

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held July 15, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
John F. Coleman, Jr.
Ralph V. Yanora

Rulemaking Regarding Hazardous Liquid Public
Utility Safety Standards at 52 Pa. Code Chapter 59

L-2019-3010267

NOTICE OF PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

The Pennsylvania Public Utility Commission (Commission) adopts this Notice of Proposed Rulemaking (NOPR) Order and seeks comment on proposed amendments to our existing regulations and the addition of new regulations in Chapter 59 of Title 52, 52 Pa. Code, Chapter 59, to enable more comprehensive regulation of public utilities that transport petroleum products and other hazardous liquids in intrastate commerce.

BACKGROUND

Under Section 501(b) of the Public Utility Code, the Commission has the general administrative power and authority to supervise and regulate all public utilities doing business within the Commonwealth and to make such regulations as may be necessary or proper in the exercise of its powers or for the performance of its duties. 66 Pa.C.S. § 501(b). Section 102, in pertinent part, defines a public utility as:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

...

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa.C.S § 102, definition of public utility (1)(v). Accordingly, the Commission has jurisdiction over and authority to regulate, *inter alia*, the transportation of petroleum products transported via pipeline or conduit for the public for compensation. 66 Pa.C.S. §§ 102, 501(b); *see also* 66 Pa.C.S. § 506 (inspection of facilities and records). The term “petroleum products” includes refined petroleum products such as fuel oil and diesel as well as natural gas liquids such as ethane, benzene and propane. *See e.g., Petition of Granger Energy of Honey Brook, LLC*, Docket No. P-00032043 (Order entered September 8, 2004) (“petroleum products” as used in Section 102 of the Code, has a broad meaning as a “catch all phrase” to include what would otherwise be an exhaustive list of products); *see also* 49 CFR § 195.2 (defining a petroleum product as “flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.”).

Consistent with that authority, effective September 22, 2012, the Commission amended its regulations at Chapter 59 to address the safety of petroleum products pipelines by incorporating the Federal pipeline safety regulations at 49 CFR Part 195. *See* 42 Pa.B. 5967; *Rulemaking Re Liquid Fuels Pipeline Regulations*, Docket No. L-2008-2034622 (Order entered March 1, 2012).

The Commission participates as a certified state in the pipeline safety program administered by the U.S. Department of Transportation’s Pipeline and Hazardous

Materials Safety Administration (PHMSA) under 49 U.S.C. § 60105(a).¹ The Commission incorporated 49 CFR Part 195 in its regulations, in part, to comport with the requirements of PHMSA’s pipeline safety program. Participating certified states must adopt the minimum Federal pipeline safety standards and are permitted to adopt additional more stringent regulations so long as they are compatible with the minimum Federal pipeline safety standards. As stated in Appendix A to Part 195:

For the remainder of pipeline facilities, denominated “intrastate pipeline facilities,” the [Hazardous Liquids Pipeline Safety Act (HLPSA)] provides that the same Federal regulation and enforcement will apply unless a State certifies that it will assume those responsibilities. A certified State must adopt the same minimal standards but may adopt additional more stringent standards so long as they are compatible.

49 CFR Part 195, *Appendix A to Part 195 – Delineation Between Federal and State Jurisdiction – Statement of Agency Policy and Interpretation*. Based on the foregoing, as a certified state in PHMSA’s pipeline safety program, the Commission may adopt additional standards beyond the minimum Federal pipeline safety standards.

Part 195 prescribes safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids. 49 CFR § 195.0. Under Part 195, hazardous liquids include “petroleum, petroleum products, anhydrous ammonia, or ethanol.” 49 CFR § 195.2. In sequence, Part 195 addresses the following: General; Annual, Accident, and Safety-Related Condition Reporting; Design Requirements;

¹ Certification is an annual process, in which PHMSA makes available appropriate forms to each State agency, which is included with the annual grant program. Each year, the Commission completes and submits these forms to PHMSA. To view the Commission’s 2021 certification status, refer to *Appendix F – State Program Certification/Agreement Status*, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation (Last accessed May 12, 2021) available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-03/2021%20Appendix%20F%20-%20State%20Program%20Certification%20Agreement%20Status_0.pdf.

Construction; Pressure Testing; Operation and Maintenance; Qualification of Pipeline Personnel; and Corrosion Control. *See* 49 CFR Subparts A–H.

At present, the safety standards for hazardous liquid public utilities are limited to the Commission’s adoption of the minimum standards in Part 195 in Chapter 59 of the Commission’s regulations. Section 59.33 provides in relevant part, as follows:

(b) *Safety code.* The minimum safety standards for all natural gas and hazardous liquid public utilities in the Commonwealth shall be those included under the pipeline safety laws as found in 49 U.S.C.A. §§ 60101–60503 and as implemented at 49 CFR Parts 191–193, 195 and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191–193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission’s regulations with regard to the minimum safety standards for all natural gas and hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

(c) *Definition.* For the purposes of this section, “hazardous liquid public utility” means a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products by pipeline or conduit, for the public for compensation.

