



MURCHISON
LAW FIRM, PLLC

**Dallas Bar Association Energy Law Section
REVIEW OF OIL & GAS LAW XXXII**

Pipelines and What You Need to Know

Vince Murchison, Member and Manager

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The Pipeline & Energy Authority



Subject Areas to Cover

- **Pipelines – The Seemingly Simple**
- **Regulation of Pipeline Transportation**
- **PHMSA 101**
- **Policy Matters**
- **Rulemakings**
- **What's Looming Over the Horizon?**



The background of the slide features a photograph of several large, cylindrical industrial storage tanks. Each tank is equipped with an external spiral staircase and a walkway with safety railings at the top. The tanks are light-colored, and the scene is set against a clear, pale blue sky. The overall image has a slightly faded or semi-transparent appearance, allowing the text to be clearly visible.

Pipelines – The Seemingly Simple

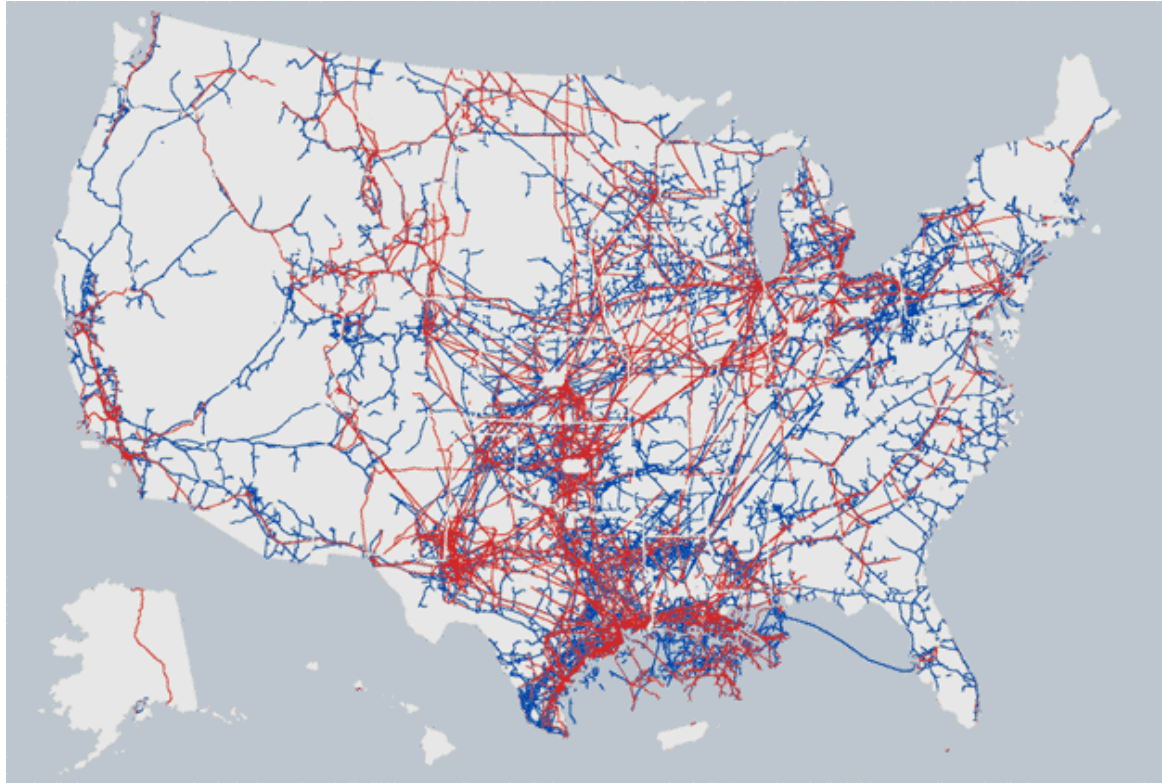


There's Not That Much to It, Right?





There's Not That Much to It, Right?



Map of major natural gas and oil pipelines in the United States. Hazardous liquid lines in red, gas transmission lines in blue. Source: Pipeline and Hazardous Materials Safety Administration.

