

Pennsylvania Public Utilities Commission Proposes Significant Changes to the Hazardous Liquid Pipeline Safety Regulations

On July 15, 2021, the Pennsylvania Public Utilities Commission (PA PUC) issued a Notice of Proposed Rulemaking Order (NOPR) proposing to change the regulations applicable to public utilities that transport petroleum products and other hazardous liquids in Pennsylvania. The NOPR follows an Advanced Notice of Proposed Rulemaking (ANOPR) that the PA PUC published on June 29, 2019, seeking comments on an expanded regulatory framework for hazardous liquid public utilities. The proposed regulations go beyond the minimum federal pipeline safety regulations in 49 C.F.R. Part 195 and would impose significant new requirements on public utilities in Pennsylvania.

Below is a summary of the significant items from the proposed regulations. Public utilities in Pennsylvania that transport hazardous liquids should carefully review the proposed regulations, the potential impact to their operations, and provide comments to the PA PUC accordingly. Comments will be due 60 days from the date the NOPR is published in the Pennsylvania Bulletin.

Reporting (§ 59.133-59.134)

- Proposes to require that an operator provide an unredacted failure analysis report based on laboratory testing and root cause analysis to the PA PUC within 120 days of a reportable accident or within 10 days of report completion, whichever comes first. If the reports are not completed within those timeframes, the public utility must provide updates to the PA PUC every 14 days. The analyses must be conducted by a PA PUC-approved independent third-party lab and consultant.
- In addition to the requirements in 49 C.F.R. Part 195, Subpart B, the PA PUC proposes to require notification of the following:
 - Proposed major construction, major reconstruction, or major maintenance involving an expenditure of more than \$300,000 or 10% of the cost of the pipe in service, whichever is less, 45 days prior to commencement.
 - Maintenance, verification digs, and assessments involving an expenditure in excess of \$50,000, and the unearthing of suspected leaks, dents, pipe ovality features, cracks, gouges, or corrosion anomalies, or other suspected metal losses, 10 days prior to commencement.
 - Any variations from a public utility's established construction methodologies 30 days prior to commencement.
 - The introduction of a hazardous liquid 30 days prior to such introduction.
 - Immediate notification of excavation damages, washouts, or unplanned replacement of any pipeline section or cut out.



CONTACT

KEITH J. COYLE

KCoyle@babstcalland.com
202.853.3460

ASHLEIGH H. KRICK

AKrick@babstcalland.com
202.853.3466

505 9th Street NW
Suite 700
Washington, DC 20004
202.853.3455

BABSTCALLAND.COM

Design and Construction (§ 59.135 – 59.138)

- Section 59.135 proposes to require that public utilities account for anticipated external loads from landslides, sinkholes, subsidence, and other geotechnical hazards in the design of pipeline facilities.
- For new pipelines, and any converted, relocated, replaced, or otherwise changed existing pipelines, § 59.136 proposes to:
 - Prohibit a pipeline from being constructed under a private dwelling, industrial buildings, and places of public assembly.
 - Provide that miter joints are not permitted.
 - Require that all girth welds must be nondestructively tested.
 - Require that a public utility specify intervals for verifying and maintaining the depth of cover for all pipe, except that depth of cover for pipe under active commercial farms must be verified every three years.
 - Require that a minimum of 12 inches of clearance be maintained between any pipe and other underground structures (no exceptions including between a public utility's own structures).
 - Include specific emergency flow restricting device (EFRD) installation requirements on pipelines transporting highly volatile liquids (HVLs).
 - Require public utilities to develop and maintain risk-based plan for valve spacing.
 - Require installation of barriers to protect against large vehicles at above ground valve stations adjacent to roadways.
- For public utilities using horizontal directional drilling (HDD), trenchless technology (TT), or direct buried methodologies, § 59.137 proposes to include requirements for the following:
 - 30-day and 24-hour notice to the PA PUC and affected public before beginning HDD, TT, or direct buried activities.
 - Require that, for certain installations, utilities consider geological and environmental impacts and comply with the Department of Environmental Protection's (DEP) Trenchless Technology Technical Guidance and all relevant DEP regulations related to water wells and supplies. Also, require that geotechnical evaluations and sampling be conducted under certain conditions, and provided to the PA PUC upon request.
 - Sets forth certain compliance, notification, and corrective action requirements if HDD, TT, or direct buried methodologies will result in adverse impacts to a private or public water supply source.
- Section 59.138 proposes to require that pipelines installed prior to 1970 must be hydrostatically tested every 10 years and inspected using in-line inspection tools at least every 2 years. Pipelines installed after 1970 must be hydrostatically tested every 3 years. For pipelines that have been placed back in service after a leak, a utility must assess using in-line inspection tools every year until 6 years has passed without another leak. Further, the PA PUC proposes to require that a utility notify it at least 5 days prior to starting a pressure test.

