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Pipelines: Control room management

BY CHRIS PAUL

The Pipeline and Hazardous Materials Safety Administration (PHMSA) published final regulations on December 3, 2009, for control room management (CRM). These regulations were the result of efforts to address concerns of the National Transportation Safety Board related to human factor issues in pipeline control rooms, and in response to specific requirements in the PIPES Act (2006) requiring PHMSA to have pipeline operators establish a human factors management plan. In the preamble to the rulemaking, PHMSA stated the purpose and scope:

“PHMSA is amending the Federal pipeline safety regulations to address human factors and other aspects of control room management for pipelines where controllers use supervisory control and data acquisition (SCADA) systems. Under the final rule, affected pipeline operators must define the roles and responsibilities of controllers and provide controllers with the necessary information, training and processes to fulfill these responsibilities. Operators must also implement methods to prevent controller fatigue. The final rule further requires operators to manage SCADA alarms, assure control room considerations are taken into account when changing pipeline equipment or configurations and review reportable incidents or accidents to determine whether control room actions contributed to the event.”

Operators must develop a CRM plan by August 1, 2011, and implement that plan by February 1, 2013. Parts of API RP 1165: “Recommended Practice for Pipeline SCADA Displays” and API RP 1168 “Pipeline Control Room Management” are incorporated into the rulemaking. An API workgroup is developing API RP 1167, which is to provide pipeline operators with recommended practices in the development, implementation, maintenance, and validation for SCADA alarm management. Differences between the regulation for gas pipelines and liquid pipelines mean operators should carefully review the rule and its applications.

According to the rule: “Each operator must have and follow written control room management procedures that implement the requirements of this section.” In the CRM plan, operators must:

- Define controller’s roles, responsibilities and authorities during normal operations, abnormal operations, and emergency “duties”;
- Provide adequate information to the controllers to perform those duties;
- Establish methodology for shift changes;
- Establish shift lengths, schedule rotations and establish maximum hours-of-service to ensure controllers can achieve the requisite hours of sleep (emergency deviations will be permitted in some circumstances); and
- Educate and train on fatigue mitigation.

Operators must subsequently incorporate lessons learned in their CRM procedures and must maintain documentation to demonstrate that any deviation from the procedures was necessary for the safe operation of the pipeline. Operators must ensure that changes to the pipeline equipment and configurations are coordinated between the control room, operations, and field personnel.

EDITOR

Chris A. Paul

www.mcafeetaft.com/Chris-Paul

CONTRIBUTING

Robert J. Joyce

www.mcafeetaft.com/Robert-Joyce

Mary Ellen Ternes

www.mcafeetaft.com/Mary-Ellen-Ternes

David M. Winfrey

www.mcafeetaft.com/David-Winfrey

Each operator must annually (not to exceed 15 months) test and verify the internal communications plan for manual operation of the pipeline, test any backup SCADA systems, and review the controller training program.

Operators must have a written management plan for alarms, which are defined in this rulemaking as an audible or visible signal to the controller that equipment or processes are deviating from safety-related parameters. Therefore, each operator will need to review their system to determine which alarms pertain to safety-related parameters and make adjustments, since many signals that are commonly referred to as alarms in pipeline parlance related to SCADA systems may not meet this definition of “alarm.” Operators must develop a training program to give each controller a working knowledge of the pipeline system and prepare them to carry out the duties defined by the operator, recognize and respond to abnormal operating conditions, and communicate in emergency conditions. To address system changes, operators must “conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays.” [Click here for access to the rule.](#)

Proposed 2011 budget eliminates fossil fuel tax incentives

BY MARY ELLEN TERNES

The Office of Management and Budget has proposed for Fiscal Year 2011 to eliminate broad categories of financial incentives that preferentially benefit oil, natural gas and coal production. The proposed budget justifies these changes citing perceived market distortions and the goal to strengthen incentives for investments in what are claimed to be clean, renewable and more energy efficient technologies.

For coal, targeted eliminations include: (1) Expensing of Exploration and Development Costs (2) Domestic Manufacturing Deduction for Hard Mineral Fossil Fuels (3) Percent Depletion for Hard Mineral Fossil Fuels (4) Royalty Taxation.

