



U.S. Congress Reauthorizes Pipeline Safety Agency and Mandates New Pipeline Safety Requirements

On June 22, 2016, President Obama signed the PIPES Act of 2016 into law.¹ The Act reauthorizes the U.S. Department of Transportation's ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA") through fiscal year 2019. The Act makes dozens of changes to the federal pipeline safety laws, including:

- Requiring that DOT adopt, for the first time, federal minimum safety standards for underground natural gas storage facilities;
- Authorizing DOT to issue emergency orders to address imminent hazards posed by gas pipelines or hazardous liquids;
- Allowing a certified state authority to participate in a DOT inspection of an interstate pipeline facility;
- Increasing inspection requirements for certain hazardous liquid pipeline facilities located underwater; and
- Imposing on DOT the duty to submit, on an ongoing and periodic basis, reports to Congress addressing the status of DOT's yet-to-be completed actions implementing the 2011 Pipeline Safety Act.

Underground Gas Storage Standards

In October 2015, Southern California Gas Company detected a major natural gas leak at its Aliso Canyon underground storage facility. In February 2016, the leak was stopped, and the well was permanently sealed. The Act responds to the Aliso Canyon leak in two ways. First, Section 31 of the Act establishes a task force to report within 180 days on the causes of the Aliso Canyon leak, as well as on remedial efforts to date, the impact of the leak, the way government agencies responded to the leak, and recommendations on how to improve the response to future leaks. Second, Section 12 of the Act requires DOT to issue, within two years, minimum standards for underground natural gas storage facilities. In issuing these standards, DOT must take various factors into account, including consensus standards for the operation, environmental protection, and integrity management of underground natural gas storage; the economic impact of the standards; and the recommendations of the Aliso Canyon natural gas leak task force. Section 12 also allows a state authority to adopt "additional or more stringent" safety standards for intrastate underground natural gas storage

facilities if such standards “are compatible with” the minimum standards prescribed under Section 12.

Emergency Order Authority

Section 16 of the Act authorizes DOT to issue orders “imposing emergency restrictions, prohibitions, and safety measures” on the owners and operators of gas or hazardous liquid pipeline facilities if DOT determines that “an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard.” An imminent hazard exists if a gas or hazardous liquid pipeline facility presents “a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur” and this risk can be reduced through action taken more quickly than possible using a formal proceedings. Where an imminent hazard exists, the agency may issue the order “without prior notice or an opportunity for a hearing,” but only to the extent necessary to “abate the imminent hazard.” Section 16 also specifies: (i) the factors DOT must consider in issuing an emergency order and the matters that must be addressed in each order; (ii) the process for an “entity subject to, and aggrieved by” an emergency order to petition the agency for review of the order; and (iii) the right of an entity whose agency petition is denied to seek judicial review in a U.S. district court on an expedited basis. The Act directs DOT to issue temporary regulations implementing this emergency order authority within 60 days and to issue final regulations within 270 days.

Inspections for Certain Underwater Pipeline Facilities

Section 25 of the Act imposes new inspection requirements on each operator of an underwater hazardous liquid pipeline facility located in a high-consequence area (i) that is not an offshore

pipeline facility, and (ii) if “any portion” of the facility is located at depths greater than 150 feet below the water’s surface.² The operator must inspect such a facility using an “appropriate” internal inspection technology at least once every 12 months.

Conclusion

Significant work lies ahead for pipeline safety stakeholders—and the list of tasks continues to grow.³

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com/contactus/.

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Endnotes

- 1 Protecting our Infrastructure of Pipelines and Enhancing Safety (“PIPES”) Act of 2016, Pub. L. No. 114-183, 130 Stat. 514.
- 2 A high-consequence area is a location where a pipeline leak or rupture could do the most harm. For hazardous liquid pipelines, commercially navigable waterways and unusually sensitive areas are among the areas defined as high-consequence areas. 49 C.F.R. § 195.450 (2015). An “unusually sensitive area” is a drinking water resource with certain characteristics, or certain types of ecological resources. See 49 C.F.R. § 195.6 (2015) (defining “drinking water resources” and “ecological resources” in detail).
- 3 In response to the 2010 San Bruno incident, Congress passed the 2011 Pipeline Safety Act. DOT is still in the process of developing new regulations required by that law. See Jones Day, “A Guide to PHMSA’s Proposed Rule Expanding Natural Gas Pipeline Safety Requirements” (June 2016).