Federal Oil and Gas Pipeline Regulation – An Overview

Judith M. Matlock
Davis Graham & Stubbs LLP
### Overview of FERC Jurisdiction

<table>
<thead>
<tr>
<th></th>
<th>Gas Pipelines</th>
<th>Oil Pipelines (Crude oil, NGLs, refined petroleum products)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Located wholly within</td>
<td>Not a determining factor</td>
<td>Not a determining factor</td>
</tr>
<tr>
<td>one state</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shippers can reserve</td>
<td>Yes – firm service available</td>
<td>No – in general - common carrier obligation</td>
</tr>
<tr>
<td>capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intent of shipper</td>
<td>Not relevant</td>
<td>Determining factor</td>
</tr>
<tr>
<td>Function of facilities</td>
<td>Determining factor</td>
<td>Not relevant – no gathering exemption</td>
</tr>
<tr>
<td>Governing Statute</td>
<td>Natural Gas Act of 1938</td>
<td>Interstate Commerce Act - as it existed on October 1, 1977</td>
</tr>
</tbody>
</table>
Federal Regulation –
Natural Gas Act of 1938 (NGA)

• Regulates transportation in interstate commerce (including storage)
• Regulates sales in interstate commerce for resale
• Natural gas companies engaged in such transportation or sale
Gathering or Interstate – Modified Primary Function Test

- Length and diameter of the line
- Operating pressure
- Location of wells
- Configuration
- Central point
- Location of compressors
- Location of processing plant
Gathering or Interstate – Other Factors

• The purpose, location, and operation of the facility
• The general business activity of the owner of the facility
• Whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978
Gathering or Interstate – Still More Considerations

• No one factor is determinative
• All factors do not necessarily apply to all situations
• Any and all other relevant facts and circumstances of a particular case, including non-physical criteria
Residue Gas Lines Connected to Interstate Pipelines

• If not more than 5 miles in length, considered extension of the gathering system or the processing function
• If greater than 5 miles in length, generally considered an interstate pipeline
• Critical to consider in deciding where to locate a plant!
Gathering or Interstate?

- Compressor
- Processing Plant
- Interstate Pipeline
- ≤ 5 miles Interconnect
- > 5 miles
Gathering or Interstate?

200 PSIG 1,000 PSIG Interstate Pipeline Interconnect

Compressor
Gathering or Interstate?
Gathering or Interstate?

200 psig

1,000 psig

Interstate Pipeline Interconnect
How Do You Know For Sure?

- File petition for declaratory order with FERC
- Consider asking for limited jurisdiction certificate if held to be a jurisdictional pipeline
- Consequences of guessing wrong – potential penalties *(needed FERC pre-approval for construction)*
Regulatory Requirements Under the NGA

- **Certificates of convenience and necessity** required for:
  - Construction of facilities
  - Transportation service
- **Authorization** required to abandon facilities or service
- **Blanket certificates/authorizations** available under open access regulations and tariffs
More Regulatory Requirements

- Rates, terms, and conditions of service require FERC approval
- Rates must be just and reasonable
- No undue preferences or advantage
  - But firm and interruptible service available
- Recordkeeping and reporting requirements
- Waivers of some requirements may be possible
Transportation Not Regulated Under the NGA

• **Intrastate pipeline**
  – Pipeline does not meet the FERC test for either a gathering line or an interstate pipeline
  – Primary business – Transportation of gas to local utilities (also known as local distribution companies) and end user (not to downstream interstate pipelines)
  – Location in a single state is not a test for whether a line is an intrastate pipeline
Transportation Not Regulated Under the NGA

• **Hinshaw pipeline**
  – Engaged in transportation in interstate commerce
  – Receives gas within or at the boundary of a state
  – All the natural gas so received is ultimately consumed within such state
  – Regulated by state commission
<table>
<thead>
<tr>
<th>Transportation not regulated under the NGA</th>
</tr>
</thead>
</table>

