

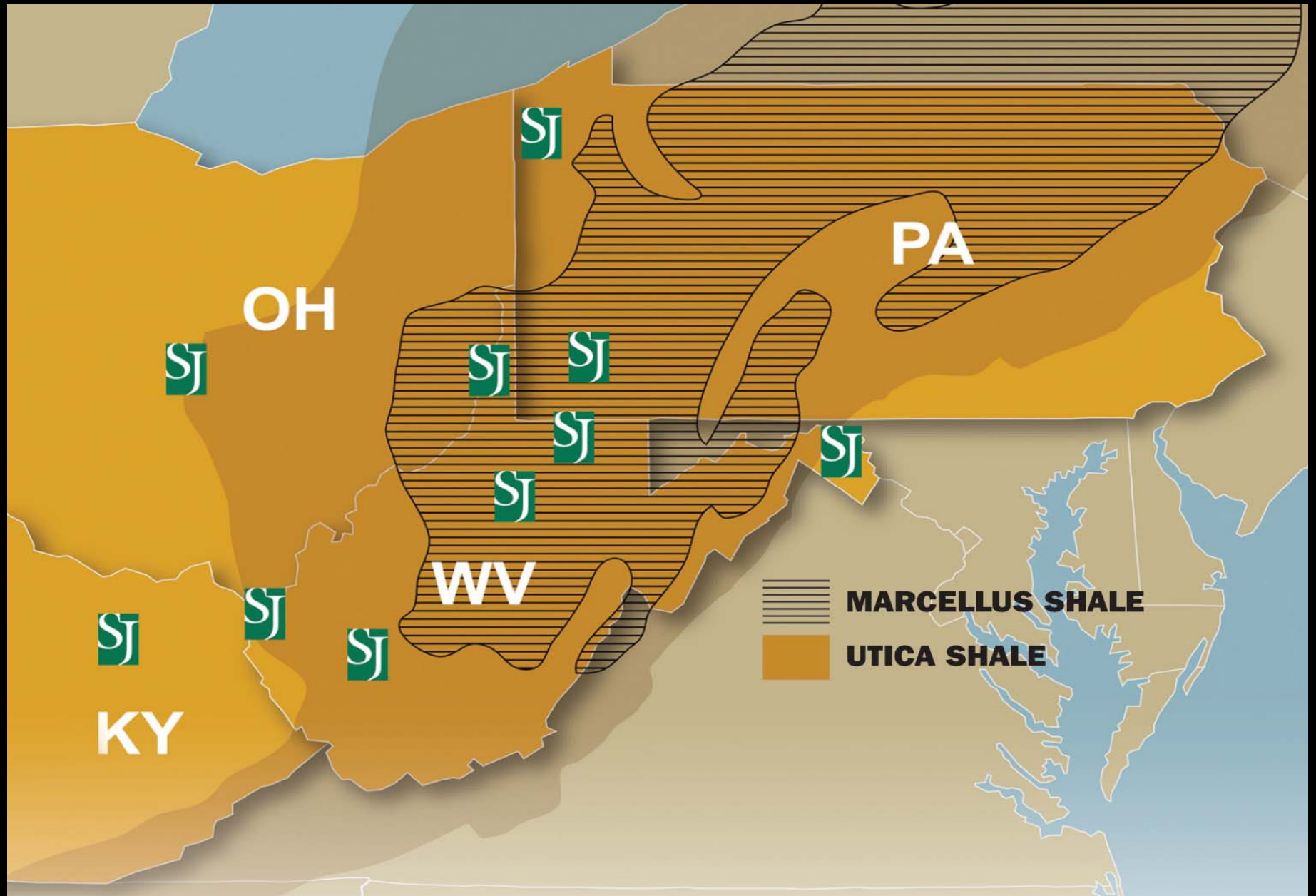
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Pipeline Safety in the Utica and Marcellus Shale

PRESENTED BY KURT L. KRIEGER & NORRIE CLEVINGER PRICE

Steptoe & Johnson Office Locations



Pipeline Safety in the Marcellus and Utica Shale

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■ ■ Today's Presenters



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■ ■ Federal Pipeline Safety Regulation



- Natural Gas Pipeline Safety Act (49 U.S.C. § 60101) – years in the making
- U.S. Department of Transportation (“DOT”) jurisdiction over pipeline safety standards
- Included: *transmission* and *distribution* of natural gas in *interstate commerce*, and limited group of *gathering* lines
- Excluded: facilities used to transfer natural gas during *production* operations

