

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street • Post Office Box 1008 • Columbus, Ohio 43216-1008 • Telephone (614) 464-6400 • Facsimile (614) 464-6350

Arthur I. Vorys
1856-1933
Lowry F. Sater
1867-1935
Augustus T. Seymour
1873-1926
Edward L. Pease
1873-1924

In Washington
Eleventh Floor
1828 L Street, NW
Washington, DC 20036-5109

Telephone (202) 467-8800
Facsimile (202) 467-8900

In Cleveland
2100 One Cleveland Center
1375 East Ninth Street
Cleveland, Ohio 44114-1724

Telephone (216) 479-6100
Facsimile (216) 479-6060

In Cincinnati
Suite 2000 • Atrium II
221 East Fourth Street
Post Office Box 0236
Cincinnati, Ohio 45201-0236

Telephone (513) 723-4000
Facsimile (513) 723-4056

In Alexandria
277 South Washington Street
Suite 310
Alexandria, Virginia 22314

Telephone (703) 837-6999
Facsimile (703) 549-4492

W. Jonathan Airey
Direct Dial (614) 464-6346
Facsimile (614) 719-4857
E-Mail - wjairey@vssp.com

January 3, 2006

DELIVERY VIA ELECTRONIC FILING (<http://dms.dot.gov>)

Docket Management System:
U.S. Department of Transportation
400 Seventh Street, SW
Nassif Building, Room PL-401
Washington, DC 20590-0001

Docket No. RSPA-1998-4868: Notices No. 5

Re: Comments of the Independent Petroleum Association of America on
Gas Gathering Line Definition; Alternative Definition for Onshore
Lines and Proposed Safety Standards
49 C.F.R. Part 192

Dear Sirs:

The Independent Petroleum Association of America (IPAA) and its members welcome this opportunity to comment on the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) proposal to define and regulate natural gas gathering lines. IPAA is a national association representing thousands of independent oil and natural gas producers and service companies across the United States. Those dedicated producers, many of which are small, family-owned businesses, drill approximately 90% of the wells in the United States and produce 85% of the country's natural gas and 65% of its oil resources. Formed in 1929, IPAA serves as an advocate for this exploration and production segment of the oil and gas industry, frequently providing expert information – both economic and statistical – on these vital domestic resources.

As noted in its previous filings in this docket,¹ IPAA has organized a broad-based Pipeline Safety Task Force to review and comment on the PHMSA effort to define gas gathering for purposes of federal pipeline safety regulation (with members from Colorado, Kansas, Kentucky, New Mexico, Ohio, Oklahoma, Texas and West Virginia). The Task Force submitted comments

¹ IPAA's earlier comments were filed in this docket on January 16, 2004 (Docket No. RSPA-1998-4868-125), and March 4, 2004 (Docket No. RSPA-1998-4868-156), and can be found at <http://dms.dot.gov/>.

IPAA Comments
January 3, 2006
Page 2

on the subject cautioning against an improper extension of federal natural gas pipeline safety regulations to production operations, which have been congressionally excluded from the Natural Gas Pipeline Safety Act's jurisdictional scope since the Act's very inception; and to rural gathering lines, absent a reasoned analysis of the actual, as opposed to merely speculative, risks presented by those lines. Now that the PHMSA has issued its Supplement Notice of Proposed Rulemaking on October 3, 2005, IPAA has the following, additional comments.

Joining in support of IPAA's comments are the Colorado Oil and Gas Association, the Independent Oil and Gas Association of West Virginia, the Kansas Independent Oil and Gas Association, the Kentucky Oil and Gas Association, the New Mexico Oil and Gas Association, the Ohio Oil and Gas Association, Texas Alliance of Energy Producers, and Texas Independent Producers and Royalty Owners Association.

