

 ENVIRONMENTAL BRIEF

## PHMSA Seeks Comments on Expansion of Gas Transmission Pipeline Regulations

On August 25, 2011, the U.S. Department of Transportation's ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA") announced that it was seeking information concerning contemplated changes in natural gas transportation safety regulations. (1) This advanced notice of proposed rulemaking ("ANPRM") follows another one published by PHMSA involving hazardous liquid pipelines. See, 75 Fed. Reg. 63774 (Oct. 18, 2010). Draft rules have not yet been proposed in response to that initiative. In this initiative, PHMSA requests comments on considerations to greatly expand both the reach and the regulatory requirements for gas pipelines.

An August 24, 2011 press release from the DOT focused on the suggested elimination of an exemption granted to older pipelines. (2) At issue is the exemption of §192.619(a)(3) that allows "pipelines to operate at the highest actual operating pressure to which they were subjected during the five years prior to July 1, 1970." 75 Fed. Reg. at 53099. Elimination of this exemption would result in reducing the allowable operating pressure of some older gas transmission lines. 76 Fed. Reg. at 53100.

Historically, rural gas gathering lines were largely unregulated. See, 76 Fed. Reg. at 53100. In 2006, PHMSA divided onshore gas gathering lines into two categories based on its relative operating pressure (compared to design): Type A and Type B. See, 49 C.F.R. 129.9. Regulatory requirements differ based on this classification. Within the ANPRM, PHMSA suggest that existing regulation of gas gathering lines is insufficient, stating that less than ten percent of gas gathering lines in the U.S. are regulated by PHMSA. Specifically PHMSA requests comments on additional regulatory reporting requirements, changes in the definition of gathering lines (to reduce the mileage of unregulated pipelines) and regulations to require corrosion control and integrity management ("IM") requirements.

PHMSA also requests comments on potential redefinition of areas considered high-consequence areas ("HCA"). Generally an HCA is an area with a higher population density. See, 49 C.F.R. 192.901. Areas designated as an HCA must develop and follow a written IM program. See, 49 C.F.R. 192.905. Changes in the definition of HCA will result in changes in the mileage of pipelines required to implement IM programs.

IM programs require pipeline operators to identify and consider threats and risk "to evaluate the merits of additional preventive and mitigative measures." 49 C.F.R. 192.911(c). According to 49 C.F.R. 192.935, "an operator must take additional measures beyond those already required by Part 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area." However, the additional measures are generally not specified. See, 76 Fed. Reg. at 53089. The ANPRM requests comments on requiring specific



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additional measures. (3) PHMSA also requests comments on applying the additional measures to pipeline at non-HCA. Otherwise the ANPRM contains requests concerning the cost and benefit of strengthening other IM requirements: modifying the repair criteria, revising requirements for collecting, validating and integrating pipeline data, use of risk modeling, incorporating prior findings and more prescriptive methods.

The ANPRM also requests comment on several significant non-IM related requirements including:

- valve spacing and the need for remotely or automatically controlled valves
- corrosion control
- longitudinal weld seam issues
- underground gas storage requirements
- management of change
- quality management systems

Persons interested in submitting written comments must do so by December 2, 2011.

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- (1.) Pipeline Safety: Safety of Gas Transportation Pipelines, ANPRM, 76 Fed. Reg. 53086 (Aug. 25, 2011).
- (2.) U.S. Department of Transportation Seeks Comment on Possible New Gas Pipeline Safety Measures (Aug. 24, 2011), found at [www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/phmsa1311.pdf](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/phmsa1311.pdf) (last visited Aug. 29, 2011).
- (3.) These additional requirements include: additional line markers; depth of cover surveys; close interval surveys for cathodic protection verification; coating surveys and required recoating; additional right-of-way patrols, shorter in-line inspection run intervals; additional gas quality monitoring, sampling, and in-line inspection tool runs; and improved standards for marking pipelines for operator construction and maintenance one-calls. See 76 Fed. Reg at 53090.

