



VIA ELECTRONIC FILING

April 12, 2022

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Docket No. L-2019-3010267, Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59

To Whom It May Concern:

I. Introduction

On February 12, 2022, the Pennsylvania Public Utilities Commission (PAPUC or the Commission) published in the Pennsylvania Bulletin a notice of proposed rulemaking (NOPR), titled “Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59.”¹ The NOPR proposes to amend Pennsylvania’s regulations for public utilities that transport petroleum products and other hazardous liquids. The Commission asked the public to submit comments on the NOPR within 60 days.² The American Petroleum Institute (API),³ Association of Oil Pipelines (AOPL),⁴ GPA Midstream Association (GPA),⁵ and the American

¹ Pennsylvania Public Utilities Commission, Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Notice of Proposed Rulemaking, 52 Pa. Bull. 992 (Feb. 12, 2022) (hereinafter “NOPR”).

² *Id.* at 1000.

³ API represents all segments of America’s natural gas and oil industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our nearly 600 members produce, process, and distribute the majority of the nation’s energy, and participate in API Energy Excellence®, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability.

⁴ AOPL promotes responsible policies, safety excellence, and public support for liquids pipelines. AOPL represents pipelines transporting 97 percent of all hazardous liquids barrel miles reported to the Federal Energy Regulatory Commission. AOPL’s diverse membership includes large and small pipelines carrying crude oil, refined petroleum products, NGLs, and other liquids.

⁵ GPA Midstream has served the U.S. energy industry since 1921 and has nearly 60 corporate members that directly employ more than 75,000 employees that are engaged in a wide variety of services that move vital energy products such as natural gas, natural gas liquids (NGLs), refined products and crude oil from production areas to markets across the United States, commonly referred to as “midstream activities.” The work of our members indirectly creates or impacts an additional 450,000 jobs across the U.S. economy. GPA Midstream members recover more than 90% of the NGLs such as ethane, propane, butane, and natural gasoline produced in the United States from more than 400 natural gas processing facilities. In 2017-2019 period, GPA Midstream members spent over \$105 billion in capital improvements to serve the country’s needs for reliable and affordable energy.

Fuel & Petrochemical Manufacturers (AFPM)⁶ (collectively, the Associations) support the Commission’s goal of improving the safety of hazardous liquid pipelines and are respectfully submitting the following comments in response to the NOPR.

II. Comments

a. Section 59.33: Safety.

In the NOPR, PAPUC proposes to amend Section 59.33 by adding references to “hazardous liquid” and “Part 195” in paragraph (b) and to include a new definition for “hazardous liquid public utility” in paragraph (c). The Associations are generally supportive of the proposed changes to Section 59.33(b), which improve the clarity of the Commission’s pipeline safety regulations. However, the Associations are not convinced that the addition of the new paragraph (c) is necessary, given PAPUC’s subsequent proposal to include that same definition in Section 59.132. The Commission should consider whether “hazardous liquid public utility” needs to be defined in both provisions.

The Associations also suggest that the title of Section 59.33 be changed from “Safety” to “Federal pipeline safety standards”. Such a title would more accurately describe the purpose of Section 59.33, which is to incorporate the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) minimum federal pipeline safety standards in 49 C.F.R. Parts 191 to 193, 195, and 199 into the PAPUC regulations for gas and hazardous liquid public utility pipelines.

b. Section 59.131: Purpose

In the NOPR, PAPUC proposes to add a new Section 59.131 to describe the purpose of the pipeline safety standards for hazardous liquid public utilities. While the Associations are not opposed to the new regulation, there are some changes that would improve the clarity of the proposed provisions.

The Commission proposes to reference the Hazardous Liquid Pipeline Safety Act (HLPSA) in the regulation. Enacted in 1979, the HLPSA was the original federal law that established PHMSA’s hazardous liquid pipeline safety program. In 1994, however, the U.S. Congress recodified the pipeline safety laws and merged the provisions in the HLPSA together with the provisions in the Natural Gas Pipeline Safety Act (NGPSA), the original federal law that established PHMSA’s gas pipeline safety program. Since the recodification, references to the

⁶ AFPM is a national trade association representing most U.S. refining and petrochemical manufacturing capacity. AFPM’s member companies produce the gasoline, diesel, and jet fuel that drive the modern economy, as well as the petrochemical building blocks that are used to make the millions of products that make modern life possible—from clothing to life-saving medical equipment and smartphones. As such, AFPM members strengthen economic and national security while supporting more than 3 million jobs nationwide. To produce these essential goods, AFPM members depend on all modes of transportation to move their products to and from refineries and petrochemical facilities and have made significant infrastructure investments to support and improve the safety and efficiency of the transportation system. AFPM member companies depend upon an uninterrupted, affordable supply of crude oil and natural gas as feedstocks for the transportation fuels and petrochemicals they manufacture. Pipelines are the primary mode for transporting crude oil and natural gas to refiners and petrochemical facilities and refined products from those same facilities to distribution terminals serving consumer markets.

HLPSA and NGPSA are typically only used for historical purposes in describing the versions of the pipeline safety laws that existed prior to 1994. The Associations suggest that, to the extent that PAPUC determines that such a reference is necessary, the phrase “Federal Pipeline Safety Act” or “Federal Pipeline Safety Laws” be used in lieu of the reference to the HLPSA in the new regulations. That is a more accurate description of the statute that currently authorizes the federal pipeline safety program for gas and hazardous liquid pipeline facilities.

