The jurisdictional issues around pipelines - that is, which agencies have authority over what aspects of pipelines - are complicated. Which agency’s rules apply depends on the location of the particular pipeline, what it carries, and whether it is considered inter- or intrastate, among other issues. What’s more, pipeline safety is typically regulated by a different agency than the one that can decide where to route a pipeline, and yet another one may regulate the tariffs (those are the charges for transporting something) in that same pipeline.

For purposes of this paper, we’ve divided up the jurisdictional questions by subject matter. Within those subjects, we’ll provide information about how the four main types of pipelines are regulated: interstate natural gas, interstate hazardous liquid, intrastate natural gas, and intrastate hazardous liquid. First, some vocabulary to identify those four categories:

**Interstate and Intrastate:** In most cases, you can determine whether a pipeline is inter- or intra-state by finding out if it goes beyond the borders of a single state. If it leaves the state, it should be interstate and if it stays within one state it should be intrastate. And sometimes that works. But sometimes it doesn’t: some big transmission lines change ownership at a state boundary and the two sections of pipeline within each state can be considered intrastate. Conversely, a transmission line that does not carry product outside one state can be considered interstate if the operator chooses to get its tariff approved by the Federal Energy Regulatory Commission (FERC), which governs tariffs on interstate transmission lines, both natural gas and hazardous liquid. There are a couple of ways to determine whether a pipeline you are concerned about is considered inter- or intra-state:

1) using the public viewer on the National Pipeline Mapping System (https://www.npms.phmsa.dot.gov/), find the pipeline you are concerned with and using the information function - the little “i” with a circle around it in the top menu- you’ll get a window including a column headed “interstate designation” and the cells will say “yes” or “no”.

**Hazardous Liquid:** Under the PHMSA (Pipeline and Hazardous Materials Safety Administration, an agency of the Department of Transportation) regulations, hazardous liquid is defined as petroleum, petroleum products or anhydrous ammonia. 49 CFR 195.2. Supercritical carbon dioxide (CO\(_2\) under enough pressure that it turns into a liquid) is also regulated as a hazardous liquid under Title 49 CFR, Part 195. 49 CFR 195.1. Other things carried by pipeline, like molasses and beer, are not.

**Gas:** The other major set of PHMSA regulations regulates the transport of gas by pipeline. 49 CFR 192.1. In this instance, gas is defined to mean: natural gas, flammable gas or gas which is toxic or corrosive. 49 CFR 192.2.

Once you categorize a pipeline into one of these four types, figuring out the relevant agencies becomes much easier. In the subject matter sections below, we’ll identify the relevant agency or agencies and try to identify any exceptions to the general rules.

**Safety**

There is some grey area involved in defining what is and isn't a “safety” regulation, and it matters because if a local or state regulation is considered a “pipeline safety” regulation, it will be preempted by applicable federal regulations, meaning it’s something the local or state government can’t regulate. There has been some litigation in this field that has resolved some of the areas in question, but there remains some grey area. For more information on these preemption issues, please refer to our [Local Government Guide to Pipelines](#), particularly in the siting and routing sections and in the “Additional Resources” section, where several of the relevant cases are described. Where a state agency is referred to as the safety agency, it is frequently the public utilities agency or the public utilities commission or the corporation commission. You can find all of these agencies’ names and links to them in the appendix to our [Local Government Guide to Pipelines](#).

**Interstate Natural Gas:** PHMSA is the federal agency responsible for regulating the safety of these lines. Under the terms of the federal statutes, PHMSA can enter into interstate agency agreements with states allowing a state pipeline agency to inspect these lines, but enforcement authority remains with the federal agency. There are currently eight states with interstate agency agreements.

**Intrastate Natural Gas:** All states, plus Puerto Rico, have submitted certifications to PHMSA to regulate intrastate natural gas lines. Under the terms of the federal pipeline statutes, that means they may inspect these pipelines and enforce regulations against them, and they may adopt and enforce regulations that are more stringent than the federal minimum standards. The state pipeline safety agencies have produced a [compendium](#) that shows all of the various state regulations that exceed or are more stringent than federal regulations.
Interstate Hazardous Liquid Pipelines: Only five states have entered into agreements with PHMSA to inspect interstate hazardous liquid lines. As with the interstate gas lines, they may only inspect; any safety violations they find must be turned over to PHMSA for enforcement.

Intrastate Hazardous Liquid Pipelines: Fourteen states have provided certification to PHMSA to take on regulation of intrastate hazardous liquid pipelines. As with gas regulations, states regulating under a certification may inspect and enforce violations of pipeline safety regulations, and may enact regulations more stringent than those of the federal government. The state pipeline safety compendium includes the state regulations that exceed federal regulations for both gas and hazardous liquid lines.