52 Pa. Code §§ 59.33(b)–(c).

In order to more comprehensively regulate the design, construction, and operations and maintenance of public utilities transporting petroleum products and other hazardous liquids under the jurisdiction of the Commission, on June 13, 2019, the Commission entered an Advanced Notice of Proposed Rulemaking (ANOPR) inviting

comments on the amendment and enhancement of Chapter 59. In particular, the ANOPR focused on expanding Section 59.33 to provide a more complete regulatory framework for hazardous liquid public utilities. The ANOPR was published in the *Pennsylvania Bulletin* on June 29, 2019, and comments from interested stakeholders were due within 60 days. Upon review and consideration of the comments received, the Commission hereby proceeds with this NOPR to begin the process of modifying the regulations at Chapter 59 as proposed in the attached Annex.

DISCUSSION

Comments

In response to the ANOPR, the Commission received a total of 93 comments, ranging from one-page resolutions to 339-page submissions. A variety of interested stakeholders filed comments including advocates, industry affiliates, local governments, members of the Pennsylvania General Assembly, and private citizens. Below, we summarize the comments received from each of the above groups in the subject areas identified in the ANOPR and in other subject areas. To the extent that the Commission does not identify a particular comment herein, it has nonetheless been duly considered.

Advocates

The following advocates filed comments with the Commission in response to the ANOPR: Bucks County Concerned Citizens Against the Pipelines, the Clean Air Council, the Conservation Voters of PA, Del Chesco United for Pipeline Safety, the Pipeline Safety Coalition, and the Responsible Drilling Alliance (collectively, advocates). The advocates generally seek strengthened regulations for new and existing pipelines. The advocates also express concern about aging pipeline infrastructure and pipeline integrity. They point to pipeline incidents, including spills, leaks, sinkholes, and private well contamination, as the basis for strengthening regulations. The advocates note that any new regulations should consider the needs of the public, the environment, and

pipeline infrastructure. Accordingly, the advocates seek new regulations that provide for meaningful public engagement and take into account industry best practices.

For example, some advocates state that the Commission should develop a regulatory process to address pipeline siting, including a permitting process to determine where pipelines facilities are located. The advocates also recommend that hazardous liquid public utilities be required to periodically review and reassess the depth of pipeline cover. In addition, the advocates suggest that all new valves be remote operated, and that emergency flow restricting devices (EFRDs) be installed in high consequence areas (HCAs) in consultation with public officials. The advocates also suggest additional regulations for HCAs. Moreover, the advocates recommend that the Commission regulate construction techniques, such as horizontal directional drilling (HDD), and require the identification of water supplies as well as the use of geophysical testing.

Further, the advocates recommend enhanced pressure testing and maximum operating pressure requirements. The advocates suggest the use of in-line inspection tools. Additionally, the advocates propose requirements for the placement of additional line markers and the provision of additional information regarding line markers. The advocates also comment on pipeline rights-of-way. One advocate proposes, *inter alia*, the creation of natural habitats on rights-of-way. Another advocate suggests that the Commission require hazardous liquid public utilities to inspect rights-of-way on foot once per quarter. Some advocates also call for the use of enhanced leak detection technology. Moreover, the advocates suggest improved pipeline personnel training and additional qualifications for individuals acting as land agents. Similarly, at least one advocate recommends that background checks be required for contractors and laborers.

Regarding hazardous liquid public utility interactions with the community, the advocates recommend that the Commission require communications with public officials, emergency responders, and landowners. The advocates also recommend the development

of emergency plans, including evacuation plans in areas of high population density. One advocate recommends tabletop and functional exercises for emergency responders, including the creation of After Action Reports by an impartial entity. One advocate also requests that the Commission revise its formal complaint process to be more accessible to all residents regardless of economic or financial resources.

In addition to the advocates identified above, the Commission's Bureau of Investigation and Enforcement (BIE), filed Comments with the Commission in response to the ANOPR. BIE's recommendations are based on the experience of and research conducted by staff in BIE's Safety Division. According to BIE, the objective of its comments is to ensure the safety of utilities, utility personnel, and the general public.

BIE's design and construction comments focus on external loads, miter joints, pipeline location, cover over buried pipelines, and valves. For example, regarding location, BIE recommends that no pipelines be installed under any building or structure intended for human occupancy. BIE also submitted comments regarding HDD techniques, including water well and supply protection. Additionally, BIE commented on pressure testing, including hydrostatic testing. BIE's operation and maintenance comments focus on requiring additional liaison activities, line markers, inspections of pipeline rights-of-way, and leak detection measures. In this regard, BIE suggests, *inter alia*, enhanced requirements for patrolling pipeline facilities as well as the use of odorant for leak detection purposes. BIE also recommends that hazardous liquid public utilities file notifications with the Commission prior to any major construction or maintenance activities. Further, BIE recommends more stringent qualifications for pipeline personnel, including requalification intervals. Finally, regarding corrosion control measures, BIE focuses on cathodic protection requirements.

Industry Affiliates

The following industry affiliates filed comments with the Commission in response to the ANOPR: the American Society of Civil Engineers, Associated Petroleum Industries of Pennsylvania, the Association of Oil Pipelines, JARI, the Marcellus Shale Coalition, Operating Engineers Local 542, the PA Chamber of Business and Industry, the Pennsylvania Energy Infrastructure Alliance, Schmid & Co., Inc., Steamfitters Local 420, Shepstone Management Company, Inc., SolSpec Aerial Analytics, Sunoco Pipeline, L.P., and the Washington Chamber of Commerce (collectively, industry affiliates). The industry affiliates largely contend that Pennsylvania's energy success relies on increased pipeline construction, that pipelines are the safest and most reliable mode of energy transportation, and that new pipeline regulations will result in increased inefficiencies. The industry affiliates recommend, generally, that the Commission defer to existing Federal regulations and not add to the American Petroleum Institute (API) Recommended Practices already incorporated into PHMSA's regulations. The industry affiliates posit that more comprehensive regulations may reverse hard-earned energy growth that the Commonwealth has experienced.