- **Section 311 transportation**
  - Intrastate *on behalf of* interstate or LDC served by interstate
  - Interstate *on behalf of* intrastate or LDC

- **Gathering** – Not what you think

- **Local Distribution**

- **Plant Lines** – Used to deliver gas to a plant for consumption
Oil Pipelines

• Transport:
  – Crude oil
  – Natural gas liquids – from processing
  – Refined petroleum products
Refined Petroleum Products

- Liquefied petroleum gas
- Chemicals
- Gasoline
- Jet fuel
- Diesel fuel
- Lubricating oil
- Fuel oil
- Oil for roads and roofing
Federal Regulation – Interstate Commerce Act

- Interstate Commerce Act of 1887 (ICA) – Regulation of railroads
- Hepburn Act of 1906 – Added transportation by pipelines of commodities (except water and natural gas)
- ICA repealed, revised, and recodified in 1978
- Part I of the ICA applicable to oil pipelines, as it existed on October 1, 1977, was not repealed and still applies today but only to oil pipelines (1988 USCA pocket part available as a PDF on the FERC website)
Federal Regulation – Interstate Commerce Act

• Regulates transportation in interstate or international commerce

• By common carriers
  – All pipeline companies and all persons, natural or artificial, engaged in such transportation
Federal Regulation – Interstate Commerce Act

- Applies to transportation of:
  - Oil
  - Natural gas liquids, and
  - Refined petroleum products

- By pipeline, or partly by pipeline and partly by railroad or by water

- NO GATHERING EXEMPTION
Jurisdictional Test

- Is the movement of product through a pipeline
- For a specific shipper
- Part of the continuous movement in interstate commerce
- Of the product for that shipper?

A pipeline located only in one state can be subject to the ICA
Intrastate or Interstate Movement?

- Depends on the **essential character of the movement** (i.e., the service provided)
- And the fixed and persisting **intent** *(of the shipper)* with which the shipment is made
- The same pipeline can provide both intrastate and interstate movements
- Test not tied to the **function** of the line (no exemption for the function of gathering)
Intrastate or Interstate Movement?

Is the owner of the red crude oil gathering line providing a FERC jurisdictional movement?

[Map showing movement from Conway in Kansas to a location in Colorado]
Indicative of *Interstate* Shipment

• Through billing across different pipeline sections to the final destination *for the same shipper*, or

• Uninterrupted movement of product, or

• Continuous possession of the shipment by the carrier, or

• Unbroken bulk of the shipment
Indicative of Intrastate Movement

• Break in the continuity of transportation
• At the time of shipment
  – No specific order
  – Of a specific quantity
  – Of a given product
  – Is being filled for a particular destination beyond terminal storage between the two pipes
Indicative of *Intrastate* Movement

- The **destination is terminal storage**
- The **terminal storage is a distribution point or local marketing facility** from which specific amounts of the product are sold or allocated
- Transportation in the furtherance of this distribution within the single state is specifically arranged only after sale or allocation from terminal storage
Insufficient Facts To Establish Movement Not Subject to ICA

- Location of line wholly within a state
- Length of the line (ICA held to apply to movements on 1,400’ line; 3.8 mile line)
- Function of line as gathering
- Storage by itself not sufficient
- Construction of line under private agreement
- Existence of competitive alternatives
- Ownership of the oil not sufficient by itself
- Commingling of product not sufficient by itself
Presumption is Interstate Movement

- All interstate movements are jurisdictional unless the facts show a **sufficient break in the continuity of transportation** so that shippers moving product through these lines do not have a fixed intent to move product interstate.
Duties Under the ICA

• To provide and furnish transportation upon reasonable request therefor
  – No guaranteed right to ship a specific quantity
  – Prorationing required if insufficient capacity
  – FERC pre-approval for limited capacity allocations to fund new construction (next slide)
Exceptions to Pro-Rationing

