

REAUTHORIZATION OF THE NATURAL GAS PIPE-
LINE SAFETY ACT AND THE HAZARDOUS
LIQUID PIPELINE SAFETY ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES
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(III)

REAUTHORIZATION OF THE NATURAL GAS PIPELINE SAFETY ACT AND THE HAZ- ARDOUS LIQUID PIPELINE SAFETY ACT

WEDNESDAY, FEBRUARY 3, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2322, Rayburn House Office Building, Hon. Joe Barton (chairman) presiding.

Members present: Representatives Barton, Bilirakis, Stearns, Largent, Whitfield, Norwood, Shimkus, Wilson, Shadegg, Pickering, Bryant, Ehrlich, Bliley (ex officio), Hall, Sawyer, Markey, Pallone, Wynn, and Dingell (ex officio).

Staff present: Cathy Van Way, majority counsel; Rick Kessler, majority professional staff member, and Sue Sheridan, minority counsel.

Mr. BARTON. If the subcommittee could come to order. We do not have a quorum, and we have no Democratic members, so we are not going to start. But I wanted the record to show the chairman was here on time and prepared to start on time, and, hopefully, members will keep that in mind, so that we begin these hearings on time.

So, I am going to recess until we get at least one Democrat here.

But I want to welcome everybody to today's hearing, and I will save my formal statement until we do get some other members. But I wanted the record to show that the chairman was here and ready to go at 2 o'clock.

We are in recess, subject to the call of the Chair.

[Brief recess.]

Mr. BARTON. The subcommittee will come to order. A quorum being present, the hearing of the Subcommittee on Energy and Power of the Commerce Committee on the reauthorization of the Pipeline Safety Act now commences.

I want to welcome everybody to the subcommittee. Obviously, I am the new subcommittee chairman. I look forward to my new position, and this is my first hearing as chairman of this important subcommittee. I hope everyone understands that I plan to conduct the business of the subcommittee in a very bipartisan fashion and a very open and fair fashion, also.

We will have to address a number of important issues this year and next year. The issue before us today is a very important issue,

the issue of pipeline safety. We will soon be considering passing a bill for nuclear waste. We hope to hold a hearing on the Exxon-Mobil merger, and we also plan to do a series of hearings with the intent to do a restructuring of the utility industry, or the electricity generation industry, in this country. And I am sure hopeful that the bipartisan cooperation will prevail on those issues as well as this issue.

The issue before us today, as I said earlier, is an important issue. There are about 2 million miles of underground pipelines in the United States made up approximately of 160,000 miles of liquid pipelines, 300,000 miles of gas transmission pipelines, and 1.5 million miles of gas distribution pipelines.

With a network this large, obviously, some accidents have occurred. The job of this Federal legislation is to put in place a framework to minimize those accidents to the extent that it is humanly possible, and, also, to make sure that we have an assessment of incidents, when they occur so that, if possible, a prospective action can be taken to prevent their reoccurrence in the future.

The safety record is respectable, and I think we are going to hear testimony today that that record has improved since the act was reauthorized back in 1996.

There is an enormous potential for the loss of human life and, also, for harm to the environment, and we cannot afford to become complacent about pipeline safety. We have to—and it is the role of this subcommittee—to ensure through legislation that our pipeline system does operate and continues to operate as safely as possible.

When the last pipeline safety reauthorization occurred in 1996, this subcommittee decided to break with the past and take a new approach, instead of responding to specific accidents, by creating inflexible one-size-fit-all mandates which did not necessarily lead to improved safety and which in fact, in some cases, may have diverted limited resources from more promising safety proposals.

In 1996, this subcommittee, and later the full committee and the Congress, decided to allow something called “risk management” and “risk assessment” to be utilized at least on a pilot basis.

Today’s hearing is going to give the subcommittee an opportunity to hear about how those changes have worked in the marketplace and how they have been implemented. By most accounts, these approaches have been successful. They have allowed the Department of Transportation to implement regulations and guidelines in a more timely fashion and to better utilize their limited resources. But as always is the case, we think that there may be room for additional improvement, and that is the purpose of the hearing today.

As subcommittee chairman, I am going to be very interested in suggestions that may be offered on how to improve the overall effect of our current Pipeline Safety Program. Although the authorization for the Pipeline Safety Program does not expire until September of the year 2000, I hope today’s hearing will be the beginning of a fairly quick reauthorization process. If we hear, as I expect to hear, the program is improved since our last reauthorization and no major modifications are needed, it is my intent to mark up a subcommittee print in the very near future. This is an important program and I would not like for our consideration of it to wait until it is on the verge of expiring.

Now that my distinguished ranking member, Mr. Hall, is here, I want to reiterate what I said in his absence. This is a bipartisan subcommittee. We expect to work in a very cooperative and bipartisan fashion with Mr. Hall and all the members on his side, in addition to the members on the Republican side of the aisle.

With that, I would be happy to recognize the distinguished subcommittee ranking member, Mr. Hall, for an opening statement, and then we will recognize Mr. Whitfield and then Mr. Pallone.

Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman. I am the Mr. Hall he was talking about. And I was quickly reading my statement once to myself before I would read it to you. But I will be very brief because, Mr. Chairman, you adequately covered everything, and I like the approach that you are taking about all these agreements we are going to have and how we are going to get along and how we are going to work together. It reminds me somewhat of a statement made by a World War II veteran. They wondered why all those World War II marriages lasted, you know, 40, 50, 60 years. And the guy answered; he said, "Well, when we got married, my wife and I agreed I would make all the big decisions and she would make all the little decisions. Up to this time, we have never had a big decision." That is the way it could work, but I don't think so. I think we are going to be able to work together. This committee has worked together historically, and there is no reason that we won't.

And I thank you for the opportunity to have this discussion on the status of pipeline safety as it relates to the reauthorization to the Federal Pipeline Safety Program.

When we last acted to reauthorize the Pipeline Safety Program, we were able to seize an opportunity at that time to apply some what we thought were new and more cooperative and less costly approaches to the very necessary task of regulation. As you remember, the expectation was that these tools would enhance the efficiency and the effectiveness of regulation, which is our duty, while fostering more productive relationships between the regulators and the industries that they so vitally affect.

I am glad you decided to call this hearing today, and I think it is getting us off to a good, early start which indicates we are going to probably have our budget out timely and be ahead of the other organizations here in the House. And I look forward to working with you on this committee. I certainly look forward to working with you on the deregulation of electricity and the hearings that we will have there, and I thank you for calling this hearing on pipeline safety reauthorization, and as much as you did cover the water-front pretty well on it, I yield back my time.

Mr. BARTON. We thank you, Congressman Hall.

I watched him not read any of that statement. Everything he said was from his heart.

The written statement is excellent, but what he said I think is an improvement even on the written statement.

The Chair would recognize the distinguished gentleman from Kentucky, Mr. Whitfield, for a brief opening statement.

Mr. WHITFIELD. Mr. Chairman, thank you very much, and I am delighted that I am here on the first hearing that you are the

chairman of the subcommittee. And, certainly, I always try to attend hearings that Ralph Hall will be present because he always has such amusing stories.

So I am delighted to be here.

But, in addition to that, we have a witness today from my home State of Kentucky, and I would like to pay special thanks to Mr. Ed Holmes, who is vice chairman of the Kentucky Public Service Commission, for being here today. And I know that he is representing NARUC and other organizations, so I am delighted that he is here. We look forward to his testimony, and we look forward to the testimony of all the witnesses, and thank you very much, Mr. Chairman.

Mr. BARTON. Well, we will make sure that your witness from your State is the last to testify, so that you have to stay here to introduce him.

So we may proceed out of order on that.

The Chair would recognize the distinguished gentleman from New Jersey, Mr. Pallone, for a brief opening statement.

Mr. PALLONE. Thank you, Mr. Chairman.

The last time the subcommittee considered the issue of pipeline safety was shortly after the horrible natural gas pipeline explosion in my district in Edison, New Jersey. And at that time, I raised several concerns.

Fortunately, some of my safety and environmental concerns have been addressed through One-Call legislation which, after 4 years, was successfully enacted into law last year as part of the 6-year Transportation Equity Act of the 21st century.

However, I want to say that many of my concerns as a result of that accident still remain. Mr. Chairman, in 1997 and 1998, there were over 200 hazardous liquid pipeline incidents resulting in over \$40 million in property damage and approximately 95 natural gas pipeline incidents during the same period resulting in nearly \$20 million in property damage. Ten injuries and one fatality occurred from these accidents. And, one person died from the pipeline disaster in my district in Edison.

My point is that we need to ensure that the pipeline safety program we have in place protects against such potentially devastating outcomes. And the DOT was mandated to develop environmental protection standards back in 1992 and is long overdue in fulfilling this mandate. The current law, I would also point out, weakened a previous mandate for regular inspections of pipelines, including standards for inspecting pipeline segments that run through environmentally sensitive areas. Further, the DOT's Office of Pipeline Safety has not prescribed any regulations in this regard.

Mr. Chairman, I just wanted to mention—if I could include in the record two charts that I have here, which we could pass out to the other members, which compare the status of the National Transportation Safety Board recommendations issued to various entities within the DOT.

[The information referred to follows:]

NATIONAL TRANSPORTATION SAFETY BOARD

Status of Safety Recommendations by Mode

DEC 1998

MODE	CEX	CAA	CAAA	CUA	CUAS	CR	CS	CNLA	Total Closed	OAA	OAAR	OUR	ORR	OAR	Total Open	Total Issued	Acceptance Rate
Aviation	5	2338	466	518	25	122	45	44	3663	232	15	44	43	149	483	4046	80.89%
Highway	4	905	134	139	4	58	31	82	1357	155	8	23	88	114	388	1745	87.90%
Intermodal	1	101	14	30	1	3	0	21	171	14	0	8	1	13	36	207	75.92%
Marine	3	1073	191	406	14	91	14	78	1900	78	6	14	29	131	258	2158	74.44%
Pipeline	1	709	55	114	1	22	14	35	951	80	1	13	30	75	199	1150	86.86%
OPS	0	101	16	52	1	8	11	8	197	12	0	7	3	24	46	243	68.25%
Non-OPS	1	608	39	62	0	14	3	27	754	88	1	6	27	51	153	907	91.34%
Railroad	3	1023	125	261	14	56	17	103	1802	110	1	11	34	83	239	1841	81.52%
TOTALS	17	6149	965	1498	59	362	121	363	9544	689	31	113	225	585	1803	11147	82.46%

Definition of Status Assignments:

CEX:	Closed--Exceeds Recommended Action	OAA:	Open--Acceptable Response
CAA:	Closed--Acceptable Action	OAAR:	Open--Acceptable Alternate Response
CAAA:	Closed--Acceptable Alternate Action	OUR:	Open--Unacceptable Response
CUA:	Closed--Unacceptable Action	ORR:	Open--Response Received
CUAS:	Closed--Unacceptable Action/Superseded	OAR:	Open--Await Response
CR:	Closed--Reconsidered		
CS:	Closed--Superseded		
CNLA:	Closed--No Longer Applicable		

National Transportation Safety Board Status of Safety Recommendations by DOT Administration DEC 1998

MODE	CEX	CAA	CAAA	CUA	CUAS	CR	CS	CNLA	Total Closed	OAA	OAAR	OUR	ORR	OAR	Total Open	Issued	Acceptance Rate
SEC DOT	0	115	21	18	0	13	5	22	194	26	0	4	9	8	47	241	88.04%
FAA	4	2132	441	502	25	116	44	36	3300	203	13	38	103	41	388	3698	83.17%
FHWA	1	262	54	41	3	22	14	9	408	19	1	11	6	2	38	445	85.97%
NHTSA	0	123	40	29	0	22	7	13	234	33	3	2	1	3	42	276	86.52%
FRA	1	201	41	83	10	28	13	25	400	30	1	6	17	22	76	476	73.46%
RSPA	1	158	23	72	1	11	13	23	302	25	1	16	3	25	70	372	70.03%
OPS	0	101	16	52	1	8	11	8	197	12	0	7	3	24	46	243	88.25%
Non-OPS	1	57	7	20	0	3	2	15	105	13	1	9	0	1	24	129	73.15%
FTA	0	37	7	11	0	2	0	3	60	6	0	0	0	0	6	66	81.97%
USCG	1	540	134	248	14	51	14	31	1033	81	6	5	48	7	127	1160	73.54%
MARAD	0	11	1	0	0	0	0	5	17	0	0	0	0	0	0	17	100.00%
TOTALS	8	3679	762	1004	53	263	110	187	5946	403	25	82	187	108	805	6751	80.75%

Definition of Status Assignments:

CEX:	Closed-Exceeds Recommended Action	OAA:	Open-Acceptable Response
CAA:	Closed-Acceptable Action	OAAR:	Open-Acceptable Alternate Response
CAAA:	Closed-Acceptable Alternate Action	OUR:	Open-Unacceptable Response
CUA:	Closed-Unacceptable Action	ORR:	Open-Response Received
CUAS:	Closed-Unacceptable Action/Superseded	OAR:	Open-Await Response
CR:	Closed-Reconsidered		
CS:	Closed-Superseded		
CNLA:	Closed-No Longer Applicable		

Mr. PALLONE. And, regrettably, of all of the DOT administrations, the Office of Pipeline Safety has the worst acceptance rate of safety board recommendations, both by mode and by administration, 68 percent compared to acceptance rates that are 10 to 20 percent higher by most of the other administrations within the Department.

For the accident that occurred in my district in 1994, for example, the NTSB recommended that the RSPA expedite requirements for installing automatic- or remote-operated mainline valves on high-pressure pipelines in urban and environmentally sensitive areas to provide for rapid shutdown of failed pipeline segments. This recommendation is still considered open or incomplete over 4 years after the recommendation was originally made. I mention that as an example. There are others, and I have consistently urged the DOT to expedite the process in that case and others. I will bring up some of these things during the questions, Mr. Chairman, but I would just like to point out again that a lot of the concerns that come from that Edison accident and a lot of the recommendations are still out there and haven't actually been accepted.

And I just would ask unanimous consent to be allowed to submit these documents and others for the record from the NTSB and the Interior Department.

Mr. BARTON. If the gentleman from New Jersey would allow the staff on the majority side, and if has not shown it to the minority side, to take a look at those documents, I am sure at the end of this hearing or sometime we will accept them, but we would like to——

Mr. PALLONE. Sure.

Mr. BARTON. [continuing] look at them, and then at the appropriate time, we will recognize you to put them into the record.

Mr. PALLONE. Thank you, Mr. Chairman.

[The prepared statement of Hon. Frank Pallone, Jr., follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW JERSEY

Thank you, Mr. Chairman. The last time this subcommittee considered the issue of pipeline safety was shortly after the horrible natural gas pipeline explosion in Edison, NJ, which is in my district. At that time, I raised several concerns regarding the proposed reauthorization language and process. Although today's hearing is an oversight hearing, presumably it serves as a prelude to a future reauthorization process prior to the Pipeline Safety Act's expiration in 2000.

Fortunately, some of my safety and environmental concerns have been addressed through "one-call" legislation, which, after four years of hard work, was successfully enacted into law last year, as part of the six-year Transportation Equity Act, or "TEA-21." However, many of my concerns still remain. I look forward to continuing to work with all interested parties to make sure we make substantial improvements in these areas.

I still have many concerns regarding environmental protection. Accident data from the Transportation Department's Office of Pipeline Safety (OPS) indicate that, on average, more than 6.3 million gallons of oil and other hazardous liquids are released from pipelines each year. In 1997 and 1998, over 200 hazardous liquid pipeline incidents occurred, resulting in over \$40 million in property damage. Approximately 95 natural gas pipeline incidents during the same period resulted in nearly \$20 million in property damage. Ten injuries and one fatality occurred from these accidents. And, 1 person died from the pipeline disaster in my district. While these numbers may seem low, the point is that the potential exists for thousands more deaths and far greater damage to natural resources and property to occur. We need

to ensure that the pipeline safety program we have in place protects against such potentially devastating outcomes.

I know industry favors a risk management/cost-benefit approach to regulating pipeline safety and played a substantial role in crafting and updating this program. But the DOT was mandated to develop environmental protection standards back in 1992 and is long overdue in fulfilling this mandate. I agree that a top-down, "one size fits all," regulatory approach is frequently not the most effective nor the most efficient use of administrative resources. However, based on the data I have seen, I am not convinced that the current approach adequately protects the environment in the context of this program.

The current law also weakened a mandate for regular inspection of pipelines, including standards for inspecting pipeline segments that run through environmentally-sensitive areas. Further, the DOT's Office of Pipeline Safety (OPS) has not prescribed any regulations in this regard.

I would also like to draw your attention for a moment to some information provided by the National Transportation Safety Board (NTSB). I have two charts, which compare the status of safety board recommendations issued to various entities within the Transportation Department (DOT). Regrettably, of all of the DOT administrations, the Office of Pipeline Safety (OPS) has the worst acceptance rate of safety board recommendations, both by mode and by administration—68%, compared to acceptance rates that are 10-20% higher by most of the other administrations within the department.

Let me give you some examples of the types of recommendations the NTSB has made. For the accident that occurred in my district in 1994, for example, the NTSB made several recommendations and is still awaiting response from the Research and Special Programs Administration (RSPA), which oversees the OPS, on a recommendation to expedite the completion of a study on methods to reduce public safety risks in the siting and proximity of pipelines.

For the same accident, the NTSB also recommended that the RSPA expedite requirements for installing automatic- or remote-operated mainline valves on high-pressure pipelines in urban and environmentally sensitive areas to provide for the rapid shutdown of failed pipeline segments. This recommendation received an acceptable response but is still considered "open"—or incomplete—over four years after the recommendation was originally made. I have consistently urged the DOT to expedite this process.

Finally, I would like unanimous consent to be allowed to submit for the record additional materials from the NTSB and the Interior Department as part of my statement. Thank you, Mr. Chairman.

Mr. BARTON. And we also want to say that the Chair is very cognizant of some of the concerns that you have justifiably raised, and the Chair shares those concerns, and that is the reason that we are holding this hearing.

The Chair would recognize a new member of the full committee, and obviously, of the subcommittee, Mr. Bryant, of Tennessee, for a brief opening statement.

Mr. BRYANT. I thank the chairman.

This is my first subcommittee hearing in which we have actually had testimony, other than organizational meetings. And I am excited about being on this committee, as well as this subcommittee. I thank the chairman for holding this hearing.

It is certainly a very important issue, not only to my State of Tennessee, but also to the entire country. And from reviewing the list of witnesses, we appear to have a good list, very eminently qualified people to talk about this issue, so I look forward to being here today.

And I may have to leave just a little early, perhaps before all the testimony is over, but I will be listening very carefully, as well as reviewing very carefully the written statements of the witnesses.

Thank you.

Mr. BARTON. The Chair would now recognize the distinguished ranking member of the full committee, the Honorable John Dingell of Michigan, for a brief opening statement.

Mr. DINGELL. Mr. Chairman, thank you. I commend you for holding this hearing, and it is good that we are looking into the substantially revised law we enacted late in 1996.

I also commend my good friend, Mr. Frank Pallone, for his unceasing vigilance in his work on behalf of those who seek to ensure that this industry adheres to the highest standards of safety.

The pipeline industry, at least those who play by the rules, has a very good record of safety, and my friends in the industry know that I hold them in the highest regard. However, there is an enormous threat to communities from unsafe pipelines, and it is a very real one.

In 1994, a gas pipeline explosion destroyed an apartment complex in Edison, New Jersey. In 1993, a leak in a Colonial Oil pipeline in Fairfax County, Virginia, caused extensive property and environmental damage. It is clear that we must all do what we can to prevent similar unfortunate occurrences in the future.

The 1996 legislation made many changes in the law, including allowing the Department of Transportation to substitute a voluntary demonstration project for regulatory mandates like biannual inspections. I am told both DOT and industry view the new pipeline program as more efficient and effective than ever before, and perhaps that is so. If that is the case, then there is much to be pleased about the new law. However, I would submit to you that we really don't know anything much for certain.

The law has only been in place for 2 years, and DOT has recently approved some demonstration projects for oil pipelines and a gas pipeline, too. But have any of these things been in place long enough for us to learn anything useful? And what monitoring has taken place to be assured that, in fact, they are working? Proper understanding of practices and safety is being looked at so that we can know whether or not our handiwork is, in fact, good.

To my knowledge, this is the first hearing on the subject since the passage in the 1996 act. I, indeed, have many questions. How have the risk management demonstration projects differed from existing regulation? Are enforcement actions up or down since the passage of the 1996 act? Are these changes due to better behavior by pipelines, or are the changes due to less oversight by the agency? What is the status of OPS's rulemaking on replacing pipelines to facilitate better safety inspections? What is the status of rulemaking on environmentally sensitive areas? And there are other questions, Mr. Chairman.

Mr. Chairman, if we intend to reauthorize the law, we must have a complete picture of the impact of the law on pipeline safety. I think it may be wise to consider a 2-year reauthorization in order to be sure that we are doing the right thing by the public. I am quite certain that we do not have enough knowledge to expand the risk demonstration provisions of the law at this time, though I believe we should, and can, leave the subject open for future consideration.

Mr. Chairman, we have almost a full 2 years to go before authorizations in this law expire. And while I commend you for the vigor-

ous way that you are taking leadership and interest in this matter, I think it would be prudent, indeed, for us to use the time that we have here to determine the extent to which this law is, in fact, working so that we can pass a broadly bipartisan bill at an appropriate time in the future that truly addresses the needs of the industry, the environment, and the public.

Mr. Chairman, I thank you for your kindness to me.

Mr. BARTON. We thank you, Congressman Dingell.

The Chair wants to announce that, according to the rules of the committee and the subcommittee, order of recognition is by seniority, alternating by party, before the gavel and by order of appearance after the gavel. According to the rules, the Chair also has the power of recognition, and the Chair is going to violate those rules right now by recognizing the full committee chairman, the Honorable Tom Bliley of Virginia, for a brief opening statement.

Chairman BLILEY. Thank you, Mr. Chairman. And I want to commend you for holding this timely hearing on the reauthorization of the Natural Gas and Hazardous Liquid Pipeline Safety Acts.

I am pleased to see the subcommittee get an early start on some of the work it has before it in the 106th Congress. This will be a very busy 2 years, and the subcommittee has a lot of important and complicated issues ahead of it.

So with that, I want to thank you, Mr. Chairman, and I also commend to your attention two other issues I view as priorities for the subcommittee; restructuring the electric utility industry to give consumers retail choice and enacting a solid law when it comes to the disposal of high-level nuclear waste. I look forward to working with you on these matters.

With respect to issues before us today, the Natural Gas and Hazardous Liquid Pipeline Safety Acts, the subcommittee's attention to this is essential to preserving the safety of our community. Although the authorization for this program does not end until September 2000, because of the importance of this program, I believe we should begin the process of formulating the reauthorizing legislation early. This hearing is the first step in that process.

The safe operation of natural gas and hazardous liquid pipelines is of serious concern to me. When pipelines are operated in an unsafe manner, they not only pose a danger to humans but also threaten the environment around them. Thus, it is critically important that natural gas and liquid pipelines are operated in a safe manner as possible.

Today's hearing should be especially interesting because it will be the first opportunity for us to learn how the changes made in the 1996 reauthorization of this program are working. Prior to 1996, Congress approached pipeline safety by requiring the Department of Transportation to implement Federal minimum standards which all pipelines were required to meet. In 1996, we authorized the Department of Transportation and pipeline operators to conduct a risk management demonstration project. This program allows DOT and pipeline operators, on a voluntary basis, to develop safety regimes tailored to the risks posed to a particular pipeline or segment of pipeline. Four risk management projects have been approved and more are in the works. I look forward to hearing how the program is working.

Another change since 1996 is that the Department is now taking a risk assessment approach to enacting new regulations and guidelines. Apparently this approach is working well, the amount of time it has taken to complete rulemakings has been shortened, and stakeholders appear to be more satisfied with the results. While I am sure that there is always room for improvement, everyone seems more satisfied with the program than when it was reauthorized in 1996.

And I look forward to hearing from the witnesses and working toward reauthorization of this program in a responsible, timely, and effective manner.

Thank you, Mr. Chairman.

Mr. BARTON. We thank the distinguished full committee chairman.

Before the Chair recognizes the distinguished gentleman from Maryland for an opening statement, I would just make an observation. All my Democratic friends are close to the Chair, and all my Republican friends are as far away as possible.

I hope that is not a message that is being sent; maybe I should. I wouldn't be the chairman, then, if I did that.

We would like to recognize the gentleman from Maryland for a brief opening statement.

Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman. I would defer an opening statement at this time.

Mr. BARTON. Okay. Then the Chair would recognize the distinguished member from Arizona, a new member of the full committee and the subcommittee, Mr. Shadegg, for a brief opening statement.

Mr. SHADEGG. Thank you, Mr. Chairman.

As my colleague, Mr. Bryant, I am new to the full committee and new to the subcommittee. This is my first substantive hearing, and I am looking forward to it.

I will keep my remarks short, other than to say that I think this is an issue of great concern. I am pleased with the progress that has been made in the past. I am also pleased that the chairman has scheduled an early hearing on this so that we can look into the issue at great depth. I am impressed with the list of witnesses.

But, also, like my colleague, Mr. Bryant, I am going to have to leave early. I regret that, but will pay attention closely to the written testimony of those witnesses I am not able to hear.

Thank you, Mr. Chairman.

Mr. BARTON. The Chair would recognize the distinguished member from Massachusetts, one of the brightest members of the committee and the Congress, the Honorable Mr. Markey, for a brief opening statement.

Mr. MARKEY. Thank you, Mr. Chairman, and I want to begin by commending you for holding this afternoon's oversight hearing on pipeline safety.

You know, back in the old days of Sam Rayburn and John McCormick and Tip O'Neill and Jim Wright, it was often said that there was an "Austin to Boston" access operating in House leadership. Today, Mr. Chairman, with your accession to the Chair, and Mr. Hall's continued service as ranking Democrat, we now clearly have a "Dallas-Fort Worth" access on this subcommittee.

As a result, I expect that we are going to be learning a whole lot more about the Lone Star State's interest in energy issues and we look forward to taking the entire course this year.

Today we begin that process by examining the implementation of the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act. All of us have a compelling interest in ensuring that the nearly 160,000 miles of natural gas or oil pipelines that are running through our communities are properly safeguarded against explosions or leaks that would endanger public safety or degrade our natural environment.

Last October's catastrophic pipeline explosion in Nigeria which killed over 700 people underscores the terrible human cost of failing to maintain safe and secure pipelines.

While the United States has largely avoided such disasters, as one of the witnesses prepared testimony points out, each year the amount of oil or other hazardous liquids released from pipelines across America is equivalent to more than half of the amount released from the Exxon Valdez disaster.

In response to concern about these releases, Congress over the years has taken a number of steps to enhance environmental protections and strengthen emergency response planning related to pipeline operations. Unfortunately, the Department of Transportation appears to have failed to carry out the intent of these laws by not issuing implementing regulations. Moreover, the Department has chosen to ignore a number of proposed safety improvements recommended by the National Transportation Safety Board over the years as a response to specific accidents that have taken place at U.S. pipelines.

And to make matters worse, in 1995 and 1996, this subcommittee considered and approved legislation which weakened a number of the safety and environmental protections established under pre-existing law. The so-called "accountable" Pipeline Safety Act of 1996 replaced these with "paralysis by analysis," risk assessment, and cost benefit analysis requirements, as well as a dubious risk management demonstration program that allowed pipelines to be exempted from Federal safety rules if they put in place their own risk management programs.

A particular concern to me was a provision in the 1996 act that permitted corporate insiders and lobbyists to serve on peer-review panels that were empowered to review all proposed DOT pipeline safety regulations. Under this provision, individuals with financial or other conflicts of interest would actually be allowed to serve as the peer reviewers. Such a practice, in my view, undermines the creditability of peer reviews and calls into questions the fundamental, scientific, and technical creditability of the entire process.

In addition, the 1996 act actually decreased public participation on technical safety standards committees from six to five and increased industry representation from four to five, thereby, assuring that the so-called "public representatives," at least some of whom appeared that would never be able to outvote the industry representatives.

During the committee's markup, I offered an amendment which was unfortunately rejected by the committee on a 19-23 party line vote which would have allowed the Secretary of Transportation dis-

cretion to exclude persons from serving as peer reviewers if they have a conflict of interest that could result in bias.

I think that this is a very important issue, Mr. Chairman. I am glad that you are focusing upon it. As we review it, I am going to keep an open mind in terms of provisions that perhaps are working better than I thought. But I would hope, at the same time, that other members would keep an open mind looking at other provisions that perhaps should be modified as well.

I thank you, Mr. Chairman. I yield back the balance of my time.

Mr. BARTON. We think the distinguished gentleman for his opening statement. I am always impressed by his performance, and the "paralysis by analysis" is an excellent soundbite.

Mr. MARKEY. Thank you.

It is a "golden oldie" at this point.

Mr. BARTON. Yes.

Mr. MARKEY. But—

Mr. BARTON. Not having the benefit of knowing you were going to use it, the best I can come up with on a short notice is a move toward perfection by cooperation which is—it is in the ballpark.

It is not a home run, but it is the same—

Mr. MARKEY. But not Fenwick Park—

Mr. BARTON. No.

Mr. MARKEY. Maybe Yellowstone Park.

Mr. BARTON. Yes.

Mr. MARKEY. I mean, it is a big park.

Mr. BARTON. But I will get better as the year goes along. And we look forward to working together on what is an important issue. And I know that all minds on all sides will be open.

So, the Chair would like to recognize the distinguished gentleman from Illinois, the powerful Illinois delegation, Mr. Shimkus, for a brief opening statement.

Mr. SHIMKUS. I will pass, Mr. Chairman.

Mr. BARTON. Okay.

Seeing no Democrats who have not yet been recognized, we would like to recognize the winning pitcher of the congressional baseball game last year, the Honorable Steve Largent of Oklahoma, for a brief opening statement.

Mr. LARGENT. I would pass.

Mr. BARTON. Okay.

Mr. LARGENT. Thank you.

Mr. BARTON. Then we would recognize a new member of the full committee and the subcommittee, the distinguished gentleman from Maryland, Mr. Ehrlich, for a brief opening statement.

Mr. EHRLICH. Pass.

Mr. BARTON. Okay.

We see Mr. Norwood is arriving. Would he care to make a brief opening statement, or would he yield?

Mr. NORWOOD. Very brief, Mr. Chairman.

Mr. BARTON. All right. If you will be seated, then we will recognize you, too, the gentleman from the great State of Georgia, the Honorable Dr. Norwood, for a brief opening statement.

Mr. NORWOOD. Well, Mr. Chairman, first, let me just simply say how pleased I am to serve on your new subcommittee this year, and I look forward to working with you. How pleased I am you are

having this hearing, and with that, I will add the basis of my contents for the record.

Mr. BARTON. Okay. The Chair would recognize the distinguished gentleman, Mr. Sawyer, for a brief opening statement, from the great State of Ohio.

Mr. SAWYER. Mr. Chairman, it is a pleasure to be here. I will forego the rest of my statement and include it in the record.

Mr. BARTON. Okay.

We are going to have a good year if everybody keeps that spirit.

The Chair would ask unanimous consent that all members not present who have not yet made an opening statement be allowed to submit a formal opening statement for the record.

Is there objection?

[No response.]

Hearing none, so ordered.

We would now like to call our first panel to the witness table. We have the Honorable Ms. Kelley Coyner, the Administrator of Research and Special Programs at the United States Department of Transportation. If she would come forward.

We also, I am told now, have in the room the Honorable Ed Holmes, who is the Commissioner and Chair of the NARUC Committee on Gas, and he is a Commissioner of the Public Service Commission in the great State of Kentucky. Would Mr. Holmes come forward?

And before we recognize them, we would like to give Mr. Whitfield of Kentucky an opportunity, if he so desires, to introduce his member from his home State.

Mr. WHITFIELD. Mr. Chairman, thank you very much. I have had the opportunity to work with Ed Holmes, and he does a great job for the Public Service Commission of Kentucky, serving as vice chairman, and today he is here representing NARUC. And I wish he had been here earlier to have heard my wonderful remarks about him before. I didn't recognize he was not here then, but I am delighted that he made it. I know his airplane was delayed, and we look forward to his testimony.

Mr. BARTON. Thank you.

We have received your written testimony. We are going to recognize you, Ms. Coyner.

And we are going to ask that you try to summarize it in about 7 minutes. If you need a little more time, obviously, we will give that, and then we will recognize Mr. Holmes.

