



October 6, 2020

Mr. Stephen Klejst  
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Mr. Thomas Goonan  
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Dear Mr. Klejst and Mr. Goonan:

The American Gas Association (“AGA”) respectfully submits this letter on behalf of its members to request that the Chemical Safety and Hazard Investigation Board (“CSB” or the “Board”) provide guidance and clarification as to the applicability and scope of the Board’s accident reporting rule (the “Rule”) that became effective on March 23, 2020 (85 Fed. Reg. 10074, 10085 (Feb. 21, 2020)). AGA is a trade organization that represents more than 200 local energy companies that deliver clean natural gas throughout the United States. AGA’s members operate a variety of natural gas pipelines and pipeline facilities including, but not limited to, gathering lines, distribution lines, underground natural gas storage facilities (“UNGSFs”), and liquefied natural gas (“LNG”) facilities. With this letter, AGA seeks to clarify that the Rule does not apply to owners and operators of these transportation-related facilities that are regulated by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) or state-equivalents.

As structured, the Rule requires owners and operators of “stationary sources” to report accidental releases of regulated or extremely hazardous substances that result in fatalities, serious injuries, or substantial property damage. 40 C.F.R. § 1604.3(a). The Rule broadly defines “stationary source” and it is unclear whether, under this broad definition, releases from pipelines or pipeline facilities meet the Rule’s criteria and must be reported to CSB. *Id.* at § 1604.2. According to the Board, the Rule was promulgated to ensure “prompt notification of any accidental releases *within the CSB’s investigatory jurisdiction.*” 40 C.F.R. § 1604.1 (emphasis added).

By design, the CSB is a nonregulatory federal agency that investigates the root causes of major chemical incidents at fixed industrial facilities. As provided in a Memorandum of Understanding (“MOU”) between the CSB and the National Transportation Safety Board (“NTSB”), the CSB’s jurisdiction does not provide the Board with the authority to investigate transportation-related accidents. See Memorandum of Understanding Between the National Transportation Safety Board and Chemical Safety and Hazard Investigation Board, 2015 WL 8452813 (Dec. 19, 2002). Instead, the NTSB has the sole authority to investigate accidental releases from pipelines and pipeline facilities that are regulated by PHMSA or state-equivalents. *Id.*

When issuing the Rule, the Board acknowledged that there may be some ambiguity as to the applicability of the Rule and created a one-year grace period to allow industry members to better

understand the newly implemented reporting obligations. 85 Fed. Reg. at 10092. The CSB indicated its willingness to use the grace period to issue guidance to owners and operators that would clarify the application of the Rule. *Id.* at 10084. To date, the CSB has not provided any guidance as to the applicability of the Rule to owners and operators of pipelines or pipeline facilities.

AGA does not believe that the CSB intended for owners and operators of pipelines and pipeline facilities to report accidental releases under the Rule, based on the statutory authority of the CSB and the NTSB as expressed in the MOU. Accordingly, to ensure that industry members fully understand their obligations under the Rule before the one-year grace period has lapsed, AGA respectfully requests that the CSB provide much needed clarity as to the scope and applicability of the Rule. Specifically, AGA requests that the CSB clarify that the Rule does not apply to owners and operators of transportation-related oil and natural gas pipelines and pipeline facilities that are regulated by PHMSA or state-equivalents, including, but not limited to, gathering lines, distribution lines, transmission lines, UNGSFs and LNG facilities.

Toward that end, AGA offers the attached Frequently Asked Question for the Board's consideration. AGA appreciates the Board's consideration of this request.

Sincerely,



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## Frequently Asked Question - Applicability of Accidental Release Reporting Requirements at 40 C.F.R. § 1604.3 to Pipelines and Pipeline Facilities

### 1. Do the reporting requirements under 40 C.F.R. § 1604.3 apply to pipelines and pipeline facilities (e.g., compressor stations, regulator stations, or other pipeline facilities), gathering lines, distribution lines, underground natural gas storage facilities, or liquefied natural gas facilities that are regulated by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) within the Department of Transportation?

No, CSB does not have jurisdiction to investigate transportation-related accidental releases. As a result, owners and operators of pipelines and pipeline facilities that transport gas or hazardous liquids in interstate or intrastate commerce under the jurisdiction of either PHMSA or a certified state under 49 U.S.C. § 60105 are not required to report any associated accidental releases to the CSB.

The CSB’s accidental release reporting requirement at 40 C.F.R. § 1604.3 was designed to provide the Board with prompt notice of all accidental releases within its investigatory jurisdiction.<sup>1</sup> A Memorandum of Understanding (“MOU”) between the CSB and the National Transportation Safety Board (“NTSB”) in 2002 was created with the express purpose to “prevent duplicate investigations or jurisdictional disputes[.]”<sup>2</sup> The MOU provides that the CSB has the authority to investigate “large chemical accidents involving the production, processing, handling, and storage of chemicals at fixed facilities.”<sup>3</sup> In contrast, the NTSB has the authority to investigate “all *transportation* accidents involving hazardous materials including: aviation, railroad, marine, highway, and *pipeline*.”<sup>4</sup>

NTSB’s transportation-related authority encompasses releases from oil and gas pipelines and pipeline facilities regulated by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”), including, but not limited to, distribution lines, gathering lines, underground natural gas storage facilities (“UNGSFs”), and liquid natural gas (“LNG”) facilities. Within its regulations related to natural gas pipeline safety, PHMSA defines “pipeline” broadly to include: “all parts of those physical facilities through which gas moves in transportation, including pipes, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.”<sup>5</sup> PHMSA also defines “pipeline facility” expansively to include “new and existing pipelines, rights-of-way, and any equipment, facility or building used in the transportation of gas or in the treatment of gas during the course of

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<sup>1</sup> 40 C.F.R. § 1604.1.

<sup>2</sup> *Id.*

<sup>3</sup> See Memorandum of Understanding Between the National Transportation Safety Board and Chemical Safety and Hazard Investigation Board, 2015 WL 8452813 (Dec. 19, 2002).

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> 49 C.F.R. § 192.3.

transportation.”<sup>6</sup> Similarly, PHMSA defines UNGSFs to include a gas pipeline facility that stores natural gas underground incidental to the transportation of gas regulated by PHMSA, including depleted hydrocarbon reservoirs, aquifer reservoirs, or solution-mined salt caverns.<sup>7</sup> Finally, PHMSA defines LNG facilities within its jurisdiction to include “a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas.”<sup>8</sup>

Taking into consideration the NTSB’s existing investigatory jurisdiction over transportation-related accidental releases, it is clear that the CSB does not have authority to investigate accidental releases from oil and gas pipelines and facilities under PHMSA’s (or a state-equivalent’s) oversight. In the event that an accidental release beyond the scope of the CSB’s authority is reported to the CSB, the Board will refer it to an appropriate entity and will not initiate any investigation in response to the report.

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<sup>6</sup> *Id.* Similar to its regulation of natural gas pipelines and facilities, PHMSA broadly defines oil pipelines and pipeline facilities. See 49 C.F.R. § 195.2 (defining oil pipelines as “all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks”) and 49 C.F.R. § 195.2 (defining an oil pipeline facility as “new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide”).

<sup>7</sup> *Id.* PHMSA’s definition notes that “in addition to the reservoir or cavern, a UNGSF includes injection, withdrawal, and observation wells; wellbores and downhole components; wellheads and associated wellhead piping; wing-valve assemblies that isolate the wellhead from connected piping beyond the wing-valve assemblies; and any other equipment, facility, right-of-way, or building used in the underground storage of natural gas.”

<sup>8</sup> 49 C.F.R. § 193.2007.