For oil and gas, targeted eliminations include: (1) Repeal Enhanced Oil Recovery Credit (2) Repeal Credit For Oil and Gas Produced From Marginal Wells (3) Repeal Expensing of Intangible Drilling Costs (4) Repeal Deduction For Tertiary Injectants (5) Repeal Exception to Passive Loss Limitations For Working Interests In Oil and Natural Gas Properties (6) Repeal Percentage Depletion for Oil and Natural Gas Wells (7) Repeal Domestic Manufacturing Tax Deduction for Oil and Natural Gas Companies (8) Increase Geological and Geophysical Amortization Period for Independent Producers to Seven Years; (9) Oil and Gas Research and Development Program. [View the proposed budget here.](#)

PHMSA final rule — HazMat security regulation

BY CHRIS PAUL

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a **final rule** on 49 CFR Part 172, Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements. The rule is effective October 1, 2010.

The rule, done after consultation with the Transportation Security Administration (TSA), changes existing security plan requirements applicable to commercial transportation of hazardous materials by air, rail, sea, and highway. The rule both reduces the list of materials subject to security plan requirements, and clarifies specific requirements related to training and documentation. Security plans must include: (a) identification of site-specific risks and vulnerabilities; (b) identification by job title of the senior management official responsible for the overall development and implementation of the plan; (c) identification of security duties for each position or department that is responsible for the plan's implementation; (d) demonstration that employees are aware of individual security responsibilities; and (e) proof of training.

The Final Rule requires that transportation security risk assessments be conducted, an assessment report written, and that the assessment report is included in the transportation security plan. The plan must be reviewed annually and updated as assets, operations, or other situations change; and it must be accessible at all times (electronic retention and access is allowed). Facilities must permit inspection of any security-related document (facility security plans, security training records, etc.) by a TSA or other Department of Homeland Security official, at any time and without advance notice.



Oil spill prevention, control and countermeasure

BY DAVID SPRING AND CHRIS PAUL

The US Environmental Protection Agency (“EPA”) requires all facilities that use, manage and store oil (1,320 gallons or more) to develop and implement Spill Prevention, Control and Countermeasure (“SPCC”) Plans. The latest amendments to the Rule and the compliance dates were issued on November 13, 2009, which reversed some of the amendments made in December, 2008. In 2009, EPA extended the compliance deadline for the new amendments to November 10, 2010 to allow additional time for facilities to prepare, amend, and implement their SPCC Plans. The amended Rule became effective on January 14, 2010.

EPA either retained or provided minor technical corrections for the majority of the December 2008 provisions. These amendments have affected all aspects of the original SPCC regulation, including what types of facilities are required to have plans, the plan contents, and the compliance requirements. Any plan prepared before November 13, 2009, should be evaluated in its entirety to ensure that it complies with the current requirements.

Some of the recent SPCC Rule Amendments apply to specific industries, such as agriculture and oil production facilities, and to certain types of qualified facilities.

Agriculture: The latest Rule exempts pesticide application equipment and related mix containers that may currently be subject to the SPCC Rule when crop oil or adjuvant oil are added to formulations. EPA has also clarified that a nurse tank is considered a mobile refueler, and, like other types of mobile refuelers, is exempt from the sized secondary containment requirements. Additionally, farms are likely to benefit from several of the other amendments finalized in this Rule, benefits counterbalanced by EPA’s removal of provisions that excluded farms and oil production facilities from the loading/unloading rack requirements. EPA also has amended the integrity testing requirements for containers storing certain types of animal fats and vegetable oils, to provide the flexibility to determine the scope of integrity testing that is appropriate, based on compliance with certain U.S. Food and Drug Administration regulations and other criteria.

Oil Production Facilities: The revised Rule has finalized several amendments to tailor the requirements for oil production facilities. The Rule had the following effects:

- Extended the timeframe by which a new oil production facility must prepare and implement an SPCC Plan.
- Modified the definition of “production facility.”
- Provided an alternative option for flow-through process vessels to comply with the general secondary containment requirement and additional oil spill prevention measures in lieu of sized secondary containment requirements.
- Exempted certain intra-facility gathering lines subject to the US Department of Transportation’s pipeline regulations.
- Provided an optional exemption from all secondary containment requirements for flowlines and intra-

facility gathering lines, and established more specific requirements for a flowline / intra-facility gathering line maintenance program and contingency planning.

