

**DOT Docket Management System
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SUPPLEMENTAL GAS GATHERING INDUSTRY COMMENTS

submitted by the

**GPA MIDSTREAM ASSOCIATION,
AMERICAN PETROLEUM INSTITUTE,
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
MARCELLUS SHALE COALITION,
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION,
GAS & OIL ASSOCIATION OF WEST VIRGINIA,
OHIO OIL & GAS ASSOCIATION,
KENTUCKY OIL & GAS ASSOCIATION,
TEXAS OIL & GAS ASSOCIATION, and
THE PETROLEUM ALLIANCE OF OKLAHOMA**

in response to

Gas Pipeline Advisory Committee Public Meeting and Report

“Pipeline Safety: Gas Pipeline Leak Detection and Repair,” RIN 2137-AF51

Notice of Proposed Rulemaking Published by the Pipeline and Hazardous Materials Safety
Administration,
U.S. DEPARTMENT OF TRANSPORTATION,
88 Fed. Reg. 31,890 (May 18, 2023)

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I. Introduction

From November 27, 2023, to December 1, 2023, and March 25 to 27, 2024, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) held a meeting of the Gas Pipeline Advisory Committee (GPAC)¹ to review a proposed rule published in the *Federal Register* on May 18, 2023 (Proposed Rule).² The Proposed Rule included significant changes to the reporting requirements in 49 C.F.R. Part 191 and safety standards in 49 C.F.R. Parts 192 for gas pipeline facilities. PHMSA proposed these changes primarily to address certain provisions in the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (2020 PIPES Act).³

The GPA Midstream Association (GPA),⁴ American Petroleum Institute (API),⁵ Independent Petroleum Association of America (IPAA),⁶ Marcellus Shale Coalition (MSC),⁷ Pennsylvania Independent Oil & Gas Association (PIOGA),⁸ Gas & Oil Association of West Virginia (GO-WV),⁹ Ohio Oil & Gas Association (OOGA),¹⁰ Kentucky Oil & Gas Association

¹ Technical Pipeline Safety Standards Committee (GPAC) 2024, <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=169> (website containing documents and other information concerning this GPAC public meeting).

² Pipeline Safety: Gas Pipeline Leak Detection and Repair, 88 Fed. Reg. 31,890 (May 18, 2023) (Proposed Rule).

³ Consolidated Appropriations Act, Pub. L. No. 116-260, Division R, 134 Stat. 1181, 2210.

⁴ GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 60 corporate members that directly employ 55,000 employees that are engaged in the gathering, transportation, processing, treating, storage and marketing of natural gas, natural gas liquids (NGLs), crude oil and refined products, commonly referred to in the industry as “midstream activities.” In 2022, GPA Midstream members operated over 495,000 miles of pipelines, gathered over 85 Bcf/d of natural gas and produced over 4.6 million barrel/day of NGLs from over 375 natural gas processing facilities.

⁵ API is the national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and 8 percent of the U.S. economy. API’s more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation’s energy and are backed by a growing grassroots movement of more than 25 million Americans.

⁶ IPAA represents thousands of independent oil and natural gas producers and service companies across the United States. America’s independent producers develop 91 percent of the nation’s oil and natural gas wells.

⁷ MSC is a regional trade association with a national membership. The MSC was formed in 2008 and is currently comprised of approximately 140 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing and transmission, in the country, as well as the suppliers, contractors and professional service firms who work with the industry.

⁸ PIOGA is Pennsylvania’s trade association representing Pennsylvania independent oil and natural gas producers of natural gas from both conventional (tight sand/sandstone) and unconventional (organic shale) formations. PIOGA and its producer members support reasonable reporting requirements and gas pipeline safety standards based on the application of risk management principles, cost/benefit analyses and the other considerations specified in federal law.

⁹ GO-WV is an association of oil and gas-related companies doing business in the State of West Virginia. GO-WV’s members are engaged in the exploration, production, gathering, distribution, transportation, and sale of natural gas.

¹⁰ OOGA is a trade association with members representing the people and companies directly responsible for the production of crude oil, natural gas, and associated products in Ohio. The core OOGA membership is comprised of independent oil and natural gas producers, major national oil and natural gas producing companies, and major

(KYOGA),¹¹ and the Texas Oil & Gas Association (TXOGA),¹² and The Petroleum Alliance of Oklahoma (PAO)¹³ (collectively, Gas Gathering Industry Commenters) submitted joint comment letter in response to the provisions in the Proposed Rule for onshore gas gathering lines on August 16, 2023 (August 2023 Joint Comments).¹⁴ The Gas Gathering Industry Commenters also submitted a supplemental comment letter on November 21, 2023, addressing the pre-briefing materials that PHMSA presented to the GPAC on November 15, 2023. On March 20, 2024, GPA and API submitted an additional supplemental comment letter in response to the GPAC presentation materials that PHMSA included on its website on March 18, 2024.

In addition to submitting these written comments, representatives of the Gas Gathering Industry Commenters attended the GPAC meetings on November 27, 2023, to December 1, 2023, and March 25 to 27, 2024, and offered public comment on the provisions in the Proposed Rule for onshore gas gathering lines. The Gas Gathering Industry Commenters note that the comments provided in this letter are intended to supplement those offered in the August 2023 Joint Comments, at the GPAC meeting, and in other prior submissions to the Agency in this proceeding.

II. Summary

The Gas Gathering Industry Commenters appreciate the important role that the GPAC serves in the rulemaking process, but the GPAC can only fulfill that role if the Agency complies with its obligations in the first instance. PHMSA clearly failed to satisfy those obligations in developing the provisions in the Proposed Rule for gas gathering lines. The preliminary risk assessment that the Agency prepared and presented to the GPAC did not satisfy the applicable statutory requirements. PHMSA's proposed regulations for gas gathering lines are also unreasonable and unsupported by the record.

international oil and natural gas companies—all focused on the exploration, discovery, and production of crude oil, natural gas, and associated liquids in Ohio.