The industry affiliates also recommend that the Commission exercise caution in integrating new regulation on existing facilities, noting that retroactive applicability is barred in certain instances. They remind the Commission that, while states may promulgate additional regulations for pipelines, new regulations must be compatible with Federal regulations. The industry affiliates also direct the Commission's attention to pending Federal rulemaking proceedings and note that PHMSA's rules are intentionally rigorous to mitigate risks and protect communities as well as the environment. Further, the industry affiliates advise in their comments that many hazardous liquid public utilities face heightened scrutiny and already exceed required standards to ensure public safety.

Regarding construction as well as operation and management standards, the industry affiliates advise that pipelines are built from materials that exceed the Federal

density standards, are often buried deeper than required, are pressure tested well above operational level, are treated with cathodic protection, and incorporate required EFRDs. Thus, the industry affiliates argue that any prospective changes to such standards should occur at the Federal level. Some industry affiliates also claim that the Commission has not explained the risk to be mitigated or the basis for needing regulatory changes. In this regard, the industry affiliates generally contend that enhancements to pipeline cover, valve, line marker, and pipeline personnel qualifications are not necessary. The industry affiliates also ask that Federal accident reporting requirements be given great deference.

The industry affiliates also state that the Commission should work with the Pennsylvania Department of Environmental Protection (DEP) and partner with hazardous liquid public utilities to enforce existing regulations, rather than adding additional rules. The industry affiliates also suggest that the Commission defer to the expertise of the DEP for HDD standards and standards for other construction techniques. Regarding HDD, the industry affiliates also note that HDD is cost effective and minimizes surface disturbance and environmental impacts. Some commenters also address claims regarding inadvertent returns, noting that there are no long term hazards for ground water.

With regard to utility interaction with public officials and the community, the industry affiliates recommend that the Commission's regulations align with existing API Recommended Practices. Some industry affiliates also stated that they have already developed resources aimed at addressing public awareness. In addition, one industry affiliate suggests that the Commission conduct a survey of past public awareness meetings and emergency drill attendance, noting that public officials rarely attend.

Finally, the industry affiliates stressed the need to safeguard sensitive information and pointed to the Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1-2141.6, and the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101, et seq., as being provisions that the Commission's NOPR may not override.

Local Government

The following local government bodies and associations also filed comments with the Commission in response to the ANOPR: the Borough of Lemoyne, Capital Region Council of Governments, the Chester County Association of Township Officials, the County Commissioners Association of Pennsylvania, the County of Chester, the Cumberland County Board of Commissioners, Downingtown Area School District, the East Goshen Township Board of Supervisors, the Hampden Township Board of Supervisors, the Lower Allen Township Board of Supervisors, the Monroe Township Board of Supervisors, the Pennsylvania State Association of Township Supervisors, the Silver Spring Township Board of Supervisors, the Township of Middletown in Delaware County, the Uwchlan Township Board of Supervisors, and the West Whiteland Township Board of Supervisors (collectively, government entities). Generally, the government entities seek additional regulations with a focus on public awareness.

A number of government entities filed identical resolutions calling for public awareness meetings. The resolutions noted that the operation of pipelines may pose a danger to the public without adequate safety measures and regulatory oversight, and that efforts should be made to enhance the public's trust. The resolutions stated that one hazardous liquid public utility has refused invitations to county-hosted meetings addressing citizens' concerns on three occasions. The resolutions also noted that, since the Commission has the authority to require hazardous liquid public utilities to conduct regional and periodic public outreach meetings, public awareness meetings should be held at least once a year on a local or regional basis.

Aside from these resolutions, the government entities submitted comments focusing on many of the same areas as the advocates. For example, the government entities suggest, the creation of an approval process for pipeline siting, requirements for the replacement of depth of cover, the installation of remote valves, requirements for

additional line markers, mandatory notice to Commission before construction activity, and the registration of land agents.

The government entities also recommend enhancements to pipeline conversion requirements, such as Commission approval prior to pipeline conversion, including public notice and hearings. In addition, the government entities suggest that the Commission impose strict regulatory practices to protect stored pipelines prior to construction and to limit the exposure of pipelines to natural elements. In this regard, the government entities suggest reporting requirements for construction delays, including the length of pipeline exposure and corrosion data. The government entities also recommend that construction permits consider the impact of HDD on residents. Further, the government entities state that risk information regarding pipelines should be provided to emergency responders and that hazardous liquid public utilities create emergency plans for schools at their own expense. The government entities also suggest that accident reports be filed with the Commission.

Members of the Pennsylvania General Assembly

The following members of the Pennsylvania General Assembly filed comments with the Commission: Representative Carolyn Comitta, Representative Danielle Otten, Senator Andrew Dinniman, Senator Judith Schwank, and Senator Tom Killion (collectively, the legislators). The legislators encourage the Commission to promulgate regulations for all areas of the ANOPR. The legislators note that local and county public officials as well as constituents have concerns regarding pipeline conversion, older pipelines, geophysical testing, the protection of public and private water wells, and communication with public officials and the community. Accordingly, the legislators ask the Commission to consider, *inter alia*, construction methods, leak detection, public notification systems, and the role of land agents. For example, the legislators ask the commission to establish increased requirements for cover over buried pipelines and underground clearances. The legislators also request enhanced requirements for valve

spacing and the use of vehicle barriers as well as additional placement of line markers. Moreover, the legislators note the importance of requiring hazardous liquid public utilities to develop emergency response plans in coordination with public officials and emergency responders, as well as public education plans.

