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*Practice Group(s):*

*Energy, Infrastructure  
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## Final Implementation of Pennsylvania's Gas and Hazardous Liquids Pipelines Act

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### Introduction

On February 17, 2012, the Pennsylvania Public Utility Commission ("PUC") issued a final implementation order (the "Final Implementation Order") to implement the recently enacted Gas and Hazardous Liquids Pipelines Act (the "Act"). A general overview of the Act is described in a prior [alert](#). The Final Implementation Order sets forth determinations regarding the Act and provides final registration materials for pipeline operators that are subject to the Act.

Prior to the adoption of the Final Implementation Order, the PUC issued a tentative implementation order (the "Tentative Implementation Order"), along with proposed registration and reporting forms and invited public comment thereto. In addition to seeking public comment, the PUC held a conference call during which the PUC staff discussed its implementation of the Act with industry stakeholders.

The Final Implementation Order adopts much of the Tentative Implementation Order, and addresses and clarifies issues that were identified to the Tentative Implementation Order via written comments and the conference call held by the PUC.

### What Are Some of the Key Aspects of the Implementation Orders?

- **Registration requirements.** Pipeline operators subject to the Act must register annually with the PUC. However, the Act does not indicate when registrations are due or what information is required to be submitted with each registration. The Final Implementation Order provides that pipeline operators shall file an initial registration form by **March 16, 2012**. The initial registration form is attached to the Final Implementation Order and should be submitted via the PUC's eFile system. (Entities with multiple U.S. DOT Operator ID numbers must register each as a separate pipeline operator.)
- **Jurisdiction of the Act over farm taps.** Pipelines that are located in Class 1 locations that have no distribution service are not within the Act's jurisdiction. However, farm taps are a type of distribution service regulated under the Federal pipeline safety laws, regardless of class location. Commentators to the Tentative Implementation Order requested that the PUC determine that all operators in Class 1 areas transporting gas from conventional wells be excluded from the Act, regardless of the existence of farm taps. The Final Implementation Order clarifies the PUC's position that an entire pipeline should not be treated as subject to assessment under the Act due to the existence of a farm tap. Nevertheless, operators of pipelines in Class 1 locations with farm taps are still required to register with the PUC as pipeline operators under the Act. However, the PUC has adjusted the registration form to provide that pipelines in Class 1 areas need to report the total mileage and the number of farm taps.
- **Mixed gas situations.** Commentators to the Tentative Implementation Order requested that the PUC adopt threshold requirements for the amount of natural gas from unconventional wells in a

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pipeline that would trigger the Act's jurisdiction over pipelines in Class 1 areas serving unconventional wells. The Final Implementation Order adopts a threshold requirement of at least 50% of gas in a pipeline that originates from unconventional wells. If so, the pipeline is a Class 1 area serving unconventional wells and is subject to reporting requirements under the Act.

- ***Steel products.*** Registration requires that pipeline operators disclose the country of manufacture for all "tubular steel products" used in the exploration, gathering or transportation of natural gas or hazardous liquids within the Commonwealth. The Final Implementation Order clarifies that this reporting requirement only applies to pipeline operators who are subject to the Act, and despite ambiguity in the Act, operators and producers who are not pipeline operators do not have steel product reporting requirements. The Tentative Implementation Order further defines "tubular steel products" to mean "the actual pipe to be used in the transportation of gas and excludes valves as well as other facilities or equipment." Steel pipe used on the well pad and in downhole operations will not be subject to this reporting requirement. However, the Final Implementation Order does provide that pipeline operators are required to comply with the country of manufacture reporting requirements for pipelines in Class 1 areas that are not otherwise subject to the Act by **March 16, 2012**.

Measurements are to be made in feet. To establish a pipe's country of origin, pipeline operators may rely on the country of origin indicated on invoices or the stamp on the actual pipe itself. The Final Implementation Order allows a pipeline operator to utilize the results of a "Material Test Report" in this determination. Country of origin registrations will be limited to pipe that was installed in the prior calendar year. For "tubular steel products" whose country of manufacture is unknown, a pipeline operator will be required to report the length of the unknown pipe.

- ***Hazardous liquids.*** Commentators to the Tentative Implementation Order observed that the draft registration form was not conducive for reporting regarding hazardous liquids pipelines. In the Final Implementation Order, the PUC confirms that non-public utility hazardous liquids pipelines within Pennsylvania must be registered as part of the Act. However, the PUC acknowledges that it does not yet have an agreement with PHMSA for the PUC to perform inspections of such hazardous liquids pipelines. Therefore, for the 2011 – 2012 fiscal year, the PUC will require registration of hazardous liquids pipelines, but will not conduct any inspections until the PUC and PHMSA enter into an agreement regarding such inspections. Consequently, the PUC will not assess hazardous liquids pipelines for the 2011 – 2012 assessment year. In anticipation of reaching an agreement with PHMSA for the 2012 – 2013 assessment year, an attachment to the registration form has been added for reporting mileage for hazardous liquids pipelines.
- ***Annual report of pipeline miles by county.*** The Act provides that on or before **March 31** of each year, pipeline operators subject to the Act must file annual reports disclosing the pipeline operator's total miles of regulated pipeline in the Commonwealth during the prior calendar year. The Tentative Implementation Order provides that the registration shall include the location of the pipeline, broken down by class location and approximate aggregate miles of pipeline. The Final Implementation Order clarifies that mileage should be reported to the nearest 1/10<sup>th</sup> of a mile.
- ***Jurisdiction over landfill gas distribution systems.*** Commentators sought guidance regarding the PUC's jurisdiction over landfill gas distribution systems. In the Final Implementation Order, the PUC indicates that pipeline systems on a landfill site are not subject to jurisdiction under the Act. However, any pipeline outside of the landfill site could be subject to the PUC's jurisdiction if it otherwise meets the Act's jurisdictional requirements.

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- **Assessments.** The Act authorizes the PUC to recover the cost of regulation based on the number of miles of regulated pipeline. The Tentative and Final Implementation Orders provide that the PUC will determine its annual costs (excluding costs otherwise reimbursed by the Federal Government) based upon its fiscal year (July 1 through June 30). For the 2011 – 2012 and 2012 – 2013 fiscal years, the annual assessment will be estimated by the PUC. Invoices for the 2011 – 2012 fiscal year will be issued on March 30, 2012, with payment requested to be made by April 16, 2012, but in any event no later than April 30, 2012. Invoices for the 2012 – 2013 fiscal year will be issued in July 2012, with payment due within 30 days of the postmark date of the invoice. Beginning in the 2013 – 2014 fiscal year, the PUC will begin assessing in accordance with its approved budget, and conduct an initial reconciliation for any over or under-collection of assessments for 2011 – 2012 and/or 2012 – 2013.

### What Are the Key Dates Adopted in the Final Implementation Order?

- March 16, 2012. Initial registrations are due.
- March 30, 2012. Invoices for the 2011 – 2012 assessment will be issued.
- April 30, 2012. Payments for the 2011 – 2012 fiscal year assessment are due.
- July 2012. Invoices for the 2012 – 2013 assessment will be issued. Payments will be due within 30 days of the postmark date of the invoice.

### What Should Pipeline Operators Do?

- **Registration.** Pipeline operators should begin preparing initial registrations in order to meet the March 16, 2012 deadline. Questions about jurisdiction, mixed gas situations, and steel products registration should be directed to experienced counsel to ensure that the initial registration is completed properly.
- **Assessments.** Pipeline operators should examine their assessment invoice carefully and be prepared to file objections, if necessary, with the assistance of experienced counsel, within 15 days of receiving the notice.

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