- Defined “produced water container” and provided an alternative compliance measure for these containers which require general secondary containment, a process or procedure certified by a PE designed to remove free-phase oil on the surface of the produced water in these containers, and compliance with additional oil spill prevention measures in lieu of sized secondary containment requirements.
- Provided a new definition of “loading/unloading rack” to clarify the oil transfer equipment subject to the provisions for facility tank car and tank truck loading/unloading racks, as well as amended provisions for this equipment.
- Clarified the definition of “permanently closed.”

Qualified Facilities: EPA streamlined and tailored the SPCC requirements for a subset of qualified facilities. This Final Rule designates a subset of qualified facilities (“Tier I qualified facilities”) as those that meet the current qualified facilities eligibility criteria and that have no oil storage containers with an individual aboveground storage capacity greater than 5,000 US gallons. A Tier I qualified facility has the option to complete a self-certified SPCC Plan template instead of a full SPCC Plan. By completing the SPCC Plan template, an owner or operator of a Tier I qualified facility will certify that the facility complies with a set of streamlined SPCC Rule requirements. All other qualified facilities are designated “Tier II qualified facilities,” and must prepare a full SPCC Plan.

EPA compliance dates for the SPCC Rule based on the November 13, 2009 Final Rule Amendments are as follows:

A facility starting operation...	Must...
On or before August 16, 2002	Continue to maintain its existing SPCC Plan in accordance with the SPCC Rule. Amend and implement that Plan no later than November 10, 2010.
After August 16, 2002, through November 10, 2010	Prepare and implement an SPCC Plan no later than November 10, 2010.
After November 10, 2010	Prepare and implement an SPCC Plan before beginning operations.* <i>*Owners or operators of new oil production facilities must prepare and implement an SPCC Plan six months after the start of operations.</i>



Clean Air Act new source review: BACT for greenhouse gases

BY MARY ELLEN TERNES

As a thumbnail summary of EPA greenhouse gas (GHG) activity, in the wake of the U.S. Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), on December 7, 2009, EPA issued an Endangerment Finding, and a Cause or Contribute Finding pursuant to the Clean Air Act (CAA) 202(a), to support EPA's promulgation of its GHG Emission Standards for Light-Duty Vehicles, which was finalized on April 1, 2010.

This new mobile source standard is the first standard subjecting GHG emissions to regulation pursuant to the CAA. Therefore, this mobile source standard actually triggers stationary source standards. As confusing as it may be, the CAA, as written, causes this new mobile source standard to automatically trigger application of the Prevention of Significant Deterioration (PSD) requirement for stationary source GHG emissions pursuant to CAA 165 and 169. These CAA provisions apply the Best Available Control Technology (BACT) emissions control requirement to stationary sources for "each pollutant subject to regulation" under the CAA. EPA implements these statutory provisions through 40 CFR 52.21(b)(50), which applies BACT to all "regulated NSR pollutants."

Due to the PSD thresholds of 100 and 250 tons per year, and Title V permitting threshold of 100 tons per year, EPA proposed a "Tailoring Rule," to raise the PSD and Title V thresholds to levels recognizing the higher emission rates of greenhouse gases, 25,000 short tons of carbon dioxide equivalent (CO₂e) greenhouse gas emissions per year. The 25,000 ton CO₂e threshold is consistent with EPA's Mandatory Greenhouse Gas Reporting Rule, promulgated on December 30, 2009, which utilizes a threshold of 25,000 metric tons of carbon dioxide equivalents from some source categories. 74 Fed. Reg. 56260 (Oct. 30, 2009) (adopted in response to the FY2008 Consolidated Appropriations Act (H.R. 2764; Public Law 110-161)) and [available here](#).