¹¹ KYOGA was formed in 1931 to represent the interests of Kentucky's crude oil and natural gas industry, and more particularly, the independent crude oil and natural gas operators. Our goals include promoting, protecting and advancing the interests of the oil and gas industry; opposing any unfair and unjust legislation which may adversely affect the oil and gas industry; and, disseminating reliable publicity to further and protect the oil and gas industry. KYOGA is dedicated to the responsible production and conservation of Kentucky's natural resources, while ensuring that its members are provided fair regulations, are educated on oil and gas issues, while protecting individual property rights, health, safety, and the environment.

¹² TXOGA is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces approximately 90 percent of Texas' crude oil and natural gas, operates nearly 90 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. In fiscal year 2022, the Texas oil and natural gas industry supported 443,000 direct jobs and paid \$24.7 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders.

¹³ PAO represents more than 1,400 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations. Our members produce, transport, process and refine the bulk of Oklahoma's crude oil and natural gas.

¹⁴ PHMSA originally requested that any comments be filed by no later than July 17, 2023, but later extended the comment period until August 16, 2023. *Pipeline Safety: Gas Pipeline Leak Detection and Repair*, 88 Fed. Reg. 42,284 (June 30, 2023).

PHMSA has the opportunity to cure these defects by preparing a revised risk assessment and, if appropriate, issuing a supplemental rulemaking proposal with leak detection and repair (LDAR) standards for gas gathering lines. The Agency should certainly consider all of the information in the record in this proceeding, including the GPAC report and the comments submitted by the public, in pursuing that course of action. The Agency should also notify the GPAC of its intent to do so in providing the written response that is required under the Pipeline Safety Act.

The Gas Gathering Industry Commenters recognize that PHMSA has expressed a strong desire to issue new LDAR standards for all gas pipeline facilities, and that a statutory deadline for prescribing those standards applies to certain onshore gas gathering lines. However, the Agency must comply with the procedural requirements in the Pipeline Safety Act and Administrative Procedure Act as part of the rulemaking process. These procedural requirements exist to protect the interests of all stakeholders and ensure that PHMSA engages in reasoned decisionmaking in prescribing regulations that have the force and effect of law.

For these reasons, and as explained in more detail below, the Gas Gathering Industry Commenters urge the Agency not to take any final agency action on the provisions for gas gathering lines until a revised risk assessment and supplemental rulemaking proposal are issued for public comment and further review.

III. Comments

a. PHMSA Failed to Comply With the Requirements in the Pipeline Safety Act and Applicable OMB Guidance in Developing the Preliminary Risk Assessment for the Proposed Rule.

The Pipeline Safety Act requires PHMSA to conduct a risk assessment for each pipeline safety standard proposed under 49 U.S.C. § 60102. Section 60102(b)(3) states that in conducting a risk assessment PHMSA must:

- (A) identify the regulatory and nonregulatory options that the [Agency] considered in prescribing a proposed standard;
- (B) identify the costs and benefits associated with the proposed standard;
- (C) include—
 - (i) an explanation of the reasons for the selection of the proposed standard in lieu of the other options identified; and
 - (ii) with respect to each of those other options, a brief explanation of the reasons that the [Agency] did not select the option; and
- (D) identify technical data or other information upon which the risk assessment information and proposed standard is based.¹⁵

¹⁵ 49 U.S.C. § 60102(b)(3)(A)–(D). PHMSA is required to make the risk assessment for a proposed safety standard “available to the general public” for comment and to present the risk assessment information to the GPAC for peer review. *Id.* § 60102(b)(4). Failing to comply with the Pipeline Safety Act’s risk assessment requirements is a “serious error” that provides a basis for vacating any subsequent final rule. *GPA Midstream Ass’n v. United States Dep’t of Transp.*, 67 F.4th 1188, 1197 (D.C. Cir. 2023).

The Office of Management and Budget (OMB) has also issued detailed guidance to Federal agencies for “conducting high-quality and evidence-based regulatory analysis” in Circular No. A-4 (Nov. 9, 2023) (Circular A-4). While issued pursuant to certain executive orders, including Exec. Order No. 12866 of September 30, 1993, 58 Fed. Reg. 51,735 (Oct. 4, 1993), PHMSA has acknowledged that Circular No. A-4 applies in conducting risk assessments pursuant to the Pipeline Safety Act.¹⁶

Two aspects of Circular A-4 are particularly relevant in evaluating the preliminary risk assessment that PHMSA developed for the Proposed Rule. First, Circular A-4 states that Federal agencies should analyze at least three regulatory alternatives in developing a rulemaking proposal: The proposed option; an option that achieves additional benefits (and presumably costs more due to, for example, greater stringency); and an option that costs less (and presumably generates fewer benefits due to, for example, less stringency). Second, Circular A-4 further states that Federal agencies should analyze distinct regulatory provisions in a proposal separately.

The Agency clearly failed to satisfy the requirements in the Pipeline Safety Act and Circular A-4 in developing the risk assessment for the Proposed Rule’s gas gathering provisions. Specifically:

- PHMSA failed to consider any non-regulatory options for Type C gathering lines. The Agency stated in the Preliminary Regulatory Impact Analysis (PRIA) that “keeping the requirements in 49 C.F.R. Part 192 unchanged . . . would fail to fulfill the mandate that Congress placed on PHMSA in Section 113 of the PIPES Act of 2020.”¹⁷ However, the congressional mandate in Section 113 does not apply to Type C gathering lines, and there is no other reason to forgo consideration of non-regulatory options for these pipelines. To the contrary, consideration of non-regulatory options is particularly appropriate for Type C gathering lines, which did not become subject to the Agency’s regulations until May 2022, nearly 17 months after the enactment of Section 113, are subject to a stay of enforcement that does not expire until May 2024, and have not even had the opportunity to fully comply with the first generation of LDAR standards that went into effect less than two years ago. Consideration of non-regulatory options is also particularly appropriate given the U.S. Environmental Protection Agency’s (EPA) new rules for addressing leaks and methane emissions from compressor stations and other facilities associated with Type C gathering lines.
- The only regulatory alternative that PHMSA considered for all gathering lines was a proposal not to provide an exception for compressor stations subject to EPA’s regulations, even though the Proposed Rule contains several distinct regulatory provisions. Those distinct provisions include, among other things, patrolling requirements, leak survey requirements, leak grading and repair requirements, and an entirely new advanced leak

¹⁶ PHMSA expressly acknowledged that obligation in its recent brief to the U.S. Court of Appeals for the District of Columbia Circuit in Final Brief for Respondents at 37, *Interstate Natural Gas Ass’n of America v. PHMSA*, No. 23-1173 (D.C. Cir. Mar. 29, 2024).

