



March 27, 2020

**VIA REGULATIONS.GOV**

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**Re: PHMSA-2019-0225: Public Meeting on Implementing the Recently Published Gas Transmission and Hazardous Liquid Final Rules**

Senior Technical Advisor Hoidal:

GPA Midstream Association<sup>1</sup> (GPA Midstream) appreciates this opportunity to submit comments on the draft versions of the Pipeline and Hazardous Materials Safety Administration's (PHMSA or Agency) frequently asked questions (FAQ) for the October 1, 2019 final rules for the safety of gas transmission lines and hazardous liquid pipelines.<sup>2</sup> PHMSA released the draft FAQs on January 30, 2020, and provided the public with an opportunity to submit preliminary comments. PHMSA also held a public meeting in Sugarland, Texas, on February 26-27, 2020, to solicit additional input, and invited the public to submit any further written comments within the next 30 days.

The comments below address PHMSA's draft FAQs for both final rules. Part I includes the comments on the draft FAQs for hazardous liquid final rule, and Part II includes the comments

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<sup>1</sup> GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing.

<sup>2</sup> Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments, 84 Fed. Reg. 52,180 (Oct. 1, 2019); Pipeline Safety of Hazardous Liquid Pipelines, 84 Fed. Reg. 52,260 (Oct. 1, 2019). Pipeline Safety: Public Meeting on Implementing the Recently Published Gas Transmission and Hazardous Liquid Final Rules, 85 Fed. Reg. 5,168 (Jan. 29, 2020).

on the draft FAQs for the gas transmission final rule. While not yet published, PHMSA is in the process of preparing additional final rules with amendments to federal pipeline safety standards and reporting requirements, including for onshore gas gathering lines.<sup>3</sup> GPA Midstream encourages PHMSA to provide the same opportunity to submit public comments on any draft FAQs that the Agency intends to issue after final rules are published in those proceedings.

## I. Draft Safety of Hazardous Liquid Pipelines Rule FAQ Comments

### A. FAQ-2 – Idled Pipelines

FAQ-2 addresses inspections and assessments required by 49 C.F.R. § 195.416<sup>4</sup> for non-HCA hazardous liquid pipe that is idle.<sup>5</sup> In FAQ-2, PHMSA explains that there is “no operational designation for an ‘idle’ line,” and that “pipelines that are not currently in use must meet all the requirements of the Federal pipeline safety regulations.”<sup>6</sup>

Pipelines that have been purged and disconnected from the source of hazardous liquids do not present the same safety considerations as active pipelines. PHMSA recognized that in Advisory Bulletin ADB-2016-05, which states that the Agency would “accept deferral of certain activities for purged but active pipelines,”<sup>7</sup> and that deferred activities could “include actions impractical on most purged pipelines, *such as in-line inspection.*”<sup>8</sup> API Recommended Practice 1181 (Pipeline Operational Status) (API RP 1181) also provides industry guidance for managing the risks associated with purged pipelines and for safely “operating” idle pipelines.

To maintain consistency with the guidance provided in Advisory Bulletin ADB-2016-05 and API RP 1181, GPA Midstream suggests that FAQ-2 be updated to read:

*Consistent with PHMSA Advisory Bulletin ADB-2016-05, a purged pipeline presents different risks to public safety and the environment. In light of the reduced risk, PHMSA will accept deferral of certain activities for purged but active pipelines that are disconnected from the source of the hazardous liquids. These deferred activities include actions that may be inappropriate to perform on purged pipelines, such as inline inspections. An operator should refer to API*

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<sup>3</sup> Gas Rule Presentation, Slide 8, Docket No. PHMSA-2019-0225-0019 (Feb. 27, 2020); *See* RIN 2137-AF39 Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments (accessed online at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2137-AF39> on Mar. 27, 2020); RIN 2137-AF38 Safety of Gas Gathering Pipelines (accessed online at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2137-AF38> on Mar. 27, 2020).

<sup>4</sup> When not otherwise indicated, citations to the Code of Federal Regulations refer to Title 49, effective July 1, 2020.