However, more recently, EPA has announced that it expects to raise this PSD threshold to a level "substantially higher" than 25,000 short tons of carbon dioxide equivalent. This direction seems to provide relief at the outset, however, CAA sources realize that CAA permitting utilizes a "potential-to-emit" approach, rather than the actual emissions targeted by EPA's Mandatory GHG Reporting Rule. Also, EPA announced that it will delay permitting of stationary source GHG emissions until 2011, and consider GHGs "subject to regulation" only when the mobile source mission standards mandate compliance, rather than the effective date of the [mobile source rule](#).

With respect to PSD implementation, BACT is one of the most litigious aspects of the CAA permitting process, and it can be most costly. Industry is waiting to see EPA's approach, which EPA indicates may rely heavily upon energy efficiency concepts.

Federal Motor Carrier Safety Administration to limit the use of wireless communication devices

BY DAVID WINFREY

To reduce the numbers of highway accidents involving distracted commercial motor vehicle ("CMV") drivers, the Federal Motor Carrier Safety Administration (FMCSA), an Agency of the U.S. Department of Transportation, has issued a notice of proposed rulemaking that would prohibit motor carriers from texting while driving in interstate commerce. The proposed rule, published in the Federal Register on April 1, 2010, is based upon DOT's statutory obligation to ensure that CMVs are operated safely, and that driver activities do not impact their ability to operate CMVs safely.

Drivers who fail to comply with the new rule would face sanctions, including civil penalties and disqualification from operating CMVs in interstate commerce. The rule would also amend FMCSA's commercial drivers license (CDL) provisions to add to the list of disqualifying offenses "a conviction under State or local laws, regulations, or ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers."

If the rule becomes final, it would also prohibit carriers from *requiring* or *allowing* their drivers to engage in texting while driving. To comply with the rule, it will be incumbent upon motor carriers to be able to establish that they have adequate policies, practices and/or procedures in place to discourage their drivers from texting while driving. Should an allegation of texting arise in either an enforcement context or in the context of trucking accident litigation, evidence of written policies, training, monitoring, discipline and more will all be at issue.

EPA proposes to add sixteen new chemicals to the toxics release inventory list

BY ROBERT JOYCE

For the first time in more than a decade, EPA has proposed to add more than a dozen chemical to the Toxics Release Inventory (TRI) list. Each of the new additions is believed by EPA to cause cancer in humans insofar as each has been classified by the National Toxicology Program (NTP) in their Report on Carcinogens as “reasonably anticipated to be a human carcinogen.” Four of the newly-listed chemicals are polycyclic aromatic compounds (PACs) that, according to EPA are persistent, bioaccumulative and toxic. PACs are expected to persist in the environment for a significant period of time and are not readily destroyed.

Those four listed PACs are:

- 1,6-Dinitropyrene
- 1,8-Dinitropyrene
- 6-Nitrochrysene
- 4-Nitropyrene

The twelve other suspected carcinogens to be added to the list are as follows:

- 1-Amino-2,4-dibromoanthraquinone
- 2,2-bis(Bromomethyl)-1,3-propanediol
- Furan
- Glycidol
- Isoprene
- Methyl Eugenol
- o-Nitroanisole
- Nitromethane
- Phenolphthalein
- Tetrafluoroethylene
- Tetranitromethane
- Vinyl Fluoride

EPA has concluded that these sixteen chemicals may be manufactured, processed, or otherwise used by industry in quantities that would exceed the TRI reporting thresholds. The deadline for commenting on the proposed additions is June 7, 2010. **The full text of the proposed rule can be found in the April 6, 2010 volume of the Federal Register** (Vol 75, No. 65, at page 17333).

SIDEBAR

Drilling restrictions

The New York State Department of Environmental Conservation (DEC) announced that due to “the unique issues” related to the protection of New York City and Syracuse drinking water supplies, drilling in these watersheds will require a case-by-case environmental review process to establish whether appropriate measures to mitigate potential impacts can be developed. [Click here for the DEC Press Release.](#)

OSHA to develop Injury and Illness Prevention Program (i2p2) standard

On April 26th, the U.S. Department of Labor released its **Spring Regulatory Agenda 2010**, and announced a new enforcement strategy – “Plan/Prevent/Protect.” The strategy includes a new OSHA standard that would require employers to implement an Injury and Illness Prevention Program (i2p2) tailored to the hazards in that employer’s workplace. The standard builds upon existing OSHA guidelines for implementing health and safety programs. To comply with the standard, employers would have to systematically identify and remediate (“find and fix”) workplace safety and health hazards on a proactive and continuous basis. OSHA plans to initiate rulemaking with stakeholder meetings beginning in June 2010 in New Jersey, followed by meetings in Washington, D.C., and Texas. DOL will publish details of the upcoming stakeholder meetings in the Federal Register.