¹⁷ PHMSA, Preliminary Regulatory Impact Analysis at 19, Docket No. PHMSA-2021-0039 (Apr. 2023), <https://www.regulations.gov/document/PHMSA-2021-0039-0019>.

detection program (ALDP). The Agency offered no justification for failing to analyze these distinct provisions separately in preparing the PRIA, and clearly did not consider at least 3 alternatives for each in the PRIA. As a result, the record contains no consideration of the regulatory options required by the Pipeline Safety Act or Circular A-4. Nor has the public or GPAC been afforded the opportunity to provide meaningful review and comment on those yet-to-be-determined-or-disclosed regulatory options.

- PHMSA did not adequately identify the costs and benefits of the proposed requirements for gas gathering lines. The Agency did not consider the non-public-utility status of these pipelines and failed to quantify any of the safety benefits associated with the proposed LDAR requirements. PHMSA also relied on flawed assumptions in analyzing various aspects of the Proposed Rule. For example, the Agency assumed without adequate supporting evidence that all gathering line operators are repairing leaks within a year of discovery; used an average leak incidence rate that underestimated the impact of the Proposed Rule on the different categories of regulated gas gathering lines; relied on a single proceeding involving a public utility gas transmission line operator in estimating repair costs for the entire gathering sector; and assumed that the proposed leak grading and repair requirements are generally consistent with existing industry practices, when that is clearly not the case.
- The only explanation that PHMSA provided for selecting the proposed LDAR standards was the congressional mandate in Section 113 of the 2020 PIPES Act. However, as previously explained, Section 113 does not apply to Type C gathering lines. The Agency's failure to consider any meaningful options for the various distinct regulatory provisions in the Proposed Rule, let alone the three alternatives recommended by OMB in Circular A-4, leaves the record completely silent on the reasons for not selecting those forgone options.
- The Agency relied on inadequate technical and information in preparing the preliminary risk assessment for onshore gas gathering lines. PHMSA relied almost entirely on assumptions in evaluating the costs, benefits, and other impacts of the Proposed Rule. The Agency not only failed in many cases to provide the explanations needed to understand the basis for those assumptions, but declined to use the current data and other information that gathering line operators are providing to PHMSA in incident, annual, and safety-related condition reports.¹⁸

For these reasons, the Agency clearly did not satisfy the requirements in Section 60102(b)(3) or follow the OMB guidance in Circular A-4 in conducting the preliminary risk assessment for the proposed LDAR requirements for gas gathering lines.

¹⁸ When PHMSA did consider that data on the eve of the March 2024 GPAC meeting, the Agency acknowledged that the original leak rate used in the PRIA for Type C gathering lines was inaccurate. GPAC Transcript Day 6 at 22:4 – 24:6 (Mar. 25, 2024). PHMSA also acknowledged that the concentration of regulated gathering line mileage among certain large operators is highly unusual, a fact that the Agency did not consider in developing the Proposed Rule or PRIA. *Id.* at 20:13 – 22:3; *see id.* at 21:9 – 21:17 (“Among the Type C operators, basically, a significant amount of mileage is operated by a relatively small number of operators. So you can see here, we found that 84 percent of mileage was operated by operators with over 250 miles of Type C, 71 percent by operators with over 500 miles, and 62 percent of mileage operated by operators with over 1,000 miles.”); Circular A-4 at 24 (requiring consideration of different requirements for large and small firms).

b. PHMSA Must Develop a Revised Risk Assessment and Supplemental Rulemaking Proposal that Complies with the Requirements in the Pipeline Safety Act and Applicable OMB Guidance Before Issuing a Final Rule.

PHMSA must develop a revised risk assessment and supplemental rulemaking proposal before prescribing any new LDAR requirements for gas gathering lines in a final rule. As the U.S. Court of Appeals for the District of Columbia Circuit recently explained in *GPA Midstream Ass'n v. United States Dep't of Transp.*, the Agency's obligation to conduct a risk assessment is an important part of the rulemaking process, and PHMSA's failure to meet that obligation is a "serious error".¹⁹ In this case, the record shows that the Agency did not consider the required options and alternatives, reasonably identify the costs and benefits, provide the requisite explanations, or incorporate adequate technical data and information. PHMSA did not satisfy any of the statutory criteria and certainly did not prepare the "high-quality and evidence-based regulatory analysis" envisioned by Circular No. A-4.

The Gas Gathering Industry Commenters identified these deficiencies and urged the Agency to correct them before presenting the Proposed Rule and preliminary risk assessment to the GPAC. And when the Agency made clear that no prior corrective action would be taken, the Gas Gathering Industry Commenters urged PHMSA to take specific actions to address these deficiencies during the GPAC's review. Specifically, in a November 21, 2023, letter to the Designated Federal Officer (DFO), the Gas Gathering Industry Commenters highlighted the defects in the preliminary risk assessment and expressed concern with PHMSA's failure to provide any meaningful consideration of those issues in the GPAC's pre-briefing materials. The Gas Gathering Industry Commenters also asked the DFO to ensure that the GPAC engaged in a meaningful discussion of the preliminary risk assessment during the public meeting, including by having the public and industry members that PHMSA appointed to satisfy the risk assessment and cost-benefit criteria in 49 U.S.C. § 60115(b)(4)(B)-(C) lead that discussion.