<sup>5</sup> Draft FAQs on the Hazardous Liquid Rule, Docket No. PHMSA-2019-0225-0005 at 1 (Jan. 30, 2020) (“Draft HL FAQs”).

<sup>6</sup> *Id.*

<sup>7</sup> Pipeline Safety: Clarification of Terms Relating to Pipeline Operational Status, 81 Fed. Reg. 54,512, 54,513 (Aug. 16, 2016) (“ADB-2016-05”).

<sup>8</sup> *Id.* (emphasis added).

*Recommended Practice 1181 (Pipeline Operational Status) for guidance in determining which activities can be deferred for a pipeline that is properly purged of and physically disconnected from a source of hazardous liquids. An operator should incorporate these procedures into their Operations and Maintenance Manual.*

B. FAQ-3 – PHMSA Responses to Requests to Use Other Technology for Non-HCA Assessments

In FAQ-3, PHMSA states that “an operator must receive a notice of ‘no objection’ from PHMSA prior to implementing the ‘other technology’ option under § 195.416(d).”<sup>9</sup> However, § 195.416(d) and FAQ-3 do not provide any guidance for what an operator should do if PHMSA does not provide a response after 90 days. Due to the lead time and mobilization costs associated with certain technologies, delayed responses will be disruptive to scheduling an assessment, create unnecessary expenses, and compromise safety. For these reasons, in FAQ-3 PHMSA should clarify the steps that an operator should take if a response is not received in 90 days.

C. FAQ-7 – Is a computational pipeline monitoring (“CPM”) leak detection required?

In FAQ-7, PHMSA identifies several factors that an operator must consider to determine if a leak detection system is effective.<sup>10</sup> The factors include those listed in § 195.444, the regulation that requires operators to have an effective leak detection system, as well as an additional factor, “the capabilities of available leak detection systems.”<sup>11</sup> Because that factor is not identified in § 195.444, the statement in the FAQ that an operator *must* consider “the capabilities of available leak detection systems” is an impermissible attempt to rewrite the language of the regulation.<sup>12</sup> PHMSA should either remove that factor or revise the FAQ to make clear that the obligation to consider that information is not mandatory.

D. FAQ-11 – Extreme Weather Inspections after Heavy Rain

Section 195.414 requires an operator to inspect all potentially affected pipeline facilities after an extreme weather event or natural disaster that has the likelihood of damaging pipeline infrastructure by scouring or soil movement. Section 195.414 lists examples of these events, such as named tropical storms or hurricanes.<sup>13</sup> Draft FAQ-11 further states that “storms that do not produce winds at tropical storm or hurricane level velocities” are not extreme weather events.<sup>14</sup>

While perhaps unintended, FAQ-11 could be read to imply that any weather event that produces tropical storm or hurricane force winds qualifies as an extreme weather event under

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<sup>9</sup> Draft HL FAQs at 2.

<sup>10</sup> Draft HL FAQs at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> § 195.414(a).

<sup>14</sup> Draft HL FAQs at 4.

§ 195.414. Many parts of the country are subject to high winds on a regular basis without precipitation. Those winds may exceed tropical storm force levels, which the National Hurricane Center defines as beginning at a sustained surface wind speed (using a 1-minute average) of 39 mph (63 km/hr).<sup>15</sup> PHMSA should make clear in FAQ-11 that high speed winds alone do not qualify as extreme weather events.

#### E. New FAQ Suggestion – Underwater Assessments

PHMSA should consider issuing a new FAQ for § 195.454, which imposes integrity assessment requirements for hazardous liquid pipeline facilities in HCAs that are located more than 150 feet under the surface of the water. PHMSA adopted § 195.454 to codify a self-executing requirement in Section 25 of the Protecting Our Infrastructure of Pipelines and Enhancing Security Act of 2016 (PIPES Act).<sup>16</sup> The term “underwater” is not defined in the PIPES Act or Part 195 regulations. The absence of that definition creates significant uncertainty about the applicability of § 195.454, particularly for pipelines that are installed with horizontal directional drills (HDD) to pass underneath inland waterways.

