



Dewey & LeBoeuf

Natural Gas Pipeline Safety Practice

Natural Gas Pipeline Safety Practice

About Dewey & LeBoeuf

Dewey & LeBoeuf is a full-service law firm providing counsel throughout the Americas, Europe, Russia/CIS, the Middle East, Asia and Africa. With more than 1,100 lawyers in major financial and commercial centers, the firm represents national and global corporations, financial institutions and government agencies in their most complex legal matters.

For additional information, please visit www.dl.com.

Natural Gas Regulatory Practice

2 |

Dewey & LeBoeuf's natural gas practice includes representation of interstate and intrastate natural gas pipelines, local distribution companies, LNG terminals, gas and product storage project developers, storage facility operators, and gatherers. This practice group is comprised of over 20 lawyers who collectively have been involved in hundreds of regulatory proceedings involving the natural gas industry.

We regularly represent clients before the Federal Energy Regulatory Commission (FERC), the Department of Transportation (DOT)/Pipeline and Hazardous Materials Safety Administration (PHMSA), the Department of Energy (DOE), the Commodity Futures Trading Commission (CFTC), and Congress,

as well as state utility commissions, oil and gas permitting bodies, environmental regulators, and state and federal courts. We also represent clients in all types of litigation involving energy companies.

Pipeline Safety Practice

PHMSA Compliance

Natural gas and hazardous liquid transmission pipelines and natural gas distribution systems are subject to regulation by PHMSA under various statutes, including the Natural Gas Pipeline Safety Act and the Hazardous Liquids Pipeline Safety Act of 1979, to ensure the safety of such facilities.

Under PHMSA regulations, pipeline owners and operators are required to design and construct pipelines in compliance with specifications that allow for safe operations at a variety of operating pressures (including transmission lines, distribution lines, and low-pressure onshore gathering lines). Pipeline owners and operators also are required to establish programs for operations, maintenance, and emergencies. PHMSA's regulations also establish standards by which the adequacy of training and testing programs for pipeline personnel are to be measured.

Our lawyers are exceptionally well qualified to address all issues that arise in this area. The practice of many our lawyers is devoted to the representation of natural gas distribution

and transmission companies in a wide range of enforcement and litigation matters, and the firm's lawyers have significant experience with respect to pipeline safety enforcement initiatives both outside and within the government. One of our lawyers, for example, served in the Office of the Chief Counsel for the PHMSA in the Western Region (which encompasses 11 states, including Alaska and California) and was a presiding official at hearings concerning alleged pipeline safety violations.

Integrity Management Plans

Although the PHMSA requirements originated as design and engineering standards, they have evolved into standards that require the continuing review of a company's Integrity Management Plan (IMP). In light of recent rupture events on natural gas and liquids transmission lines and natural gas distribution systems, on April 4, 2011, DOT Secretary LaHood made a "call to action" and launched a new pipeline safety action plan, which may include PHMSA revisiting its IMP rules for natural gas transmission pipelines. Moreover, PHMSA's distribution integrity management regulations become effective in August 2011. In this environment, it is more important than ever that a company be able to show that its IMP is compliant with PHMSA regulations.

Although there is no one-size-fits-all plan, the primary purpose of an IMP is to effectively assess, prioritize, and

monitor risks in the pipeline system, particularly, as to transmission pipelines, risks in high consequence areas (HCAs). Many integrity issues are state- or company-specific, but in all cases pipelines will seek to maintain pipeline fitness for service through rehabilitation, repair, and replacement. However, a comprehensive approach will also have the following aims: to educate the public; to ensure that pipeline operations conform to PHMSA's rules, even as company operations and regulatory standards occasionally change; to provide employees with the training, knowledge, and resources necessary for them to meet regulatory requirements; to develop adequate records that chronicle compliance efforts; to organize records to enable regular internal review and periodic audits and in anticipation of external review; to establish procedures to monitor and adjust as necessary the characteristics of the integrity management plan; and to help insulate the company from penalties by demonstrating that a violation is a departure from normal practice.