The DFO did not respond to these concerns during the GPAC meeting. Nor does the record indicate that the DFO relayed Gas Gathering Industry Commenters' concerns to the public and industry members that the Agency appointed to satisfy the risk assessment and cost-benefit criteria in 49 U.S.C. § 60115(b)(4)(B)-(C). Indeed, none of the industry or public GPAC members who reviewed the Proposed Rule appear to have the requisite education, background, or experience to meet the requirements in Section 60115(b)(4)(B)-(C).²⁰ The GPAC obviously cannot perform its

¹⁹ *GPA Midstream Ass'n v. United States Dep't of Transp.*, 67 F.4th at 1197.

²⁰ The Gas Gathering Industry Commenters note that the information available on PHMSA's website only denotes whether a member is appointed as a government, industry, or public representative. <https://www.phmsa.dot.gov/standards-rulemaking/pipeline/gas-pipeline-advisory-committee-gpac-committee-roster-and-biographies>. There is no specific notation as to whether the Secretary appointed an industry or public representative to satisfy the risk assessment or cost-benefit criteria in 49 U.S.C. § 60115(b)(4)(B)-(C). The Gas Gathering Industry Commenters further note that the detailed biographies for each of the appointed GPAC members do not indicate that any of the public or industry representatives satisfy the statutory criteria either. <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2024-01/GPAC-Biographies-01-04-2024.pdf>. Given these concerns, the Gas Gathering Industry Commenters specifically request that PHMSA include additional information in the record for this proceeding concerning whether the Secretary appointed any of the public or industry representatives to satisfy the criteria in 49 U.S.C. § 60115(b)(4)(B)-(C).

peer review function if the Agency fails to appoint members that satisfy the applicable statutory criteria.

While PHMSA has an obligation under Section 113 to establish LDAR standards for certain onshore gas gathering lines, the Agency must comply with the rulemaking requirements in the Pipeline Safety Act in meeting that obligation. PHMSA must prepare a risk assessment that meets the applicable statutory criteria. The Agency must also make that risk assessment available for public comment and subsequent review by the GPAC, including by the public and industry members that PHMSA is required to appoint pursuant to the requirements in Section 60115(b)(4)(B)-(C).

c. PHMSA Should Acknowledge in Providing its 90-Day Written Response to the GPAC Report that a Revised Risk Assessment and Supplemental Rulemaking Proposal Must Be Developed Before Issuing Any New LDAR Standards for Gas Gathering Lines.

PHMSA should notify the GPAC of its intent to develop a revised risk assessment and supplemental rulemaking proposal for gas gathering lines in providing the written response that is required under the Pipeline Safety Act. Section 60102(b)(4)(C) specifically states that “[n]ot later than 90 days after receiving a report submitted by the [GPAC],” the Agency is required “to review the report” and “provide a written response to the committee that is the author of the report concerning all significant peer review comments and recommended alternatives contained in the report.” PHMSA has advised the GPAC that the transcript of its public meetings, along with the slide decks and other materials, constitute its report. Consistent with the Agency’s guidance, the GPAC voted to approve the transcripts, slide decks, and other materials from the November 27, 2023, to December 1, 2023, and March 25 to 27, 2024, meetings as its report for the Proposed Rule.²¹

The GPAC’s report contains a variety of significant peer review comments and recommended alternatives, including with respect to the preliminary risk assessment. For example, the GPAC recommended that the Agency consider a series of principles in developing the ALDP requirements, as well as specific flow rate thresholds and alternative performance and technology standards; alternative volumetric thresholds in the leak grading criteria; alternative timelines and recheck requirements in the leak repair criteria; and an alternative leak survey requirement for Type C gathering lines. Several GPAC members also expressed concerns with the adequacy of the preliminary risk assessment for gas gathering lines.²² The Pipeline Safety Act requires PHMSA to provide a written response to these significant peer review comments within 90 days, or by no later than June 25, 2024.²³ The Agency’s failure to do so would be a clear

²¹ GPAC Transcript Day 8 at 152:8 – 154:7 (Mar. 27, 2024).

²² GPAC Transcript Day 5 at 236:20-238:15; 249:1-251:9; 272:1-272:17; 298:7-9; 371:7-9; 372:7 - 9 (“[T]he biggest problem is...the information gap.”) (Dec. 1, 2023).

²³ The Gas Gathering Industry Commenters assume that the 90-day deadline runs from March 27, 2024, the date that the GPAC voted to approve the transcripts, slide decks, and other materials as its report for the Proposed Rule. At the very latest, the deadline would run from the date that PHMSA received the transcript for the GPAC meetings, which the Agency dates to April 11, 2024, on its website, <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=169>. If that date is used, the 90-day deadline would be no later than July 10, 2024.

violation of the statute and have the effect of depriving the GPAC and other interested stakeholders with information that Congress has determined must be disclosed as part of the rulemaking process.

PHMSA's failure to provide a timely written response would prejudice the Gas Gathering Industry Commenters and other interested stakeholders who wish to engage with OMB's Office of Information and Regulatory Affairs (OIRA) during the regulatory review process that is authorized under Executive Order 12866, Regulatory Planning and Review. OIRA serves an important function in that process, particularly with respect to reviewing the regulatory and cost-benefit analyses that Federal agencies prepare in issuing new regulations. Interested stakeholders are also allowed to submit written comments and request a meeting with OIRA before the issuance of a final rule.