• If necessary to fund new construction
• Incentive shippers who make volume commitments or dedications may receive:
  – A set aside of a % of capacity not available to new shippers (not >90%) and discounted rates, or
  – Firm capacity (not subject to pro-rationing) in exchange for payment of premium rates (at least $.01).
Open Seasons

- If proposing pro-rata service for everyone, no open season required. May file a tariff on 30 days’ notice. May request to shorten notice.
- If proposing any incentive service, must first conduct an open season and make that service available to everyone. If oversubscribed, allocate pro rata.
Temporary Waivers

- Pipeline or affiliates own 100% of throughput
- No demonstrated third-party interest in gaining access to or shipping on the line
- No such interest is likely to materialize, and
- No opposition to granting the waivers
- Temporary waivers of sections 6 and 20 filing and reporting requirements
Temporary Waivers

• Not available if also transporting product that “control” under a JOA (i.e., for non-operators)

• Cannot qualify by forcing third parties to sell product to the pipeline before transportation

• If receive request for transportation, no longer entitled to the waiver
Duties Under the ICA

• No undue or unreasonable preference or advantage
  – **Elkins Act** provides for criminal liability for soliciting or granting rebates, concessions, or discrimination
  – Consider seeking declaratory order approving, *in advance of construction*, proposed tariffs with a priority service structure to fund new construction
Rates Under the ICA

• Initial rates:
  – Cost of service rates, or
  – Negotiated rates – Can propose a negotiated rate if at least one non-affiliate has agreed to the rate. If protested, must file full cost of service rates.
Not Regulated Under the ICA

• Pipeline construction or the initiating and termination of service
• Intrastate movements not part of the continuous movement of product in interstate commerce for a particular shipper
• The Uncle Sam Oil Company exception – Private carriage – a very difficult test to meet (only two decisions where successfully met)
Other Federal Regulation

• Department of Transportation - Pipeline Safety Act

• Common carrier obligation for pipelines located on BLM rights of way issued under the Mineral Leasing Act of 1920
State Regulation

• Varies by state
• Some other possible statutes/regulations:
  – Siting certificates
  – Rates, terms, and conditions of service
  – Enforcement of federal Pipeline Safety Act requirements
  – Ratable take or common purchaser obligations
  – Eminent domain to acquire rights of way
  – Corridor certificates (North Dakota)
Conclusions

• Jurisdictional test under the NGA is based on the *function* of the facilities
• Jurisdictional test under the ICA is based on the *essential character of the movement*
• Scope of regulation is not the same under the NGA and the ICA
• Legal activities under one statute may be illegal under the other statute
• State regulation of pipelines varies by State
KEY PROVISIONS OF MIDSTREAM AGREEMENTS
INTRODUCTION

- Topics to be covered:
  - Resource play dynamics
  - JOA issues
  - Agreements:
    - Gathering
    - Processing
    - Transportation (jurisdictional lines)
MIDSTREAM PLAYERS

- Producers
- Gatherer
  - Traditional
  - Private equity/start-up
- Processors
- Marketers and brokers
- Interstate and intrastate pipelines
- Local distribution companies
- End users - industrial, commercial, residential
RESOURCE PLAY DYNAMICS

- Rapidly developing plays with shortage of infrastructure
  - Pipeline specs
  - Flaring issues
  - Capital requirements
- Larger companies may not move fast enough
- Private equity-backed companies
  - Can meet capital requirements
  - Build and sell – MLPs
- Producers: building their own affiliate midstream companies
  - Controls pace of development
  - Build and monetize
JOA ISSUES

- AAPL Model Form JOA – Form 610:
  - JOA states that the installation of gathering lines will be covered by a separate agreement
- Marketing under JOA:
  - Right to take in kind on short notice
  - Operator no authority to make long term commitments
- Operator contracts for midstream services
  - Non-ops negotiate separate agreements or ratify
- Operator constructs midstream assets
  - Producer or Producer Affiliate owned systems
  - Non-ops sometimes participate under separate agreement