The concern can be clearly illustrated by considering two pipelines in an HCA that pass underneath an inland waterway that has a depth of 100 feet. The first pipeline is buried below the natural bottom to a depth of 48 inches using traditional installation methods. The second pipeline is buried below the natural bottom to a depth of 55 feet using an HDD method. While the first pipeline is clearly not subject to the integrity assessment requirements in § 195.454, the second pipeline may be. That result is irrational. The first pipeline likely presents a greater risk to the waterway in the event of a leak or rupture and becomes even more irrational for pipelines installed with the HDD method to even greater depths below the natural bottom of even shallower inland water bodies.

There is also no clear guidance in § 195.454 for measuring the depth from “the surface of the water” for purposes of the 150-foot limitation. The surface level of many water bodies changes based on tidal fluctuations, upstream water flows, downstream usage, or recent precipitation. Further guidance on this issue is needed for operators to adopt the procedures necessary to effectively implement the integrity assessment requirements in § 195.454.<sup>17</sup>

#### F. New FAQ – Gravity and Gathering Line Annual Reporting Requirements

Sections 195.13 and 195.15 subject gravity lines and reporting-regulated-only gathering lines to safety-related condition, accident, and annual reporting requirements. The effective dates for safety-related condition and accident reports are clear. However, operators must comply with

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<sup>15</sup> National Hurricane Center and Central Pacific Hurricane Center, Glossary of NHC Terms, (accessed online at <https://www.nhc.noaa.gov/aboutgloss.shtml#t> on Mar. 26, 2020).

<sup>16</sup> Pipeline Safety: Safety of Hazardous Liquid Pipelines, 84 Fed. Reg. at 52,289. *See* Pub. L. No. 114-183, § 25, 130 Stat. 514, 531 (June 22, 2016)

<sup>17</sup> §§ 195.402(a), 195.404(c). *See* Hazardous Liquid Rule Presentation, Docket No. PHMSA-2019-0225-0018, Slides 132-137 (Feb. 26, 2020).

the annual reporting requirements “by March 31, 2021.”<sup>18</sup> Section 195.49 requires pipeline operators to submit Annual Reports by June 15 of the following year. Based on the text of the regulation alone, it is not clear whether newly-required Annual Reports for 2020 are due on March 31, 2021, or June 15, 2021.

At the public meeting, PHMSA staff indicated that newly-required annual reports for 2020 will be due on March 31, 2021.<sup>19</sup> At the meeting PHMSA staff also indicated that the Agency had changed this interpretation at least once since the Safety of Hazardous Liquids Rule was issued on October 1, 2019. To alleviate confusion, PHMSA should add a FAQ response that addresses due dates for Annual Reports.

## II. Draft Safety of Gas Transmission Pipelines Rule FAQ Comments

### A. FAQ – 2 – Applicability to Gas Gathering Pipelines

The language in FAQ-2 of the Draft Gas FAQ does not adequately distinguish between the rule’s applicability to regulated Type A and Type B gathering lines. Additionally, the FAQ does not address gathering lines that are not subject to regulation under Part 192.

GPA Midstream suggests that FAQ-2 be revised to read as follows:

*Yes. While the new rules are written with a focus on the safety of onshore gas transmission lines, there are new requirements that apply to regulated gas gathering lines. Operators of offshore gas gathering lines and Type A onshore gas gathering lines remain under a general obligation to comply with the requirements for gas transmission lines, subject to the exceptions and other limitations identified in § 192.9(b)-(c). Operators of Type B onshore gas gathering lines that are new, replaced, relocated, or otherwise changed also remain under a general obligation to comply with the design, installation, construction, initial inspection, and initial testing requirements for gas transmission lines, subject to the exceptions identified in § 192.9(d)(1). There are other specific requirements for gas transmission lines that still apply to Type B onshore gas gathering lines as identified in § 192.9(d)(2)-(8).*

*However, as noted in § 192.9(b)-(c), the following requirements do not apply to offshore gas gathering lines or Type A onshore gas gathering lines: §§ 192.150, 192.285(e), 192.493, 192.506, 192.607, 192.619(e), 192.624, 192.710, 192.712, and the integrity management requirements in Subpart O. Likewise, as noted in § 192.9(d)(1), the following requirements do not apply to Type B onshore gas gathering lines that are new, replaced, relocated, or otherwise changed: §§ 192.67, 192.127, 192.205, 192.227(c), 192.285(e), and 192.506. Finally, as indicated in §§ 192.9(d)(2) and (6), the new corrosion control requirements in § 192.493 and*

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<sup>18</sup> §§ 195.13(b)(1), 195.15(b)(1).