Supplemental Notice of Proposed Rulemaking

On October 3, 2005, PHMSA issued its Supplemental Notice of Proposed Rulemaking (Supplemental NOPR) proposing to adopt, with limited modifications, the consensus standard definition for "onshore gathering line" contained in American Petroleum Institute, Recommended Practice 80 (RP-80). More particularly, PHMSA proposes to define onshore gathering line, in relevant part, as:

[A]ny pipeline or part of a connected series of pipelines that qualifies as an onshore gathering line under section 2.2 of API RP 80, with the following limitations:

(1) Under section 2.2(a)(1) of API RP 80, the beginning of a gathering line may not be further downstream than piping or equipment used solely in the process of extracting natural gas from the earth for the first time and preparing it for transportation or delivery.

* * *

[70 Fed. Reg. 57536 (Oct. 3, 2005)] The PHMSA is also proposing to establish certain safety standards for higher-risk gathering lines while relaxing the requirements for lower-risk lines (i.e., for those gathering lines located in less populated areas). *Id.*

The PHMSA's proposals are largely consistent with the legislative goals to be fulfilled by this rulemaking, and IPAA wishes to acknowledge and congratulate the PHMSA on the significant efforts it has made to resolve the difficult and complex issues presented by their mandate. Since the original notice issued on September 25, 1991, this docket has been appropriately focused on two items: (a) the proper definition of the phrase "gathering line" and its necessary endpoints for purposes of applying federal natural gas pipeline safety regulations; and (b) an examination of what, if any, rural gathering lines require federal – as opposed to state – pipeline

IPAA Comments
January 3, 2006
Page 3

safety oversight, and the scope of that potential oversight. In making these determinations, IPAA has often observed that the public policies established by Congress in the Natural Gas Pipeline Safety Act must be adhered to – i.e., that the Act’s jurisdiction *does not and cannot* extend to production operations, which are to continue to be governed by state oil and gas commissions and the policies that they determine best for their individual localities; and that any regulation of rural gathering lines must be based on and limited to an actual need for federal – as opposed to state – regulation. IPAA believes that the PHMSA has made substantial strides towards satisfying those policies.

But IPAA also believes that the rulemaking has fallen short in one important area – it fails to clearly and expressly define where production ends and gathering begins. As discussed below, that can easily be cured.

IPAA Proposal: Adopt RP-80 Definition of Production Operation

Pipeline Safety Act Jurisdiction

As noted in IPAA’s previous filings, but worth repeating here, Congress enacted the Natural Gas Pipeline Safety Act (Pipeline Safety Act or Act) – the sole source of the PHMSA’s jurisdiction here – to establish minimum federal standards for the transportation of natural gas by pipeline and through pipeline facilities. Pipeline facilities subject to the Act, both then and now, include only those facilities used for the *transmission* and *distribution* of natural gas in interstate commerce, as well as a limited group of *gathering* lines. **Notably excluded by Congress from the PHMSA’s jurisdiction, however, are those facilities used to transfer natural gas during production operations.**

That exclusion has not changed despite the several amendments Congress has made to the Pipeline Safety Act throughout its 37-years of existence. To the contrary, Congress has repeatedly, and rightly, left that authority with the relevant state commissions of the individual producing states.

Definitional Regulatory Uncertainty

Nonetheless, the lack of clear and unambiguous regulatory definitions for jurisdictional and non-jurisdictional facilities has long created uncertainty for producer and regulator alike. PHMSA rightly states in the Supplemental NOPR that it is proposing to use “a consensus standard to distinguish onshore gathering lines [in recognition of the fact that] **PHMSA’s gas pipeline safety standards do not provide an adequate basis for distinguishing these pipelines from production facilities and transmission lines.**” 70 Fed. Reg. at 57536 (emphasis added). Similarly, under the heading *Why Is Distinguishing Onshore Gathering Lines a Problem*, PHMSA correctly observes:

IPAA Comments
January 3, 2006
Page 4

PHMSA safety regulations in 49 CFR Part 192 apply to the design, construction, operation and maintenance of gathering, transmission and distribution pipelines. **However, the regulations do not cover production facilities** or onshore gathering lines in locations outside cities * * * [i.e., rural locations].