GATHERING AGREEMENTS: DEDICATION

- **Dedication**
  - Purpose
  - Area: wells, leases, geographic area
  - Limitations: formations, operated wells
  - Hereafter acquired and not subject to another existing dedication
Exclusions
- Gas used in operations:
  - Compression
  - Gas lift
  - Pressure maintenance
  - Free gas clauses
- Lessor royalties taken in kind
- Operating exclusions:
  - Pooling
  - Operator discretion in operations: plugging and abandonment
GATHERING AGREEMENTS: DEDICATION

- Transfers of the dedicated leases
- Covenants running with the lands
  - Touch and concern
  - Privity of estate
  - Intent
- Memorandum of Agreement
  - When instrument affecting title to real property is recorded, unrecorded agreements purporting to affect title referenced in instrument have no effect as to third parties
Transfers of the gathering agreement
- Require Assumption of Obligations
  - Not just “subject to”
  - Novation
- Identity of Transferee
  - Creditworthiness
  - Expertise
  - Consents to assign:
    » Hard – Void transfer if not obtained
    » Soft – not to be unreasonably withheld
    » Consider combination

Conditions to transfers of the dedicated leases
GATHERING AGREEMENTS: QUANTITY

- Producer quantity commitment
- Mitigating gatherer financial risk
  - Minimum daily volume
  - Guaranteed volumes
  - Shortfall: pay fee
  - Producer credit mechanism if overdeliver
GATHERING AGREEMENTS: TERM

- Term
  - Life of dedicated properties
  - Primary term or term of years
  - Factors
GATHERING AGREEMENTS: GATHERER COMMITMENT

- Level of service – firm or interruptible
- Required Acceptance: Maximum Daily Quantity
- When is firm not really firm
  - Force majeure
  - Curtailment
  - Maintenance: notice and definition
  - Remedies for default
- Importance of matching level of service with downstream commitments
GATHERING AGREEMENT: WELL CONNECTIONS

- Well connections
  - Location of connection
  - Timing
- Indemnity – Minimum throughput
- Producer connects based on costs or timing
- Release: Permanent or temporary
- Sharing information:
  - Drilling schedule
  - Capacity issues
Compensation and reimbursement
- Gathering fees
- Escalation
- F L & U
- Drip condensate

Allocation of charges
- By component
- By pipeline system
GATHERING AGREEMENTS: BALANCING

- Nominations
- Balancing
  - In kind
  - In cash
- Gatherer’s duty to maintain balance
- Producer’s duty to cooperate
- Impact of allocations on imbalances
GATHERING AGREEMENTS

- Economic out
  - Uneconomic well connect
  - Uneconomic operations
- Measurement and testing
- Statements, payment, creditworthiness
PROCESSING NATURAL GAS

- **Processing:**
  - Extraction and separation of the production stream into liquid hydrocarbon stream and a residue gas stream, and then —
  - Fractionation of the liquid hydrocarbon stream into ethane, iso-butane, normal butane, iso-propane, normal propane, and natural gasoline
- **Other services:** removal of water, CO2, or hydrogen sulfide
- **Residue Gas:** After removal of liquid hydrocarbons the remaining stream is primarily methane and referred to as residue gas
- **Shrinkage:** Processing decreases gas volume and gross heating volume (measured in BTUs). The decrease is referred to as shrinkage,
PROCESSING AGREEMENTS

- Agreement for removal of **liquids** and any impurities from the gas stream
- Types of processing agreements
  - Fixed fee
  - Keep whole – on MMBTUs; plant keeps liquids
  - Percentage of proceeds (POP)
- Liquids and residue gas sold by plant owner or producers (depending on type of agreement)
PROCESSING AGREEMENTS

- Curtailment: Predominant producer concern
  - Pipeline specs, flaring
  - Cash flow

- How long and to what extent will production be curtailed?