Individual Commenters

Finally, approximately 51 individuals filed comments with the Commission. These individuals largely focus their comments on the same areas as the advocates, government entities, and legislators. Many of the individuals included personal anecdotes in their comments regarding experiences they had while living near pipelines in the Commonwealth. For example, some individuals described their experience with the Revolution Pipeline incident in 2018. The individual commenters generally call for additional regulation of hazardous liquid public utilities, and primarily take issue with HDD practices, land agents and the use of eminent domain, and a lack of communication and public outreach by hazardous liquid public utilities.

Regarding HDD, the individual commenters echo concerns regarding geological impacts as well as the contamination of private wells, inadvertent returns, sink holes, and the exposure of adjacent pipelines. Some individuals also note concerns regarding noise. For instance, one individual states that he lives in an area where constant noise and vibrations continued for months due to drilling. The individual commenters maintain that HDD should only be used when absolutely necessary and that hazardous liquid public utilities must be required to adhere to noise ordinances.

As it pertains to land agents, some individuals note that their neighbors have been coerced by land agents, and state that land agents should not bully homeowners into agreeing to allow a pipeline to pass through their property. The individual commenters suggest that land agents be monitored and held responsible for deceiving landowners during negotiations and engaging in fraudulent or unlawful practices. In addition, the

individual commenters claim that hazardous liquid public utilities are misusing the eminent domain process and that eminent domain should only be used for the greater good when landowners are adequately compensated.

Finally, regarding public outreach, the individual commenters request that hazardous liquid public utilities be required to provide emergency responders, the affected public, and public officials with contact information prior to the operation of a pipeline. One individual notes that referring to line markers for emergency information is not practical as line markers may be in forests or on property that they do not own. Another individual states that she lives in an “evacuation zone” and has never received information regarding emergency procedures. She notes that the hazardous liquid public utility claims it is not required to provide such information due to security concerns. The individual commenters request meetings with public officials regarding construction and frequent public awareness meetings with the public, emergency responders, and schools.

Gas Service and Facilities Provisions

First, the Commission proposes to create a new heading within Chapter 59 to encompass the “Hazardous Liquid Public Utility Safety Standards.” In conjunction with the creation of this new heading, we propose revising the existing “Service and Facilities” heading for Sections 59.11- 59.38 to “Gas Service and Facilities.” This revision is intended to indicate that Sections 59.11-59.38 of the Commission’s existing regulations are applicable to only natural gas distribution public utilities.

§ 59.33. Safety.

Section 59.33, which addresses safety, will continue to fall under the heading for “Gas Service and Facilities.” Currently, Section 59.33 addresses both natural gas distribution utilities and hazardous liquid public utilities. We propose to remove all references to “hazardous liquid public utilities” in Section 59.33. Thus, we will amend Section 59.33(b) and mark Section 59.33(c) as “reserved.” The provisions of Section

59.33 pertaining to hazardous liquid public utilities will now be addressed in “Hazardous Liquid Public Utility Safety Standards.” We do not propose any changes to the remaining portions of Section 59.33.

Hazardous Liquid Public Utility Safety Standards

As noted above, the Commission will create a new heading within Chapter 59 to encompass the “Hazardous Liquid Public Utility Safety Standards.” This heading indicates that Sections 59.130-59.142 of the Commission’s proposed regulations are applicable only to hazardous liquid public utilities.

§ 59.130. Purpose.

Section 59.130 of the Commission’s proposed regulations formalizes the notion that, as a certified State participating in PHMSA’s hazardous liquid pipeline safety program, the Commonwealth must adopt and enforce, as a minimum, all Federal pipeline safety standards at 49 CFR Part 195 and 199 for hazardous liquid public utilities. As a certified State, however, the Commonwealth may also promulgate additional regulations for hazardous liquid public utility pipeline safety that are more stringent than the PHMSA federal regulations so long as the state regulations are compatible with the HLPSA and the minimum safety standards in PHMSA’s regulations. Thus, Section 59.130 states that the purpose of the proposed regulations encompassed in the Commission’s “Hazardous Liquid Public Utility Safety Standards” is to set forth the safety standards for all hazardous liquid public utilities in the Commonwealth, implicitly recognizing that these standards apply only to intrastate hazardous liquid pipelines operated by public utilities.

§ 59.131. Definitions.

Section 59.131 of the Commission’s proposed regulations sets forth general definitions pertinent to the regulations of hazardous liquid pipeline safety. We define “hazardous liquid public utility” consistent with the definition formally found in

Section 59.33 of the Commission’s regulations.² Thus, a “hazardous liquid public utility” is a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.

Additionally, we explain the difference between the terms “pipe or line pipe,” “pipeline,” and “pipeline facility” as it pertains to the transportation of hazardous liquids. For example, the term “pipeline” refers to all parts of a pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. The definitions are compatible with those in 49 CFR 195.2.

Moreover, in Section 59.131, we delineate key stakeholders implicated in the proposed regulations by defining the terms “affected public,” “emergency responders,” and “public officials.” “Affected public” refers to 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. “Emergency responders” refers to local fire, police, and emergency medical services, along with county hazmat teams, Department of Emergency Services, and 911 centers, and other emergency local, city, county, or state officials and representatives. “Public officials” refers to elected local, city, county, and state officials and their staff having land use and street or road jurisdiction along the pipeline route.

