

The federal government has primary oversight of the nation's pipeline system. However, a collaborative federal/state partnership exists between federal and state government in order to protect people and the environment from the risks inherent in transportation of hazardous materials.

Federal statutes provide for exclusive federal authority to regulate interstate pipelines.<sup>1</sup> These pipelines are managed by the Federal Energy Regulatory Commission (FERC) and the U.S. Department of Transportation (DOT). FERC regulates pipelines, storage, natural gas transportation in interstate commerce, and liquefied natural gas facility construction. Once pipelines are operating, the DOT's Pipeline and Hazardous Material Safety Administration (PHMSA) regulates, monitors and enforces safety. PHMSA may authorize a state to act as its agent to inspect interstate pipelines, but retains responsibility for enforcement of regulations. Currently, Arizona, California, Connecticut, Iowa, Michigan, Minnesota, New York, Ohio, Washington, Virginia and West Virginia act as interstate agents and, in that role, state personnel inspect interstate pipelines and submit reports to PHMSA which carries out compliance and enforcement action as necessary.

With regard to intrastate lines, the federal government is primarily responsible for pipeline safety regulations but states are permitted to assume regulatory, inspection, and enforcement responsibilities. In short, PHMSA delegates the majority of the responsibility for intrastate lines to the states. States have the ability to enforce federal safety regulations by requiring corrective actions, imposing civil penalties and controlling utility rates to ensure that

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<sup>1</sup> Two statutes provide the framework for the Federal pipeline safety program. The Natural Gas Pipeline Safety Act of 1968 authorizes the DOT to regulate pipeline transportation of natural gas and liquefied natural gas. The Hazardous Liquid Pipeline Safety Act of 1979 authorizes the DOT to regulate pipeline transportation of hazardous liquids (crude oil, petroleum products, anhydrous ammonia, and carbon dioxide). Both of these Acts have been codified as 49 U.S.C. Chapter 601, 49 U.S.C § 60101 et seq.

the company shoulders the cost of improving its safety record. States opt into this relationship with PHMSA. If a state decides not to participate, as Alaska and Hawaii have done, PHMSA is responsible for safety inspections. Under the Pipeline Safety Act, states must be certified by PHMSA to assume pipeline safety responsibilities, 49 U.S.C. §§ 60105, 60106. Once certified, the state is responsible for oversight of pipelines that do not cross state boundaries. State pipeline safety programs are partially funded by federal grants which are used as an incentive to improve state program performance and to encourage states to take on more responsibility for pipelines. PHMSA's State Pipeline Safety Grant program, 49 U.S.C. §60107, allocates funds to state agencies to support up to 80 percent of the cost of personnel, equipment and activities required to carry out inspection and enforcement activities of intrastate pipeline facilities.

Pennsylvania has opted in and assumed the responsibility for intrastate pipelines.

Pursuant to regulations at 52 Pa. Code § 59.33(b), the Pennsylvania Public Utility Commission (PUC or Commission) has the authority to enforce federal gas pipeline safety regulations:

(b) *Safety code.* The minimum safety standards for all gas transmission and distribution facilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § § 60101—60503 and as implemented at 49 CFR Parts 191—193 and 199, including all subsequent amendments thereto future Federal amendments to 49 CFR Parts 191—193 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 gas transmission and distribution facilities. 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.

Likewise, the Commission participates in PHMSA's Hazardous Liquid Pipeline Safety Grant Program. Pursuant to Section 511.1 of the Public Utility Code, 66 Pa. C.S. § 511.1, the Commission is authorized to apply for and use federal funds.

Until recently, PUC authority over intrastate lines only extended to public utilities as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102. However, on December 22, 2011, Governor Corbett signed into law the Gas and Hazardous Liquids Pipeline Act (Act 127), 58 P.S. § 801.101 et seq., that expands the Commission's authority to enforce federal pipeline safety laws as they relate to non-public utility gas and hazardous materials pipelines and facilities in the Commonwealth. Act 127 provides:

**Section 501. General powers of Commission.**

(a) Commission authority.--The commission shall have general administrative authority to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws. The commission may adopt regulations, consistent with the Federal pipeline safety laws, as may be necessary or proper in the exercise of its powers and perform its duties under this act.

58 P.S. § 801.501(a).

Although Act 127 broadens the Commission's authority to enforce federal safety standards to non-utilities, it does not create public utility status for these entities:

(c) Authority. – Nothing in this Act grants the Commission additional authority to determine or regulate a pipeline operator as a public utility as defined in 66 Pa. C.S. § 102 (relating to definitions) or as a natural gas supplier or natural gas supply services as defined in 66 Pa. C.S. § 2202 (relating to definitions).

58 P.S. § 801.504(c).

The Commission's Gas Safety Section has six inspectors located across the state who are on call 24 hours a day for emergencies.<sup>2</sup> They check for compliance of federal gas pipeline safety regulations. If a violation is found, the Gas Safety Section can refer the problem to the PUC for formal resolution by issuing a complaint, setting a penalty, or seeking enforcement

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<sup>2</sup> It is believed the Commission is in the process of hiring additional gas safety inspectors due to the expanded jurisdiction to enforce federal safety regulations for non-utilities under Act 127.

through the court system. Section 3301(c) of the Public Utility Code, 66 Pa. C.S. § 3301(c), allows civil penalties to be imposed for non-compliance with gas pipeline safety regulations:

(c) Gas pipeline safety violations.-- Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed \$200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$ 2,000,000 for any related series of violations, or subject to a penalty provided under federal pipeline safety laws, whichever is greater.

Samples of complaints filed on behalf of the Commission's Gas Safety Section to enforce federal safety regulations can be found on the PUC website, [www.puc.state.pa.us](http://www.puc.state.pa.us), docketed as Pa. PUC v. Philadelphia Gas Works, Docket No. C-2011-2278312 and Pa. PUC v. UGI Utilities Inc., Docket No. C-2012-2295974.