The Associations further suggest that the proposed language in Section 59.131 be modified to eliminate extraneous or unnecessary language. As previously discussed, Section 59.33 already makes PHMSA’s federal pipeline safety standards applicable to hazardous liquid public utility pipeline facilities in the Commonwealth. The first sentence in the first paragraph of Section 59.131 simply reiterates that principle without serving any other useful purpose. The Associations suggest that the Commission consider whether to eliminate that duplicative reference from the new regulation.

In addition, the Associations suggest that PAPUC consider consolidating the remainder of the language in the proposed regulation to better reflect the purpose of the requirements in Sections 59.132 to 59.143, *i.e.*, to prescribe the additional or more stringent safety standards for hazardous liquid public utility pipelines as provided in the Federal Pipeline Safety Act. Those additional or more stringent safety standards, as the Commission acknowledges in the proposed text of Section 59.131, must be compatible with PHMSA’s federal safety standards under the preemption provision in 49 U.S.C. § 60104(c). For these reasons, the Associations suggest that PAPUC consolidate and revise the language in Section 59.131 to read as follows:

§ 59.131. Purpose.

The purpose of §§ 59.131—59.143 (relating to hazardous liquid public utility safety standards) is to set forth **additional or more stringent pipeline** safety standards for all hazardous liquid public utilities in the Commonwealth **as provided in 49 U.S.C. § 60104(c) (relating to preemption)**. These sections establish design and construction standards for hazardous liquids public utilities constructing new pipelines and converting, relocating, replacing, or otherwise changing existing pipelines, as well as accident reporting, other reporting, HDD and TT, pressure testing, operations and maintenance, qualification of pipeline personnel, land agent, and corrosion control standards for all hazardous liquids public utilities.

c. Section 59.132: Definitions.

In the NOPR, PAPUC proposes to set forth in Section 59.132 “general definitions pertinent to the regulation of hazardous liquid pipeline safety.”⁷ The Associations generally support the addition of definitions to improve the clarity of the Commission’s regulations but are concerned that some of the proposals do not accomplish that objective.

⁷ NOPR, 52 Pa. Bull. at 996.

The NOPR proposes to define the term “HLPSA—Hazardous Liquid Pipeline Safety Act of 1979” for purposes of the requirements in Sections 59.131 to 59.143.⁸ As previously noted, the HLPSA is the original federal law that authorized PHMSA’s hazardous liquid pipeline safety program. While references to that law are still relevant for historical purposes, the U.S. Congress merged the provisions in the HLPSA and NGPSA together in a 1994 re-codification of the federal pipeline safety laws. To the extent that a definition is necessary, the Associations recommend that a more modern term, such as “Federal Pipeline Safety Act” or “Federal Pipeline Safety Laws”, be used in Section 59.132.

The NOPR defines “hazardous liquid public utility” as “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.”⁹ As previously stated, the Associations recommend that PAPUC consider whether this definition can be applied by reference to Section 59.33 to eliminate redundancy in the new regulations.

The Associations also request the definition of “hazardous liquid” include a reference to 49 C.F.R. § 195.2, similar to the proposed definition of “HVL.”¹⁰ Finally, to the extent that Section 59.132 refers to documents that are incorporated by reference, the Associations stress the importance of referencing the editions that are incorporated in PHMSA’s regulations. These recommendations will provide consistency with the Federal pipeline safety regulations and avoid confusion within the regulated community.

d. Section 59.133: General.

In Section 59.133, PAPUC proposes to establish general provisions applicable to hazardous liquid public utilities.¹¹ The proposal addresses, among other things, the incorporation of Federal pipeline safety standards and amendments, as well as pipeline conversions.

The Associations note that the proposed language in Section 59.133(a) is unnecessary. As previously discussed, Section 59.33 already makes PHMSA’s federal pipeline safety standards applicable to hazardous liquid public utility pipeline facilities in the Commonwealth. The proposed requirement in Section 59.133(a) simply restates that principle without serving any other useful purpose. Accordingly, the Associations recommend that the Commission consider whether that language can be deleted from the provision.

The Associations urge the Commission to revise the proposed conversion-to-service requirements in Section 59.133(d). The reference in Section 59.133(d)(1) to “this part” is confusing and should be modified to refer to “49 C.F.R. Part 195,” which is the source of authority for PHMSA’s conversion-to-service requirements. The proposed reference to “bi-directional flow” is also confusing as that operating characteristic is not relevant in determining whether a

⁸ *Id.* at 1001.

⁹ *Id.* at 996.

¹⁰ *Id.* at 1001.

¹¹ *Id.* at 996.

pipeline is subject to PHMSA's conversion-to-service requirements.¹² The only relevant consideration is whether the pipeline was previously used in a service subject to Part 195. As such, the Associations urge PAPUC to eliminate the proposed reference to "bi-directional flow" in Section 59.133(d)(1).

The Associations do not support the proposal in Section 59.133(d)(2) to incorporate a PHMSA Advisory Bulletin (ADB) titled Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service.¹³ PHMSA's ADBs provide guidance to the regulated community and do not have the force and effect of law. PHMSA does not follow the notice-and-comment rulemaking requirements in the Administrative Procedure Act and Pipeline Safety Act in issuing ADBs, and PHMSA can repeal or modify the guidance provided in an ADB at any time without providing affected stakeholders with prior notice or the opportunity to comment. For these reasons, the Associations do not support the proposed reference to PHMSA's ADB in Section 59.133(d)(2) and urge the Commission eliminate that provision from the new regulations.

e. Section 59.134: Accident Reporting.

