



March 28, 2014

OSHA Docket Office
Occupational Safety and Health Administration
U.S. Department of Labor
Room N-2625
200 Constitution Avenue NW
Washington, DC 20210

Via electronic submission: www.regulations.gov
Docket Number: OSHA-2013-0020

Re: INGAA's Comments to OSHA's Request for Information concerning Process Safety Management

To Whom This May Concern:

The Interstate Natural Gas Association of America (INGAA) appreciates the opportunity to submit comments on the Request for Information (RFI) issued by the Occupational Safety and Health Administration (OSHA) regarding its Process Safety Management (PSM) standard.

INGAA is a not-for-profit trade association representing virtually all interstate natural gas transmission pipeline companies operating in the United States. INGAA's U.S. members operate over 200,000 miles of pipeline and related facilities and account for over 90 percent of all natural gas transported and sold in interstate commerce.

To ensure the safe operation of our nation's natural gas pipeline system, INGAA's members are committed to providing a safe and compliant work environment for all pipeline operators and employees, and recognize the importance of the PSM standard to protect against chemical accidents. Most natural gas transmission facilities do not fall within the scope of the PSM standard, but certain compressor stations do meet the 10,000 pound threshold. OSHA's jurisdiction with regard to regulating PSM at these facilities, however, is preempted by the Pipeline and Hazardous Materials Safety Administration (PHMSA), as described more fully below.

These comments focus on the specific PSM issues that may impact INGAA's members.

OSHA Does Not Have Jurisdiction to Regulate PSM at Natural Gas Transmission Facilities

The Occupational Safety and Health Act (OSH Act) provides that OSHA shall not exercise jurisdiction over working conditions of employees if another governmental agency has jurisdiction over the working conditions of those employees. (29 USC § 653(b)(1)). OSHA generally cedes jurisdiction over occupational safety in specialty areas where other agencies have been granted jurisdiction to oversee safety, such as certain modes within the Department of Transportation (DOT).

Natural gas transmission operators are highly regulated by multiple federal, state and local agencies, including PHMSA. PHMSA, an agency within DOT, has statutory and regulatory jurisdiction over the safety of natural gas pipeline operators, facilities and employees. (See 49 USC § 60101 *et seq.*).

PHMSA has promulgated a body of regulations designed to protect pipeline employees and facilities. (See 49 CFR Part 192). PHMSA's rules cover, among many other things, standards related to pipeline materials, design, construction, corrosion control, operations and maintenance, and integrity management. PHMSA's integrity management regulations specifically require transmission operators to perform comprehensive and ongoing integrity inspections of their equipment and facilities. (See 49 CFR Part 192, Subpart O). The entire body of pipeline safety regulations, including the integrity management requirements, overlap with OSHA's PSM standard. As a result, OSHA issued an interpretation letter on October 30, 1992, a copy of which is attached hereto as Attachment A, in which OSHA acknowledged that it is precluded from enforcing the PSM standard against transmission companies. OSHA's interpretation letter states, in relevant part, that PHMSA's regulations:

"...address the hazards of fire and explosion in the gas distribution and transmission process. Accordingly, OSHA has determined that the agency is precluded from enforcing the PSM rule over the working conditions associated with those hazards."

Natural gas transmission facilities are highly specialized and span thousands of miles. Most pipeline equipment is located underground, but there are certain above-ground facilities and operations, such as compressor stations. Transmission piping and equipment, including compressor stations, fall squarely within PHMSA's jurisdiction. Thus, as OSHA has acknowledged, OSHA does not have jurisdiction over this equipment for purposes of PSM.

Atmospheric Storage Tanks (Section C.1 of the RFI)

OSHA should not remove the existing exemption for atmospheric storage tanks operated by natural gas transmission operators. The existing PSM standard does not apply to flammable liquids that have a flashpoint below 100 degrees Fahrenheit and are stored in atmospheric tanks at a temperature below their normal boiling point without the benefit of

refrigeration or chilling. (29 CFR § 1910.119(a)(1)(ii)(B)). Given the clear language of the rule, the Occupational Safety and Health Review Commission confirmed that the PSM standard does not apply to flammable liquids stored in atmospheric tanks, even if the tanks are connected to the process. (*Secretary of Labor v. Meer Corp.*, OSHRC Docket No. 95-0341 (1997)).

