

McNees **Client Alert**

Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act: PaPUC Registration

by Jim Dougherty

In December 2011, Governor Corbett signed into law the Gas and Hazardous Liquids Pipeline Act ("Act 127") that expands the Pennsylvania Public Utility Commission's ("PUC" or "Commission") authority to enforce federal pipeline safety laws as they relate to non-public utility gas and hazardous materials, pipelines and facilities throughout the Commonwealth.

Act 127 provisions apply to Pipeline Operators as well as companies engaged in the gathering, transportation or distribution of natural gas or hazardous liquids. A "Pipeline Operator" is a person that owns or operates equipment or facilities for transportation of gas or hazardous liquids by pipeline or pipeline facility, or such equipment and facilities regulated under federal pipeline safety laws. Unfortunately, many interpret Act 127 registration requirements as pertaining only to Marcellus or Utica Shale play-based pipeline owners or operators; this is incorrect. The PUC's implementation of Act 127 is applicable to entities, **including industrial and large commercial companies**, that own pipelines especially if those pipelines cross over roads or public easements.

To that end, the Commission fully intends to develop and maintain a registry of all Pipeline Operators and pipeline facilities within the Commonwealth. However, PUC representatives report they are troubled by what appears to be widescale failure to register by the many companies that maintain pipelines throughout the Commonwealth. On January 12, 2012, the PUC sent hundreds of letters regarding the forthcoming requirements to "all potentially-regulated Pipeline Operators" because "the Commission believes your company may be a Pennsylvania pipeline operator pursuant to the

Pipeline Act." The PUC developed this initial composite listing from several different databases, including FERC (Federal Energy Regulatory Commission) and PHMSA (US DOT Pipeline and Hazardous Materials Safety Administration) records. As of April 12, 2012, less than 70 companies have registered with the PUC as Pipeline Operators; of those registered Pipeline Operators, only five are Commercial or Industrial companies.

If you received a January 12, 2012 notice from the PUC directed to "all potentially regulated pipeline operators as defined in Act 127 of 2011," the Commission believes you are a Pipeline Operator. Accordingly, you should have either registered with the Commission by March 16, 2012, or provided a detailed explanation as to why your facility should be considered exempt.

Commission representatives indicate they will take severe action against those who failed to register. Act 127 provides that "Pipeline Operators who fail to register will be subject to civil penalties of up to \$10,000 a day that the violation persists." In that the registration deadline was March 16, 2012, those who failed to file already may be subject to significant civil penalties.

If you own or maintain pipelines within the Commonwealth, be advised the PUC perceives your facilities are likely subject to Act 127 of 2011.

Please contact Jim Dougherty at 717.237.5249 (jdougherty@mwn.com) if you would like us to assist in determining applicability of Act 127 to your facilities.