U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

9/15/2023

Mr. Lee Blank
CEO
Summit Carbon Solutions
2321 N Loop Dr. Suite 221
Ames, Iowa 50010

Dear Mr. Blank:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has received several inquiries regarding the ability of federal, state, and local governments to affect the siting, design, construction, operation, and maintenance of carbon dioxide pipelines. The widespread interest in understanding PHMSA's authorities underscores a need to reiterate the message we shared in 2014 with a company proposing a high-visibility interstate pipeline, a message directly related to current pipeline projects proposed by your companies.

As was the case in 2014, PHMSA continues to support and encourage all three levels of government—federal, state, and local—working collaboratively to ensure the nation's pipeline systems are constructed and operated in a manner that protects public safety and the environment.

Congress has vested PHMSA with authority to regulate the design, construction, operation, and maintenance of pipeline systems, including carbon dioxide pipelines, and to protect life, property, and the environment from hazards associated with pipeline operations. While the Federal Energy Regulatory Commission has exclusive authority to regulate the siting of interstate gas transmission pipelines, there is no equivalent federal agency that determines siting of all other pipelines, such as carbon dioxide pipelines. Therefore, the responsibility for siting new carbon dioxide pipelines rests largely with the individual states and counties through which the pipelines will operate and is governed by state and local law.

The Role of PHMSA

Under the federal pipeline safety laws (49 U.S.C. § 60101 *et seq.*), PHMSA is charged with carrying out a nationwide program for regulating the country's pipelines that transport gas, hazardous liquids, and carbon dioxide. With passage of the federal pipeline safety laws, Congress determined pipeline safety is best promoted through PHMSA's development of nationwide safety standards.

PHMSA takes this responsibility seriously and has promulgated comprehensive safety regulations at 49 C.F.R. Parts 190-199. Dozens of current federal requirements regulate the safety of carbon dioxide pipelines' design,[1] construction,[2] testing,[3] operation and maintenance,[4] operator qualification,[5] corrosion control,[6] and emergency response planning.[7] PHMSA inspects compliance with these requirements and enforces these standards through administrative and judicial enforcement processes.

Recently, PHMSA promulgated new, more stringent standards for automatic and remote shut off valves that affect carbon dioxide pipelines (Additional information: "New rule will help improve public safety and reduce greenhouse gas emissions following pipeline failures").[8] PHMSA also announced a number of additional actions to strengthen current pipeline safety requirements for carbon dioxide pipelines (Additional information: "PHMSA announces new safety measures to protect Americans from carbon dioxide pipeline failures"),[9] including a new rulemaking which is currently under way.

While rulemakings like this involve meticulous crafting of highly technical updates, PHMSA also retains broad authority to address imminent risks to the public posed by a pipeline —even if not specifically delineated in a rule or standard. To this extent, PHMSA will engage with all carbon dioxide pipeline project developers to ensure any unique and imminent risks from such projects are adequately mitigated pursuant to PHMSA's statutory safety authority.

The Role of State Pipeline Regulators

Federal safety standards apply to both interstate and intrastate pipeline facilities. Only PHMSA can regulate the safety of interstate pipelines, and federal pipeline safety laws expressly prohibit states from enacting or enforcing pipeline safety standards with respect to interstate pipelines (except one-call notification program regulations). However, through an agreement with PHMSA, a state authority may be authorized to inspect interstate pipelines as an agent of PHMSA, and to refer violations to PHMSA for enforcement. Thus, PHMSA's state partners play an important role in assisting to oversee the safety of the nation's interstate pipelines.

PHMSA's state partners also play a critical role in regulating the safety of intrastate pipelines. A state authority that submits a certification to PHMSA may assume exclusive regulatory authority for the safety of its intrastate pipelines. The certification must document, among other things,

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[1] 49 CFR part 195, subpart C (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-C).
[2] Subpart D (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-D).
[3] Subpart E (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-E).
[4] Subpart F (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-F).
[5] Subpart G (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-G).
[6] Subpart H (https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-195/subpart-H).
[7] *E.g.*, Subpart F, §§ 195.402, 195.403, 195.408.
[8] https://www.phmsa.dot.gov/news/phmsa-announces-requirements-pipeline-shut-valves-strengthen-safety-improve-response-efforts
[9] https://www.phmsa.dot.gov/news/phmsa-announces-new-safety-measures-protect-americans-carbon-dioxide-pipeline-failures

that the state has appropriate jurisdiction under state law; has adopted the federal safety standards to which the certification applies; inspects operators for compliance with those standards; and enforces the standards to address noncompliance.