\$1 Million fine for stormwater violations

Hovnanian Enterprises Inc. will pay a \$1 million civil penalty to resolve alleged Clean Water Act violations at 591 residential home construction sites. As part of the settlement agreement the company will implement a company-wide stormwater program designed to improve compliance with runoff requirements at existing and future construction sites nationwide. The federal complaint alleged a pattern of violations that was discovered by reviewing documentation submitted by the company, and through federal and state site inspections. According to EPA, construction disturb large areas of land and significantly increases potential for erosion. Inadequate controls cause harm from runoff from sites that flow into waterways carrying sediment that can degrade water quality. [Click here to access the Consent Decree.](#)

Haier agrees to pay \$150,000 to settle alleged efficiency violations

Appliance manufacturer Haier America agreed to pay \$150,000 as part of an administrative consent decree to resolve possible violations of Energy Department efficiency standards related to some of the company’s freezers. Due to a parts defect, the freezers consumed about 70% more energy than advertised, a possible violation of efficiency standards set by the department under the Energy Policy and Conservation Act of 1975, as well as the voluntary Energy Star program requirements. The consent decree is the first ever entered into by the department to enforce minimum energy efficiency standards.

Scott Blake, Energy Department general counsel, issued the following statement, “Enhanced energy efficiency is a national priority, and DOE will continue to vigorously enforce energy efficiency standards and Energy Star criteria.”



EPA may establish new leaded aviation gasoline standards

BY CHRIS PAUL

The Environmental Protection Agency solicited public comment on whether it should issue rules to limit air pollution from the use of leaded aviation gasoline. The EPA will be considering comments from the public and continuing conversations with the FAA and industry about issues associated with potential future emission standards. After comments are received, the EPA will consider whether emissions from aircraft using leaded aviation gasoline cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare.

If the EPA determines that lead emissions from these aircraft (piston-engined) cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare, the EPA would be required, in consultation with the FAA, to establish standards to control the emissions of lead from these aircraft. The FAA would also be required to establish standards for the composition of piston-engine aircraft fuel to control lead emissions.

According to the EPA, the U.S. has made tremendous progress in reducing lead concentrations in outdoor air, with average concentrations of lead in air decreasing 91 percent between 1980 and 2008, with much of the improvement as a result of the phase-out of lead in motor vehicle gasoline. [Click here for the complete Regulations and Guidance.](#)

SEC: How public companies must disclose business risks arising from climate change

BY MARY ELLEN TERNES

On February 2, 2010, the SEC issued interpretive guidance explaining how public companies must disclose impacts of climate change related issues to shareholders. The categories of disclosures discussed by the SEC include impacts to business from: (1) Legislation and regulation including direct and indirect changes to profit or loss dynamics from cap-and-trade; (2) International accords; (3) Indirect consequences of regulation or business trends, such as decreased demands for goods that produce significant greenhouse gas emissions, or increased demand for services related to carbon based energy sources, among others; (4) Physical impacts of climate change, including “severity of weather (for example, floods or hurricanes), sea levels, the arability of farmland, and water availability and quality,75 have the potential to affect a registrant’s operations and results.”

For more information, see [SEC Release No. 33-9106](#), Commission Guidance Regarding Disclosure Related to Climate Change, February 2, 2010.

McAfee & Taft

OKLAHOMA CITY

TENTH FLOOR
TWO LEADERSHIP SQUARE
211 N. ROBINSON
OKLAHOMA CITY, OK 73102
405.235.9621

TULSA

500 ONEOK PLAZA
100 WEST 5TH STREET
TULSA, OK 74103
918.587.0000

www.mcafeetaft.com

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