The Pipeline & Energy Authority





Low Probability, High Consequence Events



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Regulation of Pipeline Transportation



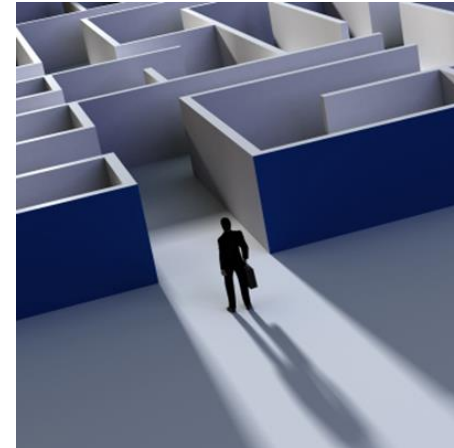
Regulation of Pipeline Transportation

The Pipeline Safety Act

The Natural Gas Pipeline Safety Act of 1968 (NGPSA)

The Hazardous Liquids Pipeline Safety Act of 1979 (HLPESA)

- The NGPSA and the HLPESA were re-codified in 1994 into the Pipeline Safety Act (PSA)
- 49 United States Code 60101, *et seq*
- Reauthorization – Every 5 years +/-
- Most Recent: PIPES Act June 22, 2016
- Next Up: 2021
- Temperature's [Always] Rising





Regulation of Pipeline Transportation

The Pipeline Safety Act

Power and Authority

- The PSA grants authority over pipeline safety to the Secretary of the U.S. Department of Transportation

Among the powers granted by Congress:

- To promulgate safety standards (regulations) for the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipelines
- To inspect pipeline systems for adherence to the safety standards
- To enforce compliance with the safety standards
- To direct that unsafe, or hazardous, pipeline systems be made safe



Regulation of Pipeline Transportation

The Pipeline Safety Regulations

- The Pipeline and Hazardous Materials Safety Administration
- aka PHMSA
- Natural Gas: 49 C.F.R. Parts 191 and 192
- Hazardous Liquids: 49 C.F.R. Part 195
- Procedural Regulations: 49 C.F.R. Part 190
- Hazardous Liquids vs. Natural Gas
 - Hazardous Liquids = Crude Oil, Refined Products, NGLs, CO² (super-critical state), Anhydrous Ammonia, Biofuels
 - Natural Gas = Natural Gas, Flammable Gas, or Gas which is Toxic or Corrosive



Regulation of Pipeline Transportation

The Pipeline Safety Regulations

Overarching Concepts:

- Performance-Based Regulation
- Performance vs. Prescriptive
 - Desired safety objectives can be reached
 - Without impeding future industry innovations
- 33 Fed. Reg. 10213 (July 17, 1968)
- Standards Incorporated by Reference
 - API, ASTM, ASME, NACE, NFPA, etc.
- Best Practices – *You Will Be Compared To Others...*
- Safety Culture, Safety Management Systems



Regulation of Pipeline Transportation

The Pipeline Safety Regulations

- General: Applicability, Definitions, etc.
- Annual, Accident, and Safety-Related Condition Reporting
- Design Requirements
- Construction
- Operation and Maintenance
- Integrity Management
- Operator Qualification
- Enforcement



Regulation of Pipeline Transportation

Enforcement

- Inspections
- Investigations
- Requests for Information
- Notices of Amendment
- Warning Letters
- Notices of Probable Violation
- Compliance Orders
- Civil Penalty (most likely, Penalties)
- Safety Orders
- Corrective Action Orders
- Administrative Procedure





Regulation of Pipeline Transportation

Overarching Federal Regulation – But Who Regulates My Pipeline – The State or the Feds?

- Interstate vs. Intrastate
- State Certification or Agreement
- Interstate Agent
- The Intrastate Landscape
 - Hazardous Liquids – only a few states
 - Natural Gas – most states
 - PHMSA takes the rest
- 49 C.F.R. Parts 191 & 192 (Gas); Part 195 (Liquids)
 - Incorporated by Reference into State Law



Regulation of Pipeline Transportation

Jurisdictional Overview: Interstate vs. Intrastate

- What it is
- What it means

Interstate Jurisdiction

The Office of Pipeline Safety (OPS) in the Pipeline and Hazardous Materials Safety Administration (PHMSA), in the DOT is delegated the Secretary's powers. PHMSA/OPS is the agency with primary safety jurisdiction over interstate pipelines.