- Solutions:
  - Temporary or permanent release
  - Monetary penalty
  - Bypass plant or minimal treatment
Allocation

- Procedure to determine how many gallons of each NGL attributed to each delivery point
- Also allocate residue gas, fuel, and other expenses
- Typically based on ratios of theoretical gallons of liquids and theoretical residue gas attributable to a delivery point over the total theoreticals delivered to the plant
TRANSPORTATION AGREEMENTS - NGA

- Natural gas transported on interstate pipelines
  - Types of service – firm and interruptible
- All of the key terms and conditions are in the FERC tariff. The form of transportation agreement is also part of the tariff.
- Find tariffs at: www.FERC.gov
  Documents and Filings  eTariff  Tariff Viewer
Drafting a new tariff and agreements:
- Start by reviewing the tariffs of one or more of the downstream interconnecting interstate pipelines
- Tariff terms and conditions heavily regulated by FERC – Order 636 and subsequent orders
- Very little room for non-standard provisions
TRANSPORTATION AGREEMENTS - ICA

- For jurisdictional movements of crude oil, NGLs, and refined petroleum products
- Tariffs tend to be relatively short
- Transportation Service Agreements or Throughput and Deficiency Agreements tend to be relatively long
The transportation agreements are not filed with FERC

In the event of a conflict between the FERC tariff and the transportation agreement, the tariff controls
- Drafting a tariff – start by reviewing the tariffs of the downstream interconnecting pipelines
- Standard tariffs - Rules and rates tariff(s)
  - No incentive or premium rates
  - All shippers subject to prorationing (allocation) in the event requests for service exceed capacity – typically based on shipper history
Incentive tariffs

– Include all of the provisions in a standard tariff
– Plus incentive or premium rates for anchor shippers
– Plus modified capacity allocation provisions for the incentive (anchor) shippers
Incentive tariffs – Some examples

- Mid-America Pipeline (MAPL) (demethanized mix) incentive program based upon execution of a Dedication Agreement
- Kinder Morgan Pony Express LLC and Hiland Crude, LLC – incentive rates for committed shippers; 10% capacity reserved for new shippers
- Enbridge Pipelines (North Dakota, LLC, Enbridge Pipelines (Bakken) L.P. – premium rates for firm service
TRANSPORTATION AGREEMENTS - ICA

- Other provisions:
  - Identification of origin and destination points
  - Operational – nominations, line fill, quality specs, gauging, testing, truck and rail car loading and unloading, storage, connection policy
  - Responsibility – loss of product, claims and suits, financial assurance, notices, assignment
  - Billing and payment
Prohibited tariff terms and conditions

– Any preferences in rates or terms and conditions of service
– Other than incentive provisions consistent with current FERC policy
– No rebates or refunds (including no delay “penalties” for new construction)
TRANSPORTATION AGREEMENTS - ICA

- Throughput and Deficiency Agreement
  - Volume commitment with a “ship or pay” obligation
  - Whether credit against future deficiencies for prior excess deliveries
  - Whether non-operator or other third-party volumes count toward the volume commitment
Throughput and Deficiency Agreement

– Negotiate whether deficiency payments owed:
  ▪ Due to Force Majeure (Transporter or Shipper)
  ▪ If Transporter otherwise fails or refuses to take
Throughput and Deficiency Agreement

- Remedies for failure to take:
  - Temporary release (option to truck or use alternative transportation)
  - Permanent release – if condition continues for extended period of time
Throughput and Deficiency Agreement

- Financial assurances
- New connections and expansions – when does the Transporter/Carrier have to connect to additional receipt points
Other provisions:

- If new construction – in-service date definition; obligation to support FERC tariff filing
- Upstream obligations of shippers – sharing of drilling plans; coordination of new connections
- Title, representations, and warranties
- Dispute resolution; limitation on damages
- Typically all of the rules tariff provisions
DGS SEMINAR: MIDSTREAM FUNDAMENTALS

MIDSTREAM AIR QUALITY AND GHG ISSUES

Randy Dann, Partner
MIDSTREAM – SIGNIFICANT AIR QUALITY ISSUES

- Source Aggregation
- Proposed Lower Ozone Standard
- GHG Regulation
SOURCE AGGREGATION

- Multiple sources/emanating units (even if not physically located at the same site) may be “aggregated” as a single stationary source, if they meet the 3-factor test and certain over-arching principles.

