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PIPELINE SAFETY *ALERT*

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The Aliso Canyon Effect: Underground Gas Storage Incident Influences Pipeline Safety Reauthorization

On June 22, 2016, President Obama signed into law the "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016" (PIPES Act, S.2276). The PIPES Act reauthorizes the Pipeline and Hazardous Materials Safety Administration's (PHMSA) federal pipeline safety program through fiscal year 2019, provides PHMSA with significant new authority, and requires the agency to prioritize the completion of outstanding mandates from the previous reauthorization in 2011. Of note, the PIPES Act requires PHMSA to develop underground gas storage standards, provides PHMSA with significant new authority to issue industry-wide emergency orders, and requires PHMSA to update its regulations for Liquefied Natural Gas (LNG) facilities. Babst Calland's Pipeline and HazMat Safety team provides the following observations on these key provisions.

Underground Gas Storage:

Congress first authorized federal safety regulation of underground gas storage in the Natural Gas Pipeline Safety Act of 1968. PHMSA and its predecessors declined to use that authority for more than four decades. Instead, PHMSA encouraged the states to establish safety standards and advised operators to follow industry standards. In more recent years, a federal court decision and a significant incident have led Congress to require PHMSA to establish federal safety standards for underground storage.

In 2010, a federal district court in Kansas ruled that the state's safety regulations for underground gas storage facilities could not be applied to interstate facilities subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). The court found that both the Pipeline Safety Act and the Natural Gas Act preempted state safety regulation of interstate storage. That decision led PHMSA to solicit public comment on the need for underground storage regulations in a 2011 Advance Notice of Proposed Rulemaking. It also contributed to Congress's renewed interest in underground storage safety. In 2013, Kansas's two U.S. Senators proposed legislation to address storage, which ultimately did not advance. Later, in October 2015, a leak was discovered at an injection well in the Aliso Canyon underground gas storage facility located in Los Angeles, California. The leak brought public and Congressional scrutiny to underground gas storage and led to renewed calls for PHMSA to regulate these facilities.

On February 5, 2016, PHMSA issued an advisory bulletin to underground gas storage operators advising them to review their operating, maintenance, and emergency response activities for underground storage. In the advisory, PHMSA also encouraged operators to develop and implement integrity management programs and follow applicable industry standards for these facilities. The Aliso Canyon incident also led the U.S. Senate to include a storage rulemaking mandate in its 2015-16 pipeline safety reauthorization legislative proposal, which the U.S. House of Representatives ultimately supported.

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Section 12 of the PIPES Act represents the culmination of Congress's efforts. The provision requires PHMSA to develop underground gas storage standards within two years and authorizes the agency to collect user fees from storage operators. In developing the standards, PHMSA must consider industry consensus standards, economic impacts and recommendations made by the Aliso Canyon natural gas leak task force established under Section 31 of the PIPES Act. Although PHMSA has not proposed any new regulations, the agency has opened a rulemaking docket (PHMSA-2016-0016) in which the agency has stated its plans to issue an interim final rule that would, among other measures, incorporate by reference API standards for underground storage, RP 1171 and RP 1170. PHMSA's recently issued advisory bulletin, its upcoming July 14th public workshop on underground gas storage safety, and the Department of Energy's workshop on well integrity for natural gas storage scheduled for July 12-13 may also provide insight into the content of future rules. Additionally, PHMSA, the Department of Energy and other federal agencies announced that they recently formed the Aliso Canyon interagency task force, which is expected to produce recommendations that may influence PHMSA's rulemaking.

Emergency Order Authority:

Under existing law, PHMSA may issue corrective action orders to individual pipeline owners or operators to address hazards to life, property or the environment. Section 16 of the PIPES Act significantly expands on that authority by providing PHMSA with the authority to issue emergency orders to impose industry-wide operational restrictions, prohibitions or safety measures if an unsafe condition or practice results in an imminent hazard. Section 16 defines an imminent hazard as a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen such risks. The Department of Transportation's (DOT) record of issuing emergency orders in other contexts suggests how PHMSA might use this new emergency order authority for pipelines.

Recently, the Federal Railroad Administration (FRA) and PHMSA have issued emergency orders under other laws that imposed heightened requirements for the transportation of crude oil by rail and established speed limits for trains carrying these materials. These emergency orders were issued in response to crude oil train accidents and resulted in industry-wide impacts. Based on DOT's history of issuing emergency orders in response to safety threats and stakeholder pressure, it seems reasonable to assume that PHMSA will use its new pipeline emergency order authority in similar scenarios.

Section 16 of the PIPES Act requires PHMSA to issue procedural regulations for emergency orders. The PIPES Act requires PHMSA to pattern its administrative review process on the established process for hazardous materials emergency orders found in 49 C.F.R. § 109.19, including procedures for formal hearings and reports and recommendations by Administrative Law Judges. A party aggrieved by an emergency order may seek judicial review of the order in a federal district court and shall be given expedited consideration. Section 16 requires PHMSA to issue temporary procedural regulations within 60 days and final regulations within 270 days after the enactment date of the PIPES Act.

Small Scale Liquefied Natural Gas (LNG) Facilities and Other Changes:

In Section 27, Congress called for the review and update of the safety standards for permanent, small scale LNG pipeline facilities. Recently, PHMSA held a public workshop on LNG regulations to discuss how its regulations may need to be updated. For example, PHMSA is reviewing whether to incorporate by reference a more recent version of NFPA 59A, an industry standard for the production, storage and handling of LNG. The most recent edition incorporated by PHMSA is the 2001 edition, and the 2006 edition for limited purposes. Stakeholders have expressed concern that the 2001 standards do not reflect the engineering advancements in today's versions of these standards.

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Additionally, PHMSA will likely review whether to amend its prescriptive siting regulations to make them more risk-based. Finally, because small scale LNG facilities interface with different modes of transportation, PHMSA plans to coordinate with various federal agencies, such as the Federal Energy Regulatory Commission, the Federal Railroad Administration, the Maritime Administration, and the United States Coast Guard.

The PIPES Act contains several other changes to the pipeline safety laws. PHMSA has also recently published a number of proposed rules that are likely to result in significant impacts on the industry. Babst Calland's Pipeline and HazMat Safety team has prepared a more detailed assessment of the PIPES Act. Please contact one of the authors to receive a copy or to obtain more information on any of PHMSA's proposed rules.

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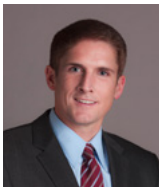

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Led by three former Pipeline and Hazardous Materials Safety Administration (PHMSA) attorneys, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle and Brianne Kurdock together have more than 25 years of experience with a multitude of pipeline safety issues. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.