So welcome to the subcommittee and the floor is yours.

STATEMENTS OF KELLEY S. COYNER, ADMINISTRATOR OF RESEARCH AND SPECIAL PROGRAMS; ACCOMPANIED BY RICHARD FELDER, ASSOCIATE ADMINISTRATOR FOR PIPELINE SAFETY, DEPARTMENT OF TRANSPORTATION; AND EDWARD J. HOLMES, VICE CHAIRMAN, KENTUCKY PUBLIC SERVICE COMMISSION, AND CHAIR, COMMITTEE ON GAS, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Ms. COYNER. Thank you, Chairman Barton.

I would like to thank you—

Mr. BARTON. You need to speak into the microphone and—

Ms. COYNER. I will pull the microphone up a little bit.

Mr. BARTON. Yes, make sure it is turned on.

Ms. COYNER. All right.

I appreciate the opportunity, Mr. Chairman, that you and Mr. Hall have given me to join you today. And I would like to note for the record that I, too, am a native Texan and share your heritage in the Lone Star State.

Mr. BARTON. Noted.

Ms. COYNER. I am Kelley Coyner, the Administrator of the Research and Special Program Administration, and I am joined today by Richard Felder, the Associate Administrator for Pipeline Safety. I am pleased to represent the Department of Transportation in discussing these important safety and environmental challenges that we face in overseeing 2 million miles of pipelines.

Under Secretary Slater's leadership, we are committed to eliminating pipeline-related deaths and injuries and reducing damage to the environment. Through vigilance over the years, we have experienced a very low number of pipeline incidents in the United States.

Today, however, we face a changing landscape. Because of the growth of suburbs, pipelines that were once in rural areas have new neighbors. Greater economic competitiveness raises questions about the adequacy of safety resources. With growing population, new construction, varying operating conditions, and significant environmental issues, the challenge is to continuously improve pipeline protections. The task is to focus on those things which are most likely to cause pipeline failure.

One way of achieving this is to forge partnerships. We have done so with other Federal agencies such as the Environmental Protection Agency and the Department of Interior; environmental organizations like the Nature Conservancy, State Pipeline Safety agencies, and industry trade associations, and companies. It is also important to find ways for the public to participate in a meaningful way. We do this by traditional means, such as public meetings and Federal Register notices, and by more innovative means, such as electronic town meetings, communications targeted specifically at communities adjacent to pipelines, and a very aggressive use of our web site.

The key challenges we face in the pipeline safety area are the following: improving prevention of outside force damage, developing safety solutions that address varying designs and operating conditions of pipelines, enhancing protection of the environment, strengthening State pipeline programs, and ensuring year 2000 compliance.

Accidental damage to underground lines is far and away the leading cause of accidents and service disruptions. Everyone must accept that protecting underground facilities is a shared responsibility.

Perhaps the most important development to ensure safety on pipelines was last year's passage of One-Call legislation and the implementation of that One-Call legislation.

Over 160 representatives of utilities, service providers, contractors, railroads, One-Call centers, and highways have joined with us as a team to study best practices for underground damage prevention as provided for in the Transportation Equity Act for the 21st Century. We are identifying practices that address known risk fac-

tors, such as the planning, design, and operation of One-Call systems, mapping, and locating pipelines and excavation damage. The team will hold an interim briefing via satellite on March 31 and will complete its work by June.

To communicate the need for sharing responsibility for damage prevention, we have worked closely with the pipeline industries, State, and Federal Government, and the insurance and construction industries on a novel public education campaign. The campaign addresses the critical damage prevention steps. Pilot results from Virginia, Georgia, and Tennessee indicate increased use of One-Call systems and, most importantly, decreased damage to pipelines from outside force damage. As a result of this successful pilot, we will expand the campaign nationwide this year.

The wide variety of pipeline systems and the environments in which they are located also warrant efforts to tailor safety solutions. Our demonstration program will answer the question whether using risk management results in greater safety and stronger protection of the environment. We are encouraged by the preliminary results, but we are not done yet with our work.

The greater regulatory process also benefits from government and industries'—and by government, I mean both Federal, State, and local governments—collective assessment of risks. We are producing effective operator qualification requirements using a negotiated process.

We have improved our understanding of what LNG and tank safety requirements should be. Through wide consultation with government agencies, industry, and independent economists, we have built a new framework for performing cost-benefit analysis which we are implementing program-wide.

To target important safety issues, we are testing a new inspection approach, the System Integrity Inspection Pilot Program. The pilot program will allow us to identify potential problems earlier and move to correct them. I want to stress for the record that participating companies must continue to comply with all of our safety standards.

Efforts like risk management and damage prevention further safety and protect the environment. To better protect areas that are most unusually sensitive, RSPA is working with industry and environmental organizations and other Federal and State agencies. We are considering what additional protections would be effective so that we can base a regulation on practical experience. We are currently pilot testing this process.

Because we require more detailed information, we have also built a national pipeline mapping system. We undertook this effort in concert with public and private-sector stakeholders, including States, the U.S. Geological Survey, the Federal Energy Regulatory Commission, and the Department of Energy. The mapping system not only helps our prevention strategy, but also our work in oil spill response planning.

No depiction of the challenge of pipeline risks would be complete without the recognition of the major role that State agencies play in pipeline safety. States comprise 87 percent of the national workforce of pipeline inspectors and each year conduct over 8,000 inspections. State regulators actively participate in all our regulatory

and policy initiatives. States assume the primary role in overseeing compliance on intrastate transmission and distribution pipelines.

Over 85 percent of the incidents with fatalities occur on those pipelines which are located in densely populated areas.

We have steadily increased our support for State programs from \$8 million in 1994 to \$14.5 million in 1999, and we continue to need strong support in that area.

We are all concerned about potential for disruption of oil and gas and other services in the year 2000. We are working with the President's counsel on Y2K conversions, specifically the energy sector, on this issue. Our objectives are to integrate public-and private-sector efforts to facilitate solutions.

We are prepared to take what we have learned under the current Pipeline Safety Act and work closely with Congress to advance our safety and environmental goals. We are committed to maintaining high levels of safety and environmental protection.

I would welcome any questions you may have, Mr. Chairman, and others on the subcommittee.

[The prepared statement of Kelley S. Coyner follows:]

PREPARED STATEMENT OF KELLEY S. COYNER, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

I would like to thank Chairman Barton from Texas and Ranking Minority Member Hall from Texas for the invitation to speak to the Committee today. I am Kelley Coyner, Administrator of the Research and Special Programs or RSPA. Appearing with me is Richard Felder, Associate Administrator for Pipeline Safety. I am pleased to represent the Department of Transportation (DOT) to describe the safety and environmental challenges we face in our oversight of the national pipeline system. Within the Department, the Research and Special Programs Administration's (RSPA's) Office of Pipeline Safety (OPS) is charged with regulating the safe and environmentally sound operation of the national pipeline infrastructure. Pipelines transport natural gas to 55 million residential and commercial customers. They also transport 60 percent of the crude oil and petroleum products that fuel our industry, our economy and our households. We have responsibility for over 2 million miles of pipelines and approximately 2200 operators. Our regulations cover the design, construction, inspection, testing, operation, and maintenance of pipeline systems. We achieve compliance with our regulations through a partnership with state agencies, which assume regulatory and enforcement functions primarily as they apply to intrastate pipeline transportation, while the Federal government assumes these responsibilities for interstate pipelines.

Our mission is to ensure the safe, reliable, and environmentally sound operation of the Nation's pipeline transportation system. Consistent with the Department's Strategic Plan, we strive to eliminate pipeline-related deaths, injuries, and property damage, and reduce pollution to the environment. Our top priorities are reducing to zero the accidents caused by non-compliance with pipeline regulations and working with operators to reduce threats to pipeline integrity.

As we prepare for reauthorizing the national pipeline program, it is an opportune time to look at the safety record over the last ten years. The number of incidents of all types is generally constant despite growth. Incidents caused by corrosion and outside force are on the gradual decline. Federal regulations, in conjunction with historically good industry operating practices, have resulted in a generally positive safety and environmental record. Compared to other modes of transportation, pipelines have a very low incident rate per miles of product transported.

As we face the beginning of the next century, however, we are confronted by a changing landscape. With the growth of suburbs, the pipelines that were placed in rural or sparsely populated areas have new neighbors. Expanding population and environmental concerns are the dominant features on today's pipeline maps. Greater economic competitiveness drives corporate mergers and restructuring and raises questions about adequacy of safety resources.

The era of buried pipelines operating out of sight and out of mind is over. The challenge of the past two decades was assuring that Federal minimum pipeline standards adequately addressed fundamental requirements for pipeline systems

that traverse many states and many geographic and environmental conditions. With changing and diverse population densities and environmental concerns, and widely varying operating conditions, our concern now is how to maintain and improve this safety record. Increased safety can only occur if we can recognize and address system-unique conditions and concerns. Overseeing pipelines is becoming an increasingly challenging task. To address these challenges, we embarked on a course of applying risk-based approaches to provide safety and environmental solutions.

The Accountable Pipeline Safety and Partnership Act was passed in 1996 to provide new ways to improve the pipeline safety record and to increase the reliability and efficiency of pipeline systems. Knowing that the majority of accidents were occurring in pipeline systems that were fully compliant with regulations, Congress authorized risk management demonstration projects and required risk assessments of all new pipeline regulations. Our goal was to adopt a more comprehensive approach to identifying risks and to improving the allocation of public and private resources to the most important safety and environmental issues.

We are pleased to report that we have aggressively implemented the call for more effective regulation and proceeded in exploring the potential for risk management as a permanent feature of the Federal pipeline safety program. Using new approaches, we are attacking the problem of population encroachment along pipelines that is resulting in damage to pipelines and breaches of pipeline integrity. With the knowledge that a more competitive economic environment is driving a search for the most economical means of maintaining and enhancing aging systems, we are finding the most effective means for addressing increasing safety risks and devising new strategies for increasing environmental protection.

RISK MANAGEMENT & RISK BASED REGULATION

The Risk Management Demonstration Program is designed to test whether or not the principles and processes of risk management could provide effective alternative regulatory approaches for the pipeline industry. The Department will exempt operators from regulations if they can demonstrate alternatives that achieve superior safety performance. The demonstration program will enable us to answer the following questions:

- Does risk management result in greater safety, environmental protection, and service reliability than would otherwise be achieved through compliance with the safety regulations?
- Are resources being better prioritized and more effectively applied under risk management?
- Does government have a better ability to influence a positive safety and environmental outcome?

Government and industry realized that risk management requires fundamental change—in the way that companies operate, in the processes and information we use to ensure safety, in the ways and degrees to which companies and regulators interact with each other, and in how the public is involved in the regulatory process. Fundamental change does not come easily or quickly.

The Department recognized that regulatory change that allows companies greater flexibility to define pipeline-specific problems and cost-effective solutions must be pursued in a prudent manner. We must ensure that safety and environmental protections are maintained, that we allow significant input from all affected parties on all demonstration projects, and that we apply careful analysis and judgement before we approve alternatives to the current regulations.

During 1998, the Department approved the Mobil, Phillips, Equilon, and NGPL demonstration projects. We are currently awaiting public comment on the Chevron project. The Columbia and Northwest projects are in the final stages of review prior to soliciting public comment. We are also working with Enron, Duke, and Tennessee Gas to meet program requirements in 1999. We tailor our audit of each company's progress against its risk management plan. To allow for public evaluation, company commitments and project performance measures are included for tracking in an internet-accessible information system.

As we approach the midpoint in the demonstration period, preliminary findings suggest that operators are enhancing their identification and resolution of pipeline risks through use of more thorough evaluative techniques. The Department is observing and documenting for public record how companies are performing more comprehensive and integrated examination of risks and targeting their prevention and mitigation strategies. We are observing the exploration of new technologies and processes. We have seen an improved emergency notification network to alert residents near pipelines about releases and appropriate responses. We have witnessed better risk control through management of the excavation process near pipelines,

better repair procedures, and better placement of valves to control potential releases in environmentally sensitive areas. One company has revamped its aerial assessment process to provide more rapid response to concerns. We have seen improvement of safety practices for employees who work in areas where exposure to risks is high. Across the board, the consultation process has increased the Federal and state governments' understanding of pipeline integrity issues specific to locations and neighborhoods, as well as system wide.

As we improve our understanding of the variation in risk factors along pipelines, we are more fully applying this understanding to our regulatory process. We turned a ten-year struggle over prescriptive regulations for testing and certifying pipeline employees into a regulatory negotiation that produced an effective plan for a performance-based operator qualification regulation. The negotiated rule was the product of a team that included representatives from government, industry, labor, state regulators, and the public.

We have accelerated regulatory development of more risk-based safety and environmental protection standards by increased participation in national consensus standards organizations and adoption of industry standards. We have used this process to improve our regulation of liquified natural gas (LNG) facilities, by adopting standards of the National Fire Protection Association, and of breakout tanks, by adopting standards of the American Petroleum Institute.

We have implemented the risk assessment provisions of our 1996 reauthorization. We formed a cost-benefit framework working group made up of individual operators, the major pipeline trade organizations, and economists familiar with cost-benefit analysis. The working group has developed a framework for how we will perform future cost-benefit analyses, and we are fully implementing the concepts and processes within our program.

We are also testing a risk-based alternative approach to pipeline inspection, via the System Integrity Inspection (SII) Pilot Program, the goal of which is targeting important safety issues more efficiently. The SII approach is based on the operator's presentation of a System Integrity Plan to focus federal and state resources on the most significant and potentially high impact safety, environmental, and regulatory issues.

Traditionally, our inspections have focused strongly on ensuring compliance with applicable pipeline safety regulations using a checklist approach with certain guidelines. While this approach provides assurance that operators are complying with all regulations, there may be other opportunities to improve safety. The SII approach is a more broad-based examination of integrity issues, including many areas not covered during a standard inspection. It is important to note that SII is a full compliance program, without exemptions from regulation. We believe, however, that it will help us to improve information exchange and system-side consideration of individual operators' safety and environmental performance. The Department is now soliciting applications from interested companies.

NATIONAL DAMAGE PREVENTION INITIATIVE

Accidental damage to underground lines is by far the leading cause of accidents and service interruptions. A web of underground facilities forms the unseen backbone of our national economy. Damage to pipelines, telecommunications lines, and other buried utilities may be caused by several factors. Damage to underground facilities may result in deaths, injuries, and property and service losses.

The Department has vigorously tackled this challenge. In 1998, Congress included comprehensive one-call damage prevention provisions in the Transportation Equity Act for the 21st Century (TEA-21). This law requires DOT to conduct a comprehensive study and publish a report on one-call center best practices. OPS scheduled an initial public meeting in August to solicit public input and participation in addressing new requirements. Since August, we have numerous public meetings to accomplish the work of the study. Over 160 representatives of utilities, service providers, contractors, locators, and railroads, and numerous federal, state and local government officials are participating in study task teams. They are donating their time and effort to find common solutions to a problem that previously divided them and delayed passage of national legislation. They are identifying best practices in the critical areas of one-call center operations, planning and design, excavation, mapping, and locating underground utilities. The best practices initiative is known as the One-Call Systems Study, or "Common Ground".

The "Common Ground" steering team will hold an interim briefing to report on its progress; a satellite broadcast is planned for March 31, 1999. Participants invited include representatives of organizations of contractors, locators, gas and telecommunications utilities, one call systems, railroads and the National Transpor-

tation Safety Board. RSPA plans to complete the study and publish the report in June 1999. Finally, following the completion of the study, we plan to hold a joint public meeting on our findings with the National Transportation Safety Board.

The Department will then proceed to finalize the criteria and protocols for a new grant program to reduce damage to underground facilities by improving the operational efficiency of one-call centers, marking and locating techniques, design and planning practices and other techniques identified as best practices in the study. TEA-21 authorizes grants of \$1 million in fiscal year 2000 and \$5 million in fiscal year 2001.

The best practices study builds on the strength of earlier work by the Department's joint government/industry damage prevention quality action team (DAMQAT). The team's mission is to organize a national education campaign to reduce damage to underground facilities. This team's assessment of public education needs is available on our website at www.rspa.dot.gov. The most significant finding is the need for better communications among all who work in and around underground facilities, including facility operators, private contractors and public sector employees who excavate, locators, and one-call centers.

The campaign the team developed addresses the four critical damage prevention steps: Call Before You Dig; Wait the Required Time; Observe the Marks; and Dig With Care. We pilot-tested campaign materials in Virginia, Georgia, and Tennessee from May to October. Initial results are very encouraging. The volume of calls to one-call centers increased significantly in all jurisdictions, and Virginia data shows a decline in excavation damage to gas pipelines. We will work with the coalition of one-call organizations, facility operators, and others to adopt and distribute the campaign nationwide this year.

Risk-based technology is another weapon in our damage prevention arsenal. A three-year research effort is underway to improve internal pipeline inspection technology to locate mechanical damage and stress corrosion cracking on pipelines. Since 1996, the Department has been funding this ambitious research project to modify existing inspection technology to be able to detect outside force damage. The consortium of Battelle, the Southwest Research Institute, and Iowa State University is performing the research. Pipeline companies will benefit from access to inspection technologies for detecting critical mechanical damage and cracks. Inspection vendors will acquire a better understanding of how to improve their systems.

PROTECTION OF THE ENVIRONMENT

Efforts like risk management and damage prevention further safety and protect the environment. While it is true that operating safely by keeping the product in the pipe protects the environment—that is not the only issue. To enhance our protection, we are identifying those geographic areas which are most critical to provide supplemental protection beyond our existing requirements. We are considering what additional protections would be effective, giving consideration to the adverse impacts of construction. We are also considering the processes that operators can use to perform risk assessment and make risk control decisions and how we can oversee that process, in consultation with other agencies and organizations.

We have extensively consulted with environmental experts and industry about how to define areas unusually sensitive to environmental damage (USAs) from hazardous liquid pipelines and have produced a model to designate the areas accurately on maps. We intend to evaluate the USA work to date through a field pilot test of the definition's effectiveness and usability. We will work with the American Petroleum Institute and Federal and state agencies to verify the appropriateness of the model. This pilot testing will provide us with practical experience on which to base a regulation on USAs. The Department will announce the pilot and evaluation process in the Federal Register to ensure public participation. Putting our conceptual model into actual use in the hazardous liquid pipeline industry will result in additional protections being afforded to critical environmental areas.

Mapping

The Department is building a National Pipeline Mapping System to provide government and the public with the information it needs to help manage pipeline risk, respond to pipeline incidents, and generally improve protection of public safety and the environment. The Department, with a government and industry team, has created the first national pipeline locational standards for the National Pipeline Mapping System. These are compatible with U. S. Geological Survey standards. This standard was pilot-tested by 22 operators and 10 states. Pilot participants indicated the standard was understandable and could be met with minimum burden. We have since begun to award cooperative agreements to nine states to serve as data reposi-

tories as part of the national mapping system. They will process the information for pipelines and LNG facilities within their boundaries. We are expecting that operators will submit their data on a voluntary basis.

We work with the Environmental Protection Agency, the Department of the Interior and other Federal and state agencies to obtain or create databases on environmental resources, population, natural disaster probability, and national resources so that we can prioritize where additional prevention actions should be taken. Once the Department has defined what unusually sensitive areas are, they will be depicted graphically in relation to pipelines, populated areas, political boundaries, and other geographic features. This data will enable government and industry to better evaluate what protections are needed and appropriate responses to identified risks.

Our regional offices and headquarters are now equipped with the best pipeline information available, natural disaster probability and consequence data, environmental data, and other data to better inform our deployment of resources for inspection, regulatory analysis, and emergency response.

Breakout Tanks Project

Although the safety record of tanks used as part of pipeline transportation systems has been good, we are intent on having our tank standards reflect a risk-based safety and environmental approach. While the failure of a pipeline breakout tank seems like a low probability, the threat of leaks from the corrosion of tank bottoms may be more likely. We have thoroughly evaluated the extent to which the pipeline industry meets current industry standards and are confident that the vast majority of operators do meet these standards. To upgrade the protection afforded by Federal pipeline safety regulations for breakout tanks, the Department is improving our regulations to the level of standards currently applicable to steel petroleum tanks at tank farms and refineries throughout the United States. We are working on a final rule that will incorporate industry consensus standards for aboveground storage tanks.

Oil Pollution Act (OPA) Program

In the event that the best of spill prevention strategies fail, maintaining effective spill response plans and capabilities is critical. Working together, government and industry are reducing the environmental consequences of oil spills from pipelines. We work closely with the U.S. Coast Guard and the Environmental Protection Agency in the program. On a regular basis, we review and approve pipeline facility response plans. More important, we work with operators and response agencies to test these plans. We conduct two to three area-wide full equipment deployment exercises each year, and 20 tabletop exercises to address issues at the strategic level. Improving awareness of specific strategies to protect environmental areas, improving communications between responders, and integrating all responders understanding of command and control structures are critical objectives of these exercises. State pipeline safety and environmental agencies participate in all our exercises.

STATE PROGRAMS

Since the inception of the pipeline safety program, Congress intended a common stewardship of the protection of 2 million miles of pipelines, shared between the Federal and state governments. We strive for a perfect safety record.

States take jurisdiction over intrastate transmission and distribution pipelines. Unfortunately, over 85 percent of incidents involving fatalities occur in distribution pipelines, which are located in densely populated areas. With our compliance program focused to address the highest risks, oversight activities at the state level become of critical importance. We must do everything possible to provide adequate resources for state participation, and proper direction to assure that state programs focus on high-risk areas along intrastate pipelines. To provide proper direction, the Department established performance factors to allocate grant funds to states.

In establishing authority for Federal regulation of pipelines, Congress provided for states to assume these regulatory functions as they apply to intrastate pipeline transportation. We have three provisions for varying levels of state participation in these regulatory functions—state certification, state agreement, and interstate agent. Currently, for gas programs, 48 state agencies, the District of Columbia, and Puerto Rico hold certifications, the more active level of intrastate participation, and one state operates under an agreement, and nine states act as interstate agents. For liquid programs, 12 states hold certifications, three states operate under agreements and four states serve as interstate agents.

It is in the interest of the Federal government to give the states enough financial incentive to participate in the pipeline safety program. States represent more than 90 percent of the total Federal/state workforce that oversees pipelines nationwide.

Grants are an effective way to leverage resources and increase total inspection capability since states match or exceed federal funding.

We want to strengthen the Federal/state partnership by assuring appropriate focus on risk-based compliance efforts on all intrastate pipelines. This effort would require states to exercise full jurisdiction over pipelines in their states and a Federal commitment to adequately fund state pipeline safety and environmental programs.

ADDRESSING Y2K CONCERNS

We all know that the year 2000 has the potential for serious disruptions in the transportation of oil and gas and other services. The scope of the problem necessitates that industry take the lead in assessment of potential risk. Government, however, must ensure that there is the appropriate level of industry/government cooperation, public awareness, and sharing of information on issues and solutions. We must ensure that companies are actively addressing identified problems. We are working with the Energy Sector, Oil and Gas Workgroup of the President's Council on Y2K Conversion to efficiently integrate public and private sector efforts and to notify all pipeline operators about Work Group activities. On a quarterly basis, the Work Group provides industry status reports. Results of the first survey indicate that pipeline failures related to the Y2K problem will be minimal and local in nature. We also are coordinating with the Council Sectors on Transportation, Environment and Emergency Services to share information, facilitate solution and plan for contingencies. We have distributed an advisory bulleting to the industry and our state partners outlining the problem, the Work Group strategy, and government contacts for companies needing advice. We also provide similar information during our inspections.

CONCLUSION

When we last approached reauthorizing the pipeline safety program, there was general agreement that new approaches were needed. Congress challenged us to take the lead in improving pipeline safety and environmental protection. We forged partnerships with local, state and federal governments, public interest and environmental organizations, labor and industry. Together, we have created a risk-based program that incorporates cost-effective regulation and targeted compliance activities. We are prepared to take what we have learned and accomplished in protecting people and the environment from pipeline risks and work to further advance these goals.

As we continue to evaluate incorporating risk management as a permanent feature of the pipeline program, we want to begin to build a framework for a smooth transition from demonstration projects to an operating program. In working with Congress on the next phase of risk management, we want to maintain the high safety and environmental standards we are applying today. We want to continue to meet the public's need for superior results and at the same time address the industry's need for flexibility to assure pipeline integrity with maximum efficiency.

Thank you, and I would be pleased to answer any questions you might have.

Mr. BARTON. Thank you.

We would now like to recognize the distinguished Mr. Holmes of Kentucky for an opening statement. A summary of his testimony, the complete testimony, is in the record. We will also recognize you for 7 minutes.

STATEMENT OF EDWARD J. HOLMES

Mr. HOLMES. Thank you, Mr. Chairman. My name is Edward Holmes. I serve as Vice Chairman of the Kentucky Public Service Commission and also as chair of the Committee on Gas of the National Association of Regulatory Utility Commissioners, commonly known as NARUC.

I am pleased to be accompanied today by Bill Bouker, a member of Kentucky's commission who oversees our pipeline safety activities.

Thank you for inviting us to participate in today's hearing.

NARUC is an organization of State agencies that regulate energy and communication utility companies. In this role, NARUC has been involved in the implementation of pipeline safety and hazardous liquid safety programs since their inception.

Our members are of agencies that participate with the Federal Office of Pipeline Safety, OPS, in inspecting and enforcing the Nation's pipeline safety standards. As the local officials are directly accountable to our citizens, State commissioners and their staffs are on the frontlines in our efforts to protect our citizens and environments against unsafe practices.

As such, NARUC and its members are longstanding supporters of both statutes under review here today.

Accordingly, we strongly support timely congressional reauthorization of the Pipeline Safety and Hazardous Liquid Pipeline Acts and see little need for wholesale revision at this time.

In general, the State commissions have a good working relationship with OPS, a relationship that we hope to continue under reauthorized legislation.

Indeed, we believe that the regulatory structure that Congress established in 1968, when it first enacted the Gas Pipeline Safety Act, has been a model of Federal-State partnership to protect the public interest.

This partnership places State and Federal Governments in a relationship best suited to their respective roles. For its part, OPS establishes, revises, and supervises the uniform national safety standards. As part of its supervisory responsibilities, OPS audits and evaluates the State safety programs that are originally certified under those acts.

For our part, the State agencies conduct a monitoring and inspection program in the field. State pipeline safety personnel constitute 90 percent of the inspection force conducting daily inspection activities for more than 10,000 gas operators and 250 hazardous liquid operators nationwide. It is not an overstatement to say that, without the commitment of the States to this effort, these programs simply could not function.

In exchange for this high level of effort by the State, the act authorized the Federal Government to support individual State programs by paying up to 50 percent of the State costs. We believe this is a great deal for the Federal Government, which is able to fund 90 percent of the inspection force at 50 percent of the costs. The States which are able, then, to defray those individual costs of enforcing Federal regulatory programs.

However, in recent years OPS has been unable to fully fund the amounts requested by the States for their program. Attached to my written statements are charts and graphs showing the amounts requested by the States and funded by the Federal Government from 1990 to 1997.

While funding has improved somewhat, it remains the case that the State programs remain underfunded. We believe that is unfair to the State for this situation to continue. In effect, the States are being placed in the position of providing more than 50 percent of the cost of the program. It is particularly unfair given the new responsibilities and mandates that have been imposed upon participating States in the recent years, including inspections to deter-

mine operator compliance with drug and alcohol regulations, guidelines for State adopted of the One-Call Damage Prevention Program, master-metered systems, offshore pipelines in State waters, gathering lines, intrastate hazardous liquid pipelines, liquefied natural gas, and ever increasing construction activities as operators expand their service areas. Moreover, between 1990 and 1996, the number of gas mains increased by 13 percent and local gas service increased by 5 percent.

Accordingly, we urge the Congress to authorize and appropriate sufficient funding for the State grant and aid program. NARUC stands ready to work with the subcommittee, OPS, and the rest of the administration to reach this goal. It is an extremely sound investment for the Federal Government to make to ensure that the level of safe, reliable, and efficient services that our citizens so rightly demand.

In closing, I would again express our strong support for reauthorization of the Natural Gas Pipeline Safety Act and Hazardous Liquid Pipeline Safety Act. Through these important statutes, Congress has established a workable system to bring State and Federal agencies together to protect the public. We urge you to act expeditiously to ensure that these programs continue.

Thank you for your time and consideration.

[The prepared statement of Edward J. Holmes follows:]

PREPARED STATEMENT OF HON. EDWARD J. HOLMES, COMMISSIONER, PUBLIC SERVICE COMMISSION OF KENTUCKY

Mr. Chairman and Members of the Subcommittee on Energy and Power:

Thank you for the opportunity to participate in today's hearing on the reauthorization of the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act (49 U.S.C. Section 60101 et. seq.).

My name is Edward J. Holmes. I am Vice Chairman of the Public Service Commission of Kentucky and Chair of the Committee on Gas of the National Association of Regulatory Utility Commissioners (NARUC). I am pleased to be here today representing NARUC, a nonprofit organization representing all the state public utility commissioners throughout the United States, and the National Association of Pipeline Safety Representatives (NAPSR), which is comprised of the regulatory staff members of our Commissions who focus specifically on natural gas and hazardous liquid pipeline safety.

Because our members are primarily responsible for the enforcement and monitoring of the Acts, NARUC has a strong interest in the organization and operation of the Office of Pipeline Safety. Indeed, we have a longstanding Subcommittee on Pipeline Safety comprised of technical staff, which is solely committed to working for the success of the Pipeline Safety Program established by the safety acts before this Subcommittee here today.

NARUC has been a strong supporter of the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act—critical legislation establishing for the first time a set of national standards to be used by the natural gas and hazardous liquids industry in the design, constructing, testing, operating and maintaining its transmission and distribution facilities. As an alternative to federal monitoring and enforcing of the program, the United States Department of Transportation, Research and Special Programs Administration (RSPA), Office of Pipeline Safety (OPS) offered to join with any interested state in a federal-state partnership through which the appropriate state agency would undertake monitoring and enforcement responsibilities through annual certification agreements. A grant-in-aid program was created by these Acts to provide up to 50% financial support to those states accepting that responsibility. State programs are audited and evaluated on an annual basis by field representatives of the Office of Pipeline Safety.

The funds that the Acts provided allowed states to make that commitment without unreasonably burdening their own customers and contributed greatly to an improved public safety. The requirement that each state provide at least 50% of its own monies to fund the program assured that a reasonable perspective and partner-

ship was built into the funding process and made each state its own stakeholder in the process.

As state utility regulators, we are charged by state statute with requiring that local gas distribution companies (LDCs) provide safe and adequate service at just and reasonable rates. We share with federal regulators and the gas industry the responsibility to provide reasonably safe and adequate service at reasonably just and fair rates.

The cost of pipeline safety is significant. The gas industry has inherited, over a period of some 150 years, an infrastructure comprised of a mixture of plastic, steel, ductile iron and cast iron mains which in many cases needs to be refurbished. However, the industry provides services in areas that in some cases are impractical or impossible to replace and continue to serve their customers adequately and safely. It is due to the standardization of performance standards by the Office of Pipeline Safety that pipelines facing varying conditions and service requirements are uniformly monitored, inspected and maintained. In our view, customers and residents should take comfort in knowing that gas delivery systems are safe and efficient.

The vast majority of pipeline safety inspections are performed by the states under a partnership agreement with OPS under section 60105 of the Natural Gas Pipeline Safety Act. In exchange for this state effort, which substantially reduces federal obligations in this area, section 60107(a) authorizes grants to reimburse States for "up to 50%" of their program expenditures. The grant funds are now distributed through a performance-based allocation process in which a State's grant is reduced if federal performance standards are not met. This allocation process was developed with representatives from OMB in response Congress' requirement that States be more accountable to the general public on federal funding.

As a result, the States share responsibility with the Congress and the Administration to assure that adequate funds are available to assure a safe gas pipeline industry while keeping in mind that the cost of that safety is borne by ratepayers and taxpayers. In reauthorizing these Acts, Congress should continue the federal-state fund sharing philosophy that is now in place and states should reasonably be expected to bear their fair share of the burden. We strongly recommend that each State be assured its full 50% share of its inspection costs. The State should not have to continue carrying more than the 50% fair share that we have done in the absence of adequate Federal funding.

While the Pipeline Safety Act requires the federal government to ensure pipeline safety throughout the United States, State pipeline safety personnel represent more than 90% of the work force. The individuals conduct daily inspection activities for more than 10,000 gas operators and 250 hazardous liquid operators nationwide to ensure the safe transportation of product to consumers. The States are clearly at the front lines in protecting consumers and the environment because of their excellent relationships with their respective pipeline operators and deserve 50% funding.

