

Natural Gas Pipeline and Underground Storage: Recent Developments in Pipeline Safety

This *Client Alert* notes two recent updates in the area of natural gas pipeline and underground natural gas storage safety. Latham & Watkins will continue to provide updates as additional events unfold in this area of rapid development.

PHMSA Announces Partial Stay of Enforcement of Interim Final Rule on Safety of Underground Gas Storage Facilities

- PHMSA will not enforce certain aspects of its Interim Final Rule until one year after issuance of a Final Rule, anticipated in January 2018.
- Owners and operators remain responsible for reporting and developing updated policies and procedures to implement mandatory practices by January 18, 2018.
- The announcement has implications for petitions for review filed by the State of Texas, AGA, and INGAA before the D.C. and Fifth Circuit Courts of Appeal (one of which was recently dismissed as premature).

In a [notice](#) issued last week, the Pipeline Hazardous Materials and Safety Administration (PHMSA) announced that it will not enforce certain elements of its Interim Final Rule (IFR) *Pipeline Safety: Safety of Underground Natural Gas Storage Facilities*, 81 Fed. Reg. 91,860 (Dec. 19, 2016). The IFR requires that underground natural gas storage facilities implement both mandatory and non-mandatory provisions of American Petroleum Institute (API) Recommended Practices (known as “RP”s), RP 1170 (Design and Operations of Solution-mined Salt Caverns used for Natural Gas Storage) and RP 1171 (Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs).

PHMSA’s announcement raises questions about the timeline for imposing the new requirements, and could become the subject of legal challenge. According to the notice, PHMSA will stay enforcement of the *non-mandatory* provisions in the API RPs (which would have become mandatory pursuant to the IFR) until one year following issuance of a Final Rule. The Final Rule is scheduled for January 2018. Despite the partial stay, owners and operators of underground natural gas storage must develop policies and procedures implementing the mandatory provisions by January 18, 2018. That is, API’s RPs contain numerous provisions that by their own terms use language (such as “shall”) to denote a minimum requirement, as well as non-mandatory terms (such as “should,” “may,” or “can”) for recommendations that are advised but not required in order to conform with the API specifications. According to PHMSA’s recent announcement, those latter will not yet be enforced. In addition, PHMSA retains the authority to issue an emergency or corrective action order if an underground gas storage facility is found to be an imminent hazard or if facility operations would be hazardous to life, property, or the environment.

PHMSA may have decided to issue its announcement, in part, in response to challenges filed by two trade associations and to litigation by the Texas Railroad Commission all concerning the IFR. The announcement could impact the timing of decisions on pending agency and judicial challenges to it, and could conceivably give rise to new legal challenges as well. (This Latham & Watkins [White Paper](#) provides further background and context.)

Gas Pipeline Advisory Committee Meets to Discuss PHMSA's Proposed Gas Transmission Regulations

PHMSA's Gas Pipeline Advisory Committee, which is charged by statute with reviewing PHMSA's proposed regulatory initiatives to assure the technical feasibility, reasonableness, and cost-effectiveness, held a technical meeting in Arlington, Virginia on June 6 and 7, 2017. The meeting was convened to discuss PHMSA's notice of proposed rulemaking "Safety of Gas Transmission and Gathering Pipelines" (81 Fed. Reg. 20,722), which would expand federal minimum pipeline safety standards applicable to US natural gas transmission and gathering pipelines under 49 C.F.R. Parts 191 and 192. Committee members representing diverse stakeholder groups discussed and voted on proposed rule modifications designed to address technical feedback and comments received to date.

The committee achieved closure on certain proposals related to corrosion control and cathodic protection (49 C.F.R. §§ 192.319, .461, .465, .473, .478, and Appendix D), MAOP exceedance (49 C.F.R. §§ 191.1, .23, .25, and .29), records for class location and welder certifications (49 C.F.R. §§ 192.5(d), .227(c), .285(e), .619(f), and .624(f)), and integrity management (49 C.F.R. §§ 192.917(a)-(d), .917(e)(2), and .935(a)), among other things. As to each, the committee found the provisions, if modified as proposed, to be "technically feasible, reasonable, cost-effective, and practicable." Certain discussion items related to integrity management, material verification, and records requirements were tabled until the next meeting (49 C.F.R. §§ 192.13(e), .67, .127, .205, and .917(e)(3)-(4)). Also, despite considerable discussion of gathering pipeline regulation during the January meeting, the June meeting did not address this subject in significant detail, other than to advise that PHMSA clarify certain proposed transmission rule language that would not apply to distribution and gathering facilities.

Additional technical meetings, including a meeting devoted to discussing rule impacts on gathering lines, are anticipated later in the year. The meeting materials and transcripts from the June meeting are available [here](#). Meeting materials and transcripts of the January meeting are available [here](#).

A markup of changes to PHMSA's regulations may be obtained by contacting any of the authors listed below. Latham's environmental and federal energy regulatory teams work closely with Latham's top-tier commercial and transactional practices to monitor, assess, and anticipate regulation, law, and policy impacting pipelines, investors, lenders, and other stakeholders. If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult.

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