid-June 2019. This rule will: (i) adjust pipeline repair criteria in HCAs and create new criteria for non-HCAs, (ii) impose enhanced inspection requirements following severe weather events, (iii) incorporate safety standards for in-line inspection tool launchers and receivers, (iv) enhance and clarify pipeline corrosion control, and (v) enhance integrity management assessment requirements and repair criteria for HCAs and areas outside of HCAs.

The final rule, the “Safety of Gas Gathering Pipelines,” is perhaps the most controversial in the series. PHMSA has scheduled this rule to be released last, with a target of mid-August 2019. At the March GPAC meeting, PHMSA Associate Administrator for Pipeline Safety, Alan Mayberry, opened the substantive portion of the meeting by holding a preliminary discussion on the gas gathering rule. Mayberry stated that PHMSA would greatly increase the agency’s oversight in four principal ways. First, PHMSA intends that all gas gathering lines be subject to the incident reporting and annual reporting standards required in US pipeline regulations. Second, PHMSA will replace the use of API RP 80’s definition of “gathering line” with a definition the agency provides itself. Third, PHMSA will likely extend the regulatory requirements in Class 1 locations. Finally, PHMSA is expected to require that all gas gathering lines obtain an Operator Identification Number (OPID) using the national registry.

PHMSA’s rationale for separating the rules is to expedite and help streamline the review and publication process, beginning with higher-priority elements. Those topics not receiving much discussion in prior GPAC meetings (such as gathering lines) will be addressed later, after additional meetings are held. The June GPAC meeting has been postponed to a later date, yet to be announced.

Update #3: PHMSA Names Paul Roberti Chief Counsel

[Paul Roberti](#) was named Chief Counsel of PHMSA on March 27, 2018. Mr. Roberti’s previous experience in the energy, utilities, and transmission arenas includes serving as Executive Director at Ernst & Young, where he was a member of the firm’s Advisory practice specializing in power and utilities, and as a member of the Rhode Island Public Utilities Commission for seven years.

Latham will continue to monitor, assess, and anticipate legal and policy issues related to all of these developments.

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