## Louisiana Affected By President Obama's Action on Ozone Standard Reconsideration

On September 2, 2011, President Obama announced that he had requested the Environmental Protection Agency to withdraw the proposed revision to the primary National Ambient Air Quality Standard for ozone at this time. A White House press release quoted the President as stating:

"I have continued to underscore the importance of reducing regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover. With that in mind, and after careful consideration, I have requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards at this time. Work is already underway to update a 2006 review of the science that will result in the reconsideration of the ozone standard in 2013." (1)

The request was delivered to EPA Administrator Lisa Jackson via a letter from Cass Sunstein, Director of the Office of Management and Budget. The letter stated that the decision was based on the President's Executive Order 13563, which emphasizes that "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." The letter from OMB indicated that EPA was already in the process of reviewing the ozone standard again based upon the most recent science and is required to complete that review by 2013. It urged EPA to complete that process. However, OMB indicated that the President requested that EPA "reconsider" its proposed rule in light of the directives of the Executive Order, in particular, to "promote predictability and reduce uncertainty." The OMB letter flatly stated that President Obama did not support EPA's proposed rule and that regulatory agencies should take action consistent with the President's priorities. (2)



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It is likely that EPA will formally withdraw the proposed rule in the near future through Federal Register notice. This will clear the way for EPA to implement the 75 part per billion (ppb) ozone standard that was adopted in March 2008. The proposed rule that will be withdrawn was to have lowered the standard to a level between 60 and 70 ppb. At such levels, nearly every urban area in Louisiana, with the possible exception of the Monroe area, would have been in nonattainment. At the 75 ppb level, many less parishes will be subject to a nonattainment classification.

The 1997 standard presently being enforced was set at 85 ppb and all Louisiana parishes are in attainment. When the 2008 standard was adopted, Louisiana was required to designate which parishes were in nonattainment with the 75 ppb standard. The initial designation in early 2009 named 11 parishes as exceeding the standard. However, improved air quality in 2009 and 2010 resulted in Louisiana amending the proposed designation of nonattainment to just one parish – East Baton Rouge. Conditions in 2011 have apparently resulted in several more parishes (Ascension, Iberville, Caddo, and Jefferson) sliding in to nonattainment with the 75 ppb standard; but, official data on those additional parishes likely will not be available until the end of the year. EPA's default policy is to require every parish in a Consolidated Metropolitan Statistical Area (CMSA) to be classified as nonattainment if even one parish in the CMSA is nonattainment, so other parishes in the same CMSA with these could be included within the nonattainment area. However, the state can rebut that default policy with evidence that emissions in a parish are not impacting ozone attainment with a nearby parish, generally due to low levels of traffic or lack of major sources.

If EPA withdraws the proposed rule as expected, it will begin to act on the pending state designations in the near future. Under the Clean Air Act Section 107(d), EPA can agree with the state proposals for nonattainment area designations, or can alter those proposals upon 120 days notice to the state, with an opportunity for the state to argue its position. EPA makes the final decision on designations to nonattainment. Once a parish is designated as nonattainment, then the state has the obligation to adopt State Implementation Plan requirements to control emissions such that the area will achieve attainment by specified deadlines that will depend upon how much the air quality exceeds the standards. Further, new construction and modifications over certain size thresholds will require more stringent control requirements and offsets of new ozone causing pollutants within the nonattainment area. For the above parishes, this process of designation to nonattainment will play out over the next one or two years.

Withdrawal of the proposed rule to lower the standard will also clear the way for court action to proceed on the 2008 standard. A number of groups challenged the 2008 standard for either not being stringent enough or for being too stringent. Those cases are consolidated in *State of Mississippi v. EPA*, No. 08-1200, United States Court of Appeal for the D.C. Circuit (Ozone NAAQS Litigation). Because EPA was reconsidering the standard, the Court held the briefing schedule in abeyance, but is likely to now move forward on that appeal.

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- (1.) See <http://www.whitehouse.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards> (last visited September 2, 2010).
- (2.) The OMB letter to EPA is available at <http://www.whitehouse.gov/the-press-office/2011/09/02/letter-omb-administrator-cass-sunstein-epa-administrator-lisa-jackson-o> (last visited September 2, 2010)