Natural gas transmission operators routinely store “liquid condensate” in atmospheric tanks. By way of background, natural gas is compressed and transported through transmission pipelines under high pressure. During transportation, the natural gas loses pressure and must be re-compressed at facilities known as compressor stations, which are located at various intervals along the pipeline system. As the pressure and temperature of the natural gas fluctuate during transmission, the heavier hydrocarbons that make up the natural gas “drop out” of the natural gas stream. These heavier hydrocarbons are referred to as “liquid condensate” and are collected and stored in atmospheric tanks at the compressor stations. Depending on the constituents, the liquid condensate may be treated as a waste or may be reused in accordance with environmental regulations.

For the storage of liquid condensate, transmission operators rely on the atmospheric storage tank exclusion. Liquid condensate falls directly within the exclusion, as it has a flashpoint below 100 degrees Fahrenheit and is stored at a temperature below its normal boiling point without the benefit of refrigeration or chilling. The storage of flammable liquids in atmospheric tanks, including liquid condensate, is excluded from the PSM standard because it does not pose the same risk as piping, pressure vessels, chemical reactors and other equipment that are covered under the PSM standard.

To put this in perspective, a 2,500 gallon atmospheric tank – which is considered a small tank – holds enough fluid to meet the 10,000 pound threshold under the PSM standard. Therefore, if the atmospheric storage tank exclusion did not apply, the quantity of liquid condensate that is stored at many natural gas compressor stations would likely exceed the 10,000 pound threshold, so many compressor stations would fall under the PSM standard.

In fact, the unintended consequence of removing the atmospheric storage tank exclusion is that the number of PSM facilities nationwide would skyrocket. Many facilities that should not be regulated under the PSM standard would qualify by virtue of the fact that atmospheric storage tanks would be covered.

As stated, natural gas transmission operators are highly regulated by many agencies, including PHMSA. Transmission operators are required to follow rigorous procedures to assess the integrity of their equipment, including piping, valves, fittings, connections, pressure vessels, and other equipment that is part of the transmission process. PHMSA’s regulations specifically cover compressor stations. (See 49 CFR Part 192, Subparts D and O). In addition, transmission operators are also subject to strict regulations from EPA, as well as recognized industry standards, including API, ANSI and NFPA.

Given the jurisdictional issues, it is clear that natural gas transmission facilities, including piping, tanks and other equipment at compressor stations, were not intended to be treated as PSM facilities. In addition, it is clear that compressor stations should not be treated as PSM facilities by virtue of the fact that liquid condensate is collected and stored in atmospheric tanks before it is disposed of as a waste or reused in accordance with environmental regulations.

From the viewpoint of INGAA and our members, the atmospheric storage tank exclusion is the most significant issue and the biggest concern that is raised in OSHA's RFI. The exclusion must remain in effect, at least as it applies to natural gas transmission facilities. INGAA is prepared to meet with OSHA to address this issue and alleviate any concerns it may have.

Oil and Gas – Well Drilling and Servicing/Production Facilities (Sections C.2 and 3 of the RFI)

OSHA also should not apply its PSM regulations to natural gas underground storage wells. By way of background, some natural gas transmission operators store an excess supply of natural gas in underground storage fields to ensure there is an adequate supply of natural gas to meet customer demand, particularly during the peak season. Natural gas is injected and withdrawn into and from rock formations that have defined geological characteristics. One type of rock formation where natural gas is stored is a depleted oil reservoir. Operators inject the storage gas into the reservoirs through wells. When operators withdraw the storage gas, a residual amount of native oil may also be produced.

Well Drilling and Servicing

Like atmospheric tanks, natural gas storage wells are highly regulated by various federal and state agencies. Operators are also subject to numerous consensus standards. The PSM standard was clearly not designed to cover natural gas storage wells. Thus, the exemption for well drilling and servicing should continue to apply to underground gas storage wells in depleted oil reservoirs.

Production Facilities

Although there may be negligible residual oil production from a limited number of natural gas storage wells, these wells are certified by the Federal Energy Regulatory Commission (FERC) as natural gas storage wells. Accordingly, these wells are regulated as natural gas storage wells, not as production facilities. Therefore, OSHA should not regulate natural gas storage wells under the PSM standard.

RAGAGEP (Sections C.7 and 8 of the RFI)

INGAA does not believe that OSHA should revise the definition of RAGAGEP – Recognized and Generally Accepted Good Engineering Practices – to be made more explicit. To the contrary, RAGAGEPs are a performance standard, not a prescriptive standard. Every operation is different and every facility is unique.

