

Due Diligence: Critical Component of Pipeline Acquisitions

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Oil and gas discoveries in various shale plays around the U.S. over the past decade have led to an increased rise in the number of transfers and acquisitions of pipeline assets, including pipelines serving processing plants, producers, storage facilities, and those associated with power plants and other industrial users. Changes in global and domestic energy markets have continued that trend. Prudent operators routinely request and review documentation as part of their due diligence in making acquisitions, but it is becoming increasingly important that certain records be located during due diligence or factored into the transaction if such records are lacking and must be recreated. Decision makers involved in pipeline acquisitions should involve pipeline safety managers or counsel early on in the process to allow sufficient time to include pipeline safety records review as part of the transaction; to do otherwise can be a costly mistake that carries significant liability risk.

PHMSA regulations expressly require that a number of records be maintained for the life of a pipeline (see 49 C.F.R. Parts 192.517; 195.310), and many of these records are essential to support the operation of a pipeline system. Records are often lost or misplaced over time, however, as the result of transactions, office moves, etc. It is also possible that those records were never created or maintained at all, particularly given changes in the law over time. For example, PHMSA has expanded and clarified its jurisdiction over the years both by statute and regulation to include assets which were previously not regulated (e.g., regulated gathering lines) or for which the Agency has clarified regulatory classifications impacting recordkeeping and maintenance requirements (e.g., abandoned v. in service pipelines, pipelines subject to various exemptions, certain lateral transmission line extensions to industrial customers, etc.).

Construction and manufacturing records, hydrostatic pressure test records, computations of maximum allowable and/or operating pressure limits, class location reviews (for natural gas), pipe classifications and regulatory maintenance records are all now routinely reviewed during government inspections. For example, with respect to natural gas transmission pipelines, PHMSA now [requires](#) operators to submit annual report data on pipeline mileage that lacks verifiable records and is working on a [rulemaking](#) to codify this requirement and clarify and possibly expand recordkeeping schedules and requirements. PHMSA has also [advised](#) operators to validate material and strength test records and prepare a plan to obtain missing material documentation in advance of undertaking flow reversals, product changes and conversions of service. Certified states often impose additional recordkeeping and reporting requirements for intrastate pipelines, which vary by the state. Further, PHMSA tracks

acquisitions and divestments of pipeline assets as well as new construction and expansion through its operator identification notification requirements. Those records are also given close scrutiny after any incident or during any litigation.

It can be very expensive to recreate records that are no longer maintained or were never maintained (e.g., pressure tests to validate operating pressures, excavations to determine pipe material properties, proper abandonment records). Civil penalties for not maintaining (or recreating) records can also be extremely costly. Consequently, operators should consider these issues in any transaction and consider the implications to the overall cost of an acquisition both in terms of time, money and compliance risk.