Since Part 192 does not cover production facilities, in non-rural locations, pipeline operators and government inspectors must distinguish regulated gathering lines from unregulated production facilities. Similarly, in rural locations they must distinguish unregulated gathering lines from regulated transmission and distribution lines. **Yet, since the Part 192 regulations were first published (35 FR 13248; Aug. 19, 1970), operators and government inspectors have had difficulty making these distinctions.**

There reason is two-fold: First, as defined in Part 192, a “gathering line” begins at a production facility, **but the term “production facility” is not defined.** Operators and government inspectors must interpret the term “production facility” to determine whether a downstream pipeline is a gathering line. ***In the absence of a definition, their interpretations vary.***

70 Fed. Reg. at 57537 (emphasis added). Still, despite PHMSA’s accurate recognition that significant uncertainty is created without an express, clear definition of production facility in the regulations, the Supplemental NOPR fails to contain that necessary regulatory definition. That problem can easily be solved, however.

IPAA Proposal

As suggested at the December 13, 2005 Technical Pipeline Safety Standards Committee meeting, **PHMSA should expressly adopt the industry consensus definition for production operation contained in RP-80.** That definition was developed by over 20 national, regional and state oil and gas associations representing every aspect of this country’s oil and gas industry, from upstream exploration and production operations to downstream transmission operations. It was developed after a consideration of all of the comments that had been filed in this docket at the time, as well as the relevant discussions over the previous decade with U.S. DOT, its Technical Gas Pipeline Safety Standards Committee, and state regulators. And it will allow operators of production facilities and industry regulators to turn to the definitions found in RP-80 and find a level of certainty about the conclusions that they reach that they could not find before. That certainty translates not only into economic efficiencies, but into energy resource development efficiencies as well – which are essential given the marginal nature of much of this country’s natural gas production. Significantly, this definition already has *widespread acceptance and ap-*

IPAA Comments
January 3, 2006
Page 5

plication by operators and others in the field, eliminating the need for a wholesale, unnecessary, and potentially costly, reevaluation, and possible re-characterization, of these energy resource facilities.

IPAA understands that concerns have been expressed by some that the production operation definition contained in RP-80 may be mistakenly applied to storage operations and manipulated by moving separation and dehydration facilities to improperly avoid federal pipeline safety jurisdiction. To address those concerns, IPAA suggests that PHMSA adopt the definition of *production operation* contained in RP-80 in a manner similar to that used in the Supplemental NOPR for *onshore gas gathering*. More particularly, IPAA suggests the following language:

“Production Operation” means any piping and equipment that qualify as a production operation under section 2.3 of API RP-80, with the following limitations:

- (1) Facilities operated in connection with natural gas storage operations shall be excluded; and,
- (2) Separation and dehydration facilities located contrary to the prudent operating standards commonly applicable in the industry to the particular geographic location and solely for the purpose of avoiding regulation as a gathering line under Title 49 of the Code of Federal Regulations, Part 192, shall be excluded.

Additionally, IPAA suggests **deleting in its entirety subpart (1)** of the PHMSA-proposed definition for *onshore gathering line* as quoted above at Page 2. That subpart, added only as an anti-manipulation provision, is unnecessary and will only create uncertainty and needless ambiguity – i.e., the kind of confusion that prompted this rulemaking in the first instance – if allowed to remain while this definition for *production operation* is adopted.

Impact on Regulatory Analysis of Failure to Adopt Clear Definition of Production Operation

Absent a clear, unambiguous definition of *production operation* – indicating where production ends and gathering begins – IPAA believes that the regulatory analysis engaged in by the PHMSA is largely incorrect. The impacts on upstream facilities and this country’s energy resources are likely, in fact, to be ***much greater*** than supposed.