Moreover, the financial burden on the States is growing. State pipeline safety responsibilities have continued to increase due to new mandates, but grant fund dollars have not kept pace with these demands. These new responsibilities include inspections to determine operator compliance with drug and alcohol regulations [49 CFR Part 199 and Part 40], Guidelines for State adoption of the One-Call Damage Prevention program [49 CFR Part 198], Master-Metered systems, Off-shore pipelines in state waters, Gathering lines, Intrastate Hazardous Liquid pipelines, Liquefied Natural Gas (LNG) storage and ever increasing construction activities as operators expand their service areas.

On October 27, 1998, "operator qualification" programs were added to the list of mandates for States to enforce this year if finalized. This new rule will require State personnel to perform more in-depth inspections without additional funding.

OPS requested 13.5 million dollars to fund base programs for 1999 only to have OMB cut the funding to 13 million dollars. Funding has been made available for Risk Management feasibility studies (\$500,000) and for One-Call Damage Prevention (\$1 million) for 1999.

We agree that risk management may play a key role in future operator long-term planning and "One-call" has prevented underground damage, but such programs should not escalate to the point that base or core pipeline safety programs could be jeopardized.

Attached to our written statement for the Subcommittee's review are charts and data showing the amounts requested by States for their gas and liquid programs, amounts provided by the Department of Transportation, and other relevant costs from 1990 to 1997. A quick review of the States' programs costs indicate continued increases, in some cases as much as 18-20%, for carrying out additional inspections of pipeline facilities with limited funding. In addition to these specific responsibil-

ities, in 1996 there were 13 percent (115,584 miles) more intrastate gas mains and 5% (2.6 million services) more local gas services as compared to 1990.

Federal funding is not providing adequate resources to meet the needs of the States' actual costs. Therefore, a reduction of State programs, or even their maintenance at existing levels, could threaten the infrastructure of the Nation's pipeline system.

In conclusion, I would again express our strong support for reauthorization of the Natural Gas Pipeline Safety Act and Hazardous Liquid Pipeline Safety Act. Through these important statutes, Congress has established a workable system to bring State and Federal agencies together to protect the public. While these laws may benefit from minor refinements for clarity and ease of interpretation, we see no need for substantial revisions at this time.

Thank you for your time and attention.

ATTACHMENTS

ATTACHMENTS

Gas Program Data

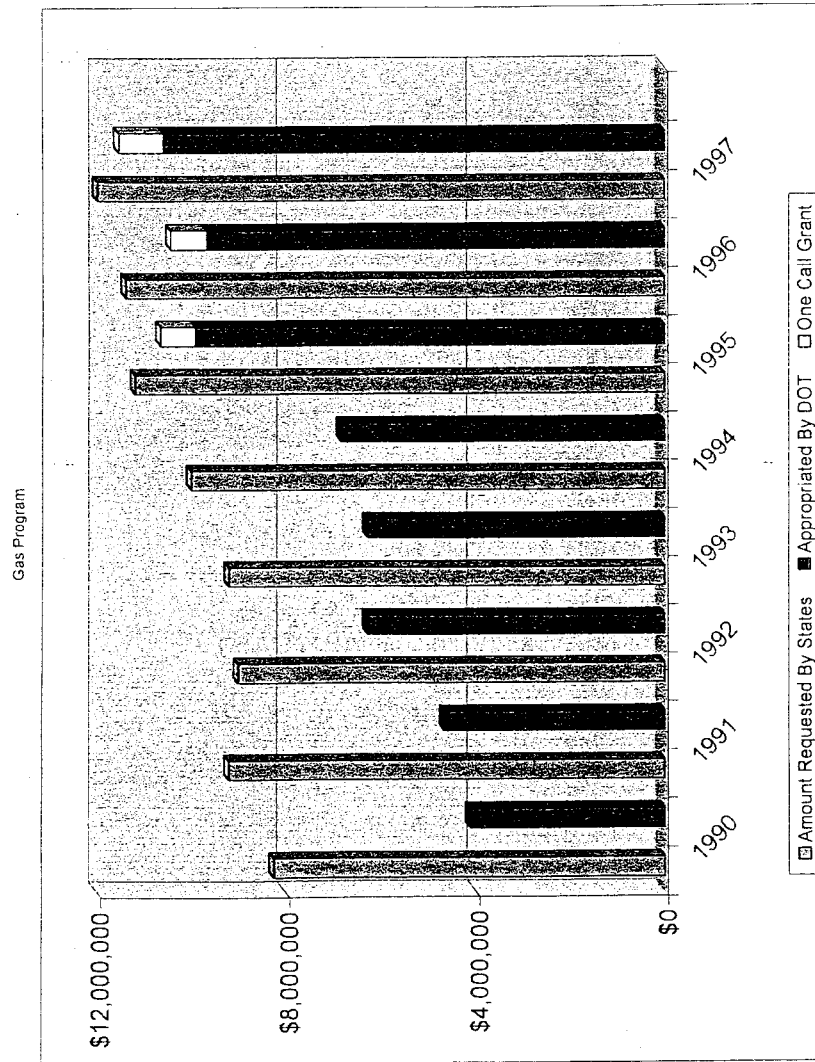
	Amount Requested By States	Appropriated By DOT	One Call Grant
		\$4,112,550	
1990	\$8,250,000	\$4,680,000	
1991	\$9,200,000	\$6,300,000	
1992	\$9,000,000	\$6,300,000	
1993	\$9,200,000	\$6,854,188	
1994	\$10,000,000	\$8,909,514	\$750,000
1995	\$11,200,000	\$9,687,530	\$778,000
1996	\$11,400,000	\$10,581,575	\$950,000
1997	\$12,000,000		

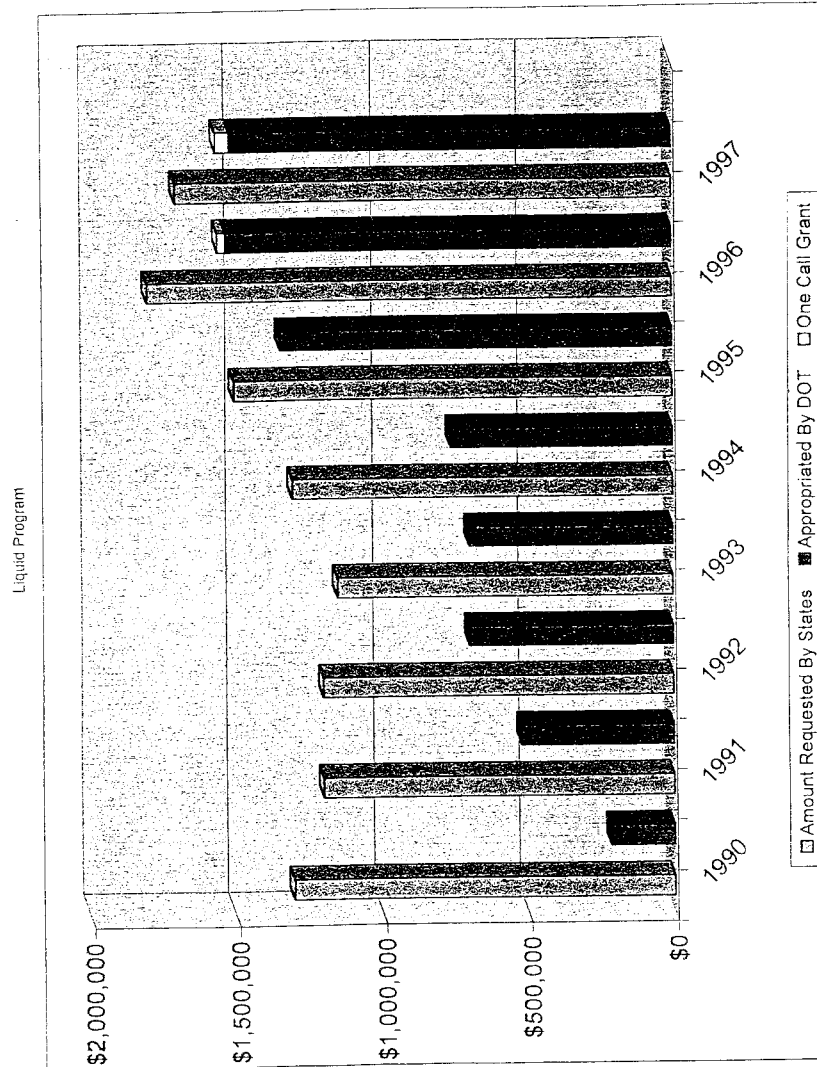
Liquid Program Data

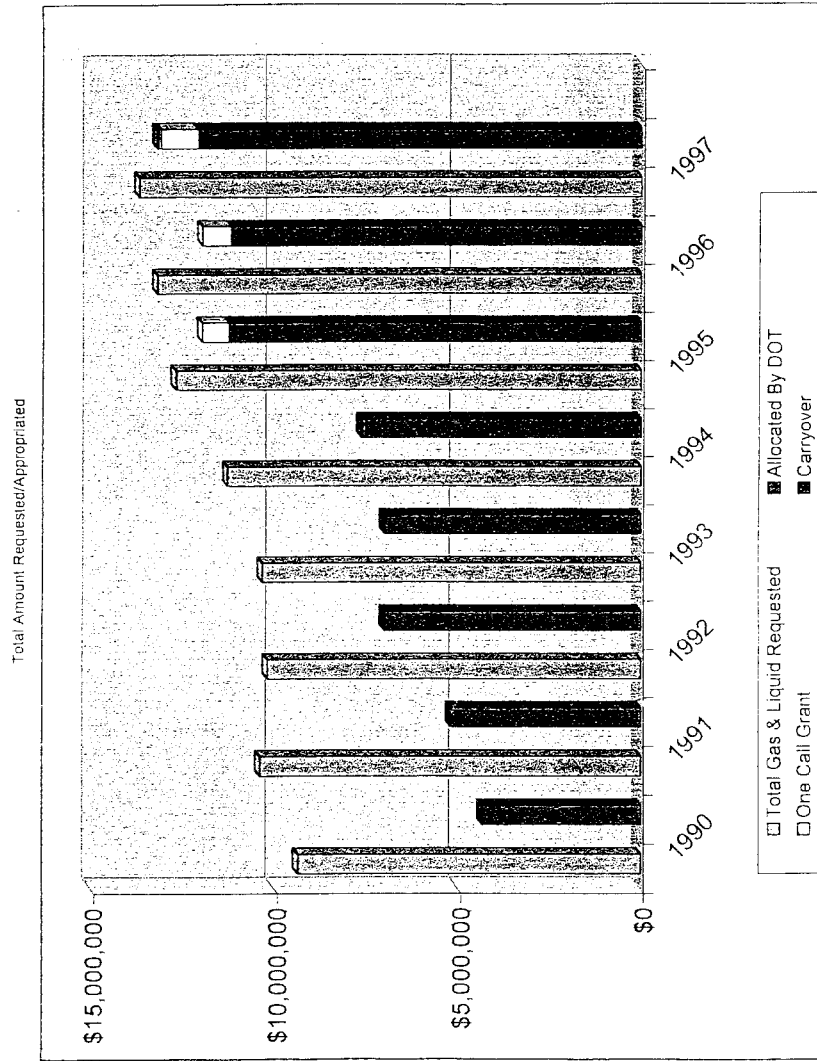
	Amount Requested By States	Appropriated By DOT	One Call Grant
		\$216,450	
1990	\$1,300,000	\$520,000	
1991	\$1,200,000	\$700,000	
1992	\$1,200,000	\$700,000	
1993	\$1,150,000	\$761,577	
1994	\$1,300,000	\$1,340,486	
1995	\$1,500,000	\$1,526,470	\$28,000
1996	\$1,800,000	\$1,508,025	\$50,000
1997	\$1,700,000		

Total Liquid and Gas Data

	Total Gas & Liquid Requested	Allocated By DOT - One Call Grant	Carryover
		\$4,329,000	
1990	\$9,350,000	\$5,200,000	
1991	\$10,400,000	\$7,000,000	
1992	\$10,200,000	\$7,000,000	
1993	\$10,350,000	\$7,500,000	\$115,765
1994	\$11,300,000	\$11,250,000	\$750,000
1995	\$12,700,000	\$11,194,000	\$806,000
1996	\$13,200,000	\$12,000,000	\$1,000,000
1997	\$13,700,000		







Mr. BARTON. Thank you, Mr. Holmes.

The Chair will now recognize himself for 5 minutes in the question period, and we will alternate between the majority and minority in 5-minute questions periods.

Ms. Coyner, my first question is to you. As I looked at the testimony last evening, I looked at a chart that was presented from your office that summarizes the number of accidents and the incidents in fatalities and injuries, by year, from 1984 to 1998. And I noticed that, in general, the number of incidents averaged, over the last 15 years, about 200 a year. But in 1998, that number fell to 26; the number of fatalities in 1998 fell to 0, and it was also 0 in 1997, thankfully, and the number of injuries in 1997 was 5, and the number of injuries for 1998 was 0.

Are your 1998 numbers final, or are they still subject to reevaluation? And, if they are not final, are there some incidents that haven't yet been put in the statistics that are going to significantly change the trend, which is a very positive trend of less incidents and zero fatalities and fewer injuries?

Ms. COYNER. Mr. Chairman, I believe that the statistics you are referring to are ones that are for hazardous liquids—

Mr. BARTON. That is correct.

Ms. COYNER. [continuing] accidents only.

Mr. BARTON. Right.

Ms. COYNER. And we actually have enjoyed a lower rate of fatalities in that area, generally. Those statistics do not include the end of the year information. But on the liquid side, that doesn't have a large variation.

On the gas side, you tend to see a larger number of incidents in the winter months, and fatalities rise accordingly. And that is because you have counted in that figures that involve house fire related kind of activities, and you have a higher usage of natural gas.

Mr. BARTON. Well, you are—

Ms. COYNER. I don't think we will see a dramatic decline, although I do think that we will see a decline on the hazardous liquid side for 1998. It indicates overall better safety practices.

Richard, do you want to elaborate on that at all?

Mr. FELDER. No, I think that is a very accurate presentation of where we are. We are in a declining trend. We always see slightly larger numbers on the gas distribution side than we would on the liquid side.

Mr. BARTON. Well, the gas pipeline number—the number incidents in 1997 was 74. So far, in 1998 it was 19. The fatality was 1 in 1997, 0 in 1998. The injuries, 5 in 1997, 9 in 1998 so far.

And then for the natural gas pipeline operators, incidents was 29 in 1998, 2 fatalities, 15 injuries.

So, all three charts show a downward trend.

Ms. COYNER. Well—

Mr. BARTON. And I think that is positive if—

Ms. COYNER. Then—

Mr. BARTON. [continuing] it is actually a consequence of conscious efforts.

Ms. COYNER. I think that we need to highlight that there were several accidents at the end of the year involving local distribution companies.

Mr. BARTON. In 1998?

Ms. COYNER. In 1998 that involved several fatalities, and those were outside force damages. The kind of accident that is involved in not only the use of a One-Call system, but also the kinds of things we are doing in our public education campaign on safe practices involving excavation. Those accidents were fairly recent; they were December accidents—are still under investigation by the NTSB—but you will see a higher fatality rate for 1998 than what you would see in—

Mr. BARTON. But by a significant number?

Ms. COYNER. Well, I think so, because a couple of them had multiple fatalities in the accident.

Mr. BARTON. So—

Ms. COYNER. What are we talking about?

Mr. BARTON. Five to ten? Two to three?

Mr. FELDER. Oh, 5 to 10.

Mr. BARTON. But not hundreds? Not—

Ms. COYNER. Five to 10.

Mr. FELDER. Oh, no. No big numbers. And the transmission numbers are better this year, and they will remain that way, even when the year-end factors come in. As Kelley has said, it is really gas distribution, and it is not accidents that are related to material failure or to operator error or that type of thing. It is really outside force—someone hitting the line and then fatalities result.

Mr. BARTON. Well, could it be—I know that honorable people can disagree. I mean that is the whole reason we have a Congress is to mediate disagreements. But is it a possible conclusion that some of the changes that have been made that allow for risk assessment and cost analysis and cooperation in putting together the rulemakings with the industry and the regulators could be one reason that some of these trends are positive?

Ms. COYNER. I think that we will enjoy positive trends over the duration of the regulations that have come into place under this regime. The risk management project is really too new for us to be able to tell you definitely, but we look at it and we think we are going to see positive results as well.

I would note that most of the risk management demonstration projects have not asked for relief from our regulations. They are taking additional steps on top of what the regulations require, and so we think that is also a very positive development.

Mr. BARTON. Okay. In establishing another tradition, the Chair is not going to violate the 5-minute rule.

So, we are going to recognize the distinguished gentleman from Texas for 5 minutes, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman.

When we debated Pipeline Safety Act reauthorization in 1996, there was a great deal of concern about the involvement of the public in the risk assessment plans and, I think, in the approval process. And I note from the testimony that five risk management plans have been approved by the Department, and some others are on the eve, maybe, of being approved.

Is there a limitation or a quota or a goal or—what were you shooting for? You have five plans approved now.

Ms. COYNER. When the President signed the Pipeline Safety Act in 1996, he also had a signing directive which governed how we went forward on the risk management demonstration projects. And one of the limitations was that we only do 10 demonstration projects over this period of time. We have been very cautious as we move forward on this, rather than taking projects prematurely that are not ready. We have gone slowly. I mean six is not, obviously, the full complement.

I would like to address, if I might, Representative Hall, your question about public participation. I think that is a key aspect of how we looked at these demonstration projects and also helped us think about how we involved the public in the rest of our program as well.

We have required the companies to develop, along with other stakeholders, a very comprehensive communication plan to involve local government officials and the public in the discussion of how these plans are put together. But we have also made use of some innovative means for involving people. We have all this information up on our web site; it is changed continuously, and we have a very high number of hits, if you will, people who are accessing and who are from the general public, as well as having electronic town meetings that make it so that someone can participate in a discussion about this program without having to travel to a distant location.

Mr. HALL. The chairman mentioned statistics a moment ago and made some inquiry of you.

It is my recollection, and I have recently had my memory jogged on the two deaths that we had in Texas back a couple of years ago. I think there you had the HVL line that was liquified in the pipe but then became gaseous when it escaped or there was a fracture or something. And then somehow a spark and explosion—it killed two teenagers. They were just nearby or not very far from the explosion.

What have you learned from that, and what steps have been taken since that time to preclude something like that? I guess what type of precautions have you put in place, if any?

Ms. COYNER. There are really two issues in terms of the lessons learned from that incident. They fall in two categories. One, is how do you stop the accident in the first place? And, in that case, it was caused by corrosion that caused the pipeline to fail. We have required Koch to review the integrity of the rest of their line, and we are also in the process of implementing new regulations to deal with corrosion issues on these lines as well. So, it is not only a solution that will make sure that this pipeline is safe, but that we raise the standard for other pipelines as well.

Another issue is, when you have a failure, what can you do to mitigate to, hopefully, avoid the kind of situation you saw here? Because, as you mentioned, we had a particularly tragic situation where a couple of teenagers—who we believe were probably going for help—caused ignition of this vapor cloud by turning the key in their vehicle.

What we have done in the case of Koch is that we have required them to upgrade both materials they use to educate people who are adjacent to the pipeline, but also how they go out and reach those

individuals. Not only about how to avoid damaging the pipeline, which is a central focus of public education efforts, but also what to do if you encounter such a situation, because what may seem to be intuitive at the moment may not be the right safety measure to take. And it is a problem with HVL incidents where you have a vapor cloud, but it is also a bigger problem in a natural gas area.

The NTSB this summer issued a series of recommendations that followed these incidents. These were—actually, it wasn't even the summer, it was last fall—and we are working with them to respond to them. But I think that on each one of those that we will be, in a large measure, in agreement on the safety issues that are involved in those recommendations.

Mr. HALL. A lot of those pipes were put in the ground a long, long time ago. Do you make weekly, monthly, quarterly, annual inspections of those?

Ms. COYNER. The inspections really fall into—

Mr. HALL. Briefly, if you can.

Ms. COYNER. I will.

Mr. HALL. I would not like to break the chairman's rules—

Ms. COYNER. The answer is that we don't have a—

Mr. HALL. [continuing] the very first day.

Ms. COYNER. We don't have a fixed cycle for our inspections, but we do require some very frequent aerial inspections which give us a good indicator whether or not there are leaks. They have inspections at varying intervals, depending on what the likelihood of a problem is. In some areas, the nature of the soil means there are going to be greater corrosion problems, and we require more frequent inspections in those areas.

Mr. HALL. I thank you.

I yield back my time.

Mr. BARTON. I thank the ranking member.

I am going to recognize Mr. Whitfield of Kentucky, he was here before the gavel, and the rules say, members that are here before we convene are recognized in order of seniority. And then after, it is in order of appearance. So, I have got some senior members who have appeared—Mr. Bilirakis and Mr. Stearns, the vice chairman—but Mr. Whitfield was here, and so that is the reason that he is going to be recognized for 5 minutes right now.

Mr. WHITFIELD. Thank you, Mr. Chairman. I really appreciate your rules for the subcommittee this year.

Mr. BARTON. I am just using the rules of the full committee actually using them, though.

Mr. WHITFIELD. Mr. Holmes, in your testimony, one of the things that you touched on was that States received grants of up to 50 percent of their cost for various inspection programs. And I noticed, also, that you said that grant funds are distributed through a performance-based allocation process in which a State's grant is reduced if Federal performance standards are not met.

Now, are you basically saying that even when the performance standards are met, many States do not receive the 50 percent that they are entitled to?

Mr. HOLMES. Yes. As I understand, on the scoring system, you can score the highest, you know, points on the system and you

still—because of funding—you don't receive the maximum 50 percent.

I think in Kentucky we scored the maximum points allowed, and I think our average is about 40 plus percent of what we receive in actual funding. So it varies on the availability of funds and scoring that is coinciding with it.

Mr. WHITFIELD. So, basically, there is an appropriation shortfall at the—

Mr. HOLMES. Yes.

Mr. WHITFIELD. [continuing] Federal level, then?

And how much is that shortfall? Do we have an idea?

Mr. Felder?

Mr. FELDER. Yes. The shortfall has varied from year to year, but it has grown from about \$1 million to about \$3 million at this point.

Mr. WHITFIELD. Okay.

And how many different grant programs are there to the States for pipeline safety purposes?

Ms. COYNER. There is one now. There is one pipeline safety grant program that we have had, but the new One-Call legislation would authorize grants for One-Call systems that would go through the States for damage prevention efforts, and that would be an additional grant. This is not referred to in what Mr. Holmes is talking about.

Mr. FELDER. Right. I would also add, there are a couple of—as Mr. Holmes has said—we cooperate with the States on a number of programs. So, for example, as we have been implementing risk management, we have actually received \$500,000 in the budget to work with States and bring States in as reviewers of risk management plans, so that as that demonstration goes through, they get the same education that our inspectors get. So, there is a category there for risk grants and, as Kelley has mentioned, there is also One-Call grants.

Mr. WHITFIELD. One of you had mentioned the System Integrity Inspection Pilot Program in your testimony, the goal of which is targeting important safety issues more efficiently. And then later on it talks about, "the Department is now soliciting applications from interested companies."

I was wondering what incentives are there for companies to apply to participate in that program?

Ms. COYNER. The approach is to look cooperatively with the company at what the highest risk safety issues are in a particular system and really focus our auditing of them in that regard. The traditional inspection is a checklist which may or may not be relevant to that particular system. It is a one-size-fits-all, if you will, approach to inspections, whether the system is in an area such as the Alyeska pipeline in Alaska which has unique corrosion problems or it is in an arid environment in Arizona. And so the idea is that we are looking for a handful of companies really to see if we might do that.

The other idea is to look at a system-based inspection rather than a segment-based inspection, so that we look a pipeline from its beginning to its end, rather than looking at just a piece of it that happens to fall in one our regions.

Mr. WHITFIELD. Now, as an administrator responsible for this type of activity, what do you view as your major obstacle in providing as safe a system as possible? Can you give a generic answer to that?

Ms. COYNER. The biggest obstacle is getting a real handle on how you deal with outside force damage because it is a complicated area that involves not only getting people to use One-Call system, but to use proper excavation techniques when they have the system marked. That is the single biggest obstacle.

Mr. BARTON. Mr. Whitfield, do you yield back?

Mr. WHITFIELD. Yes, I thought the buzzer went off.

Mr. BARTON. It did, but—

Mr. WHITFIELD. Oh, okay. I yield back the balance of my time.

Mr. BARTON. I am not used to such polite subcommittee members.

Before we recognize Mr. Pallone, for the record, we need to note that Mr. Richard B. Felder is the Associate Administrator for Pipeline Safety, and he has been answering questions, and we want the recording clerk to know that that is the gentleman and that is his title, for the record.

I would recognize for 5 minutes the gentleman—

Mr. SAWYER. Chairman, may I be excused?

Mr. BARTON. We would love to have you stay, Mr. Sawyer so we may not excuse you. But we can't compel you to stay.

Mr. Pallone is recognized for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. Again, if I could renew my unanimous consent request with regard to those documents.

Mr. BARTON. The Chair and the staff have looked at the documents, and we think that they help build the record for this hearing, and, without objection, they are put into the record with your opening statement.

Mr. PALLONE. Thank you, Mr. Chairman.

I wanted to ask Ms. Coyner, in the previous authorization of the Pipeline Safety Act, there was language that was supported by myself and Senator Lautenberg with regard to a study and then, I guess, eventual rulemaking relative to the automatic shutoff valves and the remotely controlled valves that I made reference to in my opening statement, and I just wondered what the status of that is. Is that study complete? Are there rulemakings that will be suggested?

Ms. COYNER. As you know, the statute calls for a rulemaking if warranted by, I believe, June 1, 1999. We have conducted a workshop; we have conducted a survey that was called for, and we are in the process of putting the report together. We are a little bit behind on getting the report done, but I do not anticipate that we will be behind in issuing the rulemaking, if we need to go forward on it, by June 1, 1999.

But one of the things that I—because I know of your concerns in Edison—we have certainly worked on them over the years—is that it is important to note that a number of companies are putting in remote-controlled valves. And in New Jersey, in particular, they have put in 35 remote-controlled valves on that system that was so critical where Edison was concerned. And, in fact, we have continued to work very, very closely with the New Jersey officials in

making sure that their concerns about those valves were met. We have a meeting coming up in the next couple of weeks to, again, meet with them in Princeton to review the plan there. And we are also working with them on encroachment issues which was the key issue in that incident.

Mr. PALLONE. I thank you.

Now following up on Mr. Hall's question—I think it was Mr. Hall that talked about the possibility of expanding these 10 demonstration projects. Is it your intention, or are you interested in, expanding these 10 demonstration projects, you know, going beyond that at this point? Is that the DOT's intention?

Ms. COYNER. The direction that we have from the President—which we agree with—is that we need to look at the 10 demonstration projects and determine whether or not the risk management approach strengthens safety and environment above what the minimum standards are. The initial information that we have, which is very preliminary, indicate that that is the case. But we are not at a place where we can say definitively what the outcome would be.

I think it is important that we continue to look at risk management as an alternative, but I don't think that we are in a position to make a determination today, firmly, about what direction we would want to take in reauthorization. We are only about, at most, 18 months into this particular process.

But one thing that I want to underscore again is that in these projects—there are six of them—most of them are not deviating from the regulatory standard, and I think that is really critical to know. What it is, it is taking a different approach to dealing with systems-specific issues that we are concerned about. In some cases, it may be damage prevention; it may be a corrosion issue in another project.

Mr. PALLONE. Well, let me just ask Mr. Holmes the same thing basically. I know that you state, or that NARUC has stated, that this program should not escalate to the point that base or core pipeline safety programs could be jeopardized. Could you elaborate on that? I mean are you concerned that if they go beyond this 10, that that, in fact, will be the case?

Mr. HOLMES. Well, obviously, I think we at NARUC have some concerns if it goes beyond that, that there will be some critical issues there that needs to be addressed. So, yes, we do have concerns there.

Mr. PALLONE. The other thing I want to ask, Mr. Chairman, if I could is, you know, I was concerned in the last reauthorization about funding levels. And I guess I wanted to know if you felt there was sufficient funding, either Federal funding for oversight, particularly with regard to States, to effectively implement and enforce the pipelines safety programs, including the One-Call, because in previous Congresses, I have been involved in trying to get more money through appropriations for that. How are we doing, funding wise, either Federal or State? Federal for State programs or just the Federal programs, in general, for enforcement.

Ms. COYNER. I think that we need to continue to strive for moving to the 50 percent funding for the State programs. It has not been one that we have met in the past, and that is critical, because we really leverage the State programs to make sure that we have

the adequate inspection resources and the adequate inputs from the States' programs where they really know the pipeline systems.

The second issue I think is really important—and I want to take a moment to congratulate you on your leadership in getting the One-Call legislation passed last year—is that it is critical that we get the funding for the new One-Call Grants Program being something that is in addition to the funding that we have already for the State grant programs.

Mr. PALLONE. Thank you.

Thank you, Mr. Chairman.

Mr. BARTON. Thank you, Mr. Pallone. We are only going to have one round of questions for this panel, but my guess is that you have got some other questions, so we will submit those in writing—

Mr. PALLONE. Thanks.

Mr. BARTON. [continuing] and make sure that we get a timely response.

The Chair would now recognize Mr. Shadegg of Arizona for 5 minutes of questions.

Mr. SHADEGG. Thank you, Mr. Chairman. I will endeavor not to take all my time.

Ms. COYNER, I want to begin by just clarifying, at least for myself, the answer you gave with regard to the number in the chart we have that shows a significant reduction in incidents and fatalities and injuries for the 1998 period. As I understood your testimony, those numbers are not yet complete for either chart, that is for gas or for other hazardous liquids?

Ms. COYNER. Let me clarify something, Congressman.

Mr. SHADEGG. Please do.

Ms. COYNER. That is actually not a chart that was attached to my testimony.

Mr. SHADEGG. Right.

Ms. COYNER. I believe it was attached to API's testimony, and I have not physically seen that particular chart. But based on the information that the chairman indicated, those are not complete for the year.

Mr. SHADEGG. Not final numbers for 1998?

Ms. COYNER. But based on what we know about the incidents, the area that we would expect a change is in the local distribution line numbers, both in terms of numbers of incidents and fatalities.

Mr. SHADEGG. Okay. I just wanted to try to clarify that. My understanding from our staff is that those numbers came from a DOT web site, and maybe we ought to double-check it so they get it clear so we all understand.

It is true, however, you believe that we are witnessing improvements in safety—

Ms. COYNER. Yes.

Mr. SHADEGG. [continuing] in both categories. Is that right?

Ms. COYNER. If you really divide them into three categories. I would divide the gas into transmission and local distribution companies, we are definitely seeing improvements on the transmission lines, and in the liquid side, we are also seeing improvement.

Mr. SHADEGG. Okay.

Let me turn to a separate topic where I, again, just kind of want to clarify for myself, for my understanding—being new to the committee.

As I understood what you said a few moments ago—and maybe I was partially listening and partially not—you currently base your analysis on risk as it is. That is, you look at the most dangerous—you work with the companies to establish the most dangerous exposure, whether it is a particular pipeline or section of pipeline or type of material that is being transmitted or whatever it is, and make your evaluation based on the highest risk exposures under the current structure. Is that correct?

Ms. COYNER. There are really three basic ways that we are using risk tools.

Mr. SHADEGG. Okay.

Ms. COYNER. And I think that what you are referring to is something that we call the demonstration program.

Mr. SHADEGG. Okay. That is what I wanted to find out, whether that was everything or—

Ms. COYNER. The 10 projects.

Mr. SHADEGG. [continuing] whether that was the demonstration projects.

Ms. COYNER. The program allows 10 companies to come in and if they wish to ask for regulatory relief—they have not in some cases—but to come in and say, “We want to address a particular problem, and here is why we find this to be the highest risk.” And they have to come in with one of the generally accepted approaches to doing risk assessments and risk management to evaluate it. It has been a very labor-intensive process because we have done a lot of parallel training for the State inspectors and for the Federal inspectors.

The second way that we are using risk as a tool is in the manner that Congressman Whitfield was referring to, which is in the System Integrity Inspection Pilot Program. And that is designed to focus on compliance issues and what areas can we find where we don’t have any deviation from the regulatory standards, but where we can highlight our inspection approach to be more effective.