Having access to PHMSA's 90-day written response to the GPAC report allows stakeholders to engage more effectively with OIRA in submitting comments and participating in these meetings. That especially true in this proceeding, given the Agency's failure to comply with the statutory requirements and fundamental principles of OMB's guidance in Circular A-4 in developing the preliminary risk assessment for the Proposed Rule. Stakeholders have a right to understand how PHMSA intends to address these concerns prior to engaging with OIRA, the entity within the Executive Branch that is tasked with reviewing the risk assessment and other documents that the Agency develops during the rulemaking process.

d. PHMSA Should Review All of the Information in the Record in Developing a Revised Risk Assessment and, If Appropriate, Issuing a Supplemental Rulemaking Proposal for Gas Gathering Lines.

The Gas Gathering Industry Commenters raised a number of concerns with the Proposed Rule and preliminary risk assessment in comments submitted prior to and during the GPAC meetings. Other interested stakeholders submitted comments as well. The Agency should consider all of the public comments, as well as the information included in the GPAC report, when developing a revised risk assessment and, if appropriate, issuing a supplemental rulemaking proposal for gas gathering lines.

The Gas Gathering Industry Commenters are highlighting certain issues that received attention during the GPAC meeting for PHMSA's consideration below. The Gas Gathering Industry Commenters note that GPAC's report does not address every aspect of the Proposed Rule. To the extent that the GPAC did not review a proposal, the Gas Gathering Industry Commenters urge PHMSA to consider its prior comments and the additional information provided below in addressing those issues.

i. PHMSA Should Not Apply the Proposed Rule to Type C Gathering Lines.

The Gas Gathering Industry Commenters have already provided extensive comments explaining why the proposed LDAR requirements should not apply to Type C gathering lines.²⁴ Those comments include the fact that the congressional mandate in Section 113 does not apply to Type C gas gathering lines; that PHMSA did not comply with the risk assessment requirements in developing the Proposed Rule; and that applying the proposed LDAR regulations to Type C gas gathering lines, which only recently became subject to the basic, first-generation leak survey and repair requirements, is unreasonable.

Numerous public commenters echoed these concerns during the GPAC meeting, emphasizing the inadequacies of the preliminary risk assessment, including PHMSA's decision not to incorporate available Type C gathering line data into its analysis,²⁵ the Agency's use of inaccurate cost information related to gathering lines,²⁶ and the difficulty of developing gathering line operations and maintenance procedures.²⁷ The GPAC's report confirms the merits of the Gas Gathering Industry Commenter's concerns as well. Members repeatedly stressed that record lacked the data and information needed to evaluate the Proposed Rule's impact on Type C gathering lines,²⁸ and noted that while other regulated facilities, such as transmission and distribution lines, can pass costs to ratepayers, the gathering industry cannot.²⁹ The Gas Gathering Industry Commenters reiterate that a revised risk assessment and supplemental rulemaking proposal must be issued before applying any new LDAR requirements to Type C gathering lines.

ii. The Proposed Leakage Survey Requirements for Gathering Lines Remain Unsupported by the Record.

The Gathering Industry Commenters have previously explained why the record does not support applying the Proposed Rule's leakage survey and patrol requirements to gas gathering pipelines.³⁰ Specifically, the Gas Gathering Industry Commenters note that:

- The risk assessment for the proposed changes to the leakage surveys requirements for Type C gas gathering lines does not comply with 49 U.S.C. § 60102(b)(3). PHMSA did not consider any non-regulatory options in conducting the risk assessment for the proposed changes to the leak survey requirements for Type C gathering lines and only considered regulatory options that satisfied the rulemaking mandate in Section 113. The Agency did not consider the non-public-utility status of Type C gathering lines in evaluating the costs of the proposed changes, or the information and other data that Type C gathering line are now required to submit to PHMSA in incident, safety-related condition, and annual reports. Nor did the Agency consider the unique impact of applying more frequent leakage survey requirements to Type C gathering lines, which only recently became regulated, had initial

²⁴ Gas Gathering Industry Comments at 17-29, Docket No. PHMSA-2021-0039 (Aug. 16, 2023) (discussing certain amendments to written procedural requirements, leakage survey requirements, leak grade and repair criteria, and advanced leak detection programs).

²⁵ GPAC Transcript Day 5 at 171:17-173:20 (Dec. 1, 2023).

²⁶ *Id.* at 175:1-176:5.

²⁷ *Id.* at 175:7-178:20.

²⁸ *Id.* at 249:1-251:9; 272:1-272:17; 371:7-9 “[T]he biggest problem is...the information gap.”)

²⁹ *Id.* at 236:20-238:15; 298:7-9.

³⁰ Gas Gathering Industry Comments at 21-24, Docket No. PHMSA-2021-0039 (Aug. 16, 2023).

compliance deadlines that did not run until May 2023, and are subject to an exercise of enforcement discretion that does not expire until May 2024.

- PHMSA relied primarily on two sources of authority in estimating the costs of the proposed changes to the leakage surveys for Type A, B, and C gathering lines. The first source of authority is a 2014 state public utility proceeding in California involving an operator with no onshore gas gathering lines. The second source of authority is the Agency's Final Regulatory Impact Analysis for the November 2021 gas gathering line rule, which provides a cost estimate of \$500 per mile for conducting leakage surveys without citing to any supporting authority.³¹ Neither of these sources provides a sufficient basis for extrapolating the potential costs of conducting additional leakage surveys for the gas gathering sector. Nor do they account for the adverse market conditions that will arise from requiring increased leakage surveys across all sectors of the gas pipeline industry at the same time.
- PHMSA failed to quantify the safety benefits of the proposed changes to the leakage survey requirements. The Agency must adequately identify the benefits of a proposed standard to comply with risk assessment requirements in the Pipeline Safety Act and cannot simply offer a conclusory explanation for failing to quantify those benefits.³² The safety benefits of the proposed increase in the leak survey requirements are clearly relevant to making a reasoned cost-benefit determination, particularly for small leaks. Any methane emission reductions that would result from requiring operators to conduct leak surveys to detect small leaks is minimal, and any justification for imposing that obligation requires consideration of the safety benefits and resulting costs.