- Examples of oil and gas facilities potentially at risk of aggregation:
  - Compressor station(s) and gas processing plant

- Primary consequence of aggregation: Exceedance of permitting thresholds
  - Major source construction and operating permit thresholds (e.g., 100 tpy VOC, NOx in DJ Basin)
  - General Permit thresholds (e.g., 90 tpy for GP)
SOURCE AGGREGATION FACTORS

- Three factors required to aggregate:
  - (1) Same SIC code (industrial grouping);
  - (2) Under common control; and
  - (3) Located on one or more contiguous or adjacent properties
  - Must satisfy all three factors

- “Adjacent” – EPA has inserted notions of “functional relationship/dependence”

- “Functional relationship” invalid per Summit Petroleum v. EPA, 690 F.3d 733 (6th Cir. 2012)
FUTURE AGGREGATION DEVELOPMENTS

- EPA intends aggregation-related rulemaking
- Define “adjacent”
- Proposed rule in Spring/Summer 2015?
EPA’s Proposed Lower Ozone Standard

- EPA is proposing to lower the ozone NAAQS to within the range of 65 to 70 ppb (8-hour average). See 79 Fed. Reg. 7,234 (Dec. 17, 2014)

- Taking comment on a standard as low as 60 ppb (uncertainty in scientific evidence at this level)
Nonattainment areas are indicated by color. When only a portion of a county is shown in color, it indicates that only that part of the county is within a nonattainment area boundary.
Counties Where Measured Ozone is Above Proposed Range of Standards (65 – 70 parts per billion)

358 counties would violate 70 parts per billion (ppb)
200 additional counties would violate 65 ppb for a total of 558

Based on 2011 – 2013 monitoring data
Originally, EPA Identified 114 Areas that did not meet the 1997 Ground-level Ozone Standards

Areas not meeting 84 parts per billion

Based generally on 2001 – 2003 monitoring data
Today, 90 percent of those areas meet the 1997 Standards.

Areas not meeting 84 parts per billion (12 areas)
102 areas meet the 1997 standards.
Based on 2011 – 2013 monitoring data
EPA Projects Most Counties Would Meet the Proposed Range of Standards in 2025

- 9 counties outside of California would violate 70 parts per billion (ppb)
- 59 additional counties outside of California would violate 65 ppb for a total of 68

Because several areas in California are not required to meet the existing standard by 2025 and may not be required to meet a revised standard until sometime between 2032 and 2037, EPA analyzed California separately. Details are available in the Regulatory Impact Analysis for this proposal.
“Other Sources” Max Contrib. 4th High DMAX8 Ozone

Boundary Conditions  Natural  Anthropogenic

Wildfire  Prescribed Fire  Agricultural Fire
### EPA’s Proposed Ozone Timeline

<table>
<thead>
<tr>
<th>Designation Schedule</th>
<th>Tentative Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>State and Tribe Recommendations</td>
<td>October 2016</td>
</tr>
<tr>
<td>Final Designation</td>
<td>October 2017 Effective date may vary.</td>
</tr>
<tr>
<td></td>
<td>(Air quality data years: 2014 – 2016)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Implementation Schedule</th>
<th>Tentative Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure SIP</td>
<td>October 2018</td>
</tr>
<tr>
<td>Attainment Plans Due</td>
<td>October 2020-2021</td>
</tr>
</tbody>
</table>