In Section 59.134, PAPUC proposes to establish additional accident reporting requirements for hazardous liquid public utilities.¹⁴ "Subsections (b) and (c) require that, after any accident causing the conditions described in 49 CFR 195.50," a pipeline operator "must provide a failure analysis report and a root cause analysis report to the Commission[] . . . within 120 days of the accident or within 10 days of report completion, whichever comes first."¹⁵ Those analyses must also be performed by an independent third-party that is approved by the Commission.¹⁶ "Subsection (e) requires that, after the release of a hazardous liquid causing the conditions described in 49 CFR 195.52," a pipeline operator "must provide immediate notice" to the Commission, not to exceed one hour.¹⁷

The Associations note that Part 195 already prescribes notification and reporting requirements¹⁸ and requires operators to "Analyz[e] pipeline accidents to determine their causes."¹⁹ PAPUC does not identify any inadequacies in the existing PHMSA regulations in the NOPR or offer a justification for the additional requirements or explain how they will advance pipeline safety.

Nor does the Commission provide a rationale for requiring the use and approval of an independent third-party in analyzing all of the events that meet the criteria in 49 C.F.R. § 195.50. PAPUC does not impose similar requirements on other industries or entities within its jurisdiction

¹² 49 C.F.R. § 195.5.

¹³ NOPR, 52 Pa. Bull. at 1002 (incorporating by reference Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service, PHMSA Advisory Bulletin ADB-2014-04, 79 Fed. Reg. 56121 (Sept. 18, 2014), as well as any updates thereto).

¹⁴ *Id.* at 996.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 997.

¹⁸ 49 C.F.R. §§ 195.50, 195.52.

¹⁹ *Id.* § 195.402(c)(5).

such as gas pipeline transportation,²⁰ railroad transportation,²¹ air transportation,²² electric utilities,²³ telephone utilities,²⁴ or water utilities.²⁵

Section 195.50 also requires accident reporting for events that do not warrant the performance of an independent third-party analysis, including releases that result in “estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or both, exceeding \$50,000.”²⁶ The Commission does not explain why an independent third-party analysis is necessary for these types of events, which can occur entirely on the grounds of an operator’s property without creating any risk to public safety.

The Associations suggest the PAPUC limit the additional accident reporting requirements in Section 59.134(b)-(d) to events that meet criteria in 49 C.F.R. § 195.50(a), (c), or (d). These types of events, which involve explosions or fires not intentionally set by the operator, fatalities, or personal injuries that require hospitalization, create the kind of risk to public safety that could justify the additional requirements proposed by the Commission.

f. Section 59.135: Construction, operation and maintenance, and other reports.

In Section 59.135, PAPUC proposes to establish reporting requirements for construction, operation, and maintenance activities.²⁷ Under this proposal, hazardous liquid public utilities must provide advance notice to the Commission of, among other things, major projects “in excess of \$300,000 or 10% of the cost of the pipe in service, whichever is less”; maintenance activities in excess of \$50,000; the unearthing of certain pipeline anomalies; immediate notice of “[e]xcavation damages, washouts, or unplanned replacements”; a variation in construction methodologies; or the introduction of a hazardous liquid.²⁸

The Associations do not believe that the proposed monetary thresholds for the advance notification requirements for certain major projects is reasonable. PHMSA uses a \$10 million threshold in its 60-day advance notification requirements in 49 C.F.R. § 195.64(c)(1), which is more than 30 times greater than the \$300,000 threshold that the Commission is proposing for major projects. Using the monetary threshold proposed by PAPUC would require advance notification of various types of routine maintenance work, which cannot be fairly characterized as major projects. The Associations recommend the PAPUC assess whether it is staffed to timely respond to the influx of notifications that can be expected under this section.

Concerning the proposed maintenance notification requirements, the Associations recommend the PAPUC increase this threshold to avoid unnecessary notifications and overburdening its staff. The Commission should also include a provision in any advance

²⁰ 52 Pa. Code § 59.11.

²¹ *Id.* § 33.14.

²² *Id.* § 27.10.

²³ *Id.* § 57.11.

²⁴ *Id.* § 63.65.

²⁵ *Id.* § 65.2.

²⁶ 49 C.F.R. § 195.50(e).

²⁷ NOPR, 52 Pa. Bull. at 1002.

²⁸ *Id.* at 1003.

notification requirement that allows an operator to provide the notification after the applicable deadline if compliance is not practicable due to unforeseen circumstances, an emergency, or where an immediate repair is required under PHMSA's regulations.²⁹ PHMSA includes a similar provision in its 60-day advance notification requirement in 49 C.F.R. § 195.64(c)(1)(i) and failing to provide a safe harbor provision would create a potential conflict and incompatibility with an operator's obligations under Part 195.

Concerning washouts and excavation damage, the Associations suggest the Commission replace "immediately" with "upon confirmed discovery" as defined in 49 C.F.R. § 195.2. PAPUC should also align these requirements with PHMSA's 2019 hazardous liquid rule, which requires an inspection of a pipeline following an extreme weather event.³⁰ PHMSA's FAQs for the rule require an inspection only "after the cessation of the event or when the operator has determined that it is safe to access the area."³¹

As for the proposed advance notification requirement for a variation in construction activities, the Associations believe this requirement is impractical. It is not uncommon for engineers to change their construction methodologies due to unforeseen factors, such as site-specific conditions discovered during construction. An advance notification requirement would unjustifiably delay the construction process, is overly burdensome, costly, and does not contribute to pipeline safety. The Associations suggest a no-object option, whereby operators may continue construction activities after notification to the PAPUC. This would avoid construction crews waiting idle on a confirmation from the PAPUC every time a change occurs.

g. Section 59.136: Design requirements.

