

**ENERGY ALERT**

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**RAPIDLY APPROACHING DEADLINES UNDER PENNSYLVANIA'S NEW PIPELINE SAFETY LAW**

Deadlines are rapidly approaching under the recently enacted "Gas and Hazardous Liquids Pipelines" Act (Act 127 of 2011), which is also known as the Pipeline Safety Law.

The Pennsylvania Public Utility Commission ("PUC") issued a Final Order on the implementation of Act 127 on February 16, 2012. Act 127 becomes effective on February 20, 2012 and authorizes the PUC to conduct safety inspections and investigations of natural gas pipelines within the Commonwealth in coordination with the U.S. Department of Transportation's ("U.S. DOT") Pipeline and Hazardous Material Safety Administration ("PHMSA"). It also gives the PUC the power to regulate natural gas pipelines without having to deem the "pipeline operators" to be a public utility.

**Self-Registration of Pipeline Operators**

Under Act 127, the PUC is developing a registry for all "pipeline operators" in the Commonwealth. The term "pipeline operator" is defined as a person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws. But, this term does not include (a) a public utility, (b) an ultimate consumer who owns a service line on their real property (c) pipelines subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC) or (d) petroleum gas distributors who are not subject to the federal pipeline safety laws.

This is a broad definition that includes gathering companies; midstream companies; pipeline companies; gas distribution systems that are not public utilities (cooperatives, municipalities, and municipal authorities); master meter systems that provide service to property owned by third parties; and propane distribution systems subject to the federal pipeline safety laws.

Owners or operators of pipelines in Pennsylvania will need to determine if Act 127 applies to them. The key point is that if a person operates multiple facilities, some of which are subject to Act 127 and some of which are not, the person is a pipeline operator only with regard to the facilities subject to Act 127. For example, a person who operates a FERC jurisdictional transmission pipeline facility and other non-FERC jurisdictional gathering lines, then they are a pipeline operator with regard to their non-FERC jurisdictional gathering lines.

**Annual Registration**

Each pipeline operator is required to register with the PUC. Initial registrations must be filed with the PUC by March 16, 2012. Registration is required each year. Future registrations must be submitted to the PUC by March 31<sup>st</sup> of each year. Registrants are expected to file their registration forms using the PUC's eFile system.

The registry will be organized by U.S. DOT Operator ID numbers. Multiple entities that operate under one U.S. DOT Operator ID number will register as a single pipeline operator. A single entity with

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multiple U.S. DOT Operator ID numbers must register each U.S. DOT Operator ID number as a separate pipeline operator.

Registration will include a report of the entity's in-state pipeline mileage in operation for the prior calendar year for (a) Class 1 pipeline serving unconventional wells,<sup>1</sup> and (b) all Class 2, 3 and 4 Pennsylvania gas or hazardous liquids pipelines.<sup>2</sup> Pipeline mileage should be reported to the nearest 1/10<sup>th</sup> of a mile.

Each pipeline operator must determine whether a pipeline is "regulated under Federal pipeline safety laws." This can be a complex determination for gathering lines.<sup>3</sup> **Be careful with your classifications!** If a person operates pipelines that are located solely in Class 1 locations and that have no distribution service, such pipelines are currently not jurisdictional under Act 127 and the person need not register as a pipeline operator.<sup>4</sup> But, if it is later determined that the pipelines are not solely in Class 1 areas and are subject to Federal pipeline safety laws, you are potentially liable for failing to register as a pipeline operator and for any other violations of Act 127.

Registration will also include a disclosure, regardless of class location, of the country of manufacture for all tubular steel pipe installed in the prior calendar year in Pennsylvania for the exploration, gathering or transportation of natural gas or hazardous liquids. Registrants will need to provide the length of all such tubular steel pipe in feet, and may rely upon the indication of the country of manufacture on purchase invoices or upon the stamp on the product itself. If the country of manufacture is unknown, registrants should then indicate that along with the length of the product installed.

The annual registration fee of \$250 is due from each pipeline operator - with the exception of propane distributors (registered with the Pennsylvania Department of Labor & Industry) and boroughs.

Once registered, pipeline operators are responsible to promptly update the PUC with any changes to their contact information. Pipeline operators who fail to register will be subject to civil penalties of up to \$10,000 a day.<sup>5</sup> See 66 Pa. C.S. § 3301(c).

### **Annual Assessments**

In the coming months, two assessments will be invoiced by the PUC to pipeline operators. The first assessment will be for the remainder of Fiscal Year 2011-2012 (February 20, 2012 to June 30, 2012).