Further, in Section 59.131, we incorporate by reference the definitions of a number of technical terms in 49 CFR Part 195, including “computational pipeline monitoring system,” “external corrosion direct assessment,” “ERFDs,” and “HCAs.” We

² As noted earlier, the definition of “hazardous liquid public utility” was removed from Section 59.33(c) because that portion of the regulations will now address only “Gas Service and Facilities.”

incorporate these terms to ensure consistency and compatibility among the proposed regulations and the minimum safety standards in PHMSA’s regulations. The definitions of other technical terms are also consistent with PHMSA guidance and documents.

The Commission welcomes comments regarding the definitions proposed in Section 59.131. The Commission also seeks comment regarding the need for additional definitions to enhance the readability of the proposed regulations and better clarify any technical terms or references to technical documents therein.

§ 59.132. General.

Section 59.132 of the Commission’s proposed regulations establishes general provisions applicable to hazardous liquid public utilities. Subsection (a) stems in part from the existing regulation at Section 59.33(b) under “Gas Service and Facilities.” Subsection (a) here mirrors Section 59.33(b) in that it adopts the Federal pipeline safety standards, as a minimum, as required by the Commonwealth’s participation in PHMSA’s hazardous liquid pipeline safety program. The Federal pipeline standards are the minimum safety standards, unless otherwise specified in the proposed regulations at Sections 59.130-59.142.³ Future Federal amendments will automatically take effect for purposes of the Commission’s regulations after 60 days, unless otherwise directed. In this regard, we created new language to indicate that future amendments to the Federal regulations that are more stringent than the Commission’s requirements under proposed Sections 59.130-59.142 will control.

Section 59.132 also addresses enforcement and records. Subsections (b) and (c) provide for the inspection of hazardous liquid public utilities for compliance purposes, require hazardous liquid public utilities to make their facilities, books, and records

³ The Commission may promulgate additional regulations that are more stringent than the PHMSA Federal regulations so long as the state regulations are compatible with the HLPSA and the minimum safety standards in PHMSA’s regulations.

accessible to the Pipeline Safety Section, and require the provision of reports, data, and other information to the Pipeline Safety Section upon request. These subsections will aid the Commission in ensuring compliance with the proposed regulations.

Finally, Section 59.132 addresses pipeline conversion. Subsection (d) directs hazardous liquid public utilities to notify the Commission's Pipeline Safety Section before a pipeline is converted from service not previously covered by the "Hazardous Liquid Pipeline Safety Standards." This subsection also requires hazardous liquid public utilities engaged in conversion, flow reversal, or commodity change subject to 49 CFR Part 195.5 to comply with *Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service*, PHMSA Advisory Bulletin ADB-201-04, Docket No. 2014-0040; 79 FR 56121-56122. These requirements will provide additional oversight for pipeline conversions.

With regard to Section 59.132, the Commission seeks comment on the impact of future amendments to the Federal regulations that are more stringent than proposed Sections 59.130-59.142, and the language addressing such amendments in subsection (a). The Commission also seeks comment regarding the pipeline conversion notification and compliance provisions set forth in subsection (c).

§ 59.133. Accident reporting.

Section 59.133 of the Commission's proposed regulations set forth requirements for hazardous liquid public utilities reporting accidents. Section 59.133 works in conjunction with 49 CFR 195.50 and 49 CFR 195.52. Subsections (b) and (c) require that, after any accident causing the conditions described in 49 CFR 195.50, a hazardous liquid public utility must provide a failure analysis report and a root cause analysis report to the Commission's Pipeline Safety Section. The failure analysis report and root cause analysis report must be provided within 120 days of the accident or within 10 days of report completion, whichever comes first. The failure analysis and root cause analysis

must be performed by an independent third-party laboratory and an independent third-party consultant, respectively. A hazardous liquid public utility must provide status reports to the Pipeline Safety Section every 14 days if the respective deadlines are not met. Subsection (d) sets forth the process for obtaining approval of a third-party laboratory and consultant.

Subsection (e) requires that, after the release of a hazardous liquid causing the conditions described in 49 CFR 195.52, a hazardous liquid public utility must provide immediate notice to the Pipeline Safety Section and emergency responders. Notice must be provided at the earliest practicable moment and no later than one hour after confirmed discovery. The accident reports required by Section 59.133 will provide the Commission's Pipeline Safety Section, and emergency responders in the case of subsection (e), with additional information regarding pipeline accidents.

The Commission welcomes comment on the accident reporting requirements proposed in Section 59.133, including the timeframe for reporting accidents and the content of a hazardous liquid public utility's accident reports.

§ 59.134. Construction, operation and maintenance, and other reports.

Section 59.134 of the Commission's proposed regulations sets forth requirements for hazardous liquid public utilities reporting construction, operation and maintenance, and other activities. Subsection (b) requires hazardous liquid public utilities to notify the Pipeline Safety Section of (1) proposed major construction, major reconstruction, or major maintenance involving an expenditure in excess of \$300,000 or 10% of the cost of the pipe in service, whichever is less, and (2) 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, 45 days prior to commencement and 10 days prior to commencement, respectively. Subsection (b) also requires hazardous liquid public

utilities to immediately notify the Commission's Pipeline Safety section of excavation damages, washout, or unplanned replacement of any pipeline section or cut out.