Section 59.136 proposes to establish additional design requirements for "hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines."³² Specifically, the proposal would require operators to account for "landslides, sinkholes, subsidence, and other geotechnical hazards" in addition to the other requirements for external loads in 49 C.F.R. § 195.110(a).³³

The Associations note that retroactively applying the proposed additional design requirements to converted pipelines creates a direct conflict with PHMSA's regulations.³⁴ As the rulemaking history makes clear, PHMSA's conversion-to-service requirements exist to provide operators with a process for placing previously-unregulated pipelines in Part 195 service without requiring compliance with the design requirements.³⁵ Operators are only required to review the design history of the pipeline and, if sufficient historical records are not available, to conduct

²⁹ See 49 C.F.R. § 192.933(d)(1).

³⁰ Pipeline Safety: Safety of Hazardous Liquid Pipelines, 84 Fed. Reg. 52,260, 52,268-269 (Oct. 1, 2019).

³¹ PHMSA, Frequently Asked Questions for the Final Rule titled, "Pipeline Safety: Safety of Hazardous Liquid Pipelines," published on October 1, 2019, FAQ-12 (Nov. 30, 2020), <https://www.phmsa.dot.gov/regulatory-compliance/phmsa-guidance/frequently-asked-questions-faqs-pipeline-safety-safety>.

³² NOPR, 52 Pa. Bull. at 1004.

³³ *Id.*

³⁴ 49 C.F.R. § 195.5.

³⁵ Transportation of Liquids by Pipeline, Conversion of Existing Pipelines to Liquid Service, 43 Fed. Reg. 6,786 (Feb. 16, 1978).

appropriate tests to demonstrate that the pipeline is in satisfactory condition for safe operation. Operators are not “designing a pipeline” as part of the conversion-to-service process and cannot be required to retroactively comply with an additional design requirement for anticipated external loads. Such a requirement is clearly incompatible with the text, structure, and history of PHMSA’s conversion-to-service requirements.³⁶ The Associations urge the Commission to eliminate the reference to “converting” pipelines from the text of the final regulation.

Concerning the design requirements, 49 C.F.R. Section 195.110 provides a list of external loads to be considered when designing a pipeline, including landslides, sinkholes, subsidence, and other geotechnical hazards.³⁷ Section 195.110(a) requires operators to follow section 419 of ASME/ANSI B31.4 in providing for a pipeline’s expansion and flexibility.³⁸ The Associations note that section 419 focuses on the sufficiency of a pipeline’s ability to absorb episodes of thermal expansion and contraction.³⁹ While this section is appropriate for anticipating external loads such as earthquakes, vibration, thermal expansion, and contraction, it is misplaced in the NOPR and should not be referenced in Section 59.136.

Finally, the Associations note that an API standard is currently under development that will address pipeline geohazards, and the Interstate Natural Gas Association of America (INGAA) recently published a white paper titled “Guidelines for Management of Landslide Hazards for Pipelines” that the industry uses to manage the risk of geohazards.⁴⁰ The Associations encourage the PAPUC to postpone the proposed requirements in Section 59.136 and revisit the topic once an industry-wide standard is developed. The Associations also welcome participation from the PAPUC in the standard development process.

h. Section 59.137: Construction.

Section 59.137 proposes to establish requirements for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines.⁴¹ The proposed requirements include pipeline location restrictions, a prohibition on miter joints, depth of cover standards, clearance requirements between pipe and other underground structures, valve location and spacing requirements, and a requirement for vehicle barriers to protect above ground valves.

As indicated in the comments provided on Section 59.136, the Associations note that retroactively applying the proposed additional construction requirements to converted pipelines creates a direct conflict with PHMSA’s regulations.⁴² PHMSA’s conversion-to-service requirements exist to provide operators with a process for placing previously-unregulated pipelines

³⁶ See 49 U.S.C. § 60104(c).

³⁷ Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59, Pa. Bull. at 1004.

³⁸ 49 C.F.R. § 195.110(a).

³⁹ ASME/ANSI B31.4-2006, Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids, § 419 (Oct. 20, 2006).

⁴⁰ INGAA, Guidelines for Management of Landslide Hazards for Pipelines (Aug. 17, 2020), <https://www.ingaa.org/Foundation/FDNreports/38063.aspx>.

⁴¹ NOPR, 52 Pa. Bull. at 1004.

⁴² 49 C.F.R. § 195.5.

in Part 195 service without requiring compliance with the construction requirements.⁴³ Operators are only required to review the construction history of the pipeline and, if sufficient historical records are not available, to conduct appropriate tests to demonstrate that the pipeline is in satisfactory condition for safe operation. Operators are not “constructing new pipelines” as part of the conversion-to-service process and cannot be practicably required to comply with additional construction requirements, including retroactive limitations on pipeline location, welding, depth-of-cover, underground clearance, and valves. These limitations effectively ban operators of certain existing pipelines from using the conversion-to-service process, a requirement that is clearly incompatible with the text, structure, and history of PHMSA’s regulations.⁴⁴ The Associations urge the Commission to eliminate the reference to “converting” pipelines from the text of the final regulation.

In Section 59.137(b), PAPUC proposes to prohibit pipelines from being located in certain areas. Unlike PHMSA’s pipeline location requirements in 49 C.F.R. § 195.210, which include a practicability limitation and a provision for requiring additional depth of cover in certain situations, the Commission’s proposal would create an outright ban. PAPUC offers no justification for that extreme proposal or discussion on the potential impacts of prohibiting pipeline installations in these locations. Nor does the Commission acknowledge that the ban would prohibit operators from repairing or replacing existing pipelines in these locations. If the proposed language is adopted, operators would have to violate Section 59.137(b) to perform these activities. To avoid that result, the Commission should make clear that any such prohibition does not apply to the repair or replacement of existing pipelines in the prescribed locations.

