

## Federal pipeline safety agency issues advisory bulletin for underground gas storage facilities

On February 5, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) published an advisory bulletin in the Federal Register on the safety of underground gas facilities. 81 Fed. Reg. 6334-6336. Citing several incidents at underground gas storage facilities, including the ongoing natural gas leak at a facility in the Porter Ranch area of Los Angeles, California, PHMSA's advisory bulletin recommends operators of these facilities take measures to ensure public safety and the protection of the environment. The advisory bulletin recommends, among other things, that operators:

- Develop and follow comprehensive procedures, mitigation measures, periodic assessments, and emergency plans for maintaining the safety and integrity of all underground gas storage wells and associated facilities.
- Voluntarily implement American Petroleum Institute (API) Recommended Practices (RP) 1170, "Design and Operation of Solution-mined Salt Cavern Used for Natural Gas Storage, First Edition, July 2015"; API RP 1171, "Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs, First Edition, September 2015"; and Interstate Oil and Gas Compact Commission's (IOGCC) "Natural Gas Storage in Salt Caverns—A Guide for State Regulators."
- Review and update operations and maintenance plans and procedures at least annually.
- At a minimum, implement a list of 12 separate actions to address issues such as pressure verification, well monitoring, facility inspections, functional testing, the installation of subsurface safety valves, ensuring mechanical integrity, monitoring corrosion, identifying and remediating other threats and hazards, responding to emergencies, and maintaining records for the life of these facilities.

While not establishing any binding legal requirements for underground gas storage facility operators, the advisory bulletin provides insight into PHMSA's thinking as it considers whether to establish new regulations for these facilities.

PHMSA has long had the authority to establish federal safety standards for underground gas storage facilities, but the agency

has never used that authority for policy reasons. In a 1997 advisory bulletin, PHMSA's predecessor, the Research and Special Programs Administration (RSPA), announced it would not be conducting a rulemaking proceeding for underground storage facilities. 62 Fed. Reg. 37008-37009. Having examined the need for new regulations in response to a safety recommendation from the National Transportation Safety Board, the independent federal agency that investigates significant transportation-related accidents, RSPA explained that the IOGCC and API had developed guidelines that applied to all aspects of underground storage, and that operators could ensure the safety of such facilities by voluntarily complying with those guidelines. RSPA also explained that the agency had urged state authorities to adopt and apply those guidelines to facilities in order to make additional federal regulations unnecessary. Finally, RSPA encouraged operators of interstate underground storage facilities to comply with IOGCC and API guidelines and appropriate state regulations.

In 2010, the U.S. District Court for the District of Kansas issued an important decision on the ability of the states to regulate underground interstate gas storage facilities. *Colorado Interstate Gas Company v. Wright*, 707 F.Supp.2d 1169 (D. Kan. 2010). The case involved an interstate pipeline operator that challenged the Kansas Corporation Commission's authority to apply state statutes and regulations for the safety of underground natural gas storage operations to an interstate storage facility. The district court found that the federal Pipeline Safety Act preempted the commission from enforcing these provisions, even though PHMSA had not established any federal safety standards for the regulation of underground gas storage facilities. Indeed, the district court said that "[t]he decision of the Department of Transportation to exempt certain pipelines from federal regulation does not necessarily mean that the state can step in and impose its own regulations"; rather, it "may imply an authoritative federal determination that the area is best left unregulated, and in that event would have as much pre-emptive force as a decision to regulate." 707 F.Supp.2d at 1188 (quoting *Kinley Corp. v. Iowa Utilities Bd.*, 999 F.2d 354, 359 (8th Cir. 1993)).

In August 2011, PHMSA responded to the district court's

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decision by asking for public comment on whether the agency should establish federal regulations for underground gas storage facilities. 76 Fed. Reg. 53086- 53102. In November 2011, U.S. Senators Pat Roberts (R-KS) and Jerry Moran (R-KS) also introduced legislation allowing state agencies to directly regulate the safety of interstate underground gas storage facilities, an initiative they continued to press over the next few years.

In October 2015, the Southern California Gas Company discovered a leak at an injection well in the Aliso Canyon underground gas storage facility in Porter Ranch, Los Angeles. The leak has resulted in great public scrutiny of the safety of underground gas storage facilities and prompted renewed calls for PHMSA to establish federal safety standards for these facilities. In December 2015, with the Aliso Canyon leak still underway, the U.S. Senate Committee on Commerce, Science and Transportation proposed legislation that would require PHMSA to issue rules for underground gas storage within two years. The Senate proposal has not been enacted, and it is not clear how the provision would impact PHMSA's recent advisory bulletin on the safety of underground gas storage facilities. In any case, the advisory bulletin provides an indication of how the agency may approach the issue going forward.