

November 21, 2023

Alan K. Mayberry
Associate Administrator for Pipeline Safety
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
United States

RE: Docket No. PHMSA-2021-0039
Pipeline Safety: Gas Pipeline Leak Detection and Repair
Gas Pipeline Advisory Committee Meeting

Mr. Mayberry:

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 (collectively, Gas Gathering Industry Commenters) are writing to you as the Designated Federal Officer (DFO) for the Gas Pipeline Advisory Committee (GPAC).¹ The GPAC is scheduled to hold a public meeting from November 27 to December 1, 2023, to review the proposed rule in the above-captioned proceeding, Pipeline Safety: Gas Pipeline Leak Detection and Repair, 88 Fed. Reg. 31,890 (May 18, 2023) (Proposed Rule).² The Proposed Rule includes 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. Many of these changes are intended to address provisions in the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, Division R, 134 Stat. 1181, 2210 (2020 PIPES Act).

Our understanding is that the Agency held a pre-briefing with the GPAC members on November 15, 2023, to discuss the Proposed Rule in preparation for the upcoming meeting.³ We reviewed the Agency's pre-briefing materials and are concerned by PHMSA's failure to include any meaningful analysis of the Preliminary Regulatory Impact Analysis (PRIA), including with respect to the comments and information received from the public. We note that the Agency's obligation to conduct a risk assessment in preparing the PRIA is an important part of the rulemaking process, and that the GPAC is required to consider the risk assessment information in

¹ PHMSA, Gas Pipeline Advisory Committee (GPAC) Charter – October 2022 to October 2024, <https://www.phmsa.dot.gov/standards-rulemaking/pipeline/gas-pipeline-advisory-committee-gpac-charter-october-2022-october-2024> (last updated Nov. 14, 2022).

² <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=167>.

³ <https://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=1514>.

performing its peer review function of a proposed rule. *GPA Midstream Ass’n v. United States Dep’t of Transp.*, 67 F.4th 1188, 1196-99 (D.C. Cir. 2023). We are bringing these concerns to your attention in advance of the public meeting to ensure that PHMSA staff and the GPAC members are properly advised of their statutory roles and responsibilities.

The Pipeline Safety Act requires PHMSA to conduct a risk assessment for a proposed rule and to present the risk assessment information to the GPAC for peer review. 49 U.S.C. §§ 60102(b)(3)-(4). After receiving the risk assessment information, the GPAC is then required to “prepare and submit to the [Agency] a report that includes—(i) an evaluation of the merit of the data and methods used; and (ii) any recommended options relating to that risk assessment information and the associated standard that the committee determines to be appropriate.” *Id.* § 60102(b)(4)(B)(i)-(ii). The GPAC charter indicates that the members effectively prepare that report during the deliberations that occur at the public meeting.⁴

The Gas Gathering Industry Commenters submitted detailed comments on the Proposed Rule, and those comments raised significant concerns with the risk assessment that PHMSA included in the PRIA. Those concerns included, among other things:

- PHMSA’s failure to consider any non-regulatory options in conducting the risk assessment for Type C onshore gas gathering lines as required by 49 U.S.C. § 60102(b)(3). Instead of considering non-regulatory options, the Agency simply assumed that “keeping the requirements in 49 CFR unchanged . . . would fail to fulfill the mandate that Congress placed on PHMSA in Section 113 of the PIPES Act of 2020.”⁵ However, the rulemaking mandate in Section 113 of the 2020 PIPES Act does not apply to Type C onshore gathering lines, and there is no other provision in the Pipeline Safety Act that justifies PHMSA’s failure to consider non-regulatory options in conducting the risk assessment for these pipelines.
- PHMSA’s failure to adequately identify the costs and benefits in conducting the risk assessment for Type C onshore gas gathering lines as required by 49 U.S.C. § 60102(b)(3). We explained that PHMSA did not consider the non-public-utility status of gathering lines in analyzing the costs of the Proposed Rule, and that the Agency failed to quantify any of the safety benefits, which are clearly relevant in weighing the costs and benefits of requiring Type C gas gathering line operators to detect and repair small leaks, including for pipeline segments that do not contain any buildings intended for human occupancy or other impacted sites within the potential impact circle. We further explained that PHMSA did not use any of the data that Type C onshore gas gathering line operators are providing to the Agency in incident, annual, and safety-related condition reports. Finally, we explained that the Agency did not consider the impact of applying more stringent leak detection and repair requirements to all Type C onshore gas gathering lines, which only became jurisdictional gas pipeline facilities for the

⁴ According to the current GPAC charter, “[t]he transcript of the [GPAC’s public] meeting[s], together with the presentation slides documenting the [GPAC’s] votes during each meeting, shall serve as the report for each proceeding.” GPAC Charter 3.a., <https://www.phmsa.dot.gov/standards-rulemaking/pipeline/gas-pipeline-advisory-committee-gpac-charter-october-2022-october-2024>.