The third way that we are using risk is in how we prioritize the allocation of our resources so that we are putting the programs’ resources to the most important risks, and we are also making sure that our regulations address the most important risks.

Mr. SHADEGG. Is it your sense—and I take it, it is—that generally, the new statute is working and is working well?

Ms. COYNER. Yes.

Mr. SHADEGG. Mr. Holmes, I want to go to your testimony. The National Association of—what is it?

Mr. HOLMES. Regulatory Utility.

Mr. SHADEGG. Regulatory Utility.

Mr. HOLMES. NARUC.

Mr. SHADEGG. Commissioners—in Arizona, I guess it would be our corporation commission.

Mr. HOLMES. Yes.

Mr. SHADEGG. Has taken a position that you think the act should be modified? It should be reauthorized without significant modification?

Mr. HOLMES. Yes, we support the act for reauthorization. Once again, we would like to reach that level of 50 percent funding.

Mr. SHADEGG. Funding is the big issue you seem to touch upon.

Mr. HOLMES. Yes, that is—

Mr. SHADEGG. The overall structure—looking at the way the law works, you think it is working?

Mr. HOLMES. Yes; the overall structure works well, and we support that. Our working relationship with the Office of Pipeline Safety is a good relationship. So, overall the structure works, and we are able to provide, through the State, the necessary inspectors to provide the inspection services.

Mr. SHADEGG. Second issue I want to talk about is the 10 experimental programs that are ongoing. I want to understand—did I understand you to say, Mr. Holmes, that you would not want that program expanded?

Mr. HOLMES. I am not that familiar with that. We will have to—

Mr. SHADEGG. Perhaps there is a better way—

Mr. HOLMES. I will have to get something in writing. Yes.

Mr. SHADEGG. Later on?

Mr. HOLMES. I will follow up in writing on that on the 10 demonstration programs.

Mr. SHADEGG. Thank you for your testimony, and I yield back the remainder of my non-time.

Mr. BARTON. Thank you, Congressman Shadegg.

We recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes for questions.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Ms. Coyner, on the President's recent budget submission, does he include the deficit in this program? The underfunding of the 50 percent match to the States?

Ms. COYNER. No. It is at about 43 percent.

Mr. SHIMKUS. So even the President—

Ms. COYNER. That is correct.

Mr. SHIMKUS. The President's plan underfunds the program?

And just to help with vocabulary, second term here—outside force damage is really backhoes digging in the pipes. Is that right?

Ms. COYNER. Thank you for saying that so clearly.

Backhoes and people. It is interesting; even people digging in their yards to plant a tree can hit a line.

Mr. SHIMKUS. And that is the importance of the One-Call?

Ms. COYNER. That is right.

Mr. SHIMKUS. And I think we talked last year on legislation of a—I don't know, maybe my staff and I talked about it—about a national One-Call proposal. What would be the Department's position on that?

Ms. COYNER. Last year you, in fact, included that in the T-21—

Mr. SHIMKUS. Okay.

Ms. COYNER. [continuing] legislation.

Mr. SHIMKUS. Right.

Ms. COYNER. So it calls upon us to establish what the best practices are for One-Call programs.

Mr. SHIMKUS. What does that mean, best practices?

Ms. COYNER. Best practices would be, what are the best ways for a One-Call system to be designed and operated? What kind of mapping information do they need to be able to deal with all the multiple utilities that they are dealing with? What are the best approaches for ensuring that people use the system? What are the best practices in terms of enforcement activity and ensuring that people are complying with the One-Call requirements?

Mr. SHIMKUS. So DOT is—

Ms. COYNER. We have put together a team of about 160 representatives from across the board—from the railroads, the highways, the telecommunications business, the people who are involved, who go out and mark lines, the locators, and the like—who have been working since August last year. We have an interim report that we will present in a nationally broadcast teleconference on in March. We expect the final report to go out in June in time for us to, hopefully, implement a grants program beginning next fiscal year.

Mr. SHIMKUS. And that is part of your, I think, full statement—

Ms. COYNER. It is part of the written statement; that is correct.

Mr. SHIMKUS. [continuing] that I was reviewing.

The grants program will be designed to encourage States that do not have a program to develop one? Many States have one, currently?

Ms. COYNER. Most States have some programs. The idea is to encourage them to bring their standards up a great deal. And so it is incentivized better practices by One-Call systems and the State agencies that support this system.

Mr. SHIMKUS. So other than outside force damage, what other pipeline deficiencies are there that cause deaths?

Ms. COYNER. Well deaths are caused, of course, when the pipeline fails. And there are a couple of—

Mr. SHIMKUS. I mean do we have a record of failures?

Ms. COYNER. Right. The other factor—

Mr. SHIMKUS. Proportionally, what is the percentage?

Ms. COYNER. The percentage is 80 percent of the fatalities are caused by outside force damage on natural gas pipelines. It is very disproportionate. Now on the liquid side, they have a very low rate of fatalities, so you really can't tie it that way. Outside force damage rates about three or four on liquid lines, with corrosion being, I think, at the top of the list.

Is that correct, Rich?

Mr. FELDER. That has been true traditionally. This last year of numbers, we actually flipped those a little bit, and we actually ended up with outside force damage on the top, even for liquid lines. Those are the latest API numbers. So, you are really talking outside force, then corrosion, and then you move down the scale to much smaller numbers.

Mr. SHIMKUS. And DOT does research on pipelines? Do you have research funds for pipeline safety?

Ms. COYNER. We have some research funds, and what we have done in order to leverage those is to work cooperatively with others. One of the particular areas we have been working on in the last several years is developing better what we call "pigging tech-

nology.” Those are the internal inspection devices which are non-destructive ways to evaluate pipelines.

Mr. SHIMKUS. When you said, “with others,” who is “others?”

Ms. COYNER. That one in particular is with the Gas Research Institute.

Rich——

Mr. SHIMKUS. It could be industry, itself?

Mr. FELDER. Right. Well, and it is also the academic community on that particular piece. We have Southwest Research Institute, Battelle Memorial Laboratories and Iowa State involved, also. But we have a broad spectrum.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. BARTON. Thank you, Congressman Shimkus.

We will recognize the distinguished gentleman from Georgia, Mr. Norwood, for 5 minutes.

Mr. NORWOOD. Thank you very much, Mr. Chairman.

Ms. Coyner?

Ms. COYNER. Yes.

Mr. NORWOOD. I think before—I am sorry I can’t see very well—I think before we end the day, we will probably have some suggestions that hazardous liquid releases are on the increase. And I would like to know if you think that is the case.

Mr. FELDER. Well, I think it depends on what level you are measuring. Reportable incidents for hazardous liquids are down under our statistics. We capture everything that is 50 barrels and up.

Mr. NORWOOD. Let me——

Mr. FELDER. There are liquid releases that are outside of our jurisdiction that might happen in waters of the United States, and so forth. I would have to look at the numbers that you have. But according to what we regulate and what we have, our liquid releases are decreasing.

Mr. NORWOOD. Not increasing?

Mr. FELDER. Not increasing.

Mr. NORWOOD. And it isn’t hard to—all I am simply asking you, is there more happening in this year and predictable in the next year than happened last year and the year before that? Is there more rather than less? And you are saying it is less rather than more?

Mr. FELDER. Yes.

Mr. NORWOOD. Ms. Coyner, who has the primary responsibility for pipeline safety? Is it DOT or is it industry? Or is it the pipeline people? Who is the major person responsible for safety?

Ms. COYNER. The industry is responsible for ensuring that it meets safety standards. At a minimum, the Federal safety standards, but also there may be State regulations that they also have to comply with. And it is their responsibility to meet those standards. Now it is our responsibility to have oversight over the pipelines and over the State pipeline safety programs.

Mr. NORWOOD. Well, let us follow in to that a little bit and just help me a little bit. Why don’t you explain a little bit to me how the Federal and the State partnership works in this area.

Ms. COYNER. We have a system whereby we have jurisdiction over different kinds of pipelines—those that are interstate and those that are intrastate—and we have encouraged States to par-

ticipate in our national gas and our hazardous liquid programs so that we can fund their programs and to expand them. We work very closely with them.

Mr. NORWOOD. Well, explain that. What do you mean participate in your program?

Ms. COYNER. I am going to ask, actually, for the expert here—

Mr. NORWOOD. That is fine.

Ms. COYNER. [continuing] to give you the “nitty-gritty” on this.

Mr. FELDER. The Federal program, under the Gas Act and the Hazardous Liquid Act, we have jurisdiction over pipeline safety for the United States. State programs come into being under State law, and they come to us for certification, that they meet the minimum Federal standards. And if they do, we can fund up to 50 percent of their efforts. And their efforts are to oversee intrastate pipelines. It is our responsibility to oversee interstate pipelines. It is an outstanding partnership, as Ed Holmes was saying. For your up to 50 percent funding, you get about 90 percent of the inspections done around the country. Most of the distribution system mileage is intrastate; it is within States. It is inspected by State pipeline safety programs. And the lion’s share of the States are involved in our program. There are just a couple of States that do not participate.

Mr. NORWOOD. Mr. Holmes, how do you feel about that relationship, other than the fact that you are not getting paid properly?

Mr. HOLMES. Well, like I said earlier, you know, we obviously, given that the fact that we have several inspectors throughout the States committed to inspecting the pipelines and we would like to see the 50 percent funding. But we don’t want to see that funding level diminished as a result of the One-Call system or some other pipeline safety issues.

Our responsibility is on the inspection side, and we just want to continue to see that level enhanced.

Mr. NORWOOD. Do you feel, Mr. Holmes, that had not the Federal Government become involved in this and dangle that 50 percent, that your inspection system might be different than the one that the DOT would have you do? Is there any excesses in it?

Mr. HOLMES. I don’t feel that there are any excesses in it, Congressman.

But we do think it is necessary.

Mr. NORWOOD. In other words, if the DOT wasn’t involved, you would want your State to write the same regulations as DOT as?

Mr. HOLMES. Yes. Obviously, we would have those concerns.

Mr. NORWOOD. Is the answer you would want your State to or you wouldn’t?

Mr. HOLMES. I would have to get back with you on that.

Mr. NORWOOD. Mr. Chairman, that is acceptable.

Mr. BARTON. The Chair would recognize the distinguished subcommittee chairman of the Health and Environment Subcommittee of the full Energy and Commerce Committee, the Honorable Michael Bilirakis, from the great State of Florida, for 5 minutes.

Mr. BILIRAKIS. Thank you, thank you, Mr. Chairman.

I welcome Ms. Coyner and Commissioner Holmes.

I was very much involved in this subcommittee a few years ago when we had this question of pipeline safety, and it was something

that I really was concerned with then. I just wish I could have been here at the beginning of the hearing, but we had two Veteran's organizational meetings over in one of the other buildings. I got here when I could.

Well, let us just go into the breakout tanks just very quickly. Currently, at I understand it, the regulation of petroleum storage tanks, also known as breakout tanks—has historically been done by DOT. Recently, though, the EPA has asserted jurisdiction over these same tanks. That results, as I understand it, in tank operators having to meet the different and conflicting regulatory requirements of two different Federal agencies.

This is really a question to Ms. Coyner, but I would say we need your perspective on this, too, Mr. Holmes.

So, having to meet the requirements of two different Federal agencies results in additional costs, I would imagine? Maybe inefficiencies for the operator and the Federal Government? I would like to know your—what you think about this potential conflict and, also, if there are any steps being taken to resolve the problem? Or should there be maybe steps taken by the Congress to resolve the problem, if you see it as a problem as I stated?

Ms. COYNER. I have seen it as a problem. It has been a significant issue, not only with the industry concerns that you have just mentioned, but it is also one of the areas that is really critical on environmental issues in terms of making sure that we protect the environment and to make sure that we have integrity of these breakout tanks.

Last spring, we issued a notice of proposed rulemaking on this issue, and we actually expect to have a final rule on this that will help address those jurisdictional issues in the next several weeks.

Mr. BILIRAKIS. But this is being issued by DOT?

Ms. COYNER. DOT.

And it will help address the jurisdictional issues with respect to EPA, by improving where we are in terms of the standards that we have for breakout tanks. I think what is important is that we have involved a broad range of interest in this discussion—not only our colleagues at the Environmental Protection Agency, but also representatives of the environmental community and as well as industry—in reaching a resolution I think that we can all ultimately live with.

Mr. BILIRAKIS. Well, do you feel that you are receiving proper cooperation from EPA? Is this a partnership-type of a thing you are working it work out? And do you feel that they are being reasonable? Do they feel you are being reasonable? And when might we expect this to be resolved?

Ms. COYNER. We expect to issue a rule in the next several weeks. That does not mean that we have agreed on every single issue with respect to our colleagues, but we are satisfied that we will be able to make the rule final by the beginning of March. There are always healthy disagreements between different agencies and different stakeholders of the Office of Pipeline Safety, and I don't have any problem with that. I think that we have reached a good resolution that will both be economically efficient and protect the environment.

Mr. BILIRAKIS. Will this rule be a DOT rule, or will it be a—

Ms. COYNER. It will be a DOT rule.

Mr. BILIRAKIS. [continuing] DOT rule. All right. How does this resolve, then, the potential to conflict with EPA that sometimes takes place?

Mr. FELDER. Yes. I think on the jurisdictional issue, as Kelley has said, we have moved ahead to strengthen our tank standards. And we feel that they are at a level that should be acceptable to Environmental Protection Agency as well. And we are, as Kelley said, we are working with EPA, and our goal is for both the agencies to have comparable standards so that when you look at that kind of a jurisdictional issue, does it make any difference who the regulator is in that circumstance? The answer should be, "No." The answer should be, "You have got good strong protective standards that apply at both agencies." They are harmonized, and we would be able to end that dispute that has bubbled up. So, it is a concern of ours. We have moved forward to engage with the Environmental Protection Agency. I think we have done our part in terms of—

Mr. BILIRAKIS. And that is working well?

Mr. FELDER. [continuing] strengthening our standards.

Mr. BILIRAKIS. [continuing] you feel in your discussions with them in trying to work out the differences?

Mr. FELDER. Well, we are making progress.

Mr. BILIRAKIS. You are making progress.

Mr. FELDER. We have held a number of meetings with them, and we would like to bring it to a conclusion.

Mr. BILIRAKIS. Can you keep this committee advised—

Ms. COYNER. We would be delighted to.

Mr. BILIRAKIS. [continuing] as to what progress is—

Mr. FELDER. We will.

Mr. BILIRAKIS. Thank you.

Thank you, Mr. Chairman.

Mr. BARTON. Thank you, Congressman Bilirakis.

The Chair would now recognize the distinguished gentlelady from the great State of New Mexico, Congresswoman Wilson, for 5 minutes.

Ms. WILSON. Thank you, Mr. Chairman. I am glad you have got the "great." I appreciate that.

I have been reading over your testimony here, and I apologize for being late. I had two subcommittees at the same time.

I have a particular interest in your risk assessment process, and particularly the interrelationships of various systems here with respect to safety and also maintenance of critical infrastructure. And I don't know, Ms. Coyner, if this comes under your purview. If it doesn't, send me somewhere else; that is fine. But, does the Department of Transportation participate in any modeling and simulation activities with other parts of Government about the vulnerability of the gas system?

Ms. COYNER. That is an appropriate question for two reasons. One, the Pipeline Safety Program has been involved in the Department's recent vulnerability assessment of all surface transportation systems, which we would include the gas system. What we have done is to look at what are the places where it would be most vulnerable and ways that we can address that. The other reason it is appropriate is that, as the Administrator of the Research and Spe-

cial Programs Administration, through our research activities, we have headed up this activity for the entire Department. I think what might be useful is to supply you with what—we will have the assessment done and public in the next couple of weeks.

The second thing I would note, in terms of beyond the modeling questions, which is really what the study addresses—it puts the first comprehensive model for looking at how do we assess the vulnerabilities of this kind of system—is that we have also tried to strengthen dealing with things on a more, if you might, ad hoc or incident-by-incident type of situation. And, so that as information becomes available through the law enforcement community, we have worked with the industry to provide them information so that they can change what they are doing in terms of security that might be involved at a particular facility.

Ms. WILSON. Let me ask you, how do you do that? Do you have a group of folks working with modeling computers? I mean, how do you go about assessing vulnerability?

Ms. COYNER. There are several ways. One, is that we have participated in the President's Critical Infrastructure Commission in terms of the modeling kinds of activities that they have been involved in with the energy sector, generally. The second way is that we have put together a data base approach to doing simulations of what would happen in particular situations. This particular assessment is really the first time that we have undertaken this kind of a approach to putting together a complete model. We did not do what you might consider extensive modeling or runs of the data for the gas distribution systems, but more looked at the interfaces of where a gas system comes into another transportation facility.

Ms. WILSON. Okay. And one final question—you may have already answered this; someone else may have asked it—but, with respect to both the hazardous liquids and natural gas, what kinds of technologies are becoming available to reduce the cost and increase the reliability of our pipelines? And either Mr. Holmes or Ms. Coyner, or both?

Ms. COYNER. I think there are a number of them. I think two critical areas are materials and non-destructive testing of materials. And the latter is probably the one where we have had the most promising breakthroughs. Those particularly different kinds of what we call "pigs" or "pig devices" or internal inspection devices—and I refuse to wear my "pig" button that someone sent me to wear today. But, those devices allow pipeline companies to inspect their lines for anomalies in the pipeline without causing damage to it, and that is important, in terms of an alternative to hydrostatic testing which can actually damage a line. It is important because it will also—hopefully, it will lead to a cheaper way of more frequently inspecting these lines, as well as a way that protects the environment, because hydrostatic testing can actually cause the failure of a line.

Ms. WILSON. Yes.

Mr. HOLMES. Yes. I would just add, possibly an electronic mapping of the pipelines so we would have a better idea of where the pipelines are actually located and that they are located within the right-of-ways they were designed for. So, a better mapping system would help.

Ms. WILSON. Thank you.

Mr. BARTON. Is that all your questions?

Ms. WILSON. Yes, sir.

Mr. BARTON. Well, we are going to excuse this panel. We want to thank you for your attendance and your cooperation. We had several pages of questions that we provided to the members to ask, which they tended to ignore because they had better questions. So, you are going to have some written questions for the record to submit to you. And I am sure that our distinguished friends that are disguised as empty chairs to my left also will have some questions. I know Mr. Markey and Mr. Pallone and Mr. Dingell will, so we will keep the record open. We will send you some written questions and hope that you can comply as cooperatively as you have in your verbal answers with your written answers.

Ms. COYNER. Thank you, Mr. Chairman.

Mr. HOLMES. Thank you, Mr. Chairman.

Mr. BARTON. Thank you for your attendance.

The Chair would now like to call our second panel. And I am told that all are in attendance.

We have Mr. John Zurcher, who is the Manager for Pipeline Safety with Columbia Gas Transmission Corporation. We have Mr. Richard Cook, who is the Vice President for Washington Gas. We have Ms. Lois Epstein, who is with the Environmental Defense Fund, and we have Mr. Richard Wilson, who is the Vice Chairman for Buckeye Partners Limited, and he is representing the Association of Oil Pipelines and the American Petroleum Institute.

So if you four witnesses could come forward—we want to welcome you on behalf of the subcommittee and the full committee. Your entire testimony is in the record in its entirety. We are going to start with Mr. Zurcher.

STATEMENTS OF JOHN S. ZURCHER, MANAGER, PIPELINE SAFETY, COLUMBIA GAS TRANSMISSION CORPORATION; RICHARD J. COOK, VICE PRESIDENT, WASHINGTON GAS; LOIS N. EPSTEIN, ENGINEER, POLLUTION PREVENTION ALLIANCE, ENVIRONMENTAL DEFENSE FUND; AND C. RICHARD WILSON, VICE CHAIRMAN, BUCKEYE PARTNERS LIMITED, ON BEHALF OF THE ASSOCIATION OF OIL PIPELINES AND AMERICAN PETROLEUM INSTITUTE

Mr. ZURCHER. Thank you, Mr. Chairman.

Mr. BARTON. And we will just go right down the line, Mr. Zurcher, Mr. Cook, Ms. Epstein, and then Mr. Wilson.

We will recognize each of you for 5 minutes to summarize your testimony, and if you need a little extra time we will obviously give you that opportunity.

Mr. Zurcher.

Mr. ZURCHER. Thank you, Mr. Chairman, and thank you, members of the subcommittee, for listening to us. And, good afternoon.

My name is John Zurcher; I am Manager of Pipeline Safety for Columbia Gas Transmission, which is part of the Columbia Energy Group.

Columbia Gas Transmission is a major natural gas transmission company serving the eastern part of the United States. We have over 12,000 miles of interstate transmission pipe in service today.

I am also here on behalf of the Interstate Natural Gas Association of America, INGAA, and INGAA is a trade association which represents virtually all the major natural gas transmission pipelines in North America which collectively transport over 90 percent of the natural gas consumed in the United States. And I am currently the Chair of the Pipeline Safety Committee for the INGAA organization.

Natural gas transmission pipelines are remarkably safe, and I know you have seen the statistics. But the industry is always looking for ways to improve protection to the public, protection to the environment, and protection to our own employees. We feel that we just cannot rest on our good safety record, that our industry actually needs to continue to look toward the future and how new technology can increase safety even more.

Congress passed its last reauthorization, the Pipeline Safety Act of 1996, and that act incorporated two important new concepts. The first one is the risk assessment and cost benefit analysis that deals with new safety regulations. The second one is a voluntary risk management demonstration project. And we know that the act is due for reauthorization at the end of fiscal year 2000.

The Office of Pipeline Safety, or OPS, has recently completed its guidelines for the risk assessment cost benefit process. New rules have been created in a more consensus, oriented, and timely manner. While the risk assessment process itself has not been completely implemented yet, we believe that it will this year. In the meantime, due to the flexibility which Congress gave us in this process, OPS has done a very good job of moving new rules through their approval process.

The risk management demonstration project, the other risk, is a voluntary effort, whereby companies can tailor their safety efforts to address the specific risks along their pipeline system.

Each risk management plan is subject to review and approval by the Office of Pipeline Safety, and we must ensure that our plans provide a superior level of safety compared to the existing regulations. And through this process, OPS solicits public and stakeholder involvement in each of these proposals. This is not a cost-cutting technique. In fact, costs actually go up for the companies that participate. However, the risk management process does allow us to spend our resources more wisely and more effectively.

Five risk management plans have been approved thus far, with several close to approval. The project has helped to bring out about a better understanding among industry and government, which ultimately benefits everyone. Our relationship with OPS, while not perfect, has improved as a result of this increased understanding.

INGAA believes that the current Federal Pipeline Safety Program is effective and benefits the general public. As such, we respectfully ask Congress to continue the program as it now stands. INGAA also wants to see pipeline safety user fees which fund almost the entire OPS budget held at current levels.

I want to thank you, Chairman Barton, and the subcommittee for allowing me to testify today and for inviting me. And we really do appreciate the swift attention that you are paying to our legislation.

[The prepared statement of John S. Zurcher follows:]

PREPARED STATEMENT OF JOHN S. ZURCHER, MANAGER, PIPELINE SAFETY, COLUMBIA GAS TRANSMISSION CORPORATION, ON BEHALF OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Mr. Chairman and members of the Subcommittee, I am John S. Zurcher, Manager of Pipeline Safety for Columbia Gas Transmission Corporation, and Chairman of the INGAA Pipeline Safety Committee. I am speaking today on behalf of The Columbia Energy Group and the Interstate Natural Gas Association of America (or INGAA).

By way of introduction, the Columbia Gas Transmission is a wholly owned subsidiary of The Columbia Energy Group, a Fortune 500 and S&P 500 company located in Fairfax, Virginia and Charleston, West Virginia. Columbia is one of the nation's largest natural gas companies, with assets of about \$6 billion. Its operating companies are engaged in all phases of the gas business, plus marketing, fuel management services and electric power generation. Columbia companies directly or indirectly serve more than 7 million natural gas customers—12 percent of the nation's total—in 15 States and the District of Columbia, and have 53,000 miles of pipeline systems.

INGAA is the trade association that represents virtually all of the interstate natural gas transmission pipeline companies operating in the U.S., as well as comparable companies in Canada and Mexico. Its thirty-four members transport over 90 percent of the nation's natural gas.

I join you today with a positive story to tell. First, natural gas transmission pipelines are an extremely safe mode of transportation for energy; in fact we are unsurpassed in our safety record. Second, government and industry can, and in our case, do work well together in improving public safety. And third, the risk-based regulatory framework that Congress created in the 1996 Pipeline Safety Act reauthorization is an efficient and effective alternative to traditional regulation.

First let me talk about this industry's safety record. Safety is a top priority for our industry. As I have already mentioned, natural gas transmission pipelines, which transport over one-third of the nation's energy, have an excellent safety record. In 1997, the last full year of statistics, there were five injuries and one fatality associated with natural gas transmission lines, and almost all of these were the result of a third party hitting a pipeline with heavy excavation machinery. These figures are encouraging when you consider that there are over 300,000 miles of natural gas transmission pipeline in the U.S. As you can see from the appendix to this testimony, an individual is far more likely to die from lightning or a bee sting, than from a natural gas transmission line accident.

However, we want to continue to improve this record. One fatality is still one too many. That is why a flexible, evolving federal pipeline safety effort is so important. We cannot rest on a good record, and we cannot always look to the problems of the past if we want to avoid accidents in the future.

Let me expand further on that point. Until recent years, the federal pipeline safety program evolved from minimum safety standards coupled with numerous prescriptive mandates. Individual regulations were, in many cases, a response to particular incidents, with little consideration given to overall risk. In other words, the federal pipeline safety program was stuck reacting, instead of studying and ranking the risks that pipeline face.

As a result of P.L. 104-304, reauthorizing the Pipeline Safety Act in 1996, the Department of Transportation's Office of Pipeline Safety (OPS) has joined with industry in exploring ways in which resources—public and private—could be used most effectively to enhance public safety. We both agreed that a risk-based approach to regulation was the key. Together, government and industry worked with Congress for passage of the Accountable Pipeline Safety and Partnership Act of 1996. The term "partnership" in the title is key, because that is exactly what has resulted. The forward-looking leadership at OPS has taken this legislation and created a spirit of cooperation not seen since the first Pipeline Safety Act was passed more than thirty years ago—all with the goal of protecting the public, the environment and industry employees.

The 1996 Act contains two important elements. First, it requires (with exceptions) new safety regulations to undergo a risk assessment/cost-benefit analysis prior to final approval. Based largely on President Clinton's Executive Order 12866, this provision is consistent with the "reinventing government" ideal of smarter, more effective regulation. It is important to note, however, that not all new regulations are required to undergo this analysis. The risk assessment/cost-benefit requirement is waived if a rule is the product of a negotiated rulemaking, a consensus rule, the adoption of industry standards, or with the consent of standing advisory boards within OPS.

When this provision was debated several years ago, some expressed concern that this would lead to "analysis paralysis." However, this provision has not brought the regulatory process to a screeching halt. OPS has continued to move rules through their process, and in fact the time it takes to get new rules through OPS has decreased. One major rule, dealing with pipeline operator qualification, had languished at OPS since 1992 amidst gridlock. When the 1996 Pipeline Safety Act reauthorization passed, however, OPS decided to pursue a negotiated rulemaking. We anticipate that this rule will be successfully concluded this spring. Other rules have been adopted through consensus or embracing industry standards. The trains have not only kept running, they are running better.

I know that OPS is considering at least one rule this year which will require a cost-benefit analysis. We all need to participate in this process in a positive way.

The other important element of the 1996 reauthorization is the Risk Management Demonstration Project. This should not be confused with the risk assessment provision. The risk assessment/cost-benefit analysis looks at new safety regulations which are applicable across the entire industry. Under the Risk Management Demonstration Project, pipelines can voluntarily create their own safety programs, subject of course to OPS review and approval, which would tailor each pipeline's efforts to address the specific risks along its system. As a hypothetical example, consider a rule which would require a pipeline to inspect its facilities once a month in order to look for construction activity that might accidentally lead to a rupture. The rule does not distinguish between areas with different population densities and different levels of construction activity. Therefore, the pipeline is required to inspect their right-of-way in areas where the risk is low just as often as those areas where the risk is high. This situation does not lead to the best allocation of resources.

Under a risk management plan, a pipeline might want to inspect right-of-way in urban areas, where construction activity is greater, once a week, and inspect right-of-way in rural areas on a less frequent basis. In this hypothetical situation, the pipeline is now spending its limited resources in a more effective manner, based on the potential safety risk to its system.

The 1996 Act established a voluntary demonstration project for risk management. Individual pipeline companies have the option of submitting a risk management plan for some or all of their systems. The Department of Transportation must review each application and certify that it provides a "equal or greater level" of safety as compared to compliance under existing minimum standards. In addition, based on a directive from President Clinton, each risk management project must provide "superior safety" in order to gain Departmental approval. The President also directed that OPS provide meaningful public communication on specific risk management proposals, and that a maximum of ten projects be approved prior to the Department making its report to Congress on the progress of the demonstration project.

To date, the department has approved four risk management projects. Another three are pending approval with more at various stages in the process. One of those three pending proposals is one which Columbia Gas Transmission and Columbia Gulf Transmission submitted to DOT last year.

The Office of Pipeline Safety has taken a phased approach to working on and approving individual companies' risk management projects. The first plans approved all involved hazardous liquid pipelines. Very few items in these plans involved alternatives to regulations, but instead they are testing the risk management premise of providing superior safety, environmental protection and service reliability.

The plans involving natural gas pipelines are taking longer to approve. Most items in these plans involve alternatives to current pipeline safety regulations. It is taking longer than expected to work through the technical arguments for these items primarily due to the fact that the existing regulations were often not based on technical justifications.

Columbia is in the final phase of project approval with our "Order" expected in the April, 1999 timeframe. We are looking at a system-wide application of the risk management program which we expect will allow us to better allocate resources to those areas that have the greatest risk, while not compromising safety to the public, the environment or our employees. Columbia's project does involve alternatives to existing regulations, such as: basing inspection and testing of certain facilities on actual performance rather than the calendar; use of inspection and testing techniques that are more in line with today's technology; and providing additional services to our customers while maintaining reliability.

In concluding my remarks on risk management, let me say that industry and government are learning a great deal, especially about each other. Where prescriptive-type regulations are a "snapshot" of what might be good for safety, risk manage-

ment allows safety efforts to evolve and change with new technologies. The general public gets a better product—increased safety—as a result.

Before I talk about what we think should be in a new reauthorization bill, I first want to thank the Congress for passing the Comprehensive One-Call Notification Act last year. I have just been talking about risk, and certainly there is no greater risk to natural gas transmission pipelines than unintentional third-party damage. Many of these accidents can be avoided through better communication between pipeline operators and excavators. That is exactly what the legislation passed last year is designed to do. Without mandates, and without heavy-handed regulations, the One-Call Act creates incentives for states to adopt more inclusive and more effective one-call programs. This is perhaps the single most important pipeline safety measure Congress can enact, because it attacks the greatest cause of pipeline accidents.

The Office of Pipeline Safety has been leading discussions across different industries, trying to identify ways to improve safe excavation procedures. The spirit of cooperation has been terrific. We thank Congress for getting the ball rolling.

Now on to what we would like to see in the next reauthorization. We have an excellent program, and an excellent staff at the Office of Pipeline Safety. INGAA strongly supports the risk assessment/cost-benefit review for new regulations. We want to see it continue.

In regards to the risk management demonstration project, INGAA respectfully request that it also be extended. The Department is preparing its risk management report to Congress now, pursuant to the 1996 Act. We all agree that the concept has merit and deserves to continue. Unfortunately, the approval of risk management plans has taken longer than expected. This is due primarily to the fact that risk management regulation is a new concept, and therefore it has taken time to develop the procedures, and the level of mutual trust, needed to carry the program forward. In addition, the requirement for meaningful public communication has necessitated many public meetings and ways to solicit public input. With so much already invested, we need to continue our good efforts.

As a final note, I want to discuss the OPS budget. The natural gas and petroleum transmission pipelines fund almost 100 percent of the OPS budget through user fees. These user fees are assessed on companies based on the mileage of transmission pipeline in their systems. Because we pay the bill, we have a keen interest in the OPS budget. Based on our safety record, INGAA believes that OPS has the resources it needs to fulfil its mission. Accordingly, we support funding levels which would maintain staffing and program operations at their current level.