#### Attainment Schedule by Classification

<table>
<thead>
<tr>
<th>Classification</th>
<th>Schedule*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marginal</td>
<td>3 years to attain</td>
</tr>
<tr>
<td>Moderate</td>
<td>6 years to attain</td>
</tr>
<tr>
<td>Serious</td>
<td>9 years to attain</td>
</tr>
<tr>
<td>Severe</td>
<td>15 to 17 years to attain</td>
</tr>
<tr>
<td>Extreme</td>
<td>20 years to attain</td>
</tr>
</tbody>
</table>

*Areas must attain as expeditiously as practical, but not later than the schedule in the table. Two one-year extensions are available in certain circumstances based on air quality.
OZONE IMPLICATIONS FOR MIDSTREAM OPERATORS

- Expanded NAAs

- Increased permitting burdens and delays (e.g., lower major source thresholds)

- More stringent emission control requirements (e.g., LAER, Offsets)
GHG REGULATION - BACKGROUND


- Triggered Title V/PSD GHG Permitting (2010)

- White House Agenda (Climate Action Plan, etc.)
UTILITY AIR REGULATORY GROUP V. EPA (U.S. SUPREME COURT)

- Issue: whether EPA permissibly determined that regulation of GHGs from mobile sources triggered regulation of GHGs from stationary sources?

- The Court addressed two central questions:
  1. Can a PSD/Title V source be subject to permitting based solely on GHG emissions (i.e. “non-anyway” sources)?
  2. Can a source already subject to PSD/Title V be required to limit GHG emissions by employing BACT (i.e. “anyway” sources)?
“Non-anyway” sources: EPA overstepped its CAA authority in tailoring the emissions thresholds for GHGs. Sources cannot be subject to PSD/Title V based solely on GHG emissions.

“Anyway” sources: EPA reasonably interpreted the CAA to require sources already subject to PSD to comply with BACT requirements for GHGs
STATE GHG REGULATION

- Colorado’s game-changing methane regulation (2014)
- LDAR monitoring required for individual well production facilities and compressor stations
- Well liquids unloading regulations
- Other states with similar programs
QUAD O 2.0

- 40 CFR Part 60, Subpart OOOO (Quad O) to be amended to include measures to reduce methane emissions

- National LDAR program; pneumatics?
MIDSTREAM FUNDAMENTALS

THE NUMBERS GAME: RMP, PSM, AND OTHER ENVIRONMENTAL CONSIDERATIONS

Brenna K. Finn, Associate
INTRODUCTION

- Environmental Considerations
  - Risk Management Program (RMP)
  - Process Safety Management (PSM)
- Hot Topics & Impacts to Operators
  - RMP/PSM Revisions
  - Pipeline and Hazardous Materials Safety Administration (PHMSA) Interpretation Letters
  - Toxics Release Inventory (TRI) Expansion
Clean Air Act § 112(r) – General Duty Clause

“The owners and operators of stationary sources producing, processing, handling or storing [regulated] substances have a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.”
### GDC ENFORCEMENT ACTIONS (2013)*

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Case Category</th>
<th>Case Status</th>
<th>Civil Penalty</th>
<th>Settlement Date</th>
<th>Value of Complying Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compressor Station</td>
<td>Administrative - Formal</td>
<td>Closed</td>
<td>0</td>
<td>Sept. 2013</td>
<td>$7,000</td>
</tr>
<tr>
<td>Compressor Stations</td>
<td>Administrative - Formal</td>
<td>Closed</td>
<td>0</td>
<td>Sept. 2013</td>
<td>$3,000</td>
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<tr>
<td>Measuring Station</td>
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<td>Sept. 2013</td>
<td>$7,000</td>
</tr>
<tr>
<td>Compressor Stations</td>
<td>Administrative - Formal</td>
<td>Final Order Issued</td>
<td>$93,000</td>
<td>Aug. 2013</td>
<td>$177,000</td>
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<td>Gas Plant</td>
<td>Administrative - Formal</td>
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<td>$35,000</td>
<td>Aug. 2013</td>
<td>0</td>
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</tbody>
</table>