Multiple public commenters raised these issues, as well as other serious concerns related to the PRIA, in addressing the GPAC at the public meeting.³³

iii. The Proposed ALDP and Leak Grading and Repair for Gas Gathering Pipelines Remain Unsupported by the Record.

The application of the proposed ALDP and leak grading and repair criteria requirements to gas gathering pipelines cannot be supported by the current administrative record. The Gathering

³¹ The 2021 FRIA relied heavily on information that IPAA purportedly provided to PHMSA during a 2006 rulemaking proceeding. PHMSA recently acknowledged that the historical data submitted by IPAA is no longer available for review. Letter from Tristan H. Brown, Deputy Administrator to Mathew Hite, GPA Midstream (Apr. 15, 2022), <https://www.regulations.gov/document/PHMSA-2011-0023-0507>. PHMSA cannot prepare an adequate risk assessment by relying on outdated, and otherwise unavailable, data from a years-old rulemaking proceeding. See Appeal of Decision Denying Petition for Reconsideration at 7-8, No. PHMSA-2011-0023 (June 1, 2022), <https://www.regulations.gov/document/PHMSA-2011-0023-0509>.

³² *GPA Midstream Ass'n v. United States Dep't of Transportation*, 67 F.4th at 1200-1201.

³³ GPAC Transcript Day 2 at 40:8-13 (Nov. 28, 2023) (asking PHMSA to consider emission costs related to increased patrolling); *Id.* at 63:5-8 (costs associated with increased patrolling cannot be applied to more beneficial risk-mitigation and safety operations); *Id.* at 67:3-71:3 (failure of the PRIA to consider gas gathering); *Id.* at 76:13-21 (patrolling has not been shown to be an effective method for leak detection); *Id.* at 77:7-80:10; *Id.* at 83:7-15 (no accounting in the PRIA for transmission patrolling costs).

Industry Commenters raised significant issues concerning PHMSA's risk assessment that must be remedied through a supplemental rulemaking and new risk assessment.³⁴

With respect to the proposed ALDP requirements, the Gas Gathering Industry Commenters reiterate that:

- Section 113 does not apply to gas gathering lines in Class 1 locations, including Type C gathering lines. Congress limited the mandate to regulated Type A and Type B gas gathering lines in Class 2, 3, and 4 locations. Type C gathering lines were not even jurisdictional when Congress enacted Section 113 and only became regulated for the first time in May 2022. Congress clearly did not intend for PHMSA to apply advanced leak detection program requirements to Type C gas gathering lines, particularly when those lines only recently became subject to the basic, first-generation leak survey and repair requirements in Part 192.
- The risk assessment for the proposed ALDP requirements for Type C gas gathering lines does not comply with 49 U.S.C. § 60102(b)(3). PHMSA did not consider any non-regulatory options and only considered regulatory options that satisfied the rulemaking mandate in Section 113. PHMSA did not consider the non-public-utility status of Type C gathering lines in evaluating the costs of the proposed ALDP, or the information and other data that Type C gathering line operators are now required to submit to PHMSA in incident, safety-related condition, and annual reports. Nor did PHMSA consider the unique impact of applying the proposed ALDP requirements to Type C gathering lines, which only became regulated for the first time in May 2022, had initial compliance deadlines that did not run until May 2023, and are subject to an exercise of enforcement discretion that does not expire until May 2024.

As for the proposed leak grading and repair requirements, the Gas Gathering Industry Commenters similarly reiterate that:

- PHMSA did not consider any non-regulatory options and only considered regulatory options that satisfied the rulemaking mandate in Section 113 in evaluating the costs, benefits, and other impacts of applying the proposed leak grading and repair requirements to Type C gathering lines. The Agency did not consider the non-public-utility status of Type C gathering lines in evaluating the costs of the proposal, or any of the information and other data that Type C gathering line operators are now required to submit to PHMSA in incident, safety-related condition, and annual reports. Nor did the Agency consider the unique impact of applying more stringent leak grading and repair requirements to Type C gathering lines, which only became jurisdictional last year, had initial compliance deadlines that did not run until May 2023, and are subject to an exercise of enforcement discretion that does not expire until May 2024.
- PHMSA relied on unreasonable assumptions in evaluating the costs, benefits, and other impacts. The Highwood Report submitted by the Gas Gathering Industry Commenters

³⁴ Gas Gathering Industry Comments at 25-32, Docket No. PHMSA-2021-0039 (Aug. 16, 2023).

states that the average leak incidence rate used in the PRIA likely results in a significant underestimation of the actual leak incidence rate for the gas gathering sector. The Highwood Report also notes that PHMSA’s failure to account for leak sizes undermines the validity of the average leak incidence rate used in the PRIA as well. In addition, the Agency relied on a single proceeding involving a public utility gas transmission line operator to support using an average unit repair cost of \$5,650 per leak for all regulated gathering lines. Using a single public utility proceeding to determine the average unit cost of leak repairs for an entirely different sector of the pipeline industry is unreasonable. Finally, PHMSA assumed that the proposed leak grading and repair requirements “are generally consistent with existing practices of gas gathering and transmission operators”, even though the proposed requirements depart significantly from longstanding industry practice, and did not quantify any of the safety benefits associated with that proposal.

During the public comment period, speakers raised concerns that the Gathering Industry Commenters share with the ALDP³⁵ and leak grading and repair requirements.³⁶ The GPAC did not discuss the impact that these proposed requirements would have on gas gathering lines, instead providing recommendations for transmission and distribution lines.³⁷ The administrative record does not adequately or accurately address how these requirements apply to gathering lines, and PHMSA should conduct a supplemental rulemaking and revised risk assessment to provide the necessary support.

iv. PHMSA Must Consider Other Methane-Related Regulations.