Concerning the proposed prohibition on miter joints under Section 59.137(c), the Associations would like to inform the Commission that, in some circumstances, a pipeline may become insignificantly misaligned. PAPUC should allow deflections up to three degrees caused by misalignment, as prescribed in 49 C.F.R. Section 195.216. Section 59.137(e)(1) of the NOPR requires pipeline operators to maintain a 40-inch depth of cover for pipelines under active commercial farms that have been cultivated two or more of the past five years. PAPUC should account for the fact that operators will be unable to maintain this depth of cover in those circumstances where a landowner digs too deep. The Associations recommend that PAPUC provide an impracticability exception to this Section, allowing for non-compliance if impractical to do so. As for the clearance requirements between pipe and other underground structures in Section 59.137(f), the Associations suggest an exemption when another utility encroaches on the pipeline.

Regarding the valve requirements in Section 59.137(g), the Associations strongly urge the Commission to rescind its proposal and defer to the provisions in the final rule that PHMSA issued earlier this month.⁴⁵ The NOPR would require operators to install an emergency flow restricting device (EFRD) on a mainline with lateral spacing not to exceed five miles. The NOPR’s definition

⁴³ Transportation of Liquids by Pipeline, Conversion of Existing Pipelines to Liquid Service, 43 Fed. Reg. 6786.

⁴⁴ See 49 U.S.C. § 60104(c).

⁴⁵ See Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards, Final Rule, 87 Fed. Reg. 20940 (Apr. 8, 2022).

of EFRD references the federal definition. The term EFRD is defined in 49 C.F.R. Section 195.450, which defines terms used in the Part 195 integrity management requirements. The term EFRD, as used in Section 59.137(g) of Commission’s proposal, can be read as only applying to those mainline segments located in high consequence areas (HCAs). The NOPR’s use of the term differs from that in Part 195 in that federal integrity management regulations require operators to perform a risk assessment and then determine whether an EFRD is necessary.⁴⁶ The Associations recommend the PAPUC defer to federal regulations concerning the use of EFRDs.

Further, PHMSA recently issued a final rule concerning the function, use, and placement of automatic or remote-controlled shutoff valves.⁴⁷ The rule underwent a robust notice and comment period and was vetted by PHMSA’s technical advisory committees and the Office of Management and Budget. The Associations also note that arbitrary valve spacing requirements may inadvertently lead to serious pipeline safety concerns. If valves on a hazardous liquid pipeline are incorrectly placed or improperly closed, it may cause a water hammer effect, or a pressure wave that may damage or destroy the pipeline. As such, PAPUC should defer to the federal rule as opposed to imposing its own valve spacing requirements.

Finally, Section 59.137(h) of the NOPR requires the installation of vehicle barriers at above-ground valve stations “adjacent” to roadways. The barriers must be designed to protect against the “largest types of vehicles”. The Associations believe these terms are ambiguous and should be clarified in the final regulation.

i. Section 59.138: Horizontal directional drilling and trenchless technology, or direct buried methodologies.

Section 59.138 proposes to establish requirements for hazardous liquid utilities using horizontal directional drilling (HDD), trenchless technologies (TT), or direct buried methodologies for constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines.⁴⁸ The proposal would prescribe HDD notification requirements, geologic and environmental considerations, and water well protection standards.⁴⁹

As indicated in the comments provided on Sections 59.136 and 59.137, retroactively applying the proposed requirements for HDD, TT, and direct buried methodologies to converted pipelines creates a direct conflict with PHMSA’s regulations.⁵⁰ PHMSA’s conversion-to-service requirements exist to provide operators with a process for placing previously-unregulated pipelines in Part 195 service without requiring compliance with the construction requirements.⁵¹ The proposed construction requirements for HDD, TT, and direct buried methodologies effectively ban operators of certain existing pipelines from using the conversion-to-service process, a requirement that is clearly incompatible with the text, structure, and history of PHMSA’s regulations.⁵² The

⁴⁶ 49 C.F.R. § 195.452.

⁴⁷ See PHMSA, Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards, 87 Fed. Reg. 20940.

⁴⁸ NOPR, 52 Pa. Bull. at 1004.

⁴⁹ *Id.*

⁵⁰ 49 C.F.R. § 195.5.

⁵¹ Transportation of Liquids by Pipeline, Conversion of Existing Pipelines to Liquid Service, 43 Fed. Reg. 6786.

⁵² See 49 U.S.C. § 60104(c).

Associations urge the Commission to eliminate the reference to “converting” pipelines from the text of the final regulation.

Section 59.138(b) would require operators to notify PAPUC and affected public 30 days prior to the commencement of drilling, and again 24 hours prior to commencement. The proposed requirement does not consider emergency situations where advance notice is not possible. The Associations suggest that the Commission include an exception for such circumstances. The Associations also suggest PAPUC exempt operations and maintenance (O&M) activity from the requirements in Section 59.138(d), which requires operators to identify public and private water wells near the pipeline. This proposal is unnecessarily burdensome and could delay critical O&M activities, potentially compromising safety.

j. Section 59.139: Pressure Testing.