■ ■ Federal Pipeline Safety Regulation



- DOT regulates through Pipeline and Hazardous Materials Safety Administration (“PHMSA”) acting through the Office of Pipeline Safety (“OPS”)
- Goal: assure safe transportation of natural gas, petroleum and other hazardous materials by pipeline
- Develops and implements minimum safety standards and reporting requirements for pipeline transportation and facilities

■ ■ Federal Pipeline Safety Regulation



- OPS – Federal Regulations (49 C.F.R. Parts 190-199)
- Framework for all states that partner with PHMSA to enforce pipeline safety requirements
- Responsibilities are shared with various state regulatory partners – states may require more
- Safety program funding

■ ■ Federal Pipeline Safety Regulation



- Applies to certain gathering lines:
 - offshore gathering lines
 - certain onshore gathering lines
- Gathering defined by API's RP-80 "Guidelines for the Definition of Onshore Gas Gathering Lines"
- The art of defining where a 'gathering line' begins (where a 'production operation' ends) and where the 'gathering line' ends
- When onshore gathering becomes 'regulated'
- Production operations not regulated by OPS

■ ■ Federal Pipeline Safety Regulation



- ‘Production operation’ defined
- Piping and equipment used to produce and prepare natural gas and/or gas liquids for transportation or delivery
- Includes: extraction and recovery, lifting, stabilization, treatment, separation, production, processing, storage, and measurement of hydrocarbons as well as the associated production compression, gas lift, gas injection, or fuel gas supply

■ ■ Federal Pipeline Safety Regulation



- ‘Gathering line’ defined
- Pipelines used to transport gas from the furthestmost downstream point in a production operation to the furthestmost downstream series of endpoints
- Gathering starts:
 - only after the ‘production operation’ ends
- Gathering ends:
 - only after all potential endpoints have occurred and the gathering function ends entirely

■ ■ Federal Pipeline Safety Regulation



- Assuming onshore gathering
- Is it regulated?
- What 'type' is it?
- What is its 'class' location?

■ ■ State Regulation



- PHMSA shares the development and implementation of pipeline safety regulations with state regulatory partners
 - Certification, Agreement, Interstate Agent
- Federal funds are used to improve state program performance
- Federal funding is determined through an allocation formula
- National Association of Pipeline Safety Representatives (NAPSR)

■ ■ State Regulation – West Virginia



- Public Service Commission of West Virginia (“WVPSC”)
- Gas Pipeline Safety Section of the Engineering Division
- Adopted the federal pipeline safety regulations
- Certified to regulate and inspect interstate and intrastate gas and hazardous liquid pipelines in West Virginia
- Additional safety-related requirements for non-rural gathering

■ ■ State Regulation – Ohio



- Public Utility Commission of Ohio (“PUCO”)
- Gas Pipeline Safety Section
- Adopted the federal pipeline safety regulations
- Certified to regulate, inspect and enforce intrastate gas pipeline safety requirements in Ohio; and inspect interstate gas pipelines
- Additional safety-related requirements for gathering

■ ■ State Regulation – Pennsylvania



- Pennsylvania Public Utility Commission (“PaPUC”)
- Gas Safety Division, Bureau of Transportation & Safety
- Does not regulate gathering or non-public-utility intrastate transmission lines
- Only permitted to enforce federal regulations for pipeline operators with public utility status
 - Someone engaged in distributing the gas directly to the public for compensation
- Gathering lines in Pennsylvania are not subject to PaPUC jurisdiction and are only subject to federal regulation under PHMSA

■ ■ Recent Federal Developments



- Recent DOT Developments:
- New website for pipeline safety awareness
<http://opsweb.phmsa.dot.gov/pipelineforum>
- April 4, 2011 - New Pipeline Safety Action Plan
www.dot.gov/affairs/2011/dot4111.html
- April 18, 2011 - Secretary LaHood held a Pipeline Safety Forum on April 18, 2011 where the following were identified as priorities:

■ ■ Recent Federal Developments



Pipeline Safety Forum priorities:

- Conducting more state and federal inspections
- Instituting more enforcement
- Refreshing Integrity Management Rules through advance notices of proposed rulemakings
- Closing statutory exemptions (gathering lines)
- Increasing data transparency
- Auditing Public Awareness Programs
- Auditing Distribution Integrity Management Program Implementation
- Accelerating Control Room Management Implementation
- Increasing operator cooperation with emergency responders
- Issuing a Notice of Proposed Rulemaking for Federal One-Call Enforcement

■ ■ Federal and State Regulation



- Pending Legislation
 - Federal
 - Pennsylvania
- Miss Utility, One Call, Call Before you Dig
 - Know the registration requirements



Litigation Concerns

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■ ■ Risk Factors for Pipelines



- Excavation Damage – most prevalent and most preventable
- Corrosion
- Material flaws
- Physical Risks
- Leaks
- Aged pipelines
- Wrong type of pipeline

■ ■ Risk Factors for Pipelines



Risk depends on state you are in and infrastructure that exists there.