⁵ PHMSA, Preliminary Regulatory Impact Analysis at 19, Docket No. PHMSA-2021-0039 (Apr. 2023), <https://www.regulations.gov/document/PHMSA-2021-0039-0019>.

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 runs through May 2024.

- PHMSA’s failure to incorporate adequate technical data and information and reliance on unreasonable assumptions in conducting the risk assessment for Type A, B, and C gathering lines. We explained, for example, that 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 underestimates the impact of the Proposed Rule; relied on a single proceeding involving a public utility gas transmission line operator in California in estimating repair costs for the gathering sector; assumed that the proposed leak grading and repair requirements are generally consistent with existing industry practices, when they clearly depart in significant ways from those practices; and failed to quantify any of the safety benefits for the Proposed Rule.

The Gas Gathering Industry Commenters also submitted a detailed third-party technical report, Highwood Emissions Management, Technical Report: PHMSA Methane Detection Requirements Analysis, Evaluation of PHMSA’s proposed monitoring technology requirements (July 27, 2023) (Highwood Report).⁶ The Highwood Report provided data and information about the costs, benefits, and other impacts of the Proposed Rule that bears directly on various aspects of the Agency’s risk assessment.

Despite these extensive comments, PHMSA failed to include any meaningful analysis of the PRIA in the pre-briefing materials provided to the GPAC members on November 15, 2023. The pre-briefing materials only included a single slide summarizing the overall estimated costs and benefits of the Proposed Rule at a 7% and 3% discount rate. Other aspects of the Proposed Rule addressed in the pre-briefing materials included additional detail and information summarizing the public comments. The Gas Gathering Industry Commenters are concerned by PHMSA’s decision to exclude any meaningful discussion of the PRIA from the pre-briefing materials, particularly given the importance of the risk assessment information to the GPAC’s peer review function.

As the Associate Administrator for Pipeline Safety and DFO for the GPAC, the Gas Gathering Industry Commenters believe you are in the best position to ensure that PHMSA staff and the GPAC members understand the importance of meeting their statutory obligations at the upcoming public meeting. We further note that the industry and public GPAC members that the Agency appointed to satisfy the risk assessment and cost-benefit criteria in 49 U.S.C. § 60115(b)(4)(B)-(C) can assist PHMSA staff in presenting the information necessary to facilitate the peer review process.⁷ Finally, we note that appropriate portions of the public meeting must be dedicated to performing a meaningful review of the risk assessment information for the transcript and other materials presented to serve as the GPAC’s report and recommendations on the Proposed Rule.

⁶ Comments of the Gas Gathering Industry Commenters, Docket No. PHMSA-2021-0039 (Aug. 16, 2023), <https://www.regulations.gov/comment/PHMSA-2021-0039-26134>.

⁷ The Gas Gathering Industry Commenters are unable to determine from the information available on the PHMSA website which industry and public members the Agency appointed to satisfy the risk assessment and cost-benefit criteria in 49 U.S.C. § 60115(b)(4)(B)-(C). <https://www.phmsa.dot.gov/standards-rulemaking/pipeline/gas-pipeline-advisory-committee-gpac-committee-roster-and-biographies>.

The Gas Gathering Industry Commenters appreciate your time and willingness to address these concerns.

Sincerely,



Matthew Hite
Senior Vice President of Government Affairs
GPA Midstream Association



Dave Murk
Senior Director, Pipelines
Midstream and Industry Operations
American Petroleum Institute



David E. Callahan
President
Marcellus Shale Coalition



Robert Brundrett
President
Ohio Oil and Gas Association



Charlie Burd
Gas and Oil Association of WV, Inc.




Daniel J. Weaver
President & Executive Director
Pennsylvania Independent Oil & Gas Association



Dan Naatz
COO & Executive Vice President
Independent Petroleum Association of America



Tulsi Oberbeck
Director of Government and Regulatory Affairs
Texas Oil and Gas Association



Ryan Watts
Executive Director
Kentucky Oil & Gas Association



Angie Burckhalter
Senior V.P. of Regulatory & Environmental Affairs
The Petroleum Alliance of Oklahoma