Section 59.139 proposes to establish requirements for a hazardous liquid pipeline public utility conducting pressure testing.⁵³ PAPUC does not explain the significance of its pre- and post-1970 timeframes. Many of the federal gas pipeline safety laws were established in the 1970s.⁵⁴ The significance in this context is that many pipelines constructed prior to 1970 were unregulated. Liquid pipelines, in contrast, were not added to the statute until 1979, making the pre- and post-1970 distinction irrelevant in this context.⁵⁵ 49 C.F.R. Part 195 references the year 1970 in the context of low-frequency electric resistance welded (ERW) pipe and its susceptibility to selective seam weld corrosion (SSWC).⁵⁶ The Associations request the PAPUC explain why it has chosen these dates. If the intent of the Commission is to target SSWC, it should abandon its proposal and defer to federal regulations, specifically, the guidance provided in Part 195, Appendix B.

The Associations also question the applicability of the Commission’s proposal in Section 59.139. It requires operators of pipelines installed prior to 1970 to hydrostatically test those lines every 10 years and inspect them using an inline inspection (ILI) tool every two years.⁵⁷ Many pre-1970 pipelines, however, were not designed for the passage of ILI tools, and operators could not comply with the proposed requirement without modifying these facilities. Nor does PAPUC’s proposal account for the presence of pipeline facilities in HCAs that are exempt from PHMSA’s ILI accommodation requirements, including “(1) Manifolds; (2) Station piping such as at pump stations, meter stations, or pressure reducing stations; (3) Piping associated with tank farms and other storage facilities; (4) Cross-overs; [and] (5) Pipe for which an instrumented internal inspection device is not commercially available[.]”⁵⁸ These facilities are not required to accommodate ILI tools under PHMSA’s regulations, and the Commission provides no justification for overriding that exception.

Finally, the Associations suggest modifications to Section 59.139(b)(3), which requires “[a] pipeline that has been placed back in service after a leak has been repaired [to] be reassessed

⁵³ *Id.* at 1005.

⁵⁴ See Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, 82 Stat. 720.

⁵⁵ See Hazardous Liquid Pipeline Safety Act of 1979, Pub. L. No. 96-129, 93 Stat. 1003.

⁵⁶ See 49 C.F.R. § 195.303.

⁵⁷ NOPR, 52 Pa. Bull. at 1005.

⁵⁸ 49 C.F.R. § 195.120(b).

using [ILI] . . . every year until six years pass without another leak.”⁵⁹ There is little benefit in assessing at this frequency, especially in cases where the leak was not caused by a time-dependent threat. And a small, contained leak should not trigger the requirements under this Section. The Associations recommend the Commission define the magnitude of the leak and provide a technical basis for the six-year requirement.

k. Section 59.140: Operation and Maintenance.

Section 59.140 proposes to establish requirements for a hazardous liquid public utility operating and maintaining a pipeline.⁶⁰ The proposals include certain emergency procedures, public awareness requirements, right-of-way (ROW) inspection intervals, leak detection and odorization requirements, and the use of EFRDs in HCAs.⁶¹

The Associations suggest that the PAPUC remove its proposal in Section 59.140(b), which requires operators to establish and maintain liaison with emergency responders and consult with them in developing and updating emergency response procedures. This requirement creates an onerous burden for operators, who already meet with a wide range of emergency responders.⁶² Further, the PAPUC should consider establishing similar standards for emergency responders, requiring them to attend meetings with pipeline operators. In some areas, first responders are volunteer who may not have time to meet with operators. Should PAPUC adopt this provision, it should more narrowly define *emergency responders* in 59.132.⁶³ The Associations also request clarity on Section 59.140(b)(3), which requires tabletop drills to be conducted in each *geographic area*. This term can be broadly construed and is not clearly defined by the Commission.

Section 59.140(c) requires liaison activities with emergency responders at least twice per year. The Associations recommend the Commission revise this language, requiring liaison activities with emergency responders *as necessary*. PAPUC has not provided any evidence to suggest that more frequent liaison activities are necessary or will increase safety. PAPUC should also recognize that it may be impractical to get non-disclosure agreements with emergency responders across the state, as required by this Section.

Concerning the public awareness requirements in Section 59.140, the Commission should remove its proposal requiring operators to meet with the affected public and public officials at prescribed intervals. The Associations note that participation from this stakeholder group is traditionally low. Operators cannot compel participation, and they should not be punished for a lack of public participation. The Commission should instead defer to the robust PHMSA regulations for public awareness. The Associations suggest the PAPUC require meetings with the public *as needed*. The Associations also suggest the PAPUC narrow its definition of affected public, which is significantly expanded from its meaning under federal regulations and API RP

⁵⁹ NOPR, 52 Pa. Bull. at 1005.

⁶⁰ *Id.*

⁶¹ *Id.* at 1007.

⁶² See 49 C.F.R. § 402(c)(12).

⁶³ NOPR, 52 Pa. Bull. at 1001 (Section 59.132 defines *emergency responders* as “[l]ocal fire, local police and local emergency medical services; county hazmat teams, Department of Emergency Services and 911 centers; and other emergency local, city, county, or state officials or representatives”).

1162. With respect to the line marker requirements in Section 59.140(f), the Associations request clarity, and an explanation for requiring “two line markers, one in each direction.” The Associations would also like the Commission to consider including aerial patrols in the proposed pipeline inspection requirements in paragraph (g). Aerial patrols can be used effectively to monitor activities on pipeline right-of-ways, a principle long acknowledged in PHMSA’s regulations.