Subsections (c), (d), and (e) detail requirements for the content of these notices. For example, a hazardous liquid public utility must provide the following information in its notice to the Commission's Pipeline Safety Section: name, pipeline route, length, of the pipeline, the counties and municipalities traversed, estimated start and completion dates; pipeline identification information; any change in flow direction, and commodity or product. A hazardous liquid public utility may be required to provide additional information regarding, *inter alia*, the following areas upon request from the Commission's Pipeline Safety Section: project information; pipe specifications; operating pressure and stress; welding; railroad, road, and water crossings; valves; minimum cover and clearance; piping; pressure and leakage tests; and pipeline rights-of-way.

Moreover, Section 59.134 addresses notice for variations from a hazardous liquid public utility's established construction methodologies, requiring notice to the Pipeline Safety Section 30 days prior to commencement, and notice prior to the introduction of a hazardous liquid, requiring notice to the Pipeline Safety Section and public officials 30 days prior to introduction. These notification requirements and the other notification requirements in Section 59.134 detailed above will provide the Commission's Pipeline Safety Section, and public officials in the case of hazardous liquid introduction, with further information on construction, operation and maintenance, and other activities.

The Commission seeks comment on the construction, operation and maintenance, and other reporting requirements proposed in Section 59.134, including the types of activities for which notice is required, the timeframe for providing notice, and the content of the notice provided to the Commission's Pipeline Safety Section and the information provided to the Pipeline Safety Section upon request.

§ 59.135. Design requirements.

Section 59.135 of the Commission’s proposed regulations sets forth design requirements for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines. In particular, subsection (b) works in conjunction with 49 CFR 195.410(a) and requires that, in addition to providing external loads for earthquakes, vibration, and thermal expansion and contraction, a hazardous liquid public utility must account for anticipated external loads for landslides, sinkholes, subsidence, and other geotechnical hazards. This requirement is intended to require hazardous liquid public utilities to account external loads for all common geotechnical hazards that may impact pipelines in the Commonwealth.

The Commission seeks comment regarding whether other specific geotechnical hazards should be included in the proposed external load provision at Section 59.135.

§ 59.136. Construction.

Section 59.136 of the Commission’s proposed regulations prescribes construction standards for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines. Subsection (b) addresses pipeline location and provides that, in addition to the requirements of 49 CFR 195.210, no pipeline may be located under private dwelling, industrial buildings, and places of public assembly. Subsections (c) and (d) address welding, providing that miter joints are not permitted and that all welds must be nondestructively tested using the methods set forth in 49 CFR 195.234. Additionally, subsections (e) and (f) establish requirements for cover over buried pipelines and clearances between pipe and underground structures. Subsection (e) works in conjunction with 49 CFR 195.248, and provides for set-interval testing for depth of cover, which will aid in ensuring the proper depth of cover is maintained. Subsection (f) requires a minimum of 12 inches between the outside of a

pipe and any underground structure, including structures owned by the hazardous liquid public utility and foreign structures, without exception.

Further, Section 59.136 addresses valves placement and vehicle barriers. For pipelines transporting HVLs, subsection (g) requires the installation of EFRDs on a main line every five miles and the installation of additional valves based on a pipeline's proximity to schools, churches, hospitals, daycares, nursing facilities, commercial facilities, sport complexes, and public parks with the outer most areas of the LFL. Subsection (g) also requires a hazardous liquid public utility to develop and maintain a risk-based plan addressing valve spacing. Finally, subsection (h) requires a hazardous liquid public utility to install barriers designed to protect against large vehicles at above-ground valve stations adjacent to roadways. These requirements will provide for enhanced shut off capabilities, including remote shut off, and additional protection for valve stations, including protection from large vehicles.

The Commission seeks comment regarding the construction requirements proposed in Section 59.136. We note that, like the design requirements in Section 59.135, the construction requirements detailed above are applicable to hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines. The Commission seeks comment regarding the applicability of these requirements to other hazardous liquid public utilities.

§ 59.137. Horizontal directional drilling and trenchless technology, or direct buried methodologies.

Section 59.137 of the Commission's proposed regulations sets forth requirements for hazardous liquid public utilities using HDD, trenchless technology (TT), or direct buried methodologies in construction or operation and maintenance. Subsection (b) requires a hazardous liquid public utility to provide both a 30-day and a 24-hour notice to the Commission's Pipeline Safety Section and the affected public before beginning HDD,

TT, or direct buried construction or operation and maintenance activities. This requirement will ensure that the Pipeline Safety Section and the affected public receive adequate notice of HDD or TT.

Further, subsection (c) requires hazardous liquid public utilities using HDD or TT for construction or operation and maintenance activities to consider geological and environmental impacts and to comply with DEP Trenchless Technology Technical Guidance. For example, this subsection requires a hazardous liquid public utility to, *inter alia*, conduct a geotechnical evaluation of subsurface conditions along a pipeline facility and conduct geological sampling at locations where suspected anomalous conditions are identified through geophysics, including post-construction geophysics. Subsection (c) also requires the hazardous liquid public utility to provide information, including geotechnical reports, regarding HDD or TT to the Commission's Pipeline Safety Section upon request. These provisions are intended to enhance the safety of hazardous liquid public utilities' service and facilities.