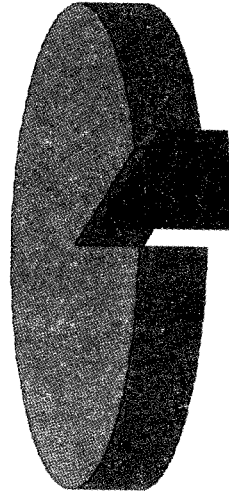
To close, I want to thank you, Mr. Chairman, for moving quickly to examine reauthorization of the Accountable Pipeline Safety and Partnership Act. We believe this Act has lived up to its name in creating a true partnership between industry and government. As I have described here today, our spirit of cooperation has enabled us not only to take some important initial steps to implement the Act, but has carried over to our work on one-call damage prevention as well. We feel that the current public/private partnership for pipeline safety is an excellent one. INGAA is proud of our record of achievement in protecting the public, but we are always trying to improve. We believe the flexible and evolutionary pipeline safety program now in place gives us the tools to do so.

Thanks again, and I would be pleased to answer your questions at the appropriate time.

Transportation-Related Fatalities 1997

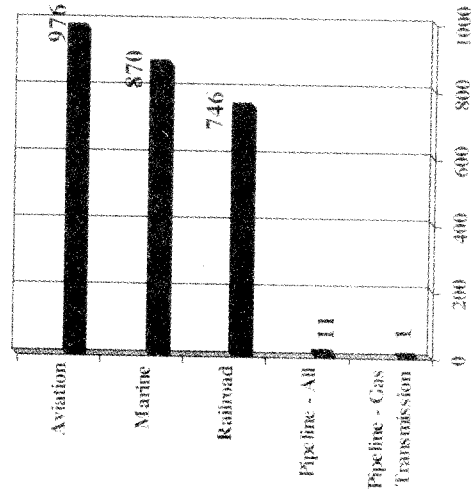
Highway - 42,000

94%

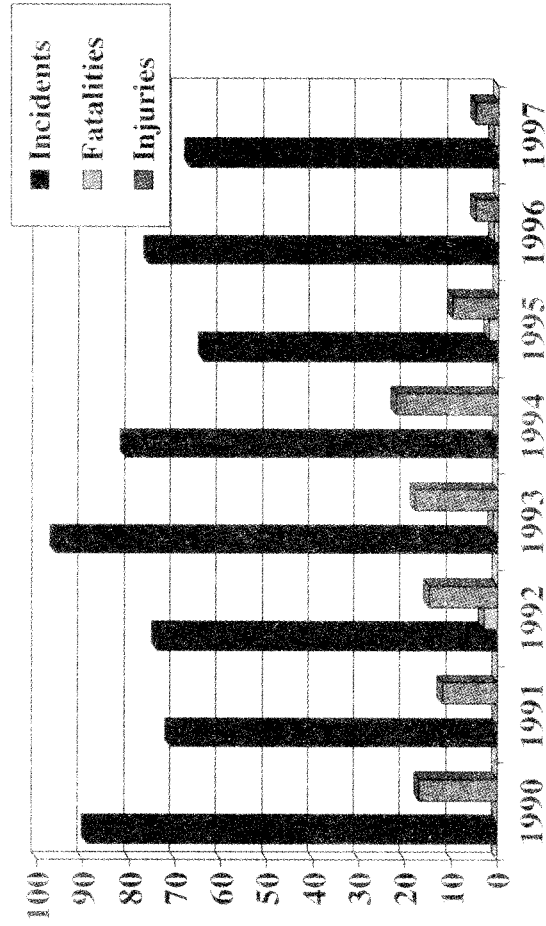


Other - 6%

Sources: National Transportation Safety Board
and the Office of Pipeline Safety, US DOT

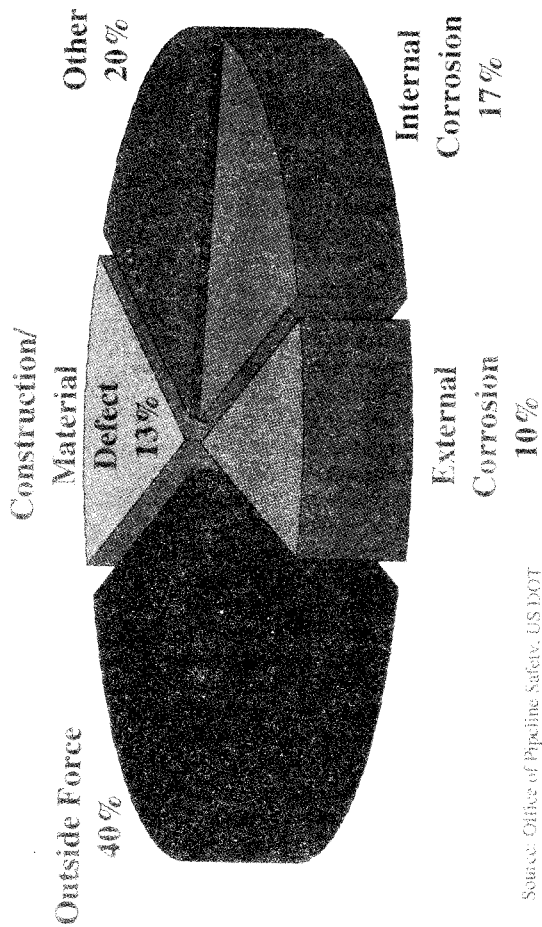


Natural Gas Transmission Pipeline Accident Summary 1990 - 1997



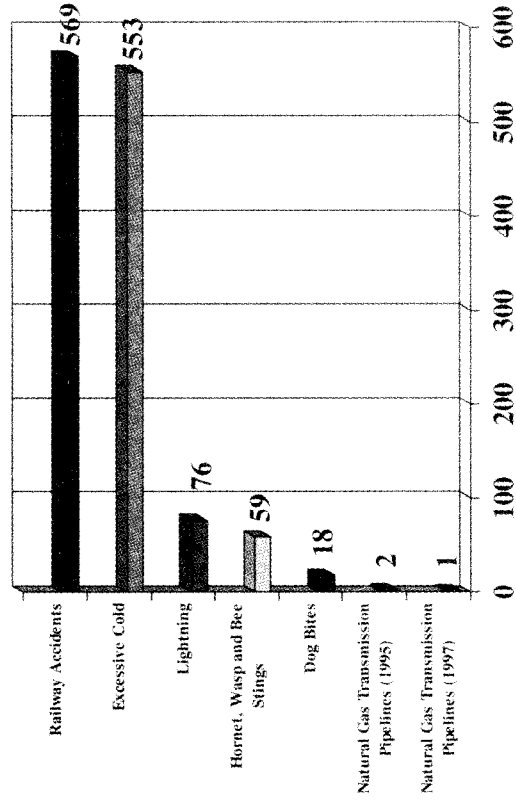
Source: Office of Pipeline Safety, US DOT

Total Number of Natural Gas Transmission Pipeline Accidents, by Cause 1994- 1997



Source: Office of Pipeline Safety, US DOT

Natural Gas Transmission System Relative Risk Comparison U.S. Fatalities 1995



Sources: National Safety Council (1998) and the Office of Pipeline Safety, US DOT

Mr. BARTON. Thank you, Mr. Zurcher.
We would recognize Mr. Cook now for 5 minutes.

STATEMENT OF RICHARD J. COOK

Mr. COOK. Yes, if I may, my name is Richard J. Cook, and I am Vice President of Construction and Technical Support of Washington Gas.

And, Mr. Chairman, if I may, Ms. Coyner used a word that, we, who were who were from agricultural areas, would think as an oxymoron, and that is a smart pig. But, in the industry, it has a meaning that is understood. Also——

Mr. BARTON. That is not as bad as a “smart Congressman.” Some people think that is an oxymoron.

Mr. COOK. Let me say that I am here to represent the American Gas Association, AGA, and Washington Gas. Washington Gas is a local distribution company serving approximately 820,000 meters in the Washington, DC metropolitan area and the surrounding region. Our service area covers 6,648 square miles in Maryland, Virginia, West Virginia, and the District of Columbia. We have approximately 22,000 miles of gas lines.

I am here this afternoon—and I am kind of one of these bottom-line people; we are here to support this reauthorization. And, as is the American Gas Association representing 189 LDC’s, local distribution companies, that deliver gas to almost 60 million homes and businesses in all 50 States.

We are literally the gas company, because we are at the end of the line. In other words, if you look at the production fields, the interstate transmission, the intrastate transmission, and to the burner tip, LDC’s represent that face of the gas industry to the public. The delivery of safe, reliable service at a reasonable cost is paramount to maintaining and growing our business.

The safety record of the gas industry I think is exemplary. With an estimated 1.5 million miles of distribution lines nationwide and serving approximately 60 million customers, our accident rates are extremely low.

Last year Congress gave us another means of lowering this number by enacting the legislation to improve the One-Call system. The One-Call is our principal tool in combating unintentional dig-ins by third parties, the No. 1 cause of accidents on natural gas pipelines. Thank you for strengthening the One-Call system, and thanks to DOT for moving expeditiously to implementing that act.

AGA and Washington Gas, respectfully, urge Congress to reauthorize for another 4 years the current pipeline safety statute. We ask that you allow the initiatives created by this law—risk assessment, cost-benefit analysis, and the establishment of risk management demonstration projects—be continued. With regard to authorization levels, we believe the funding levels approved for fiscal year 2000 should be sufficient to carry this through the next 4 years.

The 1996 law, including a new section modeled after President Clinton’s reinventing Government initiatives for risk assessment and cost-benefits, we think is important. This initiative allows the application of flexible risk assessment and cost-benefit analysis to new pipeline safety standards in order to gather as much information as possible prior to issuing the rule. This analysis is waived

if OPS elects to utilize alternatives such as a negotiated rule-making or consensus rule.

The front-end loading of information and discussion of issues at the beginning of the process leads to better workable rules in the end. Using this approach, OPS has been able to dramatically reduce the time it takes to issue final rules. Furthermore, working with stakeholders throughout the process should result in fewer legal challenges. The Government actually realizes a saving in time, personal resources, and money.

The new approach has neither diminished OPS's ability to issue new regulations nor resulted in rules that do not protect the public or the environment. Experience, to date, has shown that regulators and industry can work together to reach safety objectives. We don't always agree, but we continue to share information and ideas. This leads to a better understanding of differing viewpoints which leads to better results.

I will give you an example of that type of activity that I am discussing. OPS's operator qualification rule is a product of successful negotiated rulemaking. Prior to using the negotiated approach, this rule has been under consideration since 1992. A 1994 DOT proposal suggested the initial compliance costs alone would exceed in excess of \$500 million and operators with successful programs in place would have to change them.

Under the new approach, this was achieved much more quickly, and the final rule will be issued this spring with agreement with virtually all the parties.

We also support the risk assessment and find that, in fact, the local LDC's would like to participate in that.

So I am cutting my discussion short.

Mr. BARTON. We appreciate it.

Mr. COOK. You have my written statement. But again, coming to the bottom line, we support the reauthorization of this bill.

Thank you.

[The prepared statement of Richard J. Cook follows:]

PREPARED STATEMENT OF RICHARD J. COOK, VICE PRESIDENT, CONSTRUCTION AND TECHNICAL SUPPORT, WASHINGTON GAS AND REPRESENTING THE AMERICAN GAS ASSOCIATION

Good afternoon, Mr. Chairman and members of the Subcommittee.

My name is Richard J. Cook and I am Vice President of Construction and Technical Support for Washington Gas here in Washington, D.C. Thank you for this opportunity to appear before the Subcommittee in regard to reauthorization of the pipeline safety statute.

Washington Gas is a natural gas local distribution company (LDC) serving customers through nearly 820,000 meters in the Washington, D.C. metropolitan area and the surrounding region. Our service area covers 6,648 square miles in Maryland, Virginia, West Virginia and the District of Columbia. Our system contains nearly 22,000 miles of natural gas lines.

I am also here this afternoon representing the member companies of the American Gas Association (A.G.A.). A.G.A. represents 189 LDCs that deliver natural gas to almost 60 million homes and businesses in all 50 states.

LDCs comprise that segment of the natural gas industry that delivers natural gas to homes and businesses. We are at the end of a line stretching from the producing fields, through the interstate and intrastate pipeline system to the natural gas burner tip. We are, to the general public, the face of natural gas. The delivery of safe, reliable service at a reasonable cost to our customers is paramount to maintaining and growing our business.

Although each State utility commission has primary regulatory authority over LDCs, federal pipeline safety regulations also have an impact on our operations.

States adopt the federal safety rules as minimum requirements and receive grants of up to fifty percent (50%) of their pipeline safety enforcement costs from the Department of Transportation's (DOT) Office of Pipeline Safety (OPS) each year. This system has worked well and has provided a level of consistency from State to State. Nevertheless, we are always interested in finding better ways to provide safe, reliable service.

Our safety record is exemplary. With an estimated 1.5 million miles of distribution lines nationwide and serving approximately sixty million customers, our accident rate is extremely low. We are grateful that last year Congress gave us another means of lowering that number by, enacting legislation to improve the one-call system. One-call is our principal tool in combating unintentional dig-ins by third parties—the number one cause of accidents on natural gas pipelines. Thank you for recognizing the importance of strengthening the one-call system. And thanks to DOT for moving expeditiously to implement the act. Your actions will result in improved coverage by state one-call laws and assist in the prevention of future accidents.

REAUTHORIZATION FOR THE 106TH CONGRESS

A.G.A. and Washington Gas respectfully urge Congress to reauthorize for another four years the current pipeline safety statute and allow the initiatives created by the 1996 reauthorization—risk assessment, cost/benefit analysis and the establishment of risk management demonstration projects—to continue to unfold. The risk assessment and cost/benefit requirements have been applied to several rules, both final and pending. To date, four risk management demonstration projects have been approved for liquid pipelines and one for a natural gas line, with three more close to approval. With regard to authorization levels, we believe the funding level approved for FY 2000 should be sufficient to carry the program forward for another four years.

UPDATE ON THE IMPLEMENTATION OF THE 1996 REAUTHORIZATION STATUTE

Risk Assessment and Cost Benefit

The policy and regulatory changes imposed by the 1996 pipeline safety reauthorization bill are working well and moving forward smoothly. The 1996 law included a new section modeled after President Clinton's "Reinventing Government" initiatives outlined in Executive Order 12866. This initiative allows the application of flexible risk assessment and cost/benefit analysis to new pipeline safety standards in order to gather as much information as possible prior to issuing a rule. The analysis is waived if OPS elects to utilize alternatives such as a negotiated rulemaking, consensus rule or simply adoption of industry standards if no party objects.

This "front-end loading" of information and discussion of issues at the beginning of the process leads to better, workable rules in the end. Using this approach, OPS has been able to drastically reduce the time it takes to issue final rules. The initial information gathering and analysis takes substantial time, to be sure, but once done OPS is able to move much more rapidly through the formal rulemaking process. Furthermore, working with the stakeholders throughout the process should result in fewer legal challenges. The government will realize savings in time, personnel resources and money.

Of major concern was the suggestion that the new approach would either diminish OPS' ability to issue new regulations, or result in rules that did not protect the public or the environment. This has not proven to be the case. Experience to date has shown that regulators and the regulated industry can work together to reach safety objectives. We don't always agree but we continue to share information and ideas. This leads to a better understanding of differing viewpoints, which can only lead to better results.

Two of OPS' recent implementation activities have had a direct impact on operations at Washington Gas:

- OPS' Operator Qualification rule is the product of a successful negotiated rulemaking. The final rule should be issued this spring.
- OPS is in the process of adopting a consensus plastic pipe standard that has been developed through months of work by stakeholders. OPS is also working with stakeholders to develop consensus corrosion standards.

Case Study: Operator Qualification

In the 1992 reauthorization, DOT was required to issue new regulations that would have required an operator to test and certify individuals who work on pipelines. Under DOT's 1994 proposal the initial compliance costs of this regulation alone would have exceeded \$500 million. Every natural gas utility would have been

forced to adopt the one-size-fits all Federal program and operators with successful programs in place would have been required to make changes.

In the 1996 reauthorization, Congress amended its directive and DOT changed its focus. All the affected stakeholders were brought together to discuss their interests and concerns. Through this approach, a rule was crafted that achieves Congress' original objective while minimizing the impact on operators. The process has not been easy, but the result will be a final rule issued with the agreement of all parties. We commend DOT's approach to resolve this controversial issue and their commitment to implementing and utilizing, the guidelines and principles adopted in the 1996 reauthorization.

Risk Management

The 1996 law also authorized OPS to work with companies on a voluntary basis to develop customized safety plans that may or may not strictly comply with existing safety regulations. These are called risk management demonstration projects. The initial projects are limited to interstate liquid and natural gas pipelines and I understand other witnesses will cover this subject.

Some LDC's, including Washington Gas, are also interested in exploring this concept. Approximately one-half of the average LDC's safety budget is spent in complying with federal and state regulations. The other half is frequently allocated using some type of internal risk assessment tools. Companies have developed expertise in employing these risk assessment methodologies and have developed confidence in them. It seems logical to apply these tools to compliance activities to critically assess whether they truly provide an additional margin of safety.

A.G.A. is participating on a team organized by DOT comprised of A.G.A. member companies and state regulatory and DOT representatives. Their mission is to examine whether risk management is feasible and appropriate for LDCS. We expect a report by year-end and look forward to the study's results.

Funding for OPS

Funding for OPS' safety program comes from user fees assessed on transmission pipelines. A portion of the fees assessed on natural gas interstate transmission lines is passed through to the LDC. This in turn is passed on to the consumer. Congress should, therefore, ensure that the funding level for OPS is both adequate and proper.

During negotiations for the 1996 law, the natural gas industry agreed that OPS needed funding to develop guidelines and protocols for the new initiatives. OPS also needed to be able to clear its backlog of pending regulations and provide adequate inspectors in the field. We believe OPS is well on the way to accomplishing these objectives and urge that funding remain at the FY2000 level for the next four years.

If Congress decides to increase the authorization, the additional funds should come from OPS' reserve. This reserve contains previously collected but as yet unused pipeline safety user fees. It seems appropriate that these monies be used for OPS activities until entirely drawn down.

CONCLUSION

Congress should retain the provisions of the 1996 pipeline safety law and extend the risk management demonstration program. The processes created by Congress in 1996 are working; we ask that they be allowed to continue. OPS has not been hampered by the new requirements of the 1996 law. In fact, the knowledge and expertise of OPS inspectors and personnel have been increased to the benefit of public safety.

Continuation of these programs will bring about greater knowledge and understanding for all parties, leading to better rules and programs in the future. Initiatives such as these represent a real reinventing of government by allowing innovative processes to improve public safety as well as providing a systemic change in the way industry is regulated.

I appreciate the opportunity to appear before you today, and look forward to answering any questions that you may have. Thank you.

Mr. BARTON. Thank you, Mr. Cook.

Now I will recognize Ms. Epstein for 5 minutes.

STATEMENT OF LOIS N. EPSTEIN

Ms. EPSTEIN. Thank you.

Good afternoon. My name is Lois Epstein, and I am a licensed engineer with the Environmental Defense Fund in Washington, DC. EDF is a non-profit environmental research and advocacy organization with nearly 300,000 members nationwide. Previous to EDF, I was an environmental consultant and I worked for U.S. EPA. Since 1995, I have been a member of the advisory committee which oversees the Department of Transportation's Office of Pipeline Safety's work on hazardous liquid pipelines such as those that carry crude oil and gasoline.

My testimony today is on behalf of EDF and its members. EDF also is a co-founder and member of the National Pipeline Reform Coalition, a multi-stakeholder network whose goal is to protect the environment, property, and public safety from pipeline releases.

In my testimony, I will provide you with EDF's analysis and views on the activities of the Office of Pipeline Safety, or OPS, which impact the environment, the existing pipelines safety law, and recommendations for congressional action.

To begin, I refer you to Figure 1, on page 2, of my written testimony which shows annual releases to the environment from hazardous liquid pipelines using OPS's data from 1990 through 1998. I have to respectfully disagree with Assistant Administrator Felder's answer to Congressman Norwood's question, as this figure shows that since 1995, the amount released to the environment has increased annually, including since the 1996 reauthorization. And I did download the data for all of 1998.

Mr. BARTON. Good.

Ms. EPSTEIN. Figure 2 shows that the amount of oil released per incident has been increasing since 1993, indicating that releases may be becoming more serious over time. That is, there were fewer reports in 1998, but the size of the release was increasing.

Mr. BARTON. Would the gentlelady suspend?

I notice you are speaking almost faster than I can listen. We are going to give you sufficient time.

Ms. EPSTEIN. Thank you very much.

There is an oil pipeline spill of tens of thousands of gallons approximately every other day. As oil pipeline releases can and do contaminate drinking water supplies, crops, and residential lands, generate greenhouse gases, kill fish, and cause deaths and injuries from explosions and fires, these two upward trends in annual releases and release size clearly need to be reversed.

Note that for hazardous liquid pipelines, not for gas pipelines, various studies have shown that outside force is not the primary cause of accidents.

While there are undoubtedly some pipeline companies that are effectively preventing releases and protecting the environment, there are others that are not, as shown by the data of transfer oil pipelines.

The Pipeline Safety Act of 1992 gave OPS the mandate to develop pipeline standards that protect the environment. OPS has not, however, issued any environmental protection regulations to date. There simply is no excuse for OPS's complete failure to meet congressional deadlines for environmental protection standards.

Additionally, OPS has an extremely poor record of enforcing existing and developing new safety requirements. On the enforcement

side, the OPS web site shows that the civil penalties OPS proposes to collect in 1997 and 1998 are less than half of what the Office proposed to collect in 1994.

As for developing new safety standards, the National Transportation Safety Board has recommended numerous changes in the oil pipeline program, but OPS has not acted on many recommendations.

The November 1998 NTSB meeting on the investigation of two serious oil pipeline accidents in Texas and South Carolina resulted in strong criticism of OPS by board chairman James Hall. Chairman Hall stated his willingness to raise to Congress the issue of OPS's unresponsiveness. Had NTSB's recommendations been followed OPS might have prevented the deaths of two teenagers in Texas in 1996, as NTSB first recommended improving the corrosion protection standards in 1987.

Given this background, EDF sees the need for four significant amendments to the current pipeline safety law.

First, remove the State preemption language to allow States to exceed Federal requirements for interstate pipelines. And that is a strategy that is used in environmental laws quite commonly. I don't know any statute that doesn't include that.

Second, require that OPS delegate enforcement for interstate pipelines to qualified State agencies.

Third, add release liability provisions as a non-regulatory incentive for improved pipeline performance.

And, four, amend the citizen suit provisions to facilitate private enforcement actions.

These amendments are all discussed in greater detail in EDF's written testimony.

As for implementation issues associated with the existing pipeline safety statute, EDF continues to have significant concerns with the risk management provisions and the extraordinary cost benefit analysis procedures added to the law when it was last reauthorized.

EDF's primary concerns with the risk management demonstration projects are that they do not provide the public with additional information about pipeline risks. And while OPS is using a large proportion of its limited resources for risk management, OPS is not carrying out its congressional mandates and NTSB recommendations to develop standards that would apply to all pipelines except the minuscule mileage currently in the risk management program.

In conclusion, EDF strongly urges Congress to: one, amend the pipeline safety law in the manner discussed to improve environmental protection; two, conduct an oversight hearing on OPS's performance, including how it compares to State performance. Examine if there is a culture at OPS that will not address pipeline and environmental issues effectively. Three, request that the General Accounting Office study the resources OPS devotes to risk management versus other activities, OPS's enforcement record compared to that of other Federal regulatory agencies, and the ability of States now and in the future to take over some of OPS's current responsibilities.

The oil pipeline program offers an excellent opportunity for Congress to be proactive on the environment.

Thank you very much for inviting me to testify today. I hope this information proves helpful in your deliberations.

[The prepared statement of Lois N. Epstein follows:]

PREPARED STATEMENT OF LOIS N. EPSTEIN, SENIOR ENGINEER, ENVIRONMENTAL DEFENSE FUND

Good afternoon. My name is Lois Epstein, and I am a licensed engineer with the Environmental Defense Fund in Washington, DC. EDF is a non-profit environmental research and advocacy organization with nearly 300,000 members nationwide. Previous to EDF, I worked as an environmental consultant for two firms, and for the U.S. Environmental Protection Agency. Since 1995, I have been a member of the advisory committee which oversees the U.S. Department of Transportation Office of Pipeline Safety's work on pipelines transporting hazardous liquids such as crude oil and gasoline.¹

My testimony today is on behalf of EDF and its members. EDF also is a co-founder and member of the National Pipeline Reform Coalition, a newly-formed network of environmental organizations, local government, industry, and labor unions whose goal is to protect the environment, property, and public safety from releases from hazardous liquid and natural gas pipelines.

In my testimony, I will provide you with EDF's analysis of and views on: 1. the activities of the Office of Pipeline Safety (OPS) which impact the environment, 2. the existing pipeline safety law, and 3. recommendations for Congressional action.

The Office of Pipeline Safety's Record on the Environment

To begin, I refer you to Figure 1, which shows "Annual Releases to the Environment from Hazardous Liquid Pipelines" from 1990 through 1998 using OPS accident data. These data show that over 6.3 million gallons of oil and other hazardous liquids are reported released from pipelines on average each year,² more than half the amount released from the Exxon Valdez disaster. Note that Figure 1 shows that since 1995, the amount released to the environment has increased each year.

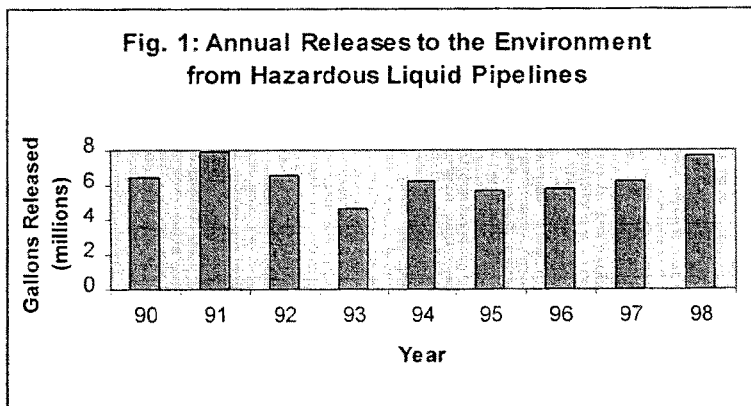
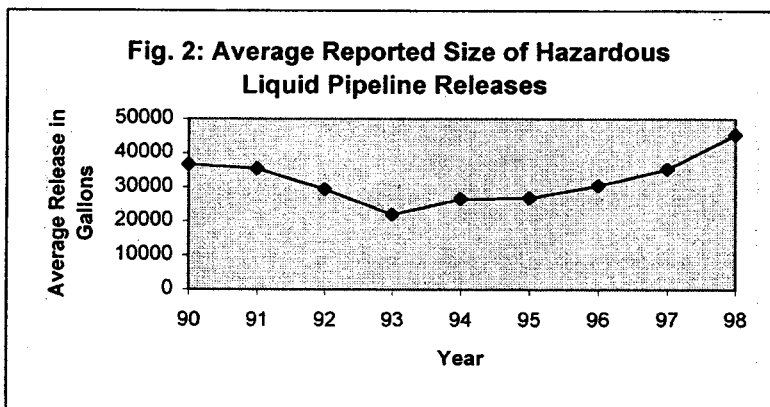


Figure 2 shows that the amount of oil and other hazardous liquids released per incident has been increasing since 1993, indicating that releases may be becoming more serious over time. The average amount released in 1998 was over 45,000 gallons. Annual reporting in the 1990s ranges from 170 to 236 incidents per year, with an average of 200, meaning that there is a pipeline release of tens of thousands of gallons approximately every other day.

¹The U.S. DOT's Technical Hazardous Liquid Pipeline Safety Standards Committee.

²The OPS accident database contains estimates of release size from those reporting the incidents. This database contains both under-reporting and over-reporting of accidents (the latter through redundant reports). Only releases of at least 2,100 gallons or at least \$50,000 in property damage, or which cause a death or serious injury, are required to be reported (see 49 CFR 195.50 for more details).



As hazardous liquid pipeline releases can and do contaminate drinking water supplies, crops, and residential lands, generate greenhouse gases, kill fish, and cause deaths and injuries from explosions and fires, these two upward trends in aggregate annual releases and release size clearly need to be reversed. The following table lists some of the most serious releases from hazardous liquid pipelines and their tank farms in recent years:

Company	Date	Location	Gallons Released	Comments
Shell Pipeline Corporation.	April 1998	St. James, LA	748,000	Crude oil release at tank farm caused by operational problems.
All American Pipeline Company.	December 1997	CA (city not reported to OPS' database).	540,000	Corrosion failure in pipeline.
Williams Pipeline Company.	March 1997	Des Moines, IA ..	1.26 million	Gasoline leak(s) from corrosion at a pipeline-related tank farm, causing extensive property damage
Colonial, Exxon, Texaco, Valero.	October 1996	Houston, TX	1.47 million	Pipelines broke under pressure from severe flooding, spilling oil into the San Jacinto River.
Koch Pipeline	August 1996	Lively, TX	Gaseous release from a pipeline.	Pressurized liquid butane escaped from a corroded section of the liquid pipeline, killing two teenagers.
Colonial Pipeline	June 1996	Greenville, SC	957,600	Diesel fuel spilled into the Reedy River, killing 35,000 fish. Rupture caused by inadequate management controls and training.
Colonial Pipeline	March 1993	Reston, VA	408,000	Fuel spilled into Sugarland Run, a tributary of the Potomac River. Water supplies in the area were shut down for several days, accompanied by air pollution.

OPS data also show reported property damage from hazardous liquid pipeline releases averaged over \$39 million in the 1990s, with an average property damage cost per incident of over \$194,000 (median cost is \$20,000). Based on an analysis by Battelle National Laboratory,³ and EDF's analysis of OPS accident data for 1990-1998, it appears that no more than 20-30% of hazardous liquid pipeline releases are caused by "outside forces," or entities sometimes beyond the control of pipeline companies. The most common causes of releases from hazardous liquid pipelines are corrosion, operational incidents, and material defects.

³ Causes of Pipeline Incidents, Effect of the Aging Infrastructure On Incidents, and Areas of Technology Development," Robert J. Eiber, Battelle National Laboratory, published in the National Pipeline Safety Summit, Newark, New Jersey, June 20, 1994 proceedings, U.S. Department of Transportation, Office of Pipeline Safety.

While there undoubtedly are some pipeline companies that are effectively preventing releases and protecting the environment, there are others that are not, as shown by OPS accident data. This situation is analogous to the environmental protection efforts by non-transportation companies, e.g., petrochemical companies, in the 1960s, prior to passage of the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act in the 1970s. It took passage of these laws and subsequent development of regulations by the U.S. Environmental Protection Agency to ensure that laggard companies and plants met minimal levels of environmental protection. Just like those environmental laws, the Pipeline Safety Act of 1992 gave OPS the mandate to develop pipeline standards that protect the environment—OPS has not, however, issued any environmental protection regulations to date.

Of particular significance and despite an October 1994 Congressional deadline, OPS has not even proposed a rule under section 60109 of the Pipeline Safety Act that identifies areas “unusually sensitive to environmental damage” if there is a hazardous liquid pipeline accident. OPS also was instructed by Congress to prescribe regulations by October 1995 requiring periodic inspections of pipeline infrastructure in such areas to ensure they have adequate integrity to continue operations. There is no excuse for OPS’ complete failure to meet these deadlines.

Additionally, OPS has an extremely poor record of enforcing existing and developing new safety requirements. On the enforcement side, the OPS web-site shows that the civil penalties OPS proposes to collect in 1997 and 1998 are less than half what the office proposed to collect in 1994 (\$0.5 million in 1997-8, down from \$1.14 million in 1994). Because the penalties for violations and releases are likely to be so minimal, it frequently can be cheaper for pipeline companies to pay fines and cleanup costs than to prevent pollution.

As for developing new safety standards, based on its investigations of pipeline accidents, the National Transportation Safety Board (NTSB) has recommended, but OPS has not implemented, the following changes in its hazardous liquid pipelines program:⁴

- require hazardous liquid pipeline operators to assess the adequacy of their pipelines to operate at maximum allowable operating pressures *on a periodic basis* (emphasis added);
- revise hazardous liquid pipeline regulations to include criteria similar to the regulations in place for natural gas pipelines to evaluate the adequacy of cathodic protection (i.e., a common type of corrosion protection) systems—first recommended by NTSB in 1987 and again in 1998 after the deaths of two teenagers in Texas in 1996;
- modify the hazardous liquid pipeline accident data collected in a manner that would allow OPS to perform methodologically sound accident trend analyses and to evaluate pipeline operator performance using normalized accident data.