When preparing LDAR requirements, it is critical that PHMSA works to align its requirements with methane-related regulations that are already in place or are part of a pending rulemaking, such as EPA’s OOOOb super-emitter program and EPA’s mandatory greenhouse gas (GHG) reporting program in 40 CFR Part 98, particularly “other large release events”.³⁸ For example, the proposed minimum leak detection threshold rate in these two EPA programs is 100 kilograms per hour (kg/hr) of methane, respectively. In the August 2023 Joint Comments, the Gas Gathering Industry Commenters requested PHMSA review several EPA methane proposals and incorporate cost benefit data related to those requirements.³⁹ Application of duplicative or diverging requirements that aim to regulate the same issue will increase regulatory burdens and costs with no associated safety benefit. Committee members also stressed the importance of

³⁵ GPAC Transcript Day 2 at 403:14-405:2 (Nov. 28, 2023) (complexity across systems and pipeline types require flexibility); *Id.* at 406:19-408:21; *Id.* at 412:10-415:4 (legal issues with the PRIA); *Id.* at 423:1-12 (costs associated with ALDP).

³⁶ GPAC Transcript Day 3 at 392:18-393:16 (Nov. 29, 2023) (Stressing the importance of technological flexibility); p. 415:17-417:9 (issues in the PRIA related to gathering lines); *Id.* at 429:1-430:3 (Assumed costs in the PRIA are inaccurate); *Id.* at 432:1-434:3 (Assumed costs in the PRIA are inaccurate).

³⁷ GPAC Transcript Day 5 at 285:1-16 (Dec. 1, 2023) (“I don’t believe that we, in this rulemaking, have been able to adequately consider how to bring the entire gathering industry up to the same level of standard as transmission and distribution.”); *Id.* at 361:6-18 (Discussing the difference between transmission, distribution, and gathering sectors).

³⁸ Gas Gathering Industry Comments at 20-21, Docket No. PHMSA-2021-0039 (Aug. 16, 2023) (as related to compressor stations) & 34-35 (other pending EPA requirements); GPAC Transcript Day 2 at 378:8-382:6 (Nov. 28, 2023) (Description of EPA OOOO requirements and the need to align with PHMSA requirements).

³⁹ *Id.*

aligning EPA and PHMSA requirements.⁴⁰ PHMSA should review these materials when submitting a supplemental rulemaking and revised risk assessment for gas gathering lines to ensure that these programs are considered, and the regulatory requirements align.

v. PHMSA Does Not Have the Authority and the Record Does Not Otherwise Support Extending the National Pipeline Mapping System Requirements to Gathering Pipelines

The Gas Gathering Industry Commenters reiterate that any extension of the national pipeline mapping system (NPMS) to gathering pipelines is unlawful.⁴¹ The Agency’s authorization to administer the NPMS program is codified at 49 U.S.C § 60132. Subsection (a) of that provision states, in relevant part, that “the operator of a pipeline facility (except distribution lines and gathering lines)” shall submit geospatial data and other information to the NPMS. The exception for distribution and gathering lines in Section 60132(a) dates back to a voluntary digital pipeline mapping program that PHMSA created in the late 1990s, and Congress carried that exception forward in authorizing the NPMS program in the Pipeline Safety and Improvement Act of 2002 (2002 Act). The original language of the 2002 Act remains codified at § 60132(a) and has not been altered in any of the four subsequent reauthorizations of the Pipeline Safety Act.

While PHMSA has repeatedly suggested that its general information collection authority in 49 U.S.C. § 60117(c) or general rulemaking authority in 49 U.S.C. § 60102 can be used to require gathering line operators participate in the NPMS, that is not the case. It is well settled that “an agency may not circumvent specific statutory limits on its actions by relying on separate, general rulemaking authority.”⁴² Congress enacted a specific statute authorizing the NPMS program in the 2002 Act and included a clear exception for gathering lines (and distribution lines). That exception has remained in place for more than twenty years, and PHMSA cannot use its general information collection or rulemaking authority to rewrite a statute decades after the fact.

Moreover, even if PHMSA had the authority to require gathering line operators to participate in the NPMS, the record does not provide an adequate basis for pursuing that proposal. Most gathering line operators already provide appropriate pipeline location information to the authorities that administer state damage prevention programs. State damage prevention authorities do not generally require information to be submitted in a geographic information system format or with the level of detail that PHMSA requires for the NPMS program. Gas gathering line operators are also required to develop and implement public awareness and education programs under PHMSA’s regulations. Given the information that is already available to regulators and the public,

⁴⁰ GPAC Transcript Day 3 at 138:11-139:10 (Nov. 29, 2023).

⁴¹ Gas Gathering Industry Comments at 12-14, Docket No. PHMSA-2021-0039 (Aug. 16, 2023).

⁴² *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1053, 1061–1066 (D.C. Cir. 2018); *see also RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645–647 (2012); *American Petroleum Inst. v. EPA*, 706 F.3d 474, 479–480 (D.C. Cir. 2013) (“a broad programmatic objective cannot trump specific instructions”); *Michigan v. Envi’l Prot. Agency*, 268 F.3d 1075, 1084 (D.C. Cir. 2001) (“EPA cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions of EPA in a particular area.” (citation omitted)); *Asiana Airlines v. FAA*, 134 F.3d 393, 401–403 (D.C. Cir. 1998) (same); *American Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995) (“the general grant of rulemaking power to EPA cannot trump specific portions of the CAA”).

imposing an additional burden on gathering line operators to provide geospatial data to the NPMS solely is unreasonable.

At the GPAC meetings, both members of the public and committee members voiced opposition to the extension of NPMS to gathering pipelines on legal grounds and due to the inadequate cost-benefit analysis prepared by PHMSA to support the Proposed Rule.⁴³ At the GPAC meetings, PHMSA did not provide additional data that would show a sufficient risk assessment to justify including gas gathering lines in the NPMS. The Pipeline Safety Act does not permit PHMSA to apply NPMS requirements to gathering lines.⁴⁴ And even if PHMSA did have the necessary statutory authority, the current PRIA and administrative record does not support applying the NPMS requirements to gathering lines.

vi. PHMSA Should Clarify Elements of the Proposed Large-Volume Gas Release Reports.