Siting, Routing and Environmental Impacts

Interstate Natural Gas - The Natural Gas Act gives the Federal Energy Regulatory Commission (FERC) exclusive jurisdiction over the siting and routing of interstate natural gas pipelines. This means that state siting statutes, local zoning ordinances and the like are preempted to the extent they attempt to direct the siting of an interstate gas line. FERC has an extensive certification process in which local governments, state agencies and individuals can participate. Because the certification is a federal action, FERC must complete an environmental analysis of the proposal under the National Environmental Policy Act (NEPA). While we are not aware of FERC ever having rejected an application for a certificate of convenience and public necessity for a pipeline, sometimes participation in the process can result in a less destructive or dangerous location or other state and local permits being made a part of the certificate process. For more information on the FERC process we encourage you to read these two handbooks:


From the Law Offices of Carolyn Elefant: Knowing and Protecting Your Rights When an Interstate Gas Pipeline Comes to Your Community

Intrastate Natural Gas, Interstate Hazardous Liquid Pipelines and Intrastate Hazardous Liquid Pipelines - There is no comprehensive federal permitting or siting law that relates to these pipelines. The pipeline safety statutes specifically mandate that PHMSA is not authorized to prescribe the location or routing of a pipeline facility. 49 USC 60104(e). Because there isn’t a federal law preempting state and local participation in siting a new pipeline, states, and (depending on some other legal constraints)
local governments may enact laws that govern siting and routing. Several states have done so\(^1\), and their processes vary widely, from a fairly perfunctory review and approval of an operator-identified route to a more elaborate proceeding with multiple hearings, the participation of intervenors, suggested alternative routes, environmental analyses of proposed and alternative routes, and statutory constraints on areas to be avoided. Some local governments also play roles in determining where new pipelines can be constructed based on their planning and zoning authority. The exercise of that authority is affected by a variety of different relationships between states and their political subdivisions. Those relationships will determine whether a local government may have, does have, or does not have authority independent from a state to enact planning and zoning laws affecting the location of new pipelines. Some of these issues are covered in our Local Government Guide, but counties or cities interested in pursuing enactment of this type of ordinance should be prepared to research in depth their underlying authorities and the preemption issue before doing so. Representatives of pipeline operators interested in building a pipeline will provide their opinions, but may be tempted to downplay the important role that local governments may have authority to play in permitting and locating a proposed line.

**Tariffs**

Tariffs are the fees that pipeline operators get to charge for carrying other companies’ products through their pipelines. “Tariffs” sometimes also refer to the technical specifications that pipeline operators require those products to meet: a range of crude oil specific gravities, for instance, or the amount of water in natural gas.

**Interstate Natural Gas and Hazardous Liquids:** the Federal Energy Regulatory Commission has authority to approve these tariffs. More information about the process FERC uses to establish these tariffs can be found on [http://www.ferc.gov](http://www.ferc.gov).

**Intrastate Natural Gas and Intrastate Hazardous Liquid Pipelines:** Each state has an agency that governs utility rates - usually a corporations commission, utility board or commission, or public service commission. Sometimes this is not the same agency that regulates pipelines for safety purposes.

**Spill response planning and liability**

Following the grounding and rupture of the Exxon Valdez that spilled much of its oil cargo into Alaska’s Prince William Sound, Congress amended the Clean Water Act by passing the Oil Pollution Act of 1990.\(^2\) The amendments impose spill prevention, spill response planning and liabilities for cleanup onto oil pipelines, vessels and onshore facilities. Through a series of Executive Orders, memoranda of

\(^1\) These states, and citations to their respective siting and permitting statutes can be found in the appendix to our Local Government Guide to Pipelines.

\(^2\) The Oil Pollution Act of 1990 (“OPA”), Pub. L. 101-380, was enacted on August 18, 1990.
understandings and regulations, three (3) four federal agencies implement the provisions of the Act: the Coast Guard for vessels, the EPA for fixed onshore facilities like refineries, the Department of the Interior for offshore facilities, and the Pipelines and Hazardous Materials Administration of the Department of Transportation for onshore pipelines.

Each agency requires spill response plans showing the response resources an operator would have available in the event of a spill in a given location or range of locations, the size and location of a worst case discharge, the incident command structure in the event of a spill, maps of particularly sensitive resources, and directions to those responding to the spill. There are some significant variations among the agencies in terms of the staff resources available to review and approve the plans, run drills and otherwise administer a useful program.

Along with spill planning requirements OPA added additional penalties for spills into the waters of the United States to the pre-existing penalties under the Clean Water Act (CWA). The CWA penalty has increased over the years. It currently stands at $2100 per barrel, or $5300/barrel if the spill is due to gross negligence. There are additional penalties available as well, including criminal sanctions.

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3 Executive Order 12777; MOU can be found at 40 C.F.R. § Pt. 112, App. B; PHMSA regulations for spill response plans can be found at 49 CFR Part 194.

4 There is some doubt about whether any agency has issued regulations that apply to pipelines in or over submerged lands inland from the coasts - that is, in or under rivers, lakes, streams. See, National Wildlife Federation’s Notice of Intent to sue PHMSA, reported here: http://www.detroitnews.com/story/news/politics/2015/07/28/pipeline/30780751/.


7 The possible penalties for most spills would be similar to this list, compiled by the Congressional Research Service relating to the 2010 Deepwater Horizon spill. Spills not involving marine waters would not be subject to laws specific to those locations. Federal Civil and Criminal Penalties Possibly Applicable to Parties Responsible for the Gulf of Mexico Oil Spill, Congressional Research Service, 2010. https://fas.org/sgp/crs/misc/R41370.pdf