The meaning of RAGAGEP is clear from its name. A recognized and generally accepted good engineering practice, by definition, is derived from a variety of sources that are recognized and generally accepted, such as industry standards, consensus standards and manufacturer's instructions. OSHA, however, should not define these sources because they are constantly evolving and improving. Furthermore, different standards apply to different operations and equipment. For this reason, the proposed Center for Chemical Process Safety (CCPS) definition should not be adopted.

The PSM standard is a performance-based standard with the goal of minimizing risk in order to eliminate or reduce the likelihood of a chemical accident. To achieve that end, the employer is required under the PSM standard to follow recognized and generally acceptable good engineering practices while compiling process safety information before conducting a process hazard analysis, and while performing a mechanical integrity inspection. The employer should not be limited in performing these tasks based on OSHA's definition of RAGAGEP. Simply stated, RAGAGEPs are not one size fits all.

Manage Organizational Changes (Section C.10 of the RFI)

Any expansion of the management of change (MOC) requirements in the PSM standard to include management of *organizational* change should not be overly prescriptive. As OSHA can appreciate, issues surrounding Human Resources (HR) can be, and usually are, complex. There is tremendous fluidity in employment, as employees leave companies or change positions with little or no notice. Therefore, an employer must have the flexibility to address HR issues on a case-by-case basis.

With regard to the replacement of employees who have responsibility over PSM issues, affected employers should clearly take necessary steps to hire qualified personnel. However, replacement employees cannot be pre-determined. Every employer must have the freedom and discretion to hire replacement employees as needed.

Coordination of Emergency Planning with Local Authorities (Section C.11 of the RFI)

OSHA inquires whether it should amend the PSM standard to require employers to coordinate with local emergency-response authorities. INGAA notes that its members are already subject to comprehensive requirements by PHMSA to coordinate with local authorities on emergency response. PHMSA explicitly requires transmission operators to develop Emergency Plans and to coordinate with local authorities on emergency response activities (49 CFR § 192.615), and also to develop Public Awareness Programs that require, among other things, transmission operators to educate and share information with local authorities (49 CFR § 192.616).

Third Party Compliance Audits (Section C.12 of the RFI)

OSHA should not require employers to hire third parties to conduct compliance audits. An employer should have the flexibility either to retain third parties or allow in-house personnel to conduct the audits. The key is whether the person who conducts the audit is qualified, including training, experience and understanding the process. In-house personnel are often more effective than third parties, particularly because in-house personnel usually have a better understanding of the process.

It must be emphasized that third parties can be ineffective. The function of hiring a third party can be influenced by market forces, low bids, the desire to maintain ongoing relations, and other factors. Objectivity and independence are not guaranteed when it comes to hiring third parties. Objectivity and independence, however, can be achieved internally through organizational structure.

It must also be emphasized that the pool of qualified third party auditors is limited, particularly given the specialized and unique nature of business operations. While there are a select group of qualified third party auditors who have an understanding of the PSM standard, it is essential that the persons who perform audits also have a strong understanding of the unique process at each facility. To ensure that the auditor has the requisite level of knowledge of the operations, employers must be afforded the opportunity to conduct audits internally.

Contrary to OSHA's position, the Bureau of Safety and Environmental Enforcement (BSSE) is not analogous. Because BSSE deals with offshore activities, the regulatory environment is much more homogenous. OSHA, however, regulates virtually all types of employers, large and small, from all industry sectors. Furthermore, the processes subject to the PSM standard vary greatly, depending on the nature of the operation, the facility, the equipment, etc. Therefore, the BSSE requirements should not apply to OSHA.

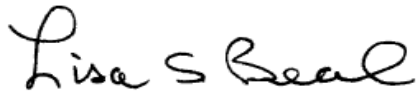
In numerous contexts, employers conduct self-audits of its processes. INGAA believes that affected employers should have the ability to allow in-house personnel to conduct PSM compliance audits. The most important factor is that the person who conducts the audit is qualified to do so.

Conclusion

Several of the issues raised in OSHA's RFI may significantly impact INGAA's members. INGAA appreciates the opportunity to comment on OSHA's RFI, and is willing to meet with OSHA to address any concerns OSHA may have.

Should you have any questions, please feel free to contact me at (202) 216-5935.

Sincerely,

A handwritten signature in black ink that reads "Lisa S Beal". The signature is written in a cursive style with a large initial "L" and a distinct "S" before the last name.

Lisa S. Beal
Vice-President, Environment and Construction Policy

CC: INGAA H&S Task Team