Additionally, Section 59.137 addresses the protection of water wells and supplies. Subsections (d) requires, *inter alia*, that a hazardous liquid public utility comply with all relevant DEP regulations, including but not limited to 25 Pa. Code § 78a.68a and 25 Pa. Code Chapters 102, 105, and 109, and all DEP Trenchless Technology Technical Guidance when using HDD or TT for construction or operation and maintenance activities near private or public water supply sources, such as wells or reservoirs. In the event that HDD, TT, or direct buried methodologies cause adverse impacts for a private or public water supply source, subsection (e) sets forth certain compliance, notification, and corrective action requirements for hazardous liquid public utilities. Like subsection (c), subsections (d) and (e) are intended to enhance safety.

The Commission welcomes comment regarding the provisions addressing a hazardous liquid public utility's HDD, TT, and direct buried methodologies proposed in

Section 59.137, including the requirements for geological testing and the protection of water wells and supplies. The Commission also seeks comment regarding the notice requirements in Section 59.137.

§ 59.138. Pressure testing.

Section 59.138 of the Commission’s proposed regulations sets forth the pressure testing requirements for hazardous liquid public utilities. Section 59.138 works in conjunction with 49 CFR 195.304. Subsection (b) addresses hydrostatic testing and reassessment, and sets forth requirements for pipelines installed before 1970, pipelines installed after 1970, and pipelines that have been placed back in service after a leak has been repaired. Subsection (c) addresses hydrostatic testing in HCAs. Further, subsection (d) requires that a hazardous liquid public utility notify the Commission’s Pipeline Safety Section and public officials prior to beginning testing. Section 59.138 is intended to enhance testing requirements, while ensuring that methods and frequency are suitable for the type of pipeline involved.

The Commission seeks comment regarding the hydrostatic testing requirements proposed in Section 59.138, including the frequency at which testing should be conducted and whether additional testing intervals should be established.

§ 59.139. Operation and maintenance.

Section 59.139 of the Commission’s proposed regulations sets forth operation and maintenance requirements for hazardous liquid public utilities. In particular, this Section provides standards for emergency procedures manuals, liaison activities with emergency responders, liaison activities with school administrators when a school building or facility is within 1,000 feet or within the LFL of a pipeline or pipeline facility, public awareness communications, line markers, inspections of pipeline rights-of-way, leak detection and odorization, and EFRDs in HCAs.

Subsection (b) requires hazardous liquid public utilities to consult with emergency responders in developing and updating an emergency procedures manual. The manual must address (1) steps to inform emergency responders of the practices and procedures to be followed for providing them with information regarding the pipeline, (2) the development of a continuing education program for emergency responders and the affected public, and (3) table-top drills to be conducted twice a year and a response drill to be conducted annually to simulate a pipeline emergency.

Subsections (c) and (d) address liaison activities. As it pertains to emergency responders, subsection (c) requires a hazardous liquid public utility to conduct the liaison activities set forth in 49 CFR 195.402(c)(12) via in-person meetings held twice a year. Subsection (c) prescribes the way in which a hazardous liquid public utility must attempt to arrange these meetings, including via mail, or telephone call, facsimile, or e-mail. A hazardous liquid public utility is permitted to utilize alternative conduct liaison activities by alternative means if attempts to arrange an in-person meeting are unsuccessful. Similarly, subsection (d) requires hazardous liquid public utilities to engage in certain liaison activities with school administrators when a school building or facility is located within 1,000 feet, or within the LFL, of a pipeline or pipeline facility, whichever is greater. For example, a hazardous liquid public utility must appear regularly at school administrator meetings for such schools upon request. The liaison requirements in subsections (c) and (d) are similar to those required by other states, including Texas, and are intended to improve relations between hazardous liquid public utilities and the affected public, emergency responders, and public officials.

Moreover, subsection (e) provides for further hazardous liquid public utility interaction with emergency responders, public officials, and the affected public. Subsection (e) works in conjunction with and goes beyond the practices set forth in API Recommended Practice 1162. For example, subsection (e) requires a hazardous liquid public utility to provide baseline messages to the affected public and emergency

responders at least twice a year and to public officials annually. This subsection also requires a hazardous liquid public utility to hold at least one open house or group meeting with the affected public annually, meet with emergency responders once per quarter, and meet with public officials annually. These requirements are intended to increase communications and information sharing.

The remaining portions of Section 59.139 address the more technical aspects of operations and maintenance. For example, subsection (f) builds upon 49 CFR 195.410 by setting forth requirements for the placement of additional line markers. Subsection (g) likewise builds upon 49 CFR 195.412 by requiring group patrol of pipeline facilities in non-HCAs at least twice a year and ground patrol in HCAs at least four times a year. Section 59.131 defines “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 limit of 25 feet, or other like non-aerial means of traversing a pipeline right-of-way. Further, Section 59.139 addresses leak detection. Subsection (h) builds upon 49 CFR 195.444 by requiring, *inter alia*, leak detection systems that are Real Time Transient Models under API Recommended Practice 1130. A hazardous liquid public utility is required to odorize an HVL pipeline if it does not meet the requirements of subsection (h) within five years. Finally, subsection (i) builds upon 49 CFR 195.452 by requiring a hazardous liquid public utility to install EFRDs in consultation with public officials in all HCAs, based on limiting the LFL to 660 feet on either side of a pipeline. These provisions are intended to enhance the current operation and maintenance requirements for hazardous liquid public utilities.