* Reported per EPA’s Enforcement and Compliance History Online Database
Clean Air Act § 112(r)(7)

– Chemical Accident Prevention Program

“... [t]he owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity [must] prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such release in order to protect human health and the environment.”
RISK MANAGEMENT PROGRAM

- Owner or Operator
- Stationary Source
- Regulated Substances & Threshold Volumes
  - Naturally Occurring Hydrocarbons
  - Gasoline/Flammable Substances Used as Fuel
- Plan Requirements
## RMP ENFORCEMENT ACTIONS (2013/2014)*

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Case Category</th>
<th>Case Status</th>
<th>Civil Penalty</th>
<th>Settlement Date</th>
<th>Value of Complying Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas Plant/Processing Plant</td>
<td>Administrative - Formal</td>
<td>Final Order Issued</td>
<td>0</td>
<td>Mar. 2013</td>
<td>$70,500</td>
</tr>
<tr>
<td>Extraction/Stripping Plant</td>
<td>Administrative - Formal</td>
<td>Final Order Issued</td>
<td>$42,504</td>
<td>Apr. 2013</td>
<td>$24,557</td>
</tr>
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<td>Gas Plants</td>
<td>Administrative - Formal</td>
<td>Final Order Issued</td>
<td>0</td>
<td>Jun. 2014</td>
<td>$70,500</td>
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<tr>
<td>Gas Plants</td>
<td>Administrative - Formal</td>
<td>Final Order Issued</td>
<td>$74,556</td>
<td>Sep. 2014</td>
<td>$141,000</td>
</tr>
<tr>
<td>Compressor Stations/Processing Plant</td>
<td>Administrative - Formal</td>
<td>Final Order Issued</td>
<td>0</td>
<td>Dec. 2014</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

* Reported per EPA’s Enforcement and Compliance History Online Database
PROCESS SAFETY MANAGEMENT

- 29 CFR § 1910.199
  - Requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals
  - Applies to:
    - “a process which involves a [regulated] chemical at or above the specified threshold quantities;”
    - “a process which involves a Category 1 flammable gas [or] a flammable liquid with a flashpoint below 100 °F . . . on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more.”
PROCESS SAFETY MANAGEMENT

- Employer
- Process
- Regulated Substances & Thresholds
- Requirements
- BUT . . . .
  - NURF
  - Atmospheric Storage Tanks
  - Oil and Gas Drilling, Servicing, and Production Operations
  - PHMSA Jurisdictional Lines
REGULATORY SHIFTS: PHMSA

- Traditional PHMSA Jurisdiction
  - Transportation of hazardous liquids in pipeline systems, including the incoming and outgoing pipelines of natural gas liquids processing facilities, up to the first pressure regulation device at the perimeter of such facilities

- Interpretation Letters
  - Fractionation facilities with associated piping inside the fence

- Interpretation Challenged
  - Pending resolution in DC Circuit (No. 13-1040, Feb. 2013; held in abeyance until PHMSA enforcement actions are resolved)
REGULATORY SHIFTS: RMP & PSM

- Executive Order 13650 (Aug. 2013)
  - Chemical Facility Safety and Security Working Group Report

- OSHA Request for Information (Dec. 2013)
  - Expanded jurisdiction over oil and gas

- EPA Request for Information (Jul. 2014)
  - Programmatic revision (new substances, thresholds, requirements, etc.)
REGULATORY SHIFTS: TRI

- Emergency Planning & Community Right to Know Act
- Toxics Release Inventory Program (§ 313)
  - SIC Codes
  - Employees
  - TRI-listed Chemicals
  - Threshold Volumes
- Petition and Lawsuit (2012 and 2015)
QUESTIONS?

Thank you!

Brenna K. Finn
Associate
(303) 892-7360
brenna.finn@dgslaw.com