

Client Alert

Energy Regulation Practice Group

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PHMSA Issues Interim Final Rule on Underground Natural Gas Storage Safety

Incorporation of Industry Recommended Practices to Jumpstart Federal Oversight

On December 14, 2016, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an Interim Final Rule (IFR or Rule) addressing critical safety issues related to downhole facilities, including wells, wellbore tubing, and casing, incorporated in underground natural gas storage facilities.¹ This Rule will impose significant new requirements on operators of underground natural gas storage facilities, and will require compliance in a compressed time frame. PHMSA has described the IFR as a “first step” in improving safety that enables PHMSA to commence inspection and enforcement activities focused on underground natural gas storage facilities as soon as the rule is effective.

PHMSA’s IFR responds to Section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act), which requires PHMSA to issue regulations imposing safety-related requirements on underground natural gas storage facilities within two years of enactment. Congress added this provision of the PIPES Act in response to the unprecedented 2015-16 leak experienced at the Aliso Canyon natural gas storage facility in southern California.

The core of the IFR incorporates by reference two American Petroleum Institute (API) Recommended Practices: API RP 1170, “Design and Operation of Solution-mined Salt Caverns used for Natural Gas Storage,” and API RP 1171, “Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs.” The regulations promulgated under the IFR will take effect 30 days after publication in the *Federal Register* (meaning that the new rules will most likely become effective around January 20, 2017).

PHMSA chose to use an Interim Final Rule because it found that any delay in adopting the API Recommended Practices would pose a threat to public safety and the environment. PHMSA noted that federal law authorizes it to proceed on an emergency basis because traditional notice and comment rulemaking would be impracticable under the circumstances. Interested parties therefore have not yet had an opportunity to comment on the proposed provisions. PHMSA has, however, established a 60 day comment period, which will run following publication of the Interim Final Rule in the *Federal Register*. PHMSA indicates that it will consider any comments received in issuing a “Final Final Rule,” and

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notes that it will consider such comments in developing subsequent underground natural gas storage safety rulemakings.

The two API Recommended Practices urge that operators of underground natural gas storage facilities implement a wide range of practices, addressing construction, maintenance, risk-management, and integrity-management procedures. API developed the Recommended Practices through a consensus process that involved input from industry participants and other stakeholders. Accordingly, the Recommended Practices have a high degree of acceptance among operators of natural gas storage facilities. This acceptance was demonstrated in early 2016 when the Intrastate Natural Gas Association of America (INGAA), a major natural gas pipeline trade association, petitioned PHMSA to incorporate the two Recommended Practices in its safety regulations.

The Interim Final Rule adds § 192.12 to PHMSA's Part 192 safety regulations. This new section requires that all underground natural gas storage facilities, including existing and to be constructed facilities, meet the requirements of the Recommended Practices. New storage facilities must meet all of the applicable Recommended Practice's requirements, while existing facilities are required to meet portions of the Recommended Practices that address operations, maintenance, integrity and related activities applicable to previously constructed facilities. Operators of existing storage facilities must meet the specified requirements of the Recommended Practices within twelve months after the effective date of the rule.

Storage operators are required to establish and follow written procedures governing operations, maintenance, and emergencies which implement the requirements of the Recommended Practices. Noting that the Recommended Practices incorporate permissive language (such as use of the word "should"), PHMSA states in the Rule that provisions stated as recommendations in the Recommended Practices are adopted as mandatory provisions in the IFR, except when the operator provides written justification as to why compliance with a provision is not practicable and not necessary for safety.

In addition to adopting the two Recommended Practices, the IFR requires storage operators to prepare and file annual reports, incident reports, safety-related condition reports, and National Registry information. The annual and National Registry reports are primarily informational, intended to allow PHMSA to monitor underground natural gas storage facilities throughout the United States, while the incident and safety-related condition reports are to be filed only to report specific events or conditions as they may occur at individual facilities. The first annual reports are due six months after the rule is effective (midsummer 2017).

King & Spalding is working with clients that own and/or operate underground natural gas storage facilities to develop compliance programs incorporating the requirements of the new PHMSA regulations. Please contact us if you have any questions regarding the new regulations or the development of compliance programs implementing them, or if you would like to file comments regarding the Interim Final Rule.

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¹ The Interim Final Rule is available on PHMSA's website at:

http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Underground_Natural_Gas_Storage_Interim_Final_Rule_Corrected.pdf.