The Commission seeks comments on the emergency procedures manual, liaison activity, public awareness, line marker, inspection of pipeline rights-of-way, leak detection and odorization, and HCA EFRD requirements proposed in Section 59.139.

§ 59.140. Qualification of pipeline personnel.

Section 59.140 of the Commission’s proposed regulations prescribes requirements for hazardous liquid public utilities qualifying individuals to perform covered tasks on a pipeline facility. Section 59.140 of the proposed regulations defines “covered task.” The term “covered task” carries the same meaning as in 49 CFR 195.501, but also includes a construction task identified by a hazardous liquid public utility.

Section 59.140 works in conjunction with 49 CFR 195.505, which requires the development of a written qualification program meeting certain criteria. Subsection (b) requires that a hazardous liquid public utility’s qualification program also include (1) the adoption of the provisions for a written qualification program for construction tasks, (2) a process that trains all individuals qualified to identify and react to facility specific abnormal operating conditions, and (3) requalification intervals for each covered task. Additionally, subsection (c) makes the record keeping requirements for covered tasks in 49 CFR 195.507 applicable to construction tasks. These additional requirements will provide increased training opportunities for individuals performing covered tasks and enhanced oversight of pipeline personnel.

The Commission welcomes comment on the additional qualification program requirements proposed in Section 59.140, including the definition of “covered task.”

§ 59.141. Land agents.

Section 59.141 of the Commission’s proposed regulations sets forth requirements for hazardous liquid public utilities employing or contracting land agents. In particular, Section 59.141 requires land agents to hold a valid Pennsylvania professional license 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. This requirement will prevent hazardous liquid public utilities from employing

or contracting individuals who are not properly qualified to act as a land agent and provide additional accountability in the performance of land agent work or services.

The Commission seeks comment regarding the need for additional requirements addressing hazardous liquid public utilities employing or contracting land agents.

§ 59.142. Corrosion control.

Section 59.142 of the Commission's proposed regulations prescribes the requirements for hazardous liquid public utilities protecting pipelines against corrosion. Subsection (b) requires written procedures for the design, installation, operation, and maintenance of cathodic protection systems, including, *inter alia*, the average and the worst-case corrosion rate experienced for each pipeline segment. Subsections (c) and (d) address the level of cathodic protection that a cathodic protection system must provide and the frequency at which a hazardous liquid public utility is required to test a cathodically-protected pipeline, respectively. Subsection (e) requires a hazardous liquid public utility to conduct close interval surveys, including paved surfaces, every three years and to adhere to the standards set forth in NACE International Standard Practice 0207-2007, *Performing Close-Interval Potential Surveys and DC Surface Potential Gradient Surveys on Buried or Submerged Metallic Pipelines* (March 10, 2007).⁴

The Commission seeks comment regarding the cathodic protection provisions proposed in Section 59.142, including the level of cathodic protection and the frequency of testing to determine the adequacy of cathodic protection. The Commission also seeks comment regarding the requirements for close interval surveys and interference currents at Section 59.142. Finally, the Commission welcomes comment regarding the need for any additional corrosion control measures.

⁴ NACE International was initially the National Association of Corrosion Engineers. NACE International and the Society for Protective Coatings are now the Association for Materials Protection and Performance.

CONCLUSION

For the reasons set forth above, the Commission commences the rulemaking process. The Commission seeks comments from all interested parties regarding the proposed regulations in the Annex to this Notice of Proposed Rulemaking as well as regarding the need for any additional provisions addressing hazardous liquid pipeline safety standards within the Commission's jurisdiction.

Accordingly, under Sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 1501; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we are considering adopting the proposed regulations set forth in Annexes A and B, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That a proposed rulemaking be opened to consider the regulations set forth in the Annex.
2. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and the Annex to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review for fiscal impact.
3. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and the Annex for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees.

4. That the Law Bureau shall deposit this Notice of Proposed Rulemaking Order and the Annex with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That interested parties may submit written comments, via the Commission's electronic filing system, referencing Docket No. L-2019-3010267 within sixty (60) days from the date the Notice of Proposed Rulemaking Order is published in the *Pennsylvania Bulletin*, and reply comments thirty (30) days thereafter. Comments shall be filed consistent with the Commission's July 27, 2020 Secretarial Letter. *Modification to Filing and Service Requirements Emergency Order*, Docket No. M-2020-3019262 (Secretarial Letter issued July 27, 2020). Pursuant to this Secretarial Letter, all filings are to be made by e-filing or by electronic mail. This information can be found on the Commission's website at www.puc.pa.gov/filing-resources/efiling/.

6. That the Secretary shall serve this Notice of Proposed Rulemaking Order and Annex upon all jurisdictional hazardous liquids public utilities; the Office of Consumer Advocate; the Office of Small Business Advocate; and the Commission's Bureau of Investigation and Enforcement.

7. That a copy of this Order and Annex shall be posted on the Commission's website, www.pa.puc.gov, at the web page for *Pipeline Safety*.

8. The contact persons for this matter are Assistant Counsel Colin W. Scott, (717) 783-5949, colinscott@pa.gov; Hayley E. Dunn, (717) 214-9594, haydunn@pa.gov; Adam D. Young, (717) 787-4700, adyoung@pa.gov; Erin N. Tate, (717) 214-1956, etate@pa.gov; and Melanie J. El Atieh, (717) 783-2811, melatieh@pa.gov in the Commission's Law Bureau.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 15, 2021

ORDER ENTERED: July 15, 2021