Operations and Maintenance (§ 59.139)

- Section 59.139 proposes several new operations and maintenance requirements, including for emergency response procedures, liaison activities with emergency responders and school administrators, public awareness communications, line markers, inspections of rights-of-way, leak detection and odorization.

- *Emergency Response:* The PA PUC proposes several additional requirements with respect to emergency response, including that:
 - Public utilities consult with emergency responders in developing and updating emergency response procedures.
 - Emergency response manuals address: (1) steps for informing emergency responders of the procedures for requesting information regarding a pipeline, (2) development of a continuing education program, and (3) performance of table-top drills twice a year and an annual response drill that simulates a pipeline emergency.
 - Public utilities hold in-person liaison activities with emergency responders twice per year; however, if the utility's efforts to arrange in-person meetings are unsuccessful there are alternative measures provided. Also proposes to establish liaison requirements with school administrators.
- *Public Awareness:* Proposes additional requirements beyond those in API RP 1162 by requiring public utilities to provide baseline messages to the affected public and emergency responders at least twice a year and to public officials annually. Also, the PA PUC proposes to require that public utilities hold regular, open meetings with the affected public, emergency responders, and public officials. The proposed regulations define affected public as "residents and places of congregation (businesses, schools, etc.) along the pipeline and the associated right-of-way within 1,000 feet, or within the lower flammability limit (LFL), of a pipeline or pipeline facility, whichever is greater."
- *Line Markers:* Proposes additional requirements for the placement of line markers.
- *Right-of-Way Inspection:* Proposes to require ground patrol of pipelines in non-high consequence areas (HCAs) twice a year and ground patrols in HCAs at least 4 times a year. The ground patrol path cannot exceed a lateral distance of 25 feet from the center of the right-of-way. The PA PUC proposes to define ground patrol as "a method of non-aerial patrol that includes walking, driving, using a low-flying drone with sufficient optical resolution operated by a qualified drone operator with an altitude of 25 feet or other like non-aerial means of traversing a pipeline right-of-way."
- *Leak detection:* Proposes to require leak detection systems that are Real Time Transient Models under API RP 1130. Public utilities would be required to odorize HVL pipelines if the requirements for leak detection systems are not met in 5 years.

Integrity Management (§ 59.139)

- The PA PUC proposes to require that utilities consult public officials in determining the need for remote controlled EFRDs in all HCAs, and that determining the need for EFRDS be based on limiting the LFL to 660 feet on either side of the pipeline.

Operator Qualification (§ 59.140)

- Proposes to define covered task as "the term as defined in 49 CFR 195.501 (relating to scope) but modifying that term to also include a construction task identified by a hazardous liquid public utility." Including construction tasks as a covered task would significantly expand an operator's Operator Qualification (OQ) program.
- Proposes to require a utility's OQ Plan to include: (1) written qualification program for construction tasks, (2) process for training all individuals qualified to identify and react to facility specific Abnormal Operating Conditions (AOCs), and (3) requalification intervals for each covered task.

Corrosion Control (§ 59.142)

- Proposes to require written procedures for the design, installation, operation, and maintenance of cathodic protection systems, including determining the average and worse case corrosion rate experienced for each pipeline segment. And, proposes to require inspections to determine the adequacy of cathodic protection be conducted on more frequent intervals. Further, the PA PUC proposes to require that public utilities initiate remedial actions within 14 days of discovering any deficiencies.
- Proposes to require public utilities to conduct close interval surveys every three years in accordance with NACE 0207-2007.

Land Agents (§ 59.141)

- Proposes to require land agents to hold valid Pennsylvania professional licenses as an attorney, real estate salesperson, real estate broker, professional engineer, professional land surveyor, or professional geologist during the performance of land agent work or services.



JAMES CURRY



KEITH COYLE



BRIANNE KURDOCK

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.