A robust IMP will reduce exposure to third-party litigation. A good IMP may also provide a smoother path in negotiating the sale of assets.

Dewey & LeBoeuf's lawyers have significant experience in reviewing and evaluating the IMPs of its clients.

As PHMSA, state partner pipeline safety agencies, Congress, NTSB, and other stakeholder groups more closely scrutinize pipeline safety, focus will inevitably turn to the adequacy of a pipeline's or distribution company's IMP and related procedures.

Inspections and Incident Investigations

PHMSA and its state partner pipeline safety agencies conduct programmatic inspections of pipeline facilities and operations, and conduct investigations when incidents occur. Dewey & LeBoeuf provides strategic counseling to our clients, including local distribution companies and intrastate transmission companies subject to federal and state laws, and interstate transmission companies subject to federal law. Our lawyers are well-versed in the statutory and regulatory scheme, and are highly knowledgeable in the inspection process and protocol.

Depending on the nature of the inspection or investigation, our lawyers provide guidance on every aspect of the process, with a goal towards demonstrating or achieving compliance. When a major incident occurs, our lawyers provide assistance and advice on all matters that may arise, including reporting, submissions, preservation of evidence, and environmental and safety compliance.

Enforcement and Litigation

Dewey & LeBoeuf represents pipeline and distribution companies in enforcement actions, including notices of probable violation and corrective action matters. PHMSA's maximum penalty is \$100,000 per day per violation, not to exceed \$1 million per violation, but Secretary LaHood also called on Congress to increase the maximum civil penalties for pipeline violations to \$250,000 per day per violation, not to exceed \$2.5 million per violation. Given the importance of pipeline safety, PHMSA has ramped up its enforcement efforts. We work closely with our clients to put together the most effective response to enforcement actions.

We also represent pipeline and distribution companies in civil lawsuits where pipeline safety is at issue. For example, we have represented pipeline companies in natural gas explosions and fires where operational safety and maintenance were alleged to have been causative factors. Private litigants pay close attention to any governmental response to major incidents, as that may drive civil litigation.

* * *

Please contact one of our pipeline or pipeline safety lawyers, listed on the back page, for further information.

Key Contacts

Darren J. Hunter

Chicago

+1 312 794 8018

dhunter@dl.com

James F. Bowe, Jr.

Washington, DC

+1 202 346 7999

jbowe@dl.com

Charles A. Moore

Houston

+1 713 287 2086

cmoore@dl.com

Ahren S. Tryon

Washington, DC

+1 202 346 8059

atryon@dl.com

Brian T. FitzGerald

Albany

+1 518 626 9311

bfitzger@dl.com

Brian D. O'Neill

Washington, DC

+1 202 346 8012

boneill@dl.com

Lawrence G. Acker

Washington, DC

+1 202 346 8016

lacker@dl.com

Catherine P. McCarthy

Washington, DC

+1 202 346 8753

catherine.mccarthy@dl.com

Meabh Purcell

Boston

+1 617 748 6847

mpurcell@dl.com

Dewey & LeBoeuf LLP

New York | London | Washington, DC | Abu Dhabi | Albany | Almaty | Beijing | Boston | Brussels | Chicago | Doha | Dubai | Frankfurt
Hong Kong | Houston | Johannesburg | Los Angeles | Madrid | Milan | Moscow | Paris | Riyadh | Rome | San Francisco | Silicon Valley | Warsaw

dl.com

The material contained herein does not constitute legal advice. Prior results do not guarantee future performance.

© 2012 Dewey & LeBoeuf LLP. All rights reserved.

In this publication, Dewey & LeBoeuf means the international legal practice comprising Dewey & LeBoeuf LLP, a limited liability partnership registered in the State of New York, Dewey & LeBoeuf LLP, a limited liability partnership incorporated under the laws of England and Wales, and all other affiliated partnerships, companies and entities. For further information on Dewey & LeBoeuf, please visit www.dl.com.