

ENERGY ALERT

NEW PIPELINE SAFETY LAW IN PENNSYLVANIA

The “Gas and Hazardous Liquids Pipelines” Act (HB 344, PN 2816) was passed by the Pennsylvania General Assembly, and was signed by Governor Tom Corbett on December 22, 2011 (“Act No. 127”). It becomes effective on February 20, 2012. [60 days after signing.]

Act No. 127 authorizes the Pennsylvania Public Utility Commission (“PUC”) to conduct safety inspections and investigations of natural gas pipelines within the Commonwealth in coordination with the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration. It would also give the PUC the power to regulate natural gas pipelines without having to deem them a public utility. Therefore, Act No. 127 does not extend the power of eminent domain is not extended to these pipelines. It does impose registration and fee requirements on midstream pipelines.

Pipelines

The provisions of Act No. 127 apply only to pipelines, pipeline operators or pipeline facilities regulated under Federal pipeline safety laws.¹

Registration and Annual Fees

The PUC shall establish and maintain a registry of all pipeline operators, excluding a petroleum gas distributor who is registered under the Propane and Liquefied Petroleum Gas Act.² The PUC may charge a reasonable registration fee and annual renewal fee, but no registration fee or annual renewal fee shall be required of a borough.

Importantly, it should be noted that the operator of a pipeline in a Class 1 location that collects or transports gas from an unconventional well (e.g. Marcellus Shale gas well) shall report the location of the pipeline by class location and approximate aggregate miles for inclusion in the PUC’s registry.

Safety Standards

The safety standards and regulations for pipeline operators shall be those issued under the Federal pipeline safety laws as implemented in 49 CFR Subtitle B Ch. 1 Subch. D.³ Under Act No. 127, the PUC shall have the following duties, and may adopt regulations that are consistent with Federal pipeline safety laws as may be necessary:

- To investigate a service, act, practice, policy or omission by a pipeline operator to determine compliance with Act No. 127.

¹ The act defines the “Federal pipeline safety laws” as: (a) 49 U.S.C. CH. 601 (relating to safety); (b) The Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. §§ 2001, et seq., (c) The Pipeline Safety Improvement Act of 2002, 49 U.S.C.S. §§ 60101, et seq.; and (d) the regulations promulgated under those acts.

² 35 P.S. §§ 1329.1 to 1329.19.

³ 49 CFR §§ 190.1 to 199.245.

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- To investigate a pipeline transportation facility to determine if it is hazardous to life or property.
- To investigate the existence or report of a safety-related condition that involves a pipeline transportation facility.
- To enter into contracts or agreements with the United States Department of Transportation to inspect intrastate or interstate transmission facilities.
- Accept grants-in-aid, cash and reimbursements made available to the Commonwealth by the Federal Government to implement Federal pipeline safety laws or other Federal law.
- To advise, consult and cooperate with the Federal Government, other states and other agencies as may be necessary to carry out the purposes of Act No. 127.
- To enforce the Federal pipeline safety laws and, after notice and opportunity for a hearing, impose civil penalties and fines and take other appropriate enforcement action.
- For purposes of petroleum gas, the PUC's jurisdiction under Act No. 127 shall be limited to those petroleum gas systems that are the following: (a) Subject to the Federal pipeline safety laws, and (b) Not a public utility.

Each pipeline operator, including its officers, agents and employees, which owns or operates equipment or facilities for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws shall observe, obey and comply with the terms and conditions of Act No. 127.

Leases

Under Act No. 127, a lease entered into to permit the replacement or construction of a pipeline carrying natural gas may include provisions relating to the restoration of the surface area, including soil or vegetation. A lease with a public entity may provide for the planting of trees in other areas of a county or municipality if trees were removed to replace or construct the pipeline.

Violations

A pipeline operator who violates Act No. 127 shall be subject to a penalty provided under the Federal pipeline safety laws or 66 Pa.C.S. § 3301(c) (relating to civil penalties for violations), whichever is greater. Section 3301(c) provides for civil penalties not to exceed \$10,000 for each violation for each day that the violation persists, and provides that \$500,000 is the maximum civil penalty for any related series of violations.

Jurisdiction

Nothing in Act No. 127 shall give the PUC jurisdiction over any pipeline operator for purposes of rates or ratemaking or any purpose other than those set forth in Act No. 127.

The jurisdiction of the commission over landfill gas distribution systems under Act No. 127 shall be limited to systems subject to Federal pipeline safety laws, and the commission shall not have jurisdiction over operations and systems within the property boundary of the landfill.

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It should be noted that Act No. 127 does not give the PUC additional authority to regulate a pipeline operator who is a public utility or a natural gas supplier.

Conclusion

Eckert Seamans can assist you in understanding this new law and its impact on your operations. Importantly, we can also advise you how to maintain compliance with Act No. 127 and other applicable laws. If you would like more information on the new law or assistance in understanding how your interests may be affected by the Commission's actions, please contact Dan Clearfield or any one of our other Energy Group attorneys at Eckert Seamans.

This Energy Alert is intended to keep readers current on matters affecting energy, and is not intended to be legal advice. If you have any questions, please contact one of the attorneys listed above, or any other attorney with whom you have been working.

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