Intrastate Jurisdiction

Safety oversight for intrastate pipelines is largely the role of the states – much more so for gas vs. liquids. State laws and regulations must be no less stringent than the PSA and the federal regulations (but may be more stringent).

What it Means

All pipelines that fall within the scope of 49 CFR Parts 192 and 195 will be subjected to the same or similar regulations.

PHMSA 101





PHMSA 101

(Red Denotes Political Appointments)

- Administrator
- Deputy Administrator
- Chief Counsel
- Associate Administrator for Pipeline Safety
- Deputy Associate Administrator for –
 - Field Operations (Regions)
 - Policy and Programs (Rulemaking, Engineering, Enforcement, Accident Investigation, State Programs, Etc.)
- https://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/ops_orgchart.pdf



PHMSA 101

(continued)

- Region Directors
 - Supervisors
 - Inspectors
 - Community Liaison Services
 - Region Counsels (Office of Chief Counsel)



PHMSA 101

(continued)



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POLICY MATTERS



POLICY MATTERS

- Noun: *Matters of Policy*
- Verb: *Policy Matters (a Lot!)*



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POLICY INFLUENCERS

- History – Accidents
 - Other Segments' Accidents (BP; Anadarko)
 - Presidential Administrations
 - Congress
 - The Public
 - Environmental NGO Activity
-
- So How's that Working for PHMSA?



LET'S RE-VISIT THE PHMSA MANAGEMENT SITUATION

- Secretary of Transportation – Elaine Chao
- Administrator PHMSA – VACANT
- Deputy Administrator PHMSA – Drue Pearce (Aug. 7, 2017)
- Chief Counsel PHMSA – ACTING Chief Counsel
- Deputy Associate Administrator for Policy and Programs – VACANT
- Region Directors – Acting RDs Rotate on 30 to 120-day cycles
 - Eastern – ACTING Regional Director(s)
 - Western – ACTING Regional Director(s)
 - Southwest – ACTING Regional Director(s)



LET'S RE-VISIT THE PHMSA MANAGEMENT SITUATION (continued)

- Personnel Turnover – Inspectors and ...
- Other Factors
- Is That Any Way to Run a Railroad?
- Does That Matter to PHMSA Career (non-political) Folks?



PHMSA RULEMAKING GENERALLY

- Agency Rule-Making Timelines
 - Pipeline Safety Act of 2011
 - Pipeline Safety Act of 2016
- Mix in Some Trump
 - Regulatory Freeze – White House Memo (Jan. 20, 2017)
 - Two-for-One – EO 13771 (Jan. 30, 2017)
 - Howz that Work?
 - Regulatory Reform – EO 13777 (Feb. 24, 2017)



RECENT & PENDING RULEMAKINGS

- Operator Qualification (Not Really) and (Final Rule Jan. 23, 2017)
- Hazardous Liquid (Not Quite) Final Rule (“Final Rule” of Jan. 13, 2017 did not reach the Federal Register)
 - Final Rule in 2017?
 - A Little More Rulemaking in the Works?
- Gas: The “Mega-Rule”: Safety of Gas Transmission and Gathering Lines (“Final Rule” Stage)
- Valve Spacing and Rupture Detection and Response
- Gas Storage
- Emergency Order; Plastic Pipe; Etc.

WHAT'S NEXT?





WHAT'S LOOMING OVER THE HORIZON?

- Large-Scale, Data-Heavy Changes Are Coming
- Increased Capital and Operating Costs
- Reduced Risk?
- But Don't Get Too Excited
- Rulemakings Are Moving with PHMSA-Speed
- Answers:
 - Keep Apprised
 - Don't be Caught Unawares
 - Back Up the Trades
 - Lend Your Expertise



Q & A



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