PHMSA's national regulatory program relies heavily on the efforts of these state partners, who employ roughly 70 percent of all pipeline inspectors and whose jurisdiction covers more than 80 percent of regulated pipelines. As noted above, federal law requires certified state authorities to adopt safety standards at least as stringent as, and compatible with, the federal standards. The state authorities will also inspect, regulate, and take enforcement action against operators of intrastate pipelines within their borders.

The Role of Local Governments

Federal preemption of pipeline safety means that states do not have independent authority to regulate pipeline safety but derive that authority from federal law through a certification to PHMSA.

In the case of local governments that are not subject to federal certification of pipeline safety authority, they may still exercise other powers granted to them under state law but none that adopt or enforce pipeline safety standards or contradict federal law.

However, PHMSA cannot prescribe the location or routing of a pipeline and cannot prohibit the construction of non-pipeline buildings in proximity to a pipeline. Local governments have traditionally exercised broad powers to regulate land use, including setback distances and property development that includes development in the vicinity of pipelines. Nothing in the federal pipeline safety law impinges on these traditional prerogatives of local—or state—government, so long as officials do not attempt to regulate the field of pipeline safety preempted by federal law.

PHMSA recognizes local governments have implemented authorities under state law that contribute in many ways to the safety of their citizens. We have seen localities consider measures, such as:

1. Controlling dangerous excavation activity near pipelines.
2. Limiting certain land use activities along pipeline rights-of-way.
3. Restricting land use and development along pipeline rights-of-way through zoning, setbacks, and similar measures.
4. Requiring the consideration of pipeline facilities in proposed local development plans.
5. Designing local emergency response plans and training with regulators and operators.
6. Requiring specific building code design or construction standards near pipelines.
7. Improving emergency response and evacuation plans in the event of a pipeline release.
8. Participating in federal environmental studies conducted under the National Environmental Policy Act (NEPA) and similar state laws for new pipeline construction projects.

Each state treats these issues differently, so pipeline operators should be prepared to deal directly with each locality and state body interested in the siting and construction process.

Collaboration Among Stakeholders

PHMSA believes pipeline safety is the shared responsibility of federal and state regulators as well as all other stakeholders, including pipeline operators, excavators, property owners, and local governments. In 2010, PHMSA launched the Pipelines and Informed Planning Alliance (PIPA)—available at https://primis.phmsa.dot.gov/comm/pipa/LandUsePlanning.html—to help pipeline safety stakeholders define their respective roles related to land use practices near pipelines and to develop best practices.

The PIPA documents are 13 years old, but they remain of value today. PHMSA looks forward to you, along with other private and public stakeholders, engaging with PHMSA in updating these documents to focus on the unique circumstances of new pipeline construction. I encourage all pipeline operators to carefully consider and adopt, as appropriate, these best practices to protect their existing and proposed rights-of-way, and to engage all stakeholders in promoting the safety of interstate pipelines.

Each community affected by an existing or proposed pipeline faces unique risks. The effective control and mitigation of such risks involves a combination of measures employed by facility operators, regulatory bodies, community groups, and individual members of the community. As a pipeline release can impact individuals, businesses, property owners, and the environment, it is important that all stakeholders carefully consider land use and development plans to make risk-informed choices that protect the best interests of the public and the individual parties involved. Sharing appropriate information with state or local governments and emergency planners, which may include dispersion models or emergency response plans, may help stakeholders make risk-informed decisions.

Bringing a pipeline into a community is often a complicated endeavor that requires tremendous coordination and open communication among stakeholders to be successful. We greatly value the efforts of pipeline operators who spend the time and energy to make sure the process goes smoothly and are responsive to all parties involved. Thank you for your cooperation in this effort.

Sincerely,

Alan K. Mayberry
Associate Administrator for Pipeline Safety