EDF research has identified several additional deficiencies in the OPS regulatory program which likely result in unnecessary environmental pollution. At a minimum, OPS needs to:

- establish performance standards for leak detection systems, so that each hazardous liquid pipeline utilizes adequate leak detection;
- address pipelines that transport liquefied gases (rather than the oil they previously carried), including notification to OPS and the public of the change in service and appropriate design and operating standards;
- require that pipeline breakout tanks, which store hazardous liquids and are an integral part of the transportation of hazardous liquids by pipelines, be designed and operated in a manner that prevents contamination of the environment (e.g., requiring corrosion protection for all breakout tanks and attached piping, double-bottoms for new breakout tanks to contain leaks, etc.);
- require reporting of spills or leaks of at least one barrel (42 gallons) rather than 50 barrels, releases where estimated property damages are at least \$5,000 (as was true in the past) rather than \$50,000, and leaks that pollute groundwater in addition to those that pollute surface water; and
- address the significant methane emissions from natural gas pipeline compressor stations, high-bleed pneumatic devices, pipeline maintenance, dehydrators, and fugitive emissions using existing technologies,⁵ as methane is a strong greenhouse gas that contributes to climate change.

⁴“Evaluation of Accident Data and Federal Oversight of Petroleum Product Pipelines,” National Transportation Safety Board, NTSB/SIR-96/02, Adopted: January 23, 1996.

⁵“Opportunities to Reduce Anthropogenic Methane Emissions in the United States: Report to Congress,” Office of Air and Radiation, EPA 430-R-93-012, October 1993.

EDF research also has identified the Y2K computer and embedded chip problem as a significant issue for the pipeline industry. Gas and oil pipelines are highly computerized, with numerous embedded chips monitoring and controlling operations. Based on the latest data from a September 1998 governmental survey which includes responses from companies representing approximately 70% of oil pipeline deliveries, only 12-35% of the companies had completed Y2K compliance testing for their critical operations.

The Federal Pipeline Safety Law

EDF sees the need for four significant amendments to the current pipeline safety law:

1. Remove the state preemption language;
2. Require that OPS delegate enforcement for interstate pipelines to qualified state agencies;
3. Add release liability provisions; and,
4. Amend the citizen suit provisions to facilitate private enforcement actions.

First, because states differ in their environmental protection needs and because the regulatory and enforcement records of OPS are inadequate as discussed above, EDF sees an urgent need for a change in section 60104(c) of the pipeline safety law to allow states to exceed federal safety and environmental protection standards. Such a change would enable states to address their need for more stringent safety and environmental standards whenever appropriate (e.g., more closely spaced valves to protect certain areas, increased or different inspection requirements, etc.), and would make the pipeline statute consistent with an aspect of the major federal environmental protection laws that works quite well. Notably, the language used for such a change should ensure that state standards are "compatible" with federal pipeline safety and environmental protection standards (the statute now contains such language for intrastate pipelines), so as not to inhibit transportation at state boundaries in any way.

Second, the current pipeline safety statute needs amendment to ensure that qualified state agencies become the federal government's "agents" to inspect and enforce regulations for interstate pipelines. Like the preemption issue, this change allows states to step in when they find the efforts of the federal government to be inadequate. I understand that the Subcommittee Chair will receive a letter for the hearing record on this topic from City Attorney James Pates of Fredericksburg, Virginia.

Third, EDF proposes that Congress add significant release liability provisions to the pipeline safety law, modeled on those in the Oil Pollution Act of 1990 (OPA), as a strong incentive to prevent releases and reduce their size. U.S. Environmental Protection Agency data show that spills over 200,000 gallons have been reduced by over 60% since OPA's enactment.⁶

Last, section 60121, "Actions by private persons," needs to be amended to facilitate private enforcement. First, section 60121 only allows citizens to file suit for violations of OPS requirements, not for posing "imminent and substantial endangerment to health or the environment," as is allowable under section 7002(a)(1)(B) of the Resource Conservation and Recovery Act of 1976 (RCRA). This change would enable those affected by pipeline releases to file suit even if the release occurred as a result of regulatory gaps. Second, section 60121 currently prevents citizens from proceeding with litigation if OPS is pursuing administrative proceedings, and should be amended to allow citizens to proceed unless OPS or the appropriate state authority "is diligently prosecuting a civil or criminal action in a court of the United States or a State" (emphasis added, from RCRA section 7002(b)(1)(B)), as environmental laws allow. Third, the statute should permit citizen plaintiffs to seek imposition of civil penalties on violators of requirements rather than merely injunctive relief, to increase the incentive for compliance.

As for implementation issues associated with the existing pipeline safety statute, EDF continues to have significant concerns with the risk management provisions in section 60126, and with the extraordinary cost-benefit analysis procedures added to the law when it was last re-authorized in 1996. The following subsections describe EDF's concerns.

Risk Management Demonstration Projects. Since enactment of the 1996 law, OPS has spent significant resources on the Risk Management Demonstration Project program, which come at the expense of OPS' other regulatory development and enforcement responsibilities. EDF also is concerned that the public gains little from this program because it (and all the involved states) are not part of the decision-making

⁶"ERNS and OPA 90: Emergency Response Notification System (ERNS) Fact Sheet," Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, EPA 540-F-97-012, April 1997.

process and do not have access to the risk information identified by the companies involved.

Additionally, OPS may be approving projects for companies that have less than adequate safety and environmental records, and OPS does not have a plan for how the lessons learned will translate to the industry as a whole. While it may be argued by the companies involved and OPS that the program is the best way to make company-specific regulatory decisions, without an enormous infusion of resources to OPS and the state pipeline agencies, such an individualized oversight program could not possibly be carried out for the over 3,000 operators of gas and hazardous liquid pipelines with their approximately 2 million miles of pipelines.

During the two year period of this program, OPS only has approved four of these projects and granted only one regulatory exemption. To the public, it appears that this program might be useful in building business-to-government relationships, but it in no way provides the public with additional information about pipeline risks, nor does it demonstrate problems with existing standards that need to be overcome through an individualized process. In fact, because companies can undertake nearly all these actions without the formal involvement of OPS (e.g., implementing environmental management systems), it is unclear why this program even needs to be part of the statute.

Cost-Benefit Analysis Procedures. Cost-benefit analysis is a limited and imperfect tool. Costs tend to be overstated and benefits understated for a variety of methodological reasons, and such analyses are very resource-intensive to conduct. In light of these problems, EDF has three specific and ongoing concerns with the provisions in the current law: 1) There is no dollar threshold in the law for regulatory costs under which these complex, uncertain, and time-consuming analyses do not have to be performed, thus providing limited benefit in some cases while using extensive OPS resources; 2) The statutory language places far too much weight on this inherently limited and uncertain process, requiring its use as a decision rule rather than as a decision tool. In other words, it requires that any new standard demonstrate that benefits justify costs, so each new regulation can be interminably litigated on these grounds; and 3) Despite EDF's efforts, OPS staff have not included language covering environmental benefits into any of its draft documents on performing cost-benefit analyses.

Recommendations for Congressional Action

Given the increasing trends for oil pipeline releases, OPS's excessive focus on Risk Management Demonstration projects at the expense of Congressionally-mandated regulatory development and enforcement, and the inability of states to act when the federal government fails in its responsibilities, EDF strongly urges Congress to:

1. Conduct an oversight hearing on OPS' performance, including how it compares to state performance on intrastate pipelines,
2. Request that the General Accounting Office study the resources OPS is devoting to risk management versus other activities, OPS' enforcement record compared to that of other federal regulatory agencies, OPS' actions with respect to National Transportation Safety Board recommendations compared to the actions of other transportation agencies to NTSB recommendations, and the ability of states now and in the future to take over some of OPS' current responsibilities.
3. Amend the pipeline safety law in the manner discussed in the previous section.

Thank you very much for inviting me to testify today. I hope this information proves helpful in your deliberations.

Mr. BARTON. Thank you, and it has proved helpful.

We will now recognize Mr. Richard Wilson. Again, your testimony is in the record; it is in its entirety. And we will recognize you for 5 minutes.

STATEMENT OF C. RICHARD WILSON

Mr. WILSON. Thank you. Mr. Chairman, it is my impression that your subcommittee desires to take an earlier and effective look at the reauthorization of pipeline safety standards, and I wanted to put right up front, with respect to the comment of the oil pipeline industry, that we support your interest in an expedited reauthorization of the pipeline safety program.

Recent pipeline safety legislation, which includes the One-Call bill last year and reauthorization in 1996, has been highly success-

ful in broadening the scope of protection and increasing the resources applied to safety in our business.

My remarks today are presented on behalf of the Association of Oil Pipelines and the American Petroleum Institute. These two organizations represent the vast majority of the oil pipeline industry.

I am Dick Wilson, vice chairman of Buckeye Pipeline Company, and my purpose today is to give you the perspective of a chief operating officer with over 10 years experience in my company and my impression of the attitudes and the opinions of my industry colleagues.

The oil pipeline industry delivers over 700 million gallons of petroleum fuel per day. In terms of gasoline alone, this represents more than 25 million vehicle fill-ups per day. This volume of petroleum is based on the demand of the American people. Our families depend on petroleum for mobility, for heat, and the very strength of the U.S. economy.

The oil pipeline industry has a vested interest in safety. No release of petroleum into the environment is acceptable. Although we look to OPS as a yardstick for our performance, the responsibility is ours.

Recently, the industry has voluntarily undertaken a comprehensive review of data concerning pipeline accidents and spills to better understand our performance. We cannot manage what we don't know.

One of the things that we would like to have is even better data. Accordingly, the oil pipeline industry has begun a new, aggressive program of tracking safety and environmental performance. Under this program, and among other things, the industry will track releases down to the level of five gallons per occurrence.

Given the cost of failure, this industry has a vested interest in positive performance, adhering to standards, and pushing its own envelope for the installation of safe equipment and operating procedures.

I have been at spill sites; I have been appalled at their consequences. I have talked to the people, and I have paid the bills. We want no more of it.

Thank you.

[The prepared statement of C. Richard Wilson follows:]

PREPARED STATEMENT OF C. RICHARD WILSON, VICE CHAIRMAN, BUCKEYE PARTNERS, L.P. ON BEHALF OF THE ASSOCIATION OF OIL PIPE LINES AND THE AMERICAN PETROLEUM INSTITUTE

I am C. Richard Wilson, Vice Chairman of Buckeye Partners, L.P. Buckeye operates, through wholly owned subsidiaries, 3,500 miles of pipelines carrying refined petroleum products, including gasoline, jet fuel, diesel fuel, heating oil and kerosene. Our facilities connect delivery locations in Illinois, Indiana, Michigan, Ohio, Pennsylvania, New York, New Jersey, Connecticut and Massachusetts. I am here today representing the Association of Oil Pipe Lines and the American Petroleum Institute.

The Association of Oil Pipe Lines (AOPL) is an unincorporated trade association representing 57 common carrier oil pipelines companies. AOPL members carry nearly 80 percent of the crude oil and refined petroleum products moved by pipelines in the United States. The American Petroleum Institute (API) represents over 400 companies involved in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining and marketing. Together, these two organizations represent the vast majority of the U.S. pipeline transporters of petroleum and petroleum products.

INTRODUCTION

Pipeline safety and pipeline integrity are top priorities for our industry. The emphasis on safety and integrity is woven into the fabric of our corporate decision making and the industry-driven initiatives undertaken by our trade organizations. This emphasis has made pipelines the safest mode for moving petroleum and petroleum products and one we are constantly striving to make safer.

We understand that the government has a duty to the public to assure the safety of the transportation systems in this country. Thus, we appreciate the work of this Committee and the important and positive role played by the Department of Transportation's Office of Pipeline Safety (OPS) in providing this assurance. We especially appreciate OPS's ability to bring industry and other affected interests together to work cooperatively to raise the overall level of safety. OPS has been an ally in our pursuit of excellence, particularly in the last three years.

However, it is important for the Committee to understand that our industry can not depend solely on the federal government or the Office of Pipeline Safety to tell us how to operate our pipelines in a safe and environmentally responsible manner. Compliance with OPS rules and regulations is only a subpart of our constant concern with effective management of safety and environmental risks. We view ourselves as the stewards of our industry. We take responsibility for operating our pipelines safely and with respect for the environment. If you think about it, it should be obvious that this would be the case. We work in the oil pipeline industry, but we are also citizens. We care about the environment. Like the rest of the country, our sensitivity to our environmental impact has grown steadily over the years. We are determined to operate the safest possible pipeline systems.

A breach in pipeline integrity is a fundamental threat to our stewardship of this enterprise and its assets. A pipeline accident is expensive, and we quickly lose the ability to influence the cost. Further, a pipeline accident is enormously disruptive. It threatens the loss, for an unknown period of time, of our ability to control our business. We simply must avoid these situations. We would do our best to avoid them under any program of safety regulation.

SUMMARY

With that introduction, I'd like to leave you with four principal points in my testimony today:

1. The public-private partnership approach of the OPS is working and should be continued and strengthened.
2. The OPS Risk Management Demonstration program is successful and promises safety and environmental results exceeding those available from existing regulations. Congress should find a way to allow risk management to be more broadly adopted in the OPS pipeline safety program.
3. The oil pipeline industry is moving forward with initiatives of its own to enhance safety and environmental protection results.
4. The current OPS program is making good progress under current law and at existing funding levels, which should be extended in real terms.

Congress and OPS should continue the good work already in progress and strengthen the public-partnership in our federal pipeline safety program.

Congress has done an excellent job with the two most recent pieces of pipeline safety legislation that have become law. Both these efforts had strong bipartisan support. Most recently, in the 105th Congress, the Comprehensive One-Call Notification legislation was enacted as part of the Transportation Equity Act for the 21st Century. The One-Call provisions you enacted address the leading cause of large volume releases from pipelines—inadvertent damage during excavation. The law is less than a year old, but it has already brought together a broad spectrum of public and private stakeholders to deal with this problem. The participants, working on a voluntary basis, are developing a comprehensive report on best practices in underground damage prevention. These participants come from a number of industries and jurisdictions, many of whom are not subject to direct federal regulation. OPS is using an open, consensus process to create a government-private partnership that has the affected groups checking their differences at the door and working together. This is an excellent initiative, and you should be proud of it.

The willingness to work together we are seeing in implementing the One-Call bill follows naturally from its predecessor, the Accountable Pipeline Safety and Partnership Act of 1996. Both these laws stress cooperation between government and industry rather than command and control. Since enactment of the 1996 amendments a regulatory logjam has broken. Rulemakings that were languishing have moved forward. New initiatives are making progress rather than bogging down in fights

among constituencies. We believe the record shows that the cooperative model works. The 106th Congress should continue to support and strengthen partnership and cooperation in the federal pipeline safety program.

The Risk Management Demonstration program you authorized in 1996 is a success, and the 106th Congress should find a way to permit application of these powerful principles more broadly in the program.

Four oil pipeline risk management demonstration projects are in operation or near approval. Each project is described in the testimony below. OPS is carrying out these projects in a completely open fashion. Anyone with access to the internet can find all the detail they want on the OPS website <http://ops.dot.gov> under PRIMIS (Pipeline Risk Management Information System). The bottom line is that these are good nuts-and-bolts projects that offer the regulator the chance to really learn how pipeline systems operate and what the risks are. All are providing enhanced protection above that required by existing regulations. We believe these improvements could be spread throughout the OPS program with your help. We also believe systematic and widespread recognition by federal regulators of risk management would lead to a far more effective and efficient regulatory program.

The oil pipeline industry is moving forward with initiatives of its own to enhance safety and environmental protection results.

Our industry has a number of self-generated initiatives aimed at raising the performance bar for our companies. One such program is a joint AOPL/API initiative on environmental protection launched last year. We have undertaken a comprehensive review of available federal data on past pipeline spills to determine what this data can teach us about pipeline accidents. We hope to mine this database to better understand what determined past safety and environmental performance. Looking forward, our companies have begun an ambitious program to voluntarily report to API internal data that will focus on a wider range of accidents and the causes and frequency of smaller spills—including those that are not required to be reported to either the federal or state governments. You cannot manage what you don't measure. We are investing resources to create a more comprehensive database because we believe we will be able to use it ourselves to help our companies to reduce the number, size and impacts of spills.

We do not recommend major change in the pipeline safety program in the 106th Congress. We just need to keep the progress coming in what is basically a well-run program.

We pay for OPS through user fees. We think the current level of authorization for the OPS program is about right and should be extended in real terms for at least four more years.

DISCUSSION

With that summary, the remainder of my testimony will further describe the interaction between the pipeline safety program and our companies' own programs to manage safety and environmental risks. I will also include remarks on our efforts to address the Y2K issue.

COOPERATION BETWEEN INDUSTRY AND OPS

Under current law, current practice and under the current management at the Department of Transportation, the Office of Pipeline Safety is a positive force in our efforts to ensure safety and protection of the environment in oil pipeline operations. Often working in consultation with OPS, the industry has developed programs, training and operational standards designed to avoid spills. The Office of Pipeline Safety has recognized the effectiveness of these standards by adopting and incorporating them into OPS regulations.

It has been very helpful to have the Office of Pipeline Safety working with us in our safety efforts. OPS has been willing to provide guidance and recommendations on how to make industry's programs more effective. Congress facilitated this cooperative approach with the changes made to the Pipeline Safety Act through the 1996 reauthorization. We are here to congratulate you on these changes and to tell you that they are working. The changes you made have had a very positive effect on safety and environmental protection.

The 1996 reauthorization added two important new elements to the pipeline safety program. First, it enhanced the effectiveness of pipeline safety regulation by requiring new safety regulations to undergo a risk assessment and cost benefit analysis based largely on President Clinton's Executive Order 12866. Second, Congress

authorized OPS to carry out a Pipeline Risk Management Demonstration Project. Under this program, OPS could approve new company-designed processes to manage safety and environmental risks. As a result of an Administration directive, these risk management processes would be designed to achieve superior results, significantly exceeding the level of safety that would be gained by compliance with existing standards. The goal was to enable the pipelines to use risk management tools to address the greatest threats to pipeline integrity on a specific segment of pipeline and to learn from these efforts how to better manage risks across pipeline systems.

IMPACT ON OPS REGULATIONS

The ideal of the risk assessment and cost benefit analysis is to achieve smarter, more effective regulations at a lower cost. In addition, Congress encouraged OPS and its stakeholders to work together to develop alternatives to traditional regulatory rulemaking by waiving the risk assessment and cost benefit requirement if a rule

- is developed through negotiated rulemaking,
- is a consensus rule,
- adopts industry standards, or
- is adopted with the consent of OPS technical advisory boards.

To their credit, OPS seized this opportunity to reach out to all stakeholders, including pipelines, on a number of regulatory mandates that had been languishing. By working together with the stakeholders using these alternatives to traditional rulemaking, a lot of good work has been done and a veritable logjam of initiatives that will promote safety and environmental protection has broken loose. More importantly, the stakeholders like the results. And they are good results.

EXAMPLES

Excavation Damage Prevention

One of the greatest risks facing pipelines is encroachment from expanding urban populations. Pipelines laid in the '50s and '60s in largely rural areas are now part of our suburban landscape. The largest source of large volume pipeline releases are accidents caused by construction crews digging into the ground and inadvertently damaging the pipe with a mechanized auger, post hole digger, backhoe, or other excavation equipment. Even a nick in the specially coated pipes can lead to corrosion causing leaks years down the road. Despite conspicuous pipeline markers and regular mailings by pipeline operators, many people are not really aware of their pipeline neighbors. In an effort to educate communities about pipelines, the OPS and industry have worked jointly on a more effective outreach effort.

The OPS and industry sponsored damage prevention quality action team (DAMQAT) included stakeholders from OPS, the pipeline industry, the states, the contractor community, the insurance industry and the general public. They have worked together to develop a new campaign aimed at increasing awareness of pipelines in the excavator community and to increase community awareness of the presence of pipelines. Most pipeline operators already significantly exceed the minimum requirements for public education programs. We recognize the value of an educated citizenry both as pipeline facility neighbors and sources of valuable information about activities along pipeline right-of-ways, including potential or actual emergencies. The DAMQAT educational program is testing new outreach methods and messages. The program is being pilot tested in three states—Virginia, Georgia and Tennessee. Both pre-program and post-program surveys are being conducted to help judge the effectiveness of the program. While the pilot program has not yet run its full term, calls to damage prevention centers in the pilot states are up and incidents are down.

Mapping Initiative

OPS and industry conducted a similar outreach effort to develop a national pipeline mapping system. OPS brought all the stakeholders to the table to form the Mapping Quality Action Team. The Mapping Team first developed requirements for a system of national maps useful to multiple members of the federal family without costing any party an inordinate amount of money. Using standards built on those of the U.S. Geological Survey, the Team developed standards for national and state repositories of pipeline maps and other location information. The system, when complete, will show the location and selected attributes of all major pipelines. OPS then intends to add data layers to the mapping system. These layers could include population, unusually sensitive areas, natural disaster probability and high consequence areas, hydrography, and transportation networks.

Unusually Sensitive Areas

In implementing its responsibilities to identify areas along pipeline rights-of-way that may be especially sensitive to oil in the environment, OPS brought all stakeholders together to develop a set of guiding principles. These areas include drinking water resources and significant ecological resources. OPS conducted a series of meetings and workshops to develop criteria to identify those resources that constitute an "area unusually sensitive to environmental damage" (USA). The pipeline industry helped to sponsor these workshops. The OPS was successful in developing criteria for determining a drinking-water USA and has a proposed set of criteria for ecological resources. Because several federal agencies have oversight over the environment, a consensus definition of USAs has been difficult to achieve. It is particularly difficult to predict the impact such a definition might have once it is in place.

In an effort to move the process forward, and to test the definition developed through the workshop process, the pipeline industry, under the umbrella of the API, has developed an industry guidance document on the definition and its initial use. This guidance document will be published in the next few months and industry will begin a voluntary effort to use the definition and develop an understanding of its impact on risk assessment and risk management efforts. Feedback will be shared with OPS as it develops the USA definition further and incorporates the definition into regulations.

Operator Qualification

Little progress was made on DOT's operator qualification rule until, following the 1996 amendments, the OPS initiated a negotiated rulemaking. OPS brought all stakeholders, including interstate and intrastate carriers, state safety officials, unions representing pipeline workers and standards organizations to the table for a negotiated rulemaking. A proposed rule was issued last October and a final rule is expected shortly. As a result of the negotiation process, a good result was achieved in much less time than a traditional rulemaking takes.

Corrosion Rulemaking

Last August, the OPS initiated a consensus rulemaking with the National Association of Corrosion Engineers, pipelines, state safety inspectors and the public. By December, the group had developed a draft rule that was widely circulated. Based on comments received, the group met again and is expected to have a proposed rule by mid-year. To move from initiation of the rulemaking process to a proposed rule with buy-in from the major stakeholders in six months demonstrates how far the pipeline safety program has come. It shows how effective the new approach has been to moving the program forward to achieve an even greater level of safety in what has been a very effective program.

RISK MANAGEMENT DEMONSTRATION PROGRAM

In an era when every dollar must count to its fullest potential, all of our companies have moved towards use of comprehensive risk management systems that continuously monitor the thousands of factors affecting pipeline operations and integrity to focus on the greatest risks. Many of these efforts go way beyond anything being requested or required by our safety partners in state and federal government.

The Office of Pipeline Safety has supported and encouraged these industry initiatives. Congress too recognized the potential effectiveness of these programs when it authorized the risk management pilot project in the 1996 reauthorization act. Four oil pipeline risk management demonstration proposals to the Department of Transportation are approved or are near approval. Each of these is summarized below. Details are available on the OPS website <http://ops.dot.gov> under PRIMIS (Pipeline Risk Management Information System).

OIL PIPELINE RISK MANAGEMENT DEMONSTRATION PROJECTS

Equilon Pipeline (formerly Shell Pipeline)

This project was originally submitted by Shell Pipeline and has been continued after Shell and Texaco joined to form Equilon in 1998. The project would develop and evaluate a pilot Risk Management Program for Equilon with the goal of future expansion and integration company-wide. The 4-year demonstration project embodies a multi-faceted approach to enhancing Damage Prevention and Emergency Response on both a 260-mile segment of a 502-mile CO₂ pipeline from Cortez, CO to Denver City, TX and a 205-mile segment of a 250-mile pipeline transporting ethylene from Deer Park, TX to Napoleonville, LA. Consistent with improved management of the risk of external damage, heightened emergency preparedness, and appropriate technical assurance, OPS will allow Equilon to operate a 25-mile por-

tion of the CO2 pipeline demonstration segment at a slightly higher pressure, achieving an approximate 20% increase in throughput, without constructing a new mid-line pump station.

Mobil Pipe Line

Mobil will work with OPS to demonstrate application of Mobil's Environmental, Health and Safety Management System to achieve enhanced release prevention and tank integrity at Mobil's crude oil storage facility at Patoka, IL. OPS will get first-hand experience with how aboveground storage tank standards address the most important risks at tank facilities. These same standards are proposed for adoption into the pipeline safety regulations.

Phillips Pipe Line

The project will use Phillips' risk management system to enhance protection in connection with all company and third-party excavations along a 60 mile-long segment of both a 12" and an 18" refined products pipeline connecting Phillips Sweeny Refinery to its Pasadena, TX terminal.

Chevron Pipe Line

The goal of this project is to demonstrate that application of Chevron's risk management program to two 330-mile-long 8" pipelines provides superior protection for the system. The Salt Lake Products Pipeline System carries refined products from Salt Lake City, UT to Boise, ID.

Each risk management demonstration project provides enhanced protection above that provided by existing regulations.

The Chevron, Phillips and Mobil projects involve no exemption from existing regulations. Equilon's plan provides for an exemption from existing OPS regulations to accomplish the pressure increase on the 25-mile portion of the CO2 line. Equilon and OPS both believe the risk control activities proposed under the project provide superior safety for both lines.

The primary benefit of these projects is the knowledge gained by OPS about how to achieve protection in excess of that provided by current regulations in specific real world situations. For example, in the Mobil project, the OPS will learn lessons about storage tank standards that can benefit the entire program when standards are made final. An additional benefit for our companies is that we obtain validation from our regulators that the application of the risk management techniques we use and believe in provide enhanced protection according to the regulators' metrics.

REAUTHORIZATION

The liquid industry believes the Office of Pipeline Safety has an excellent program. Since the program is primarily funded with user fees, this is not lightly stated. The industry believes the current level of staffing is appropriate for the responsibilities of that office and support continuation of the program at the present level.

The risk assessment and cost benefit analysis and the regulatory alternatives created under the last reauthorization have revitalized the pipeline safety program and offer the promise of making it much more efficient and effective in using resources made available to OPS. The regulators are talking to all parties affected and the response has been overwhelming. Communication has become a real dialogue that is truly moving the safety program forward.

The risk management demonstration project is still in a fairly nascent stage but initial results appear to be positive. The OPS has been cautious in moving the program forward, which is probably appropriate at this stage. As the public becomes more comfortable with the program and the parties learn more about each other, we expect the benefit to far exceed the cost. We need to continue these good efforts.

The bulk of the OPS program is funded through user fees paid by the gas transmission and liquid pipeline industry. The user fee is assessed based on mileage of pipeline. We have a keen interest in keeping the OPS program as efficient as possible. The current program is working well. The oil pipeline industry supports continuing the current funding levels in real terms.

Y2K COMPLIANCE

As the world moves towards the year 2000 and concern grows over the ability of the industrial community to function due to the "millennium bug," the pipeline industry and the OPS have been in the forefront in addressing the problem. Last summer, the President's Council of Y2K Compliance tasked the Federal Energy Regulatory Commission with the job of assessing the oil and gas industries' state of readiness. By August, the industries, the FERC and the OPS had developed and agreed

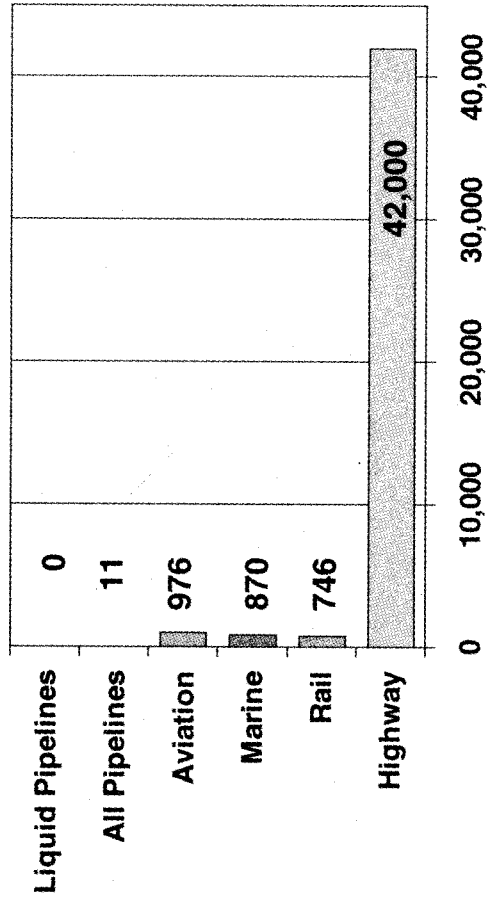
upon a survey best aimed at achieving that answer. John Koskinen, who leads the Presidents Council, has referred to the oil and gas working group as the Council's best example of a successful working group. Working as one and sharing mailing lists to achieve the greatest level of dissemination, the industry survey went out. We now have two quarters of the survey under our belt. The results can be viewed on the website [http:// www.api.org](http://www.api.org). The bottom line for us is that we believe that our survey results, coupled with what we know intuitively about our own industry, justify confidence that oil pipelines will meet the Y2K challenge. However, this is not a cause for complacency. Rather, we need to accelerate efforts to be sure that the interdependent systems—including, for example, telecommunications, electric power, police and fire protection, finance and other services we take for granted—are simultaneously Y2K compliant.

CLOSING

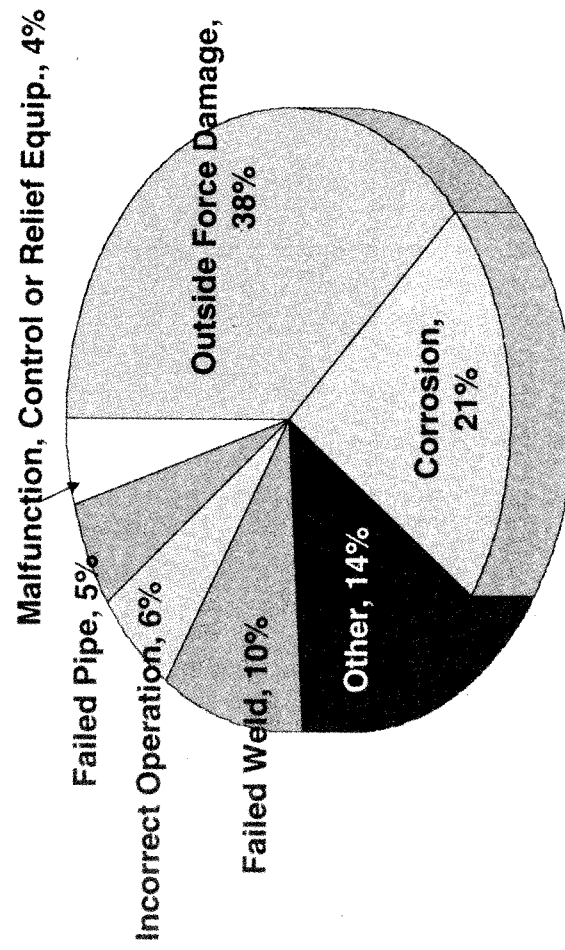
I want to thank the Subcommittee for moving the reauthorization of this vital program so expeditiously. We want to work with you to achieve a successful, bipartisan reauthorization. The public-private partnership for safety and environmental protection developed under the 1996 amendments to the Pipeline Safety Act has made valuable contributions to public policy. If we work together we can make these benefits much more widely available.

APPENDIX A

LIQUID PIPELINE SAFETY RECORD

U.S. Transportation Fatalities, 1997

Causes of Oil Pipeline Releases, 1992-97



Mr. BARTON. Thank you, Mr. Wilson.

The Chair will now recognize himself for 5 minutes in the question period.