In the August 2023 Joint Comments, the Gas Gathering Industry Commenters requested that PHMSA make certain clarifications related to its proposed large-volume gas release report.⁴⁵ At GPAC, the committee discussed a reduction in the number large-volume gas release reports per year⁴⁶ and ensuring consistency across EPA and PHMSA reporting requirements.⁴⁷ The Gas Gathering Industry Commenters also reiterate our earlier comments that any event that requires an incident report should not also require large-volume release reports in cases when a supplemental incident will provide the necessary data, and that PHMSA should clarify that a large-volume release report does not apply to instances of operators flaring gas under proposed § 192.770, or instances when the operator uses gas for fuel.⁴⁸

The Gas Gathering Industry Commenters maintain that duplicative federal reporting requirements to multiple agencies increases costs without providing safety benefit, and PHMSA should consider and coordinate with EPA to determine if reporting will provide information not being provided elsewhere.

vii. PHMSA Should Clarify Proposed Definitions of Leak or Hazardous Leak, Failure, and Confined Space.

The proposed definitions of “leak or hazardous leak,” “failure,” and “confined space,” are too broad, overly burdensome, not supported by PHMSA’s analysis in the PRIA.⁴⁹ At the GPAC meetings, no vote was taken on these topics, but multiple speakers expressed concern over the

⁴³ GPAC Transcript Day 5 at 182:19-184:7 (Dec. 1, 2023) (PSA does not permit extension of NPMS to gathering lines); GPAC Transcript Day 7 at 146:2-10 (Mar. 25, 2024); *Id.* at 150:6-151:2; *Id.* at 155:9-156:2 (The Committee does not have sufficient information to consider extension of NPMS requirements to gathering pipelines); *Id.* at 156:6-16 (NPMS is not a leak detection tool).

⁴⁴ 49 U.S.C. 60132(a); *see* discussion in Gas Gathering Industry Comments at 12-14, Docket No. PHMSA-2021-0039 (Aug. 16, 2023).

⁴⁵ Gas Gathering Industry Comments at 11, Docket No. PHMSA-2021-0039 (Aug. 16, 2023).

⁴⁶ GPAC Transcript Day 7 at 235:16-239:20 (Mar. 26, 2024).

⁴⁷ *Id.* at 243:7-19, 252:4-16.

⁴⁸ Gas Gathering Industry Comments at 11, Docket No. PHMSA-2021-0039 (Aug. 16, 2023).

⁴⁹ *Id.* at 14-16, 19-20.

implications these terms would have on the industry in terms of cost impacts with no safety benefits.⁵⁰ The Gas Gathering Industry Comments requests PHMSA review these comments in a supplemental rulemaking and revised risk assessment for gas gathering lines to ensure a sufficient cost-benefit analysis is conducted to support appropriate definitions for these terms.

viii. PHMSA’s Reference to Certain General Topics in the Proposed Rule Does Not Provide an Adequate Basis for Prescribing Binding Legal Requirements in the Final Rule.

The Proposed Rule requested comment whether PHMSA should include additional requirements for certain facilities and technologies not addressed in the Proposed Rule, including requirements for Type R lines, hydrogen lines, and underground natural gas storage facilities.⁵¹ In August 2023 Joint Comments, the Gas Gathering Industry Commenters stressed that without providing detailed proposal and conducting a risk assessment for those topics, a final rule that include specific requirements for the general topics would violate the Administrative Procedure Act and Pipeline Safety Act.⁵²

These concerns remain. PHMSA has still not proposed any specific requirements for the general topics or provided a risk assessment to support any proposal. GPAC discussion did not supplement the administrative record with necessary data and analysis but acted as a sounding board for policy preferences. The administrative record is insufficient to support any final rulemaking that includes these topics, and PHMSA should conduct a supplemental rulemaking and publish a revised risk assessment if it seeks to pursue specific requirements for these topics.

ix. PHMSA Cannot Use the Requirements in the Proposed Rule to Establish the Compliance Deadlines in the Final Rule.

PHMSA indicated in the Proposed Rule that the Agency expected operators to be able to achieve compliance with the requirements in the final rule based solely on the issuance of the proposed regulations. The D.C. Circuit recently rejected that position in *Window Covering Manufacturers Ass’n v. Consumer Prod. Safety Comm’n*, 82 F.4th 1273, 1292 (D.C. Cir. 2023), stating:

[T]he Commission suggested that window covering manufacturers should have begun complying with the new safety standard as soon as they learned of the Proposed Rule. We reject that argument and its implications. Agency action is not “final” until a conclusion is reached that “mark[s] the consummation of the agency’s decisionmaking process,” from which “rights or obligations have been determined” or “legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997) (cleaned up). Here, the culmination of the agency’s yearlong revision process was the Final Rule, and manufacturers of window coverings had no new compliance obligations until the

⁵⁰ GPAC Transcript Day 8 at 114:5-10, 117:14-19, 121:9-122:20, 123:3-10, 119:14-120:6, 123:15-22, 127:12-128:7, 133:5-134:2, 140:6-18, 141:1-11, 141:13-142:15 (Mar. 27, 2024).

⁵¹ Gas Gathering Industry Comments at 33-34, Docket No. PHMSA-2021-0039 (Aug. 16, 2023).

⁵² *Id.*

Final Rule was promulgated. We will not credit an agency explanation that requires regulated entities to tailor their operations to adhere to an agency's proposed rules. That would make the subsequent notice-and-comment proceedings superfluous and undermine the entire rulemaking process.

Id. The Gas Gathering Industry Commenters reiterate that the Agency cannot rely on the provisions in the Proposed Rule in determining the appropriate compliance deadlines for any of the requirements included in the final rule.

IV. Conclusion

The Gas Gathering Industry Commenters share PHMSA's commitment to pipeline safety and appreciate the opportunity to submit these comments on the Proposed Rule.

Sincerely,



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