

Pipeline Safety Updates: Drue Pearce Tapped for PHMSA; PHMSA and DOT Accept Comments on Pipeline Regulations

This Client Alert notes updates in PHMSA's leadership and recent engagement of stakeholders in the regulation of natural gas pipelines.

Trump Administration Appoints New PHMSA Deputy Administrator

Drue Pearce has been named the Deputy Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA) effective August 7, 2017. Prior to joining PHMSA, Ms. Pearce worked in private practice and served in a variety of roles advising stakeholders in the pipeline industry. Her experience includes serving in the Alaska Legislature, the US Department of the Interior, and the Alaska Office of the Federal Coordinator for Alaska Natural Gas Transportation System Projects, as well as on PHMSA's Technical Hazardous Pipeline Safety Standards Committee.

Trade Associations Request Further Clarification of PHMSA's Proposed Regulations Governing Natural Gas Transmission Pipelines

As noted in Latham & Watkins' [June 29, 2017 Client Alert](#), the most recent Gas Pipeline Advisory Committee (GPAC) meeting¹ focused exclusively on PHMSA's proposed rules expanding the federal minimum pipeline safety standards applicable to US transmission pipelines under 49 C.F.R. Parts 191 and 192.² On August 2, 2017, the American Gas Association (AGA), American Petroleum Institute (API), and Interstate Natural Gas Association of America (INGAA) filed joint comments with PHMSA in response to the recent GPAC meeting discussions. The associations' joint markup of the regulatory text aims to summarize the GPAC meeting votes and discussions, as well as the associations' proposed additional clarifying changes. The comments are available [here](#).

Industry Members Address PHMSA's Proposed Gathering Line Definitions and Standards

In compliance with Executive Order Nos. 13771 and 13777,³ the Secretary of the Department of Transportation (DOT) initiated a docket (by notice in the Federal Register on June 8, 2017) inviting the public and interested parties to identify "non-statutory requirements that the Department imposes that should be removed or revised."⁴ On July 24, 2017, the comment period closed for responses. Certain members of the natural gas industry provided comments on PHMSA's proposed transmission and gathering pipeline rules. Notably, some of the comments expressed that PHMSA's proposed regulations for US upstream natural gas gathering and processing pipelines contradict the current administration's infrastructure development goals.

Key industry members, including the GPA Midstream Association,⁵ API,⁶ and the Interstate Natural Gas Association of America (INGAA),⁷ responded by reiterating comments filed earlier with PHMSA in response to a Notice of Proposed Rulemaking (NPRM) that particularly focused on rural gathering lines. Industry members contend that PHMSA has overreached its statutorily prescribed limits by modifying the regulatory framework for determining whether a pipeline qualifies as a gathering line without complying with congressional mandates, and without providing a rational basis for its policy shift or the additional burdens on gathering pipeline operators.⁸ The comments indicate that the midstream industry's ability to complete pipeline infrastructure projects will be significantly harmed if PHMSA adopts the gathering line rules proposed in the NPRM. In particular, in addition to concerns that the proposed rule exceeds statutory authority, the comments highlight a third-party economic analysis that indicates that compliance costs associated with the proposed rules would have a disproportionate economic impact on small operators, which would bear the burden of absorbing certain fixed compliance costs that do not vary based on company size (e.g., rule analysis, program setup, and employee training).⁹

PHMSA is expected to continue working on a final rule that likely will be published next year.¹⁰ As the Trump administration develops priorities in this sphere, PHMSA will continue to engage stakeholders through the GPAC process. For background on PHMSA's regulation of gathering lines, please see [Latham's Client Alert White Paper](#).

Conclusion

Given the extent of ongoing and anticipated developments in pipeline regulations, industry stakeholders should stay abreast of changes that may affect operations and investments. Latham will continue to closely monitor, assess, and anticipate pipeline-related regulation, law, and policy.

If you have questions about this *Client Alert* or would like a markup of changes to PHMSA's gathering line regulations, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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Endnotes

¹ By statute, GPAC is charged with reviewing PHMSA's proposed regulatory initiatives to confirm their technical feasibility, reasonableness, and cost effectiveness.

² Pipeline and Hazardous Materials Safety Administration, Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 20,721 (April 8, 2016) (proposed rule); see also Pipeline and Hazardous Materials Safety Administration, Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, 81 Fed. Reg. 29,830 (May 13, 2016) (extending comment period).

³ DOT's notice for comments solicited input from "affected stakeholders," asking them to help the Department identify requirements in existing regulations, policy statements, or guidance documents that "unjustifiably delay or prevent completion of surface,

maritime, and aviation transportation infrastructure projects.” Department of Transportation, Office of the Secretary of Transportation, Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 26,734, 26,735 (Jun. 8, 2017).

⁴ *Id.*

⁵ Each of the Docket No. OST-2017-0057’s comments are available online at <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&D=DOT-OST-2017-0057>. The Comment of GPA Midstream is Comment NO. DOT-OST-2017-0057-0174. GPA Midstream is a trade association composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” See Comment No. DOT-OST-2017-0057-0174.

⁶ American Petroleum Institute (API) is a national trade association that represents members involved in all aspects of the oil and natural gas industry, including producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. See Comment No. DOT-OST-2017-0057-0145.

⁷ Interstate Natural Gas Association of America (INGAA) is a trade association that advocates regulatory and legislative positions of importance to the natural gas pipeline industry in North America. See Comment No. DOT-OST-2017-0057-0147.

⁸ See, e.g., Comment Nos. DOT-OST-2017-0057-0174; DOT-OST-2017-0057-0145.

⁹ See ICF International, Cost and Benefit Impact Analysis of the PHMSA Natural Gas Gathering and Transmission Safety Regulation Proposal (July 1, 2016), available online at <http://www.api.org/~media/Files/Oil-and-Natural-Gas/pipeline/2016-ICF/ICF-PHMSA-Proposed-Regulation-RIA-Analysis-070516.pdf>.

¹⁰ See Office of Management & Budget, Office of Information and Regulatory Affairs, Unified Regulatory Agenda, *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?publd=201704&RIN=2137-AE72> (indicating that the Final Rule may be published in June 2018).