As for Section 59.140(h), which establishes leak detection and odorization standards, the Association would like to highlight the fact that both HCA and non-HCA hazardous liquid pipelines are required to have a system for detecting leaks under PHMSA’s regulations.⁶⁴ The Commission’s proposal to require a CPM system on all pipeline facilities is impractical in that CPM is difficult, if not impossible, to implement on intermittent-flow or no-flow pipe segments. Odorization is likewise not practical for all liquid pipelines. The Associations suggest the PAPUC abandon these provisions and defer to federal regulations.

Finally, the PAPUC should remove the requirement in Section 59.140(i), which would require operators to determine the need for remote controlled EFRDs in consultation with public officials. The NOPR’s definition of EFRD refers to federal regulations, which define the term as, among other things, a check valve or remote-control valve.⁶⁵ PAPUC should clarify whether it intentionally excluded check valve or whether check valve may be used to satisfy the requirements in this Section. PAPUC should also recognize that federal regulations require operators to perform a detailed risk analysis before determining whether an EFRD is required.⁶⁶ Public officials will likely not understand the many factors that engineers consider in determining if, when, and where to place valves on a hazardous liquid pipeline.

l. Section 59.141: Qualification of pipeline personnel.

Section 59.141 proposes to “establish[] requirements for a hazardous liquid public utility to qualify an individual that performs covered tasks, as defined in Section 59.132 . . . to include construction tasks, on a pipeline facility.”⁶⁷ Section 59.132 would define covered task by referencing 49 C.F.R. § 195.501, which prescribes a four-part test for determining whether a task is covered.⁶⁸ “A covered task is an activity, identified by the operator, that:

1. Is performed on a pipeline facility,
2. Is an operations or maintenance task,
3. Is performed as a requirement of this part, and
4. Affects the operation or integrity of the pipeline.”⁶⁹

The four-part test to determine whether a task is a covered task cannot be applied to most construction tasks. It is a crucial part of the existing federal Operator Qualification (OQ) rule that focuses OQ efforts on safety-critical work that, if performed improperly, could result in an

⁶⁴ See Pipeline Safety: Safety of Hazardous Liquid Pipelines, 84 Fed. Reg. 52,260, 52,270 (Oct. 1, 2019).

⁶⁵ 49 C.F.R. § 195.450.

⁶⁶ See 49 C.F.R. § 195.452.

⁶⁷ NOPR, 52 Pa. Bull. at 1007.

⁶⁸ *Id.* at 1001.

⁶⁹ 49 C.F.R. § 195.501.

immediate and negative outcome that causes harm to people, property, and the environment. Dramatically broadening the scope of the four-part test by including construction tasks will dilute the focus from safety critical work and reduce the overall efficacy of OQ programs. Simply put, if everything is safety critical, then nothing is safety critical.

Critical tasks on new construction are already governed by industry standards and qualification programs, such as welding qualifications and NACE certifications.⁷⁰ Operating companies are required to provide inspection and oversight of work performed by contractors on new construction programs. And there are already multiple quality control steps and standards for new construction. If there are perceived shortcomings with the current oversight for new construction projects, then attention should be narrowly focused on those areas, rather than sweeping changes to an existing program that was designed for operations tasks.

The Associations recommend the PAPUC delete this proposed requirement and instead refer to the four-part test in Part 195, without adding construction tasks. Adding construction tasks would further complicate the four-part test, which is already ambiguous. Operators and PHMSA continuously differ on how or whether an activity is a covered task.⁷¹ To the extent that this provision is included in the final rule, the Commission should separate construction tasks from the existing four-part test, as not to further complicate the definition of a covered task. The Commission should also define the exact construction tasks to be included in this Section.

m. Section 59.142: Land agents.

Section 59.142 requires land agents to “hold a valid Pennsylvania professional license in one of the following fields: attorney, real estate salesperson, real estate broker, professional engineer, professional land surveyor or professional geologist.”⁷² The Associations request a justification for including such a requirement in the proposed regulations. They also suggest that, instead of regulating the agents themselves, PAPUC should regulate the process through which agent’s interact with landowners. The PAPUC could also consider a state certification process. There are many, more rational, alternatives than what the Commission has proposed in this section.

n. Section 59.143: Corrosion Control

Section 59.143 proposes to “establish[] requirements for hazardous liquid public utilities protecting pipelines against corrosion.”⁷³ The proposal includes criteria for cathodic protection (CP) and its adequacy, as well as close interval surveys and interference currents, all of which lack

⁷⁰ See e.g., AMPP, Certification Resources, <https://www.ampp.org/education/certification-resources> (last visited Apr. 7, 2022).

⁷¹ See e.g., *Colonial Pipeline Co.*, CPF No. 1-2017-5015, https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_120175015.html?nocache=9867#_TP_1_tab_2 (PHMSA and the operator spent several years arguing about whether the removal of casing is within the definition of a covered task).

⁷² NOPR, 52 Pa. Bull. at 1007.

⁷³ *Id.*

any reason or technical justification.⁷⁴ As an initial matter, PAPUC should provide a technical basis for these proposals, including the testing and inspection requirements.

Concerning Section 59.143(b), which would require procedures for the design, installation, operation, and maintenance of CP systems, the Associations recommend the Commission remove the requirement in this Section to “determine and document the average and worst-case corrosion rate experienced for each pipeline segment.”⁷⁵ The Commission provides no justification for this requirement.