Mr. Zurcher, I believe you were one of the ones who talked about the user fee or the assessments that are made on the pipelines to fund some of these programs. I was going to ask this question to Ms. Coyner but my time expired. Could you explain the formula that is used to determine the assessment that is made on your pipeline and others like you?

Mr. ZURCHER. Yes, sir, thank you.

Every year the Office of Pipeline Safety determines what their budget requirements are. Every year all transmission pipelines send in a total mileage statement, how many miles they operated during the year. DOT takes their total budget amount, divides it by the mileage, and then they assess to the transmission industry the transmission individual companies' proportion. Last year it was about \$70 per mile to fund OPS's budget. But it is funds that are paid for by the transmission industry.

Mr. BARTON. Okay. Is there any input before the fact on what their budget requirements are?

Mr. ZURCHER. Not officially, sir.

Mr. BARTON. Not officially.

Well, is the industry generally satisfied with that approach?

Mr. ZURCHER. I would like to say that the transmission industry is very pleased right now with the level of programs that OPS has undertaken, as well as their level of staffing.

Mr. BARTON. That could not be 5 minutes.

As slow as I speak even, it couldn't be 5 minutes. I think we got the last of Mr. Wilson's 5 minutes.

Go ahead.

Mr. ZURCHER. I just wanted to say that our industry is very pleased with the level of programs that OPS has undertaken and with their current level of staffing.

Mr. BARTON. Well, is there any discussion about an alternative funding mechanism other than what you just described to me?

Mr. ZURCHER. We have on numerous occasions discussed other funding mechanisms. Unfortunately, the administration of most of the alternatives does not necessarily make it feasible. The other alternative would be to go back to general revenues.

Mr. BARTON. Okay.

Mr. Cook and Mr. Wilson, there has been some discussion at the earlier panel about the demonstration program that has been underway. The groups that you represent, are they reasonably satisfied with the demonstration program as it is being implemented? And, if so, is there any interest in expanding those demonstration programs?

Mr. COOK. If I may, I will go first, for LDC's, local distributions companies have not been a part of the demonstration projects to date, but we are very interested in it, both as Washington Gas, individually, plus, the LDC industry's 88 member companies are also very interested.

Mr. BARTON. Okay.

Mr. Wilson?

Mr. WILSON. Both of my associations are very supportive of going forward. And I know there has been a lot of talk about trying to define either what these are, or what they are supposed to do, or how they work. I would point out that these programs and the risk management principal, in general, merely attempt to use practical and logical thinking by placing the maximum effort where reasonable people think the most need is. And that is all these programs are doing; they are in a formative stage. I think they are exciting. We anticipate that they will appear to be useful in connection with future legislation.

Mr. BARTON. Okay.

Ms. Epstein, first of all we appreciate you being here, and the EDF being a part of our hearing. I think you can go back and report that even somebody like me who probably has a "zero" rating with your association is open-minded and is going to work with you.

I read your association's recommendations for congressional action. First one is for an oversight hearing, and I am not the chairman of the Oversight Subcommittee anymore, but I personally think that would be a positive thing to do, and I will encourage Chairman Upton to put that on his agenda.

Ms. EPSTEIN. Thank you.

Mr. BARTON. You are welcome.

Your second recommendation, I am intrigued by it. You want a General Accounting Office study, the resources the OPS is devoting to risk management versus other activities and also a study of their record as compared to State transportation agencies. Have your association, your organization, or others of similar views had discussions with OPS on that recommendation?

Ms. EPSTEIN. I have raised concerns with OPS about the resource issue on the risk management projects because what I see is an enormous amount of resources for a lot of activities that could have been undertaken by companies without any sort of legislation or Federal involvement. And so my question is, what is the overall industry and the public getting out of these individualized projects, given all the amount of resources?

Mr. BARTON. But you have not really had any in-depth discussions or series of discussions?

Ms. EPSTEIN. No, not yet.

Mr. BARTON. Okay.

Well my time has expired. I will have some additional questions for the record.

I am going to recognize Mr. Shimkus for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. Zurcher, when we were talking about the cost and how it is calculated, you do admit, though, that the cost really goes all the way down to the consumer who pays for the, you know, the fuel as it comes to the home, because that cost is passed on?

Mr. ZURCHER. Yes, sir, in our rates that cost is passed on.

Mr. SHIMKUS. I always like to give the consumer credit.

Ms. Epstein, a lot of your testimony was based upon the liquid fuel issue. Do you have any specific comments on the natural gas side?

Ms. EPSTEIN. Well, gas typically has fewer environmental issues than the liquid pipeline. And I have also, in my experience, seen that the requirements and standards on the gas side tend to be a little more specific and stringent than on the liquid side. Therefore, there were fewer issues that our organization has had.

Mr. SHIMKUS. So, your organization is not as concerned with natural gas and the way that OPS is managing it through the States, the natural gas side of the pipeline?

Ms. EPSTEIN. At this point, that is correct.

Mr. SHIMKUS. Okay, good.

I want to fall back—and Mr. Holmes has left, but I want to address the issue on this regulation debate that we had with Congressman Norwood earlier, because we really didn't get an answer from Mr. Holmes who kind of chuckled, which made me think on the regulation of pipelines and the Federal guidelines which are—Ms. Epstein, you mentioned that the State cannot add to the Federal guidelines for interstate facilities?

Ms. EPSTEIN. That is right.

Mr. SHIMKUS. But they can add to the regulations for intrastate lines?

Ms. EPSTEIN. Right. In fact, I spoke to the Pipeline Association for States, NAPSA, about this particular issue and what they are doing at the intrastate level. And there are some things that are being done that go beyond the Federal requirements. And I raised the question about would it be desirable to have something similar for interstate pipelines.

Mr. SHIMKUS. Let me ask the spokesmen for the industries: Do you see differing regulations in the interstate versus the intrastate lines?

Mr. ZURCHER. I will take that question, if you don't mind, sir.

For interstate transmission pipelines dealing with natural gas, there is a few things that happened. Prior to 1968, States did have jurisdiction over interstate facilities. The regulations were very varied, and Congress saw fit in 1968 to pull that jurisdiction away from the States for the interstate operators. There are a number of issues that come up and so forth, but one of the biggest ones is that a State somewhere on the upstream side could impose regulations that add significant cost, and the person receiving the gas on the downstream side would not have an opportunity to object to those costs. So as a long-haul interstate transmission company, in my opinion, sir, it is much better to leave it with Federal oversight.

Mr. SHIMKUS. And I have—and I am sure if members evaluate their districts—I am just amazed at the pipelines that run as much as I drive. And it is probably the ninth wonder of the world when you figure all that stuff that is underneath the ground.

I guess the last question I really want to get answered is, are there regulations at the OPS that, at the users' level, that you see are not productive and are costly?

Mr. Holmes really didn't want to answer that question. And I guess I would like to throw that question open to the people in industry. And then if I have time, Ms. Epstein, if you want to be a responder to that, then I will finish with that.

Mr. ZURCHER. I would be happy—

Mr. SHIMKUS. Why don't we just go—yes. Mr. Zurcher, why don't you start first. Or whoever wants to jump in first.

Mr. ZURCHER. Your question is, as I understand is, are there regulations that may not be appropriate in today's environment? Very difficult question. Pipeline facilities were designed over many years; they were constructed over many years. They have very many different operating parameters that surround them. Our biggest problem is that the regulations are not necessarily bad or inefficient or anything like that, it is just that they do not provide much flexibility. And I think that is our key point, more flexibility. I would liken it to an automobile that you bought in 1968 where you had to do a tune-up on it once a year. But I just saw Chrysler advertise a new vehicle that you can go 100,000 miles without a tune-up. Well, we shouldn't be stuck with a 1968 tune-up once a year.

Mr. BARTON. I want everybody to have an opportunity to answer Mr. Shimkus' question.

Mr. COOK. Being a local distribution company, we feel that it is imperative that, with the reauthorization, some of the things that are in this bill are extremely important that focus dollars and attention where the risks are. So risk assessment—and I mention that LDC's would like to be involved in these kind of demonstrations, because on a daily basis, as an example, in my business and what I am accountable for, which deals with complying with the codes, we make our decisions based upon risk assessment every day. Where do you put your dollars? You put them where you get, you know, the most out of the money you invest.

When you have rulemaking that is negotiated, it is far better and more successful in getting industry-wide cooperation and compliance, and it is acceptable. I mean it is not throwing money away. And when we have performance-based type regulations, it is much better than specific regulations that tell you how many times you crank a nut tight, if you know what I mean.

So I think this reauthorization of this bill goes a long way to continue and improve the safety.

Ms. EPSTEIN. And I don't actually disagree with what the two gentlemen to the right of me said.

We are in favor of flexible but accountable requirements so that performance is measured and performance is on the track of improvement. If it is not, our position is always that you need to go back and see why that is. And we believe in the hazardous liquid pipeline area, there are some serious deficiencies in the current regulations, and many of those have been pointed out by NTSB.

Mr. WILSON. Let me say, for the sake of unanimity, that I agree with most of what has been said, too. I think I am going to take exception with the notion that there are great deficiencies. But moving on, I would remind that the vast majority of oil pipeline movements, as well as trunkline gas movements, are interstate, and it just seems to me that it is reasonable to have a single Federal authority taking jurisdiction. For the benefit of those who are regulated, we then have consistent regulation. We can train and perform and keep records in a singular fashion. We achieve a kind of scale in doing that. We also have a level playing field, to the ex-

tent that differences in cost from the result of regulation may occur if it were applied State to State.

And so from an operating manager's perspective, I think in every respect that Federal regulation, basically, makes sense.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. BARTON. Thank the gentleman from Illinois.

I would recognize the distinguished gentleman from Florida for 5 minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Mr. Wilson, let me, initially at least, stay on the regulation of petroleum storage tanks, breakout tanks, as I referred to them. And you were in the room, I believe, when I addressed my question to—

Mr. WILSON. I was.

Mr. BILIRAKIS. [continuing] Ms. Coyner. So, without my having to repeat that question, what is your response to what is happening, what is supposedly happening, and that sort of thing to hopefully try to clear up this area of conflicts and what not because of two different regulatory agencies somewhat disagreeing?

Mr. WILSON. Yes. My feeling is that it is basically intramural in the Federal Government. Second, that for the purposes of operation and the maintenance of our assets, the Office of Oil Pipeline Safety has the vast preponderance of jurisdiction. For basically the same reasons that I just stated in favor of single Federal regulation, I would favor single OPS regulation of pipelines.

Now with that said, with the intention that was stated to your question earlier, that these regulations might be highly conformed, I would have to say from an operator's perspective that if they are, in fact, conformed, we don't care that much. Rest assured that we are committed to the maintenance of safe tankage in the absence of accidents or spills from them, so we don't mind any responsible legislation.

Mr. BILIRAKIS. Well, what is your actual real-world experience in having to—in dealing with DOT, OPS, if you will, on one hand and then having EPA—and I am not trying to put one agency—

Mr. WILSON. Yes.

Mr. BILIRAKIS. [continuing] in a bad light. I hope I am not coming across that way. But we are talking about two different agencies, two different conflicting regulatory requirements. What is your experience there?

Mr. WILSON. Yes.

Mr. BILIRAKIS. Can you share real-world experience.

Mr. WILSON. Well, in my own experience, there is very little EPA experience, and the reason is that in my company, Buckeye, all of our tankage is operated as what we call "breakout tankage" in the furtherance of pipeline operations. And accordingly, it has been DOT regulation that we have dealt with. You know, in being around the industry and talking to my colleagues, their view is for simplification and a unification where we have "one-stop shopping," where we have one promulgator, we have one regulator to satisfy because, otherwise, invariably we will be talking about duplication. Accordingly, I think our industry perspective would be for as much as possible to rely on OPS rulemaking.

Mr. BILIRAKIS. Do you think OPS does a good job?

Mr. WILSON. I think they do a very good job. We are doing more for tankage as a result of kind of current regulation than we used to do, and that is neither to defend, you know, the past or the current practice. But tankage, to be sure, has received a lot of attention. And I can tell you there has been one hell of lot of money in capital spending plowed into tankage on the pipeline and terminal side in the last 5 years.

Mr. BILIRAKIS. What is your reaction to the figure 1 statistics that Ms. Epstein referred to when she sort of admonished Mr. Norwood saying that his information was incorrect because figure 1 shows annual releases to the environment—

Mr. WILSON. Yes.

Mr. BILIRAKIS. [continuing] as does liquid pipelines, have gone up. What is your reaction to that? Have you seen that figure?

Mr. WILSON. Not until now. My reaction is a safe harbor for myself. I am not a statistician or a data keeper. I can assure you that both API and AOPL is taking a hard and vigorous look at statistics, and I sense from this meeting today that, clearly, this subcommittee is going to be interested in having as clear a picture of operating statistics as you can receive. And from our side, I assure you that we will supply them.

Mr. BILIRAKIS. All right. Now, what would be the result? Ms. Epstein referred to the citizen supervision should be modified. It is one of your recommendations, if I can call it that. It said to facilitate private enforcement actions. Maybe we can get at least one of your gentleman to respond to that. What would be the result of that if we saw fit to do it?

Mr. WILSON. Maybe for a layman and non-lawyer you can tell me what that means. If that means that anybody and everybody is just going sue us, kind of in the shoes of an OPS or some other regulatory agency, I think it is a disaster. This is a highly technical business that has been around for a long time, and on the other hand, its technology is not changing very fast. It seems to me that in this program, on the concepts that I have already given you of economy, non-redundancy, the ability to deal with technical subjects, I think that current regulation has been working. That is the thrust of my testimony, in particular. To throw this open, to, you know, enumerable parties to weigh in, become overnight pipeline experts, I think is a waste of our time.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Mr. BARTON. Let us give Ms. Epstein a chance to rebut what Mr. Wilson just said.

Mr. BILIRAKIS. By all means.

Mr. BARTON. Since it is her suggestion—

Ms. EPSTEIN. Actually, the—

Mr. BARTON. [continuing] or her group's.

Ms. EPSTEIN. [continuing] information included about the citizen supervision comes from a city attorney from Fredericksburg, Virginia, who was faced with losing their city water supply twice. And he found that since it wasn't as a result of a violation of the regulations, there should be a provision as there are in environmental statutes that allow some sort of challenge based on imminent and substantial endangerment and cost recovery. The community paid

a tremendous amount of money to develop a new water supply because they lost it twice.

And I should add that the existing law does have a citizen supervision, it just happens to not be effective in its implementation because OPS can then open an administrative action which can go on for years and not result in much of a penalty, and, therefore, the citizens would not be carried forward. What this change, as I suggested, would require OPS to develop a court case instead of having the citizens go forward, and that is just a check to make sure that if there is an action that needs to be taken that it is done effectively.

Mr. BARTON. The Chair would ask unanimous consent that the record be kept open for some additional material. We do have that letter from the city of Fredericksburg, and we will, without objection, put that particular letter into the record.

Hearing no objection, so ordered.

[The information referred to follows:]

CITY OF FREDERICKSBURG, VIRGINIA
February 3, 1999

Hon. JOE L. BARTON, *Chair*
Subcommittee on Energy & Power
House Committee on Commerce
2264 Rayburn House Office Building U.S. House of Representatives
Washington, D.C. 20515

RE: Pipeline Safety Act Oversight and Reauthorization

DEAR CHAIRMAN BARTON: On behalf of the City of Fredericksburg, I am writing to submit written comments in connection with the hearing your subcommittee has scheduled for today regarding oversight of the Office of Pipeline Safety, U.S. Department of Transportation ("OPS"), and its administration of the Pipeline Safety Act ("Act"). We would respectfully request that this letter be included as part of the hearing record.

Introduction and Background

It is the City's understanding that the Subcommittee on Energy and Power is conducting today's hearing in anticipation of Congressional reauthorization of the Act later this year. We applaud the Subcommittee's interest in studying the current federal pipeline safety program and hope that you can glean a more accurate picture of the program from this hearing. As part of the process, we would encourage you to solicit input from a broad range of stakeholders in the pipeline safety program, including the victims of pipeline accidents, the environmental community, and state and local governments.

As you may be aware, the City of Fredericksburg has had a longstanding interest in pipeline safety issues. We have had the unfortunate distinction of having twice lost our entire public water supply due to accidents involving an interstate oil pipeline owned by Colonial Pipeline Company. First in 1980 and then again in 1989, a 32-inch interstate pipeline owned by Colonial that runs from Texas to New York ruptured in rural Orange County, 20 miles west of Fredericksburg. Each time, thousands of gallons of petroleum spilled into the Rappahannock River, contaminating the City's raw water supply. Each time, the City was forced to shut down its water treatment plant for more than a week and to haul water from neighboring jurisdictions. I am sure you can imagine the pain and hardship that these accidents caused our citizens and the long-lasting effects they have had on Virginia's environment.

In the aftermath of the 1989 accident, the City took it upon itself to undertake a thorough examination of pipeline safety issues generally and to learn more about the responsibilities of various state and federal agencies in preventing similar accidents in the future. Unfortunately, this study and our own first-hand experience with OPS over the past 10 years have provided us with little comfort. Time and again, we have found that OPS has taken a backseat to Congress in pushing for pipeline safety reforms, that the agency has often failed to promulgate much-needed safety standards, that it has ignored its 1993 Congressional mandate to protect the environment, and that it has consistently failed to take strong enforcement action against pipeline operators who flout federal law.

The City of Fredericksburg does not make these charges lightly or with any relish. After years of trying unsuccessfully to get OPS to take effective enforcement action against Colonial, we have reluctantly come to the conclusion that OPS will *never* require Colonial to take the necessary steps to render its pipeline safe within our watershed. Unfortunately, we have learned that our experience has been shared by many other communities throughout the country that have suffered similar accidents. These allegations are nothing new. In fact, they have been repeated and supported on numerous occasions by GAO and the National Transportation Safety Board.

The Federal-State Partnership for Pipeline Safety

Although the City would urge you to look at these and many other serious problems at OPS, we are writing today regarding one particular issue that warrants immediate Congressional attention. This involves OPS' recent efforts to discourage state governments from taking an active role in the regulation of interstate pipelines.

When the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act were enacted years ago, they were heralded as a federal-state partnership in which OPS would assume primary jurisdiction over pipeline safety standards but the states would be encouraged to assist in the inspection of new and existing pipelines, to conduct routine accident investigations, and to develop their own standards and to enforce state and federal laws for *intrastate* pipelines. OPS was authorized to make grants to states to reimburse them for up to 50% of their administrative costs. In addition, states could adopt user fees to help defray their remaining costs.

OPS and the states have traditionally operated this program under a two-tiered system of delegated authority. Under 49 USCS § 60105, OPS has the authority to "certify" states that prove themselves qualified to assume control over *intrastate* pipelines, provided they perform their duties in accordance with federal regulations. In addition, under 49 USCS § 60117(c), OPS may appoint qualified states as its "agents" to inspect *interstate* pipelines, with OPS reserving all enforcement authority over such facilities. These two separate delegation programs have been utilized by OPS for many years to administer the natural gas and the liquid pipeline programs in all 50 states.

This system, however, has resulted in a confusing patchwork of state and federal regulatory authority. According to our most recent information, 48 states are currently certified to implement the intrastate gas program, 12 serve as agents to administer the interstate gas program, 2 are permitted to inspect intrastate gas or liquid facilities but not to enforce federal standards, 12 are certified to implement the intrastate liquid program, and 4 serve as agents to administer the interstate liquid program. The system has proven confusing and overly bureaucratic, not only for the regulators but for the public and the operators as well.

In the aftermath of our two accidents, we became convinced that OPS lacked the resources and the resolve to take meaningful action to enhance pipeline safety in Virginia. At that time, OPS only had three inspectors to cover 14 Eastern states. We discovered that even though OPS had jurisdiction over all intrastate liquid pipelines in Virginia, the agency had never conducted an accurate inventory of these facilities, could not provide us with a map or tell us where they were located, and apparently had never inspected many of them. In essence, there *was* no intrastate liquid pipeline program in Virginia. As for the interstate pipelines in Virginia, we knew from first-hand experience that OPS was unwilling to take strong enforcement action against hazardous oil pipeline facilities, such as Colonial's 32-inch line that traverses the City's watershed.

On the other hand, we were impressed with the job that Virginia's own State Corporation Commission ("SCC") had been doing for many years in administering the pipeline safety program for intrastate gas facilities. We learned that the SCC was recognized as a national leader among state pipeline regulators, that it was developing one of the best "One Call" programs in the country, and that it had a proven track record for taking strong enforcement action against unsafe pipeline operators. Finally, we found the agency to be responsive to accident victims and was willing to work closely with local governments such as Fredericksburg.

For these reasons, the City led a successful effort in 1993 to secure passage of the Virginia Hazardous Liquid Pipeline Safety Act (Attachment 1), which authorized the SCC to seek intrastate certification and interstate agent status from OPS and to administer a hazardous liquid pipeline safety program in Virginia. At the time the Virginia General Assembly was considering this legislation, the Eastern Regional Director of OPS, Mr. Bill Gute, testified on behalf of the City's bill and led

us and state officials to believe that OPS would welcome the assistance of the SCC in administering this program in Virginia.

Following the adoption of this legislation, the SCC worked diligently over a five-year period to develop a top-notch certified intrastate liquid program, hired and trained the necessary staff to conduct inspections, and prepared itself to become a full partner with OPS in the liquid pipeline arena. Just as the SCC was preparing to assume this major new responsibility, OPS announced that it was reversing its former policy and would no longer encourage states to become interstate agents. This meant that the interstate agent program would be restricted nationally to the 12 states that currently enjoyed that status for gas pipelines and to the 4 states that inspected liquid pipelines (Attachment 2).

Several weeks ago, OPS formally notified the State Corporation Commission that it was unwilling to consider an exception to this new policy for Virginia, despite its previous support for the Virginia legislation and the SCC's efforts, stating that "the benefits of the SCC becoming a permanent interstate agent for hazardous liquid pipelines are no longer obvious to us" (Attachment 3). The only reason cited by OPS for this policy reversal was the institution of its new "system-wide approach" for inspecting interstate pipelines, which the agency now claimed it had sufficient staff to conduct on its own. While there is certainly merit in conducting system-wide inspections for certain interstate pipelines, particularly those of companies like Colonial with unusually serious spill records, it remains highly doubtful whether this new policy should *replace* the interstate agent program or whether it will result in a higher overall level of pipeline safety, particularly if state involvement is simultaneously being *reduced*. In fact, the City suspects that this new "policy" is simply an excuse for excluding states such as Virginia that have become more committed in recent years to the need for stronger pipeline regulation.

By letter dated January 25, 1999, the Chairman of the SCC responded to OPS (Attachment 4), charging that Virginia's preparatory efforts over the past five years "have apparently been a waste of time, money and human resources." Chairman Miller expressed a deep frustration with OPS that we know is shared by regulators in many other states. We understand that several other states have been rebuffed recently in their efforts to assume a more active role in the interstate program, including Texas and Oklahoma.

In many cases, state regulators are reluctant to speak out on this sensitive issue since they feel compelled to maintain cordial day-to-day working relationships with OPS. But if you speak to them privately, they will tell you that this policy reversal by OPS is compromising public safety and environmental protection and that OPS is attempting, for political reasons, to *reduce* their role in the entire pipeline safety program. The City believes that the Subcommittee should take immediate action to express its concerns about this policy change and to restore a proper balance to the federal-state regulatory relationship.

Recommendations

We would recommend that the Commerce Committee take two steps. First, we would encourage the Committee to conduct an oversight hearing devoted primarily to an examination of the present federal-state relationship regarding pipeline safety. Such a hearing should focus on the history, effectiveness, and scope of the state certification and interstate agent programs. Are state regulators being effectively utilized? Does "one size fit all" when it comes to pipeline safety and environmental standards or should states be empowered to develop their own standards that complement federal efforts? Is complete federal preemption of the interstate pipeline program really in the best interests of the nation?

Second, when Congress considers reauthorization of the Act, it should amend the Act to establish an interstate agent certification program that parallels the current process for intrastate certification and that encourages states to assume this responsibility. Such an amendment would also necessarily need to address the issue of preemption. As you know, current law allows certified states to promulgate their own safety standards for *intrastate* facilities, provided they are "compatible with the minimum standards prescribed" by OPS (49 USCS § 60104(c)). This same authority and preemption standard could be safely applied to the *interstate* program, since it would not compromise the primacy of federal regulations.

As a local government, the City is particularly sensitive to the preemption issue. We fully support the notion that the federal government needs to maintain a coherent, streamlined, national system for pipeline regulation that does not impede interstate commerce. Nobody wants to create a system under which 50 states promulgate 50 different sets of interstate pipeline safety standards, all going in different directions. We are not advocating such a system. But we would encourage you to take

a hard look at this issue and to determine whether preemption should be relaxed in this situation.

In conclusion, the City hopes that you will take the opportunity this year to scrutinize more closely the recent efforts of OPS to reduce the states' role in the pipeline safety program, to conduct additional oversight hearings, and to enact legislative amendments aimed at empowering states to become more active in all aspects of pipeline safety. State and local governments offer tremendous resources that should be harnessed by OPS to improve pipeline safety throughout the country.

Thank you again for allowing us to share with you our experiences and thoughts on this issue. We look forward to working with you and your staff as you work to strengthen this important federal program.

Sincerely,

JAMES M. PATES
City Attorney

Enclosures

cc: Mayor Greenup
Members of City Council
Marvin S. Bolinger, City Manager
Commissioners, State Corporation Commission
Mr. Frank Shafroth, National League of Cities
Hon. Herbert Bateman, U.S. House of Representatives
Richard B. Felder, Director, OPS

ATTACHMENT "ONE"

CHAPTER 21.

HAZARDOUS LIQUID PIPELINE SAFETY ACT.

<p>Sec. 56-553. Title. 56-554. Definitions. 56-555. Commission to implement the federal</p>	<p>Hazardous Liquid Pipeline Safety Act.</p>
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§ 56-553. Title. — This chapter may be cited as the "Hazardous Liquid Pipeline Safety Act of 1994." (1994, c. 512.)

§ 56-554. Definitions. — For the purposes of this chapter:
"Hazardous liquid" means "hazardous liquid" and "highly volatile liquid" as defined in 49 C.F.R. § 195.2.

"Person" means an individual, corporation, partnership, association or other business entity or a trustee, receiver, assignee, or personal representative of any of these.

"Pipeline operator" means a person who owns and operates pipeline facilities as defined in 49 C.F.R. § 195.2.

"Interstate pipeline" and "intrastate pipeline" shall have the same meanings as defined in 49 C.F.R. § 195.2. (1994, c. 512.)

§ 56-555. Commission to implement the federal Hazardous Liquid Pipeline Safety Act. — A. The Commission is authorized to act for the United States Secretary of Transportation to implement the federal Hazardous Liquid Pipeline Safety Act, 49 U.S.C. App. §§ 2001 to 2014, with respect to intrastate and interstate pipelines located within the Commonwealth to the extent authorized by certification or agreement with the Secretary under Section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. § 2004). To carry out its responsibilities under this section, the Commission shall have the same powers as given the Secretary in Sections 210 and 211 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §§ 2009 and 2010).

B. For the purposes of intrastate pipelines, any person failing or refusing to obey Commission orders relating to the adoption or enforcement of regulations for the design, construction, operation and maintenance of pipeline facilities and temporary or permanent injunctions issued by the Commission shall be fined such sums not exceeding the fines and penalties specified by § 208 (a) (1) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. § 2007 et seq.), as amended.

C. The Commission shall assess and collect from every hazardous liquid pipeline operator an inspection fee to be used by the Commission for administering the regulatory program authorized by this section. For purposes of interstate pipelines, such fees shall be computed based on the number of inspection man-days devoted to each pipeline operator to determine the operator's compliance with any provision of, or order or agreement issued under, the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. § 2001 et seq.), and shall not exceed the costs of inspection and investigation under this section. The costs shall not include expenses reimbursed by the federal government. The number of planned inspections conducted on each interstate pipeline operator shall be reasonable under the circumstances and prioritized by risk to the public or to the environment.

D. The authority granted to the Commission under this section to conduct inspections of interstate pipeline operators and facilities in the Commonwealth shall not extend to any official, employee, or agent of any political subdivision in the Commonwealth. No political subdivision shall have the authority to seek reimbursement for the cost of monitoring the inspections conducted by the Commission under this section. Nothing in this subsection, however, shall be deemed to impair or limit the police powers of such political subdivisions otherwise provided by law.

E. The authority of the Commission to act as an agent for the United States Secretary of Transportation with respect to interstate hazardous liquid pipelines shall become effective the first day of July next after the date the Commission receives a formal delegation of authority from the Secretary. (1994, c. 512.)

ATTACHMENT "TWO"



U.S. Department
of Transportation
Research and
Special Programs
Administration

RECEIVED
R.R.C. OF TEXAS

DEC 23 1996

GAS SERVICES DIVISION
AUSTIN, TEXAS

400 Seventh Street, S.W.
Washington, D.C. 20590

DEC 17 1996

TO ALL STATE PIPELINE SAFETY PROGRAM MANAGERS

The Office of Pipeline Safety (OPS) would like to give you an update on our policy of adding states to become agents for the purpose of inspecting interstate pipeline operators. Before responding to the interstate agent issue, we want to address significant Congressional actions that will affect our state pipeline safety partners in 1997. OPS has been working with our state partners and other pipeline safety stakeholders to achieve reauthorization of the pipeline safety program to the year 2000. The President signed our reauthorization bill on October 12th, and we are pleased that Congress took action to strengthen the state partnership by increasing the OPS budget when most agencies are experiencing reductions. The states will receive a total of \$13.2 million in grant funds in 1997 versus the \$12 million that was appropriated in 1996. We appreciate the support from state partners in this appropriation and reauthorization process.

Securing reauthorization and adequate funding levels for the Federal pipeline safety program provides OPS with a basis for considering further requests for interstate agent status. Under the OPS policy initiated in August of 1994, we deferred for two years consideration of any new state requests to become agents for the purposes of inspecting interstate pipeline operators. Our policy will remain unchanged; OPS will not be adding any additional interstate agents. As we stated earlier, OPS needed time to review the effect of new resources including the additional inspector positions and determine if these funding levels and positions would continue to be a part of our Federal program each year. It has been clear in the past that Congress intended for us to concentrate our inspection efforts on interstate operators, and for the states to focus on intrastate operators. In our budget and in reauthorization, continuing resources have been provided in overall funding levels and number of additional personnel authorized for OPS. Two years ago, our staffing level was approximately 65 positions and we are now authorized 105 positions (some of these we continue to hire and expect to be at this mandated level by mid-1997). A review of our inspection policy based on the number of inspectors that the Congress has provided OPS confirms that we will have the staff required to continue inspection efforts for the interstate operators.

The fact that we have the resources to perform interstate inspections does not mean that we are no longer interested in collaborating with our state partners. We will continue to work with your state organizations and offer temporary agent status on certain operators that have been identified by you or us to be in the interest of pipeline safety to have this additional oversight. Also, OPS was given "cooperative agreement" authority in the Accountable Pipeline Safety Partnership Act of 1996 and this may be a mechanism for us to pursue and fund special projects with our state partners in the future.

We appreciate the states' support of OPS in its pipeline safety efforts. We will continue to do everything we can to enhance pipeline safety in your state. Thanks again, for your commitment to pipeline safety.

Sincerely,



Richard B. Felder
Associate Administrator
for Pipeline Safety



U.S. Department
of Transportation
Research and
Special Programs
Administration

Eastern Region
Pipeline Safety

ATTACHMENT "THREE"

400 Seventh St. S.W.
Washington, D.C. 20590

JAN - 4 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Clinton Miller
Chairman
Virginia State Corporation Commission
1300 East Main Street, Tyler Building
Richmond, VA 23219

Dear Mr. Miller:

Mr. Massoud Tahamtani, of your staff, recently informed us that the State Corporation Commission (SCC) was fully staffed and had hired an individual with hazardous liquid operational experience. He indicated that the SCC would now be in a position to apply for interstate status. He thought, however, given the changes in nationwide interstate

policies it would be prudent to review the matter with the Office of Pipeline safety (OPS) to determine if interstate agent status continued to be the optimum course of action for our agencies.