<sup>19</sup> Hazardous Liquid Rule Presentation, Slides 15, 25.

*provisions for establishing MAOP in § 192.619(d)-(f) do not apply to Type B onshore gas gathering lines.*

*With regard to the new reporting requirements, operators of regulated gas gathering lines should review the provisions in §§ 191.23 and 191.25 which may require the filing of safety-related condition reports in certain situations. Note that none of the new rules or reporting requirements apply to gas gathering lines that are covered by the exceptions listed in § 192.1(b). These lines are not subject to regulation under 49 C.F.R. Part 192 and are exempt from the reporting requirements in 49 C.F.R. Part 191.*

#### B. New FAQ – ILI Launcher and Receiver Safety Compliance Date

Section 192.750 provides that the ILI launcher and receiver barrel safety requirements take effect after July 1, 2021. However, language in the Safety of Gas Transmission Pipelines Rule explains that, “[o]perators would not be required to perform the upgrades until the launcher or receiver is to be used.”<sup>20</sup> PHMSA should include a FAQ clarifying that operators are not required to install pressurization safety systems until an in-line tool will be launched or received from that barrel.

#### C. New FAQ – ILI Launcher and Receiver Safety Systems

The language in § 192.750 is unclear as to whether a system that indicates pressure has been relieved in an ILI launcher or receiver barrel but does not prevent the barrel from opening is compliant. The text of § 192.750 requires an operator “use a device to *either*: Indicate that pressure has been relieved in the barrel; or *alternatively* prevent opening of the barrel closure or flange when pressurized, or insertion or removal of in-line devices (e.g. inspection tools, scrapers, or spheres), if pressure has not been relieved.”<sup>21</sup> At the public meeting, PHMSA staff indicated that a device must do both and provided a noncommittal answer to a meeting attendee who asked about the discrepancy.<sup>22</sup> To clarify this matter, PHMSA should adopt a new FAQ confirming that the text of the regulation controls.

#### D. New FAQ – Gravity and Gathering Line Annual Reports

GPA Midstream has the same concerns for Annual Reports for gas lines as for hazardous liquid lines, listed above. PHMSA should include report due dates in the final Gas FAQ document for the same reasons they should be included in the final HL FAQ document.

### **III. Conform to the Rule on Rules**

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<sup>20</sup> Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments, 84 Fed. Reg. at 52,209.

<sup>21</sup> § 192.750 (emphasis added).

<sup>22</sup> Gas Rule Presentation, Slide 24.

PHMSA should ensure that the FAQs conform in all respects to DOT's new "Rule on Rules".<sup>23</sup> One area of particular concern is the mandatory language in the Draft FAQs. The Rule on Rules makes clear that DOT agencies should only use mandatory language in a guidance document when referring to an obligation that is expressly created in an underlying statute or regulation.<sup>24</sup> As indicated in these comments and by the attendees at the public meeting, certain Draft FAQs use mandatory language in circumstances that do not meet these criteria. Such statements should be removed from the FAQs before final release and publication.

#### **IV. Conclusion**

GPA Midstream appreciates the opportunity to submit these comments. If you have questions, please contact Matt Hite at GPA Midstream at (202) 279-1664 or by email at [mhite@GPAglobal.org](mailto:mhite@GPAglobal.org).

Sincerely,



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<sup>23</sup> Administrative Rulemaking, Guidance and Enforcement Procedures, 84 Fed. Reg. 71,714 (Dec. 27, 2019).

<sup>24</sup> *Id.* at 71,727 (codified at § 5.29(c)). See Executive Order 13891: Promoting the Rule of Law Through Improved Agency Guidance Documents, 84 Fed. Reg. 55,235 (Oct. 9, 2019, published in the *Federal Register* Oct. 15, 2019).