The Associations also request that PAPUC clarify the requirement in Section 59.143(d)(1), which requires each impressed current ground bed be tested as part of the testing under Section 59.143(d). Testing a ground bed is vague. Any testing should be conducted at the rectifier. PAPUC should also remove the requirement in Section 59.143(d)(3) to physically inspect rectifiers every other month. The requirement lacks a technical justification and would impose undue burdens that do not advance public safety. Similarly, in (d)(4), PAPUC should clarify whether remote monitoring is allowed. Section (d)(5) requires hazardous liquid public utilities to initiate remedial measures within 14 days upon discovery of any deficiencies indicated by the monitoring. The Associations suggest extending the time frame to one month, which is far more practical.

Finally, the Associations suggest the Commission remove the requirement to conduct close interval surveys across all paved surfaces every three years. This will require drilling permanent holes in paved surfaces, including highways.

o. Regulatory Analysis Form

Under the Regulatory Review Act of 1982 (Act 181), the Pennsylvania Independent Regulatory Review Board reviews proposed and final regulations from Pennsylvania state agencies.⁷⁶ Act 181 requires an agency to accompany a regulation with a regulatory analysis form (RAF) containing certain information such as a statement of the need for the regulation, an estimate of the direct and indirect costs to the private sector, an identification of the economic impact on small businesses.⁷⁷ For any proposed regulation that may have an adverse impact on small businesses, an economic impact statement must be developed and include an identification and estimate of the number of small businesses, the administrative costs to complying with the regulation, and a description of any less intrusive or less costly alternatives to accomplishing the proposed regulation.⁷⁸

Question 10 in the RAF asks the Commission to explain the need for the regulation and describe its benefits.⁷⁹ PAPUC asserts that the regulation is necessary “to address the concerns of the public regarding aging pipeline infrastructure and pipeline integrity.”⁸⁰ However, the NOPR

⁷⁴ *Id.* at 1008.

⁷⁵ *Id.* at 1007.

⁷⁶ Regulatory Review Act, Act of June 25, 1982, P.L. 633, No. 181, as amended P.L. 73, No. 19.

⁷⁷ *Id.* § 5(a).

⁷⁸ *Id.* § 5(a)(10.1).

⁷⁹ Pennsylvania Public Utility Commission, Regulatory Analysis Form, IRRC No. 3330 at 2, <http://www.irrc.state.pa.us/docs/3330/AGENCY/3330PRO.pdf> (Jan. 25, 2022).

⁸⁰ *Id.*

only applies to new and replaced pipeline and many of the provisions do not address aging infrastructure or pipeline integrity. From a policy perspective, operators may be reluctant to replace aging infrastructure due to the increased regulation over new and replaced pipelines. In question 10 the PAPUC also notes that it received several comments on its Advance Notice of Proposed Rulemaking (ANOPR) concerning public awareness, which is a relatively small part of the NOPR.

Concerning question 12, which asks how the proposed regulation will affect Pennsylvania's ability to compete with other states, operators may be reluctant to build new pipelines because of the needlessly onerous standards in the NOPR, discussed by section above. PAPUC is correct in that many states are certified by PHMSA to regulate intrastate hazardous liquid pipelines and may impose more stringent safety standards, but very few states have adopted standards as pervasive as those in the NOPR.⁸¹

Finally, questions 18 through 21 inquire into the costs and benefits associated with the NOPR. The Commission's responses to these questions are vague and lack any amount of specificity. For instance, question 19 asks for an estimate of the "costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required."⁸² PAPUC's response is brief: "[t]he PUC. . . has not yet discerned the additional costs that would be incurred to meet the proposed regulations."⁸³ This statement is in direct conflict with the intent of Act 181 which was enacted to prevent "regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent."⁸⁴ In its response to Question 18, PAPUC admits that "compliance with heightened standards may increase costs for hazardous liquid public utilities" but fails to quantify this assertion or provide any basis for the statement.⁸⁵

Question 26 asks the Commission to describe "any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected."⁸⁶ Again, PAPUC provided a brief response: "No alternative regulatory provisions have been considered and rejected."⁸⁷ In its response to a separate question in the RAF, PAPUC says that industry affiliates "believe that the PUC should defer to existing Federal regulations."⁸⁸ Deferring to existing Federal regulations is an alternative recognized by PAPUC but not actually considered as an alternative to the NOPR. For the foregoing reasons, the PAPUC should not finalize this rulemaking until a more accurate and complete regulatory analysis has been developed.

Act 181 also requires an agency to include in its RAF "[a] description of any data upon which a regulation is based with a detailed explanation of how the data was obtained and why the

⁸¹ *Id.* at 3.

⁸² *Id.* at 6.

⁸³ *Id.*

⁸⁴ Regulatory Review Act, P.L. 633, No. 181 § 2(a).

⁸⁵ Regulatory Analysis Form, IRRC No. 3330 at 6.

⁸⁶ *Id.* at 9.

⁸⁷ *Id.*

⁸⁸ *Id.* at 6.

data is acceptable data.”⁸⁹ Question 28 in the RAF asks the PAPUC to provide a description of the data upon which it relied in developing the NOPR. In its response, the PAPUC said that “specific empirical data were not the basis for the proposed regulation.”⁹⁰ These responses do not provide an adequate technical justification for PAPUC’s heightened safety standards and cast doubt on the reasonableness of the NOPR itself.⁹¹

III. Conclusion

The Associations appreciate the opportunity to comment on the NOPR and look forward to working with the PAPUC as changes are made.

Respectfully submitted,



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⁸⁹ Regulatory Review Act, P.L. 633, No. 181 § 5(a)(14).

⁹⁰ Regulatory Analysis Form, IRRC No. 3330 at 10.

⁹¹ *Tire Jockey Service, Inc. v. Dep't of Env't'l Prot.*, 591 Pa. 73, 107 (2007).