The PHMSA assumes that the proposed changes contained in the Supplemental NOPR would result in the total mileage of gathering lines subject to regulation under the new program being the same as today – i.e., approximately 16,000 miles. *Draft Regulatory Evaluation* at 10, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration

IPAA Comments
January 3, 2006
Page 6

(Docket No. RSPA-1998-4868-181).² Furthermore, the PHMSA assumes that no more than 25 companies will be regulated for the first time as a result of the changes contained in the Supplemental NOPR. *Id.* at 24.³ And based on these admitted assumptions – supported by little to no real information – the PHMSA concludes that the impacts will be minimal overall. That conclusion is almost certainly wrong in the absence of a clear definition of *production operation*.

Absent a clear definition of *production operation*, there will continue to be the sort of confusion and disagreements between producers and regulators that prompted this rulemaking (in large part) in the first place. See *supra*. See also, e.g., *Draft Regulatory Evaluation* at 9 (“**Consistent definition would resolve confusion that has existed over where gathering begins (i.e., where ‘production’ at the well ends)** and where gathering ends (i.e., where pipeline transportation becomes another type of regulated activity, either transmission or distribution.”) (emphasis added). And there is a very real likelihood that government regulators, on their own and at the urging of others, will try to take advantage of that confusion to push their regulatory authority as far upstream as possible, without regard to their actual statutory authority. The National Association of Pipeline Safety Representatives (NAPSR), for example, has several times filed comments in this docket suggesting that it was willing to exceed the jurisdictional limits of the Pipeline Safety Act to reach what have traditionally been viewed as upstream production facilities. See, e.g., Comments of the National Association of Pipeline Safety Representatives dated February 17, 2002 (Docket No. RSPA-1998-4868-110) (stating, for example, “We recommend that the primary focus of this effort should be on the safety of the pipeline’s operation *regardless* of its function [i.e., regardless of whether it serves a production function or not].”) (emphasis added).

In that event, this rulemaking will impact not simply 25 new operators, but potentially *thousands of producers* across the country and *thousands of additional miles* of piping and other production equipment. The Oklahoma Independent Petroleum Association comments, for example, that the expansive definition of *onshore gathering line* contained in the Supplemental NOPR – absent amendment – will “negatively impact a large portion, if not all producers in Oklahoma (*approximately 3000*), and will have a significant impact on smaller marginal natural gas well producers.” OIPA Comments dated December 27, 2005 (emphasis added). “Using PHMSA’s numbers for the paperwork burden alone would result in approximately **\$9 million dollar cost**

² PHMSA writes, “OPS acknowledges that these mileage figures are essentially estimates. * * * **OPS does not have information** about the location and environment of gathering lines, especially of those not heretofore regulated, **that would allow explicit determination of whether any portion of any particular gathering line would be regulated.**” *Id.* (emphasis added).

³ PHMSA writes, “**OPS does not have any information on the new operators that will come under safety regulation for the first time.** Any small entities that are affected are expected to be operators of small diameter, low pressure (Type B) lines that will be subject to a very minimal set of regulations and only for the short sections of pipeline located in close proximity to concentrations of population.” *Id.* (emphasis added). Additionally, “PHMSA has limited information on the number of small operators that might be impacted by the proposed regulatory change.” *Id.*

IPAA Comments
January 3, 2006
Page 7

impact to Oklahoma's operators." *Id.* (emphasis added). Across the nation's producing states, that impact – economically – is likely to be in the *hundreds of millions of dollars*. And that does not include the potentially staggering losses of our country's natural gas resources due to premature shut-ins of otherwise productive wells.