Monitor your rights of way for obstructions or things that may interfere with the safe operation of your line and take appropriate legal action to correct any issues.

■ ■ Carlsbad, New Mexico



Natural Gas Pipeline explosion occurred on August 19, 2000. Fire killed 13 campers including small children, damaged automobiles and a suspension bridge in the area. Federal investigators determined that the cause was severe internal corrosion of a 30" diameter transmission line. After eruption, fire burned for almost an hour before firefighters brought it under control.

■ ■ Carlsbad, New Mexico



Example of “minimum standards” – pipeline had not been tested since the 1950s because regulations did not require it.

Company did not have an internal corrosion control program.

No shut off valve on the line to stop the burn.

■ ■ Allentown, Pennsylvania



- In years between 1925 and 1976 two significant explosions occurred in Allentown killing 10 and injuring 24.
- Between 1976 and 1992, two more gas explosions occurred. Three people were killed, 23 injured and 11 homes were destroyed or damaged.
- In 1992 company told that miles of cast iron pipeline would need to be replaced due to corrosion.

■ ■ Allentown, Pennsylvania



- Between 1992 and 2010, six gas explosions occurred in Allentown killing seven people and injuring 83. Those six explosions were caused by excavator or contractor error as well as deteriorating pipelines.
- On February 9, 2010, a pipeline ruptured in Allentown killing 5 people, hospitalizing 3 and destroying 8 homes. Property damage was estimated at \$2.5 million.

■ ■ San Bruno, California



- San Bruno, California explosion occurred at 6:11 p.m. on 9/9/10. 30" pipeline exploded in a residential area. The explosion killed eight people and destroyed 37 homes.
- NTSB launched a team to investigate and did a visual inspection of the pipeline and measured, photographed, and secured an approximately 28' section of the pipeline and pieces of the pipeline located on either side of the area that ruptured.

■ ■ San Bruno, California



On January 2011, NTSB issued Urgent Safety Recommendations to address paper work problems. Records indicated pipe was of one type when in fact it was of another type that arguably could not withstand the pressure of the line. This essentially required a paperwork audit and that where no paperwork exists examination and testing of the lines.

■ ■ San Bruno, California



It took 16 minutes for 911 to be notified of the rupture because company trying to interpret the low pressure indicators and alarms.

■ ■ San Bruno, California



June 2011 – NTSB announced that there were deficiencies in pipeline operators emergency notification system. NTSB and PHMSA issued guidance to operators regarding sharing specific information, including pipe diameter, operating pressure, product transported, and potential impact radius with the emergency response agencies in the communities and jurisdictions where their pipelines are located.

■ ■ Crisis Management Plans



- Have crisis management plans in place for all of your facilities
- Conduct hazard assessment
- Train local emergency responders and have your own emergency response team in place

■ ■ Crisis Management Plans



- Determine how communications are to be handled internally and externally
- Know in advance what regulatory agencies are to be notified and designate whom within your company will handle dealing with the agencies

■ ■ Crisis Management Plans



- Plan for scene, witness, and evidence preservation
- Train, train, train
- Know the federal and state regulations applicable to your lines and make sure they are followed

■ ■ Crisis Management Plans



- System in place for tracking changes in regulations and making sure company remains in compliance
- Minimum standards are “minimum” – always strive to do more where safety is concerned
- Train and retrain on safety and create safety first culture – this creates good evidence

■ ■ Lawsuit



- Negligence per se – Standard of Care is created by a statute or regulation. Violation of the statute or regulation establishes a *prima facie* case of negligence.
- Negligence – A duty to exercise that degree of care which a prudent company would exercise under same or similar circumstances, or care which is commensurate with the dangerous character of the pipeline and necessary to protect the public from foreseeable injury.

■ ■ Lawsuit



- Wrongful Death
- Outrage
- Nuisance
- Breach of Covenants Contained in Right of Way Documents

■ ■ Damages



- Property Damage
- Personal Injury
- Other economic damages
- Punitive Damages

■ ■ Take Away



- Know regulations, track changes and ensure compliance
- Regulations are minimum standards. If safety requires more do more
- Monitor your rights of way for encroachments that cause safety concerns and take legal action, if necessary, to ensure removal of the problem
- Have a crisis management plan in place to ensure that a bad situation isn't made worse by a lack of planning



Thank You!



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Thank you for participating!

***Please join us for the next
Energy Webinar , September 21st***

Details will be emailed to you soon!



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