In the last couple of years, OPS has implemented a system-wide approach for inspecting interstate pipelines. This provides us with an enhanced understanding of the operator's entire system, including pipeline operation, maintenance and emergency response programs. It has allowed OPS to harmonize interpretations of pipeline safety regulations and integrity concerns so that across the country we give the same guidance for improving interstate operators' safety and environmental performance. We have not yet fully implemented this system for all operators in the country, but it is in place for the two interstate liquid operators in Virginia (Colonial and Plantation Pipelines). Colonial pipeline has since 1996, been inspected using a team of engineers from three of our regional offices to perform system wide inspections to develop a comprehensive understanding of their entire system. It is our opinion that these inspections have greatly heightened our understanding of the safety issues and provided us with a better platform to address these issues with Colonial. We have shared the reports from these inspections with the SCC. Plantation is scheduled for a system wide inspection in 1999.

Given this background, the benefits of the SCC becoming a permanent interstate agent for hazardous liquid pipelines are no longer obvious to us. That is not to say that we don't see a role for the SCC to perform in the inspection of interstate hazardous liquid lines in Virginia. We want to work closely with the SCC on issues that have particular interest to Virginia. Our new interstate policy authorizes the OPS Regional Director to grant Temporary Interstate Agent status for specific issues, such as, new construction, monitoring major rehabilitation projects, and accident investigations. We see an opportunity to pool OPS' resources and insights with the SCC's local knowledge in evaluating these activities. We also plan on continuing to share with the SCC inspection and other issues regarding Colonial pipeline in Virginia.

I hope you see this division of responsibilities as an opportunity to better utilize your state inspection resources on the intrastate operators in Virginia and an opportunity for the OPS to implement its system-wide inspection approach. We pledge to work together and consult with you in areas that require joint efforts. I also commit to provide the SCC the opportunity to comment before the OPS removes existing pressure restrictions on Colonial pipeline, if that issue should again arise.

I would appreciate a written response, regarding your perspective regarding interstate status for hazardous liquid pipelines within 30 days of receipt of this letter. Please feel free to call me at (202) 366-4580 if you wish to discuss this issue. Thank you for your continuing support of the Federal/state pipeline safety program.

Sincerely,



William H. Gute
Director, Eastern Region
Office of Pipeline Safety

CLAYTON MILLER
CHAIRMAN
THEODORE V. MORRISON, JR.
COMMISSIONER
HALLAMER WILLIAMS MOORE
COMMISSIONER

COMMONWEALTH OF VIRGINIA



ATTACHMENT "FOUR"

WILLIAM J. BRIDGE
CLERK OF THE COMMISSION
P.O. BOX 1197
RICHMOND, VIRGINIA 23219-1197

STATE CORPORATION COMMISSION

January 25, 1999

Mr. William Gute
Eastern Regional Director
Office of Pipeline Safety
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Mr. Gute:

This letter is in response to your letter of January 4, 1998, regarding our interstate agent status for hazardous liquid pipelines in Virginia.

As you are well aware, the Virginia Hazardous Liquid Pipeline Safety Act ("Act") was passed in 1994 due to concerns relative to a number of serious liquid pipeline accidents in Virginia. The Act authorized the State Corporation Commission to act for the U.S. Secretary of Transportation to implement the federal Hazardous Liquid Pipeline Safety Act in the Commonwealth. The Office of Pipeline Safety (OPS), by your testimony, supported the passage of the Virginia Hazardous Liquid Pipeline Safety Act. In fact, you testified that: "[a]s a result of the March 28 [1993] Colonial spill in Fairfax Co., the Secretary of Transportation ordered a review of the effectiveness of the federal pipeline safety program. That review culminated in an Action Plan which includes as a key component increasing state participation in the hazardous liquid pipeline safety program. We are pleased that legislation is being considered in Virginia consistent with DOT objectives." Further testimony by you praised the Commission for having an "exemplary gas safety program" and noted that "[i]n the future the SCC should not, after additional hazardous liquid pipeline safety training ... have a problem obtaining hazardous liquid pipeline safety interstate agent status from the Office of Pipeline Safety."

While the Commission received correspondence dated August 1, 1994, from OPS to state agencies concerning a stay on granting interstate status for a two-year period, your letters dated December 2, 1994, November 21, 1995, and August 28, 1996, regarding the annual audits of our 1995 pipeline safety program continued to encourage our pursuit in becoming an interstate agent. You stated, "[t]he Office of Pipeline Safety looks forward to working with the SCC staff as they prepare to become interstate hazardous liquid pipeline agents.... We remain committed to working with the SCC to assure a smooth transition takes place." By letter dated December 17, 1996, to all states in the pipeline safety program, OPS provided notice that additional interstate agents would be added. Again, by your letter of October 31, 1997, you confirmed OPS's commitment to working with the Commission to become an interstate agent. In that letter, you stated "this responsibility requires additional qualified inspectors. We [OPS] remain committed to working with the SCC to assure a smooth transition takes place."

Our Staff has actively pursued training in the hazardous liquid pipeline safety areas in preparation of obtaining interstate status since the passage of the Virginia Hazardous Liquid Pipeline Safety Act. Three of our pipeline safety engineers have completed the required courses at your TSI for the inspection of hazardous liquid pipelines. In addition, the Commission recently hired an individual from the industry with extensive liquid pipeline experience. This senior level employee comes to the Commission with seventeen years of first hand experience in the interstate transportation of hazardous liquids. As a result, we now have "additional qualified inspectors" and are in a position to apply for interstate status.

Your recent correspondence relating to our interstate agent status has dismayed us. Our efforts relative to seeking implementing legislation, hiring additional staff and obtaining further training for existing staff have apparently been a waste of time, money and human resources. Nonetheless, we shall complete our application for interstate agent status for your formal action.

I would appreciate a written response within 30 days of receipt of this letter. As always, the Commission remains committed to the effective and safe operation of both intrastate and interstate pipelines.

Sincerely,

 William F. Miller

cc: The Honorable Theodore V. Morrison, Jr.
 The Honorable Hulihan Williams Moore
 Mr. William F. Stephens
 Mr. Massoud Tahamtani

Mr. BARTON. There may be other materials that other members not currently in attendance have, and we will put those into the record if the minority and the majority staff approve.

We will also have additional questions for this panel. There are obviously a number of members who are not here, and we will give them that opportunity.

We would hope that you would give your responses as quickly as possible because we plan to move very quickly. I am tempted to ask unanimous consent to change the date and reauthorize the bill right here.

But that would not be in the spirit of bipartisanship that I just announced at the beginning of this hearing. There was a possibility we could mark this reauthorization bill up next week. Now that is unlikely, given that there were some substantive issues put on the table at this hearing, which is the purpose of the hearing. And, also, Mr. Pallone and Mr. Markey, and to some extent Mr. Dingell had some issues that they raised in their opening statements. So it is unlikely that we will do a markup next week on this bill, but it is very likely that we will have a reauthorization markup within the next month.

And so I would encourage both our panelists, our Administration officials on the previous panel, and members of the audience who have stayed in rapt attention for the last 2½ hours if you have suggestions, ideas, things that you wish to be put on the table, please approach the relevant member of the subcommittee on either side of the aisle you feel most comfortable with so that we can get those issues into play.

Mr. Bilirakis, do you have a closing comment?

Mr. BILIRAKIS. I do not, Mr. Chairman. I suppose what we have done is working. It seems to—I guess Ms. Epstein wouldn't agree with maybe that statement, I don't know. But—

Mr. BARTON. She was more positive than negative.

Mr. BILIRAKIS. There always can be—

Mr. BARTON. She just has some concerns.

Mr. BILIRAKIS. Yes. And there always can be some improvements made, I suppose, and we want to take a look at those rather than maybe reauthorize it exactly as it is. Basically, I guess I have repeated what you have just said.

Mr. BARTON. Okay.

Well, we want to again thank this panel, thank the audience for your attention, thank the members who were here.

This hearing is adjourned.

[Whereupon, at 4:30 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSES TO QUESTIONS FOR THE RECORD OF JOHN S. ZURCHER, MANAGER,
PIPELINE SAFETY, COLUMBIA GAS TRANSMISSION CORPORATION

Question 1. Do you believe that the 1996 amendments which allowed the Department of Transportation to employ risk assessment and risk management approaches have resulted in pipeline safety regulations which work better and cost less? Why or why not?

Response. The development of the risk management pilot program has significantly increased the understanding by regulators and the industry of the causes, prevention, and consequences of natural gas pipeline incidents. This has resulted in a positive culture shift aimed at lowering the risk to the public and the environment rather than simply following command and control recommendations. This philosophy motivated the efforts to enact the Comprehensive One-Call Notification Act last spring, which addresses the cause of the greatest risk to the public—unintentional third-party damage.

Similarly, the development of the risk assessment/cost benefit process has helped industry and regulatory communities identify regulatory solutions that bring about the greatest increase in safety for each dollar spent.

We do not believe that the program has reduced costs for industry, and in fact we do not think that was a goal of the 1996 Act. Rather, risk assessment and risk management are designed to take the dollars which are already being spent and employ them in the most effective manner from a public safety standpoint. Companies which have stepped forward to participate in the risk management demonstration project have spent a great deal of time and effort to put forward their own unique safety plans. The participants decide to get involved in the belief that a more focused and effective safety program will be the result.

Question 2. What level of resources is appropriate for reauthorizing legislation?

Response. The shift of the focus in the industry and regulatory community to process management and auditing will result in increased efficiency and will help focus resources on high-risk areas. While this requires an increase in the qualifications of regulatory auditors and improvements in auditing procedures, it should result in a reduction of some redundant inspections.

The development of new regulations and regulatory alternatives will require more focused resources within the Office of Pipeline Safety (OPS) and the industry as a result of the new processes. This will be counterbalanced by the elimination of less effective regulatory initiatives. Overall INGAA believes that this will result in a leveling of resource requirements at OPS. Accordingly, INGAA feels that Congress should provide authorization levels sufficient to maintain current staffing and program functions.

Question 3. The pipeline safety program is paid for through user fees. Who ultimately bears those costs? With the restructuring of the pipeline industry, are those costs still passed through on a full basis?

Response. Under the present pipeline user fee collection system, transmission pipelines (both interstate and intrastate) are assessed a fee based on the total number of miles of transmission pipe in their respective systems. Prior to the restructuring of the natural gas pipeline industry, such user fees were readily passed along to the ultimate consumers of natural gas through the rates which pipelines charged. Much has changed, however. Restructuring of the industry in the 1980's and early 90's resulted in the "unbundling" of the commodity (natural gas) from the transportation function, in order to give customers greater choice and spur competition within the pipeline industry. Individual pipelines have been forced, in many cases, to discount their transportation rates below traditional levels in order to retain existing customers and gain new ones. This discounting calls into question whether all costs the pipeline incurs are simply passed along to the ultimate customer.

Question 4. The law currently requires OPS to fund “up to 50 percent” of state pipeline safety efforts. The States have argued the OPS needs to be funding a greater share of state pipeline safety programs. Should interstate pipelines, which aren’t regulated at the state level, pay a greater share of state regulatory efforts?

Response. The current law does indeed authorize OPS to fund “not more than 50 percent” of state pipeline safety programs. This provision (49 USC 60107) was included in the law to: 1) encourage States to adopt the federal minimum safety standards, and 2) reimburse those States which acted as agents for the U.S. Department of Transportation in inspecting interstate natural gas or hazardous liquid pipeline facilities. Some State officials have argued that the language in the Act should be interpreted to mean that OPS should set a 50 percent funding level as an ultimate goal. However, INGAA views the “not more than 50 percent” provision as a ceiling for State grants, not a floor.

About 90 percent of the OPS budget is provided through pipeline safety user fees. While intrastate transmission pipelines are assessed the fee, the vast majority of fees are collected on *interstate* pipelines. As your question suggests, interstate pipelines are not regulated by the States, and yet these interstate pipelines are asked to fund a significant share of the cost associated with operating State programs. In addition, since the creation of Section 60107, the Office of Pipeline Safety has acquired a sufficient number of in-house inspectors to perform the required interstate pipeline inspections without assistance from State government personnel. Nonetheless, States still receive a substantial percentage of their pipeline safety budgets from OPS user fees. This results in a cross subsidization of the state pipeline safety offices by interstate transmission pipeline operators who are not regulated by State officials.

INGAA questions the rationale for increasing OPS grants to States. State governments have the ability to raise funds within their own jurisdictions. Indeed, States have primary responsibility for regulating the safety of local gas distribution companies (LDCs) and intrastate pipelines. In the past, it was assumed that interstate pipelines would simply pass all costs along in the rates they charged to LDCs and others. As discussed in the previous question, however, those assumptions no longer apply to our restructured industry. We believe the majority of State pipeline safety efforts should be funded by State revenues and/or by those entities which are regulated by the States.

Question 5. What would be the result if the citizen suit provisions were modified to facilitate private enforcement actions?

Response. A citizens suit provision already exists in current law (49 USC 60121). The law allows a citizen to bring suit for injunctive relief if the citizen: 1) gives 60 day notice to the Department of Transportation and the entity alleged to have committed the violation; 2) the Department has not “begun and is diligently pursuing an administrative proceeding;” and 3) the Attorney General or a comparable state officer has not “begun and diligently is pursuing a judicial proceeding for the violation.”

At the Subcommittee’s February 3rd hearing, the witness representing the Environmental Defense Fund advocated a number of changes to Section 60121 which INGAA believes are unnecessary and overreaching. The current law provides the proper role for private enforcement actions if the Department or federal/state law enforcement officers are not acting on a particular problem. However, the most efficient and timely way to address pipeline safety is through the regulatory—not the legal—process. INGAA feels that a focused, risk-based regulatory program is the most effective way to protect the public. We support a pipeline safety program which is administered by the Department of Transportation, not by the court system.

Question 6. Should the risk management concept be applied more broadly? Are legislative changes needed to have a broader application of risk management principles?

Response. INGAA is confident that the risk management philosophy is beneficial for protection of the public and the environment. The new concepts which the 1996 Act engendered are still under development and implementation at the Office of Pipeline Safety. We believe more time and effort is needed in order for business and government to digest all the new changes. If OPS wants to expand the risk management concept in the future, it can do so administratively, without changes to existing law.

Question 7. How is the risk assessment approach to regulation working with respect to pipeline safety? Are legislative changes needed to improve how it is applied?

Response. The formalized risk assessment process at OPS is just getting established. As I mentioned before, the development of this process has permanently changed the mindset of the regulatory process. It has already caused the reprioritization of efforts within OPS.

At this time, we would not recommend any legislative changes. Congress can revisit this issue in 2004, when the next reauthorization discussions are underway. By that time, there should be a wealth of experience with which to evaluate the program.

Question 8. How has the risk assessment approach improved the amount of time it takes to complete a pipeline safety rulemaking? Do you feel that the Department of Transportation is enacting better regulations as a result of using a risk assessment approach?

Response. Risk assessment is not, as some have argued, "analysis paralysis." OPS has continued to move rules through their process, and in fact the time it takes to get new rules through OPS has decreased. One controversial proposed rule, dealing with pipeline operator qualification, had languished at OPS since 1992. When the 1996 Pipeline Safety Act reauthorization passed, however, OPS decided to pursue a negotiated rulemaking. We anticipate that this rule will be successfully concluded this spring. Other rules have been adopted through consensus or embracing industry standards. The trains have not only kept running, they are running better.

The risk assessment approach will, we believe, lead to better regulations, because it "front-loads" the regulatory process with the analysis needed to make better decisions. The Department has placed an emphasis on working with industry to improve safety, with the result being a faster process and more rational standards.

Question 9. What is the status of the oil and gas pipeline community's Y2K preparedness efforts?

Response. The interstate natural gas transmission companies have been working on diligently resolving the Y2K issue in systems within the natural gas transmission industry. These suspect systems can be lumped into three general categories: operational systems (embedded processors), business systems (accounting and billing), and supplier interface (utilities, communications and supply). Each of these categories of systems goes through an extensive process of resolving the Y2K issue through the steps of planning, inventory assessment, remediation, and validation. In addition, an extensive customized and coordinated contingency plan effort is being established for the unlikely situation that remediation efforts fail to mitigate these situations. This new plan is being built off the present contingency plans for natural and manmade disasters that have made natural gas the most reliable energy source in the US.

INGAA helped initiate an effort to disseminate the progress of those efforts to government and general public through the President's Council on Y2K Conversion and the Federal Energy Regulatory Commission. This communication is accomplished primarily through a quarterly survey that updates key variables that measure the progress of efforts to manage this issue.

The last quarterly update was released on February 18th, 1999. The survey covers about 1,000 companies from all sectors of the gas and oil industries, whose customers represent 88 percent of the consumption of those fuels in the U.S. Almost all the respondents—94 percent—indicated they will be "Y2K Ready" by September 30, 1999. Additional results from the survey include the following:

- More than four-fifths of the combined oil and gas industry companies, 86 percent, are in the final stages of fixing and testing business information systems to accommodate the Y2K date. That compares with 55 percent of the companies in a September 1998 survey.
- As for the embedded hardware systems that must be corrected, 78 percent of respondents said they are in the final stages of fixing and testing hardware and embedded systems for their operational integrity. The response in the September 1998 survey was 46 percent.
- Nearly all respondents, 97 percent, said they expect to have their Y2K contingency plans in place and tested by the end of the third quarter.

To further ensure the smooth operation of their industries, oil and gas companies and associations have coordinated their Y2K efforts through the Natural Gas Council and the American Petroleum Institute. They share information on technical issues, testing and contingency planning; identify and resolve legal issues, including legislation; and communicate within the industries and with the public on their work. We have also reached out to coordinate our activities with the telecommunications and electric utility industries.

Question 10. As the Department of Transportation has moved from a minimum standards approach to a risk based approach, are there some existing pipeline safety regulations that are no longer necessary?

We believe that risk management demonstration project gives the Department, and those pipelines that volunteer to participate, greater flexibility to meet and exceed minimum safety standards. Pipeline companies have a choice to either comply with the existing minimum safety standards, or develop their own safety plan with

the approval of the Department. INGAA does not advocate the removal of any minimum safety standards at this time.

ENVIRONMENTAL DEFENSE FUND
February 12, 1999

The Honorable JOE BARTON, *Chairman*
The Honorable RALPH HALL, *Ranking Democratic Member*
Subcommittee on Energy and Power
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 20515

DEAR CONGRESSMEN BARTON AND HALL: Thank you very much for holding the February 3, 1999 hearing on the pipeline safety. I greatly appreciate Chairman Barton's comment that he will speak to Congressman Upton about holding an oversight hearing on pipeline safety prior to reauthorization of the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act (49 USC 60101 *et seq.*).

I am writing to follow-up on the hearing statement of Associate Administrator for Pipeline Safety Richard Felder that the annual trend in hazardous liquid pipeline releases was downward. I believe that statement is inaccurate, particularly during Mr. Felder's tenure. To develop my testimony, I used Office of Pipeline Safety data and found the following reported release quantities:

[In Millions]

Year	Gallons Released
1990	6.44
1991	7.84
1992	6.55
1993	4.61
1994	6.24
1995	5.67
1996	5.78
1997	6.21
1998	7.70
Average	6.34

As you can see, since 1995 the trend has been increased reported releases each year. In fact, 1998 shows the greatest releases from hazardous liquid pipelines since 1991. This nine year analysis of pipeline performance represents the most recent and relevant data, and is much more reflective of the reality of pipeline releases than a longer-term analysis which might show an overall downward trend. Additionally, most of the data for the 1990s do not include smaller spills, which were reported previously, but which are no longer required to be reported.

Finally, please note that in the testimony presented by C. Richard Wilson on behalf of the Association of Oil Pipe Lines and the American Petroleum Institute, the pie-chart showing the percentage causes of oil pipeline releases, 1992-97, is based on volume released and not the number of incidents. This distinction is important because a single large-volume release can greatly distort the analysis of causes of releases. A more appropriate analysis of where prevention opportunities lie would examine the percentage of the total number of releases by cause, with follow-up to identify the causes of incidents reported as "other," since many of these should have been reported as pipeline failures caused by incorrect operation, materials defects, etc.

I would greatly appreciate it if you would include this communication and any responsive information you might receive from Associate Administrator Felder in the record of the February 3 hearing. Thank you very much.

Sincerely,

LOIS N. EPSTEIN, P.E.
Senior Engineer

cc: Richard Felder, Associate Administrator, Office of Pipeline Safety
Members of the Subcommittee

ASSOCIATION OF OIL PIPE LINES
February 10, 1999

RE: PIPELINE SAFETY

The Honorable JOE BARTON
Chairman
Subcommittee on Energy and Power
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 20515

DEAR MR. CHAIRMAN: Thank you for the opportunity you provided the Association of Oil Pipe Lines to appear before the Subcommittee at your February 3 hearing on pipeline safety. We appreciate the fair and cooperative spirit with which the Subcommittee is approaching this issue.

The purpose of this letter is to correct any impression that may have been left at the hearing that the releases from oil pipelines are on a rising trend. In fact the long-term trend in oil pipeline releases is *downward* and significantly so. As the attached fact sheet shows, six-year average release volumes exhibit a steady downward progression for the past 30 years, with a 60 percent reduction in the volume released. Moreover, the volume of these annual releases is actually quite small in relation to the enormous volume of oil moved by the industry—currently about one one-thousandth of a percent.

However, we do not consider the current level acceptable. We are working as an industry to limit releases, and we hope to accelerate the downward trend. No release is acceptable. As we indicated in our testimony, the Office of Pipeline Safety is a positive force in working with us to limit both the occurrences of releases and their size and impact.

I request that you include this communication and the attached fact sheet in the record of the February 3 hearing. I hope this information will be useful to you as you move forward with reauthorization of the pipeline safety program.

We very much appreciate your timely efforts to address this issue. Any questions you or your staff may have about this information can be directed to me at (202) 408-7970.

Yours truly,

BENJAMIN S. COOPER
Executive Director

cc: The Honorable Ralph Hall, Ranking Minority Member.
Members of the Subcommittee.

ASSOCIATION OF OIL PIPE LINES
March 5, 1999

The Honorable JOE BARTON
Chairman
Subcommittee on Energy and Power
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 20515

DEAR MR. CHAIRMAN: Thank you for the opportunity provide answers to the Subcommittee's post-hearing questions on the reauthorization of pipeline safety programs. We appreciated the opportunity to have C. Richard Wilson, Vice-Chairman of Buckeye Partners, L.P. appear at the hearing February 3 to represent the views of the American Petroleum Institute and the Association of Oil Pipe Lines. I am transmitting these answers to you on his behalf.

I understand that you will include this communication in the record of the February 3 hearing. I hope this information will be useful to you as you move forward with reauthorization of the pipeline safety program.

We very much appreciate your timely efforts to address this issue. Any questions you or your staff may have about this information can be directed to me at (202) 408-7970.

Yours truly,

BENJAMIN S. COOPER
Executive Director

cc: The Honorable Ralph Hall, Ranking Minority Member.
Members of the Subcommittee.

FOLLOW-UP QUESTIONS FOR C. RICHARD WILSON, VICE CHAIRMAN, BUCKEYE PARTNERS, L.P.

Question 1. Do you believe that the 1996 amendments which allowed the Department of Transportation to employ risk assessment and risk management approaches have resulted in pipeline safety regulations which work better and cost less? Why or why not?

Response. The 1996 amendments significantly improved the rulemaking process at the Department of Transportation, and, as a result, we are getting regulations that work better and cost less. The 1996 amendments and the administration of these amendments by the current management at the Research and Special Programs Administration and the Office of Pipeline Safety broke a logjam in pipeline regulation. Regulations that for far too long had been bogged down in controversy and misunderstanding of industry practice are now moving forward. In particular, substitution of a model of communication and cooperation with industry and other stakeholders has been successful where the previously-used model of command and control was not. We are getting results, we are getting these results sooner, and they are better results. We are seeking better results under 1996 amendments, not necessarily less short run cost or even fewer regulations. We believe the main goal is to see that resources being applied where they have the most effect mitigating risk. OPS is making excellent progress towards this goal, and the 1996 amendments deserve much of the credit.

It is important for the Subcommittee to understand that the risk management demonstration projects authorized by the 1996 amendments have given the Office of Pipeline Safety and the industry an important new way to get better results by working together. We believe this new approach ultimately will significantly enhance pipeline safety and protection of the environment above and beyond the protection available under existing regulations. We are in the initial phase of a learning process. The early risk management projects are the basis for important training and education by both industry participants and regulatory staff. This involves both book learning and detailed on the job experience with all the parameters involved in oil pipeline operations. The learning curve will take time. But we believe we'll achieve much better understanding by both sides of how best to operate pipeline systems. We are already experiencing far better communication between our companies and our regulators. The lessons of this communication are not unique to individual facilities. These benefits can be applied throughout the industry to enhance the effectiveness of OPS regulation across the board. There are significant benefits in mutual understanding now. We expect the benefits from the process started by the 1996 amendments to increase steadily in the future.

Question 2. What level of resources is appropriate for reauthorizing legislation?

Response. We believe the current resources available to the Office of Pipeline Safety are adequate. Funding for the OPS is provided through the pipeline user fee by the oil and natural gas pipeline companies that OPS regulates. We believe that the current level of resources (represented by the appropriations enacted by the 105th Congress) is about right and should be extended in real terms for the next four years—fiscal years 2001-2004. This would mean adjusting the numbers in the current law for fiscal year 2000 using an inflation index approved by the Office of Management and Budget.

Question 3. The pipeline safety program is paid for through user fees. Who ultimately bears those costs?

Response. Pipeline companies write the checks that pay the fees, but it is not obvious how these costs are borne. Oil pipeline companies may or may not be able to recover the cost of the user fee from customers. Federal oil pipeline user fees are a cost of doing business for U.S. oil pipeline companies. Each company tries to obtain the revenues from its customers to cover today's costs, to provide returns on the capital it uses and to invest to manage the risks that the future holds. However, our companies operate in a highly competitive market, and it is not guaranteed we will stay in business. Oil pipeline rates are subject to regulation by the Federal Energy Regulatory Commission, and rate changes generally are capped by an index. This index currently requires us to reduce rates. We have no government-granted right to pass costs on to our customers. There is fierce competition in the oil industry. Each of us must manage his or her company to compete with other oil pipelines, with other modes of oil transportation, with refineries situated to reach the markets we serve and with the ever-present possibility of commodity exchanges that could bypass our pipelines entirely. The competitive pressures for improved economic, environmental and safety performance apparent in the oil industry generally also operate on the management of oil pipeline companies. We are doing our best to balance these pressures.

Question 4. What do you think of the suggestion that release liability provisions be added to the reauthorizing legislation?

Response. We oppose adding language to the reauthorization legislation relating to oil spill liability. In general, adequate causes of action are available to address damages caused by an oil pipeline spill. The liability for an oil pipeline spill onto land is currently determined under state law. Pipeline spills onto water are subject to both state liability law and to the federal Clean Water Act for spills onto navigable waters. We would oppose a proposal to further federalize the determination of oil pipeline spill liability unless and until study and analysis shows that the potential additional benefits over the status quo of such a proposal are justified. We don't believe current law puts those damaged by an oil pipeline spill at an unfair disadvantage in assigning liability for the spill. Pipeline companies carry adequate insurance to cover these risks, and, to our knowledge, have been able to cover their obligations under the judgments entered. We also would not favor delaying the reauthorization of this important program while we and the Subcommittee became entangled in the difficulties that have plagued congressional consideration of proposals to federalize liability rules in other sectors of the economy.

Question 5. What would be the result if the citizen suit provisions were modified to facilitate private enforcement actions?

Response. Increasing the number of private enforcement actions will mean more litigation costs, but we do not believe this will improve pipeline safety. Current law governing federal pipeline safety programs contains a citizen suit provision. That provision has the basic elements of citizen suit provisions generally. Any person may bring a suit against another person for violation of a law or regulation or against the agency for failure to perform its duty under the law. The agency must be given advance notice of intent to file the citizen suit, and the citizen suit may not proceed if the agency is engaged in ongoing action to enforce or carry out its own responsibilities under the law. We would oppose attempts to modify these provisions to make it easier to take management of pipeline safety out of the Office of Pipeline Safety and put it in the courts. We can think of little justification for believing that judicial involvement in pipeline safety issues will settle these issues sooner or, more importantly, will achieve better results than we are seeing under the very promising initiatives the OPS currently has under way. We expect that additional litigation will only divert time and resources that could far more productively be used to address safety issues directly.

Question 6. Do you agree with the conclusion that hazardous liquid releases are going up? Why or why not? What can be done to counter this trend?

Response. These releases are not going up. They are going down. Oil pipeline releases are on a long-term trend downward, as we indicated in our letter of February 10, 1999 to Chairman Barton. A copy of that letter is attached. This is a real trend in environmental improvement, not a function of reporting protocols. It represents progress, but is not a reason for complacency or self-congratulation. Oil pipeline spills are rare events, given the volume of petroleum delivered by the U.S. system. The volume of releases varies from year to year, and can increase in a year when there is an unusual large spill, influenced, for example, by the size of the pipe involved. A significant portion of spills, particularly the larger spills, are caused by events—weather and third-party damage—over which the responsible parties are able to exercise only limited influence. However, no release is acceptable. We are working very hard as individual companies and as an industry to use advanced technology and improved methods to reduce the number and impact of spills where we do have some control. The long-term trend downward in releases is evidence that this work pays off.

We are also working to limit the impact of formerly unpredictable events on pipeline integrity. Three of the oil pipeline risk management demonstration projects include a focus on preventing third party damage as part of providing protection superior to that achievable under existing OPS regulations. A comprehensive public education initiative developed with OPS through a public-private partnership is currently undergoing pilot testing in three states. This initiative is designed to make the key members of the public much more aware of the risks to pipeline integrity of certain activities. Last year's new one-call notification legislation has provided a number of opportunities to address even more directly the problems of third-party damage to pipelines. Under this law, we are working cooperatively with OPS, the excavation community, operators of other underground facilities, one-call center operators and other stakeholders to significantly improve the effectiveness of underground damage prevention. We believe these efforts offer promise that the downward trend in pipeline releases will continue and, we hope, accelerate.

Question 7. Should the risk management concept be applied more broadly? Are legislative changes needed to have a broader application of risk management principles?

Response. The 1996 amendments to the pipeline safety statutes provide sufficient authority for OPS to incorporate risk management principles into its regulatory program. Oil pipeline companies currently rely on risk management principles to design the programs they themselves use to improve safety and limit environmental impact. We rely on these principles because they work. We would support increased recognition by government regulators of the power of these principles. The OPS Risk Management Demonstration Program is a good way for Congress and regulators to obtain practical experience with the application of risk management techniques. We would do more in the area of demonstrating the power of risk management if this were possible. However, we are confident that the record of the currently authorized demonstration projects will clearly exhibit the value of using risk management to enhance pipeline safety and increase the level of comfort with this approach in designing regulations.

Question 8. How is the risk management approach to regulation working with respect to pipeline safety? Are legislative changes needed to improve how it is applied?

Response. The risk management approach to regulation is making good progress with respect to pipeline safety. We believe the OPS staff understands the concepts and is committed to learning the best way to apply these principles. We do not recommend legislative change in the risk management provisions at this time.

Question 9. How has the risk assessment approach affected the amount of time it takes to complete a pipeline safety rulemaking? Do you feel that the Department of Transportation is enacting better regulations as a result of using a risk assessment approach?

Response. As we said in answering a previous question, we have seen significantly more progress in developing new rules at the Office of Pipeline Safety since the enactment of the 1996 amendments. The 1996 amendments encourage OPS to use consensus processes and to work with all interested parties. This effort has led to regulatory solutions that work and are implemented much quicker than was possible in the past when regulatory proposals were developed by OPS in isolation. In sum, better regulations are being enacted in a much more timely fashion.

Question 10. What is the status of the oil and gas pipeline community's Y2K preparedness efforts?

Response. The oil and natural gas pipeline is on target to resolve year-2000-related computer problems before the end of this year. The oil pipeline industry will be prepared for the year 2000 changeover, and we are investing tens of millions of dollars to ensure this result. This is an industry that uses computing and remotely-operated technology extensively and has done so for many years. We were aware of the Y2K problem as early as almost any industry in the nation and were working to solve it before the recent attention to the issue. We are cooperating fully with the Federal Energy Regulatory Commission, which is leading the Oil & Gas Working Group of the President's Council on Year 2000 Convergence. Official estimates and statistics on oil and gas industry Y2K preparedness are available from the Working Group. Information is also available at the FERC website: www.ferc.fed.us/y2k. The President's Council is playing a useful role in helping to demonstrate not only internal readiness within a company, or an industry, but also readiness in the reliability of interconnections to essential services supplied externally, such as electric power, police and fire safety response and telecommunications. Ensuring these services is a concern for us as well, but we have less control