This is the very concern expressed by the U.S. Department of Energy's Office of Fossil Energy (DOE) in its filing dated January 14, 2004. DOE states, in an initial summary, that it is concerned that PHMSA:

[M]ay propose regulations that could negatively affect the supply of affordable natural gas. Specifically, new gathering line definitions and compliance with attendant new rules could impose additional costs on those marginal gas producers that currently provide approximately 10 percent of our onshore supplies of natural gas. Such costs could lead many of these producers to "shut-in" production as well as create disincentives for natural gas producers to initiate new exploration and production activities. [DOE Comments, Transmittal Letter at 1.]

DOE reinforced this concern in the body of its comments, observing for example that "on the basis of a review of historical [PHMSA] regulatory efforts and discussions at the November and December public meetings, it is possible that this definition could include lines that are functionally a part of gas production, thereby potentially affecting production operations." *Id.*, Comments at 2.

The risk of this loss to our domestic natural gas supplies – when it can *easily be cured* by the addition of the definition above and when there has been *absolutely no showing* that the jurisdictional limits imposed by the Pipeline Safety Act are in need of a "regulatory" fix in order to protect the public from ineffective state programs governing local production operations (implicit in the comments repeatedly submitted by NAPSRS) – is untenable.

In sum, without a clear, unambiguous definition of *production operation*, the regulatory analysis relied upon by the PHMSA woefully underestimates the economic and energy impacts on our nation's independent producers, not to mention the citizens they serve.

Conclusion

It has long been clear that definitions for *gathering* and *production operation* need to be adopted to resolve the confusion extant in the current pipeline safety program. The PHMSA has made significant strides with respect to the former but has failed to adequately define the latter. IPAA therefore urges the PHMSA to adopt the definition of *production operation* contained in Section 2.3 of American Petroleum Institute, Recommended Practice 80, with certain limitations, as set forth above. Specifically, IPAA urges the PHMSA to:

1. **Adopt the following language** to define *production operation*:

“Production Operation” means any piping and equipment that qualify as a production operation under section 2.3 of API RP-80, with the following limitations:

(1) Facilities operated in connection with natural gas storage operations shall be excluded; and,

(2) Separation and dehydration facilities located contrary to the prudent operating standards commonly applicable in the industry to the particular geographic location and solely for the purpose of avoiding regulation as a gathering line under Title 49 of the Code of Federal Regulations, Part 192, shall be excluded.

– and –

2. **Delete in its entirety** subpart (1) of the *onshore gathering line* definition proposed in the Supplemental NOPR, such that the definition for *onshore gathering line* would read:

Onshore gathering line means any pipeline or part of a connected series of pipelines that qualifies as an onshore gathering line under section 2.2 of API RP 80, with the following limitations:

~~(1) Under section 2.2(a)(1) of API RP 80, the beginning of a gathering line may not be further downstream than piping or equipment used solely in the process of extracting natural gas from the earth for the first time and preparing it for transportation or delivery.~~

(1) Under section 2.2(a)(1)(A) of API RP 80, the endpoint may not extend beyond the first downstream natural gas processing plant, unless the operator can demonstrate, using sound engineering principles, that gathering extends to a further downstream plant;

* * *

This easily-implemented solution will resolve the confusion that has existed for over 30 years among producers and some regulators as to where production ends and gathering begins for purposes of enforcing federal pipeline safety regulations. As required by Congress, it leaves to the

IPAA Comments
January 3, 2006
Page 9

relevant state commissions the jurisdiction to control production operations as appropriate under local conditions (including the safety requirements for those operations), while at the same time leaving largely intact the industry standard consensus definitions used today by industry participants and local regulators. This is a tremendous benefit to industry and the public alike.

IPAA appreciates the efforts made by PHMSA in this long-standing rulemaking and remains available to discuss any aspect of these comments or the PHMSA-proposal at the PHMSA's request.

Respectfully submitted,

A handwritten signature in black ink that reads "W. Jonathan Airey". The signature is written in a cursive, flowing style.

W. Jonathan Airey
Vorys, Sater, Seymour and Pease LLP
Chair, IPAA Natural Gas Committee
Pipeline Safety Task Force

WJA/kay