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<sup>1</sup> The Commission has adopted the threshold of at least 50% of gas throughput being from unconventional wells as the threshold to trigger Act 127 jurisdiction over a Class 1 pipeline serving unconventional wells.

<sup>2</sup> The Commission has stated that non-public utility hazardous liquid pipelines within Pennsylvania must be registered under Act 127.

<sup>3</sup> PHMSA's regulates rural "onshore gathering lines." Determinations as to whether a gathering line is an "onshore gathering line" should be based on 49 CFR § 192.8(a) and API RP 80 (which is available at [www.pioga.org/publication\\_files/api-rp-80.pdf](http://www.pioga.org/publication_files/api-rp-80.pdf)). Generally speaking, gathering lines used in a production operation, as determined by 49 CFR § 192.8(a) and API RP 80, are not "onshore gathering lines."

<sup>4</sup> Please note that the Commission has determined that operators of pipelines in Class 1 locations with farm taps are required to register as pipeline operators.

<sup>5</sup> Legislation is being considered by the Pennsylvania General Assembly that would raise this amount from \$10,000 to \$200,000 for each violation per day. See House Bill 1294 (Printer's Number 2998).

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The PUC intends to issue invoices for the first annual assessment by March 30, 2012. Payments will then be due to the PUC within 30 days after the date of the invoice.

The second assessment will be for Fiscal Year 2012-2013 (July 1, 2012 to June 30, 2013). Invoices should be sent in July 2012 with payment due to the PUC within 30 days after the date of the invoice. At this time, it is unclear if the invoice will allow installment payments for either invoice.

To determine the amount of the assessment, the budgeted PUC costs will be divided by the number of miles of pipelines operated by pipeline operators in the state to determine the PUC's cost per mile. An invoice will be created for each pipeline operator by multiplying that cost per mile by the number of miles of pipeline in the state for that operator. At this time, early estimates, which are subject to change, show that the PUC's costs will be around \$350,000 for the remainder of Fiscal Year 2011-2012 and \$1.5 million for Fiscal Year 2012-2013. In future fiscal years, the PUC will true-up any overcollections or undercollections. The initial true-up will occur in the Commission's calculation for the Fiscal Year 2013-14 assessment, but the reconciliation process will continue in each future fiscal year.

To challenge the amount of the assessment, a pipeline operator must file objections to the assessment within 15 days after receipt of the invoice. *See* 66 Pa. C.S. § 510(c). The filing of an objection does not excuse or eliminate the obligation to pay the assessment on the due date(s) in the invoice. *See* 66 Pa. C.S. §§ 510(c), (d). But, it is the only way to preserve your right to a refund of erroneous, unlawful or invalid assessments. *See Pittsburgh Limousine v. PUC*, 762 A.2d 1150 (Pa. Cmwlth. 2000) (PUC has no discretion to consider the merits of a utility's untimely filed objections to assessment).

The objections must explain in detail the specific grounds upon which the assessment is excessive, erroneous, unlawful or invalid. The PUC will hold a hearing upon such objections. After the hearing, the PUC shall issue a ruling on the adjudication. Amounts due must be paid within ten (10) days after receipt of PUC's decision on the objections. A pipeline operator who filed an objection may, at any time within two (2) years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid. *See* 66 Pa. C.S. §§ 510(d), (e).

If payment is not timely made, the PUC may suspend or revoke any certificate(s) of public convenience, certify motor vehicle registrations to the Department of Transportation for suspension or revocation, or institute an action at law for the amount lawfully assessed, together with any additional costs incurred. *See* 66 Pa. C.S. § 510(c).

### **Mailing List for Pipeline Operators**

The PUC believes that certain entities are, or may be, pipeline operators under Act 127. It has placed those entities on a mailing list. If you have received materials from the PUC related to Act 127, you are on the pipeline operator list. This is only a problem if you are not a pipeline operator.

Entities on the mailing list who are not pipeline operators need not register with the PUC. But, to avoid future enforcement actions by the PUC, those entities should take prompt action to have the PUC remove them from the mailing list. The PUC has indicated that those entities should contact or email PUC staff (at ra-Act127@pa.gov) with a justification in order to be removed from the PUC's mailing list. An

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entity's determination that they are not required to register under the Act 127 is subject to review by the PUC.

### **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 127 and other applicable laws and regulations. If you would like more information on the new law or assistance in understanding how your interests may be affected by the PUC's actions, please contact Dan Clearfield, Jeff Norton, or any one of our other Energy Group attorneys at Eckert Seamans.

For more background information, see ESCM Alert entitled "New Pipeline Safety Law in Pennsylvania" at <http://www.eckertseamans.com//file/pdf/alerts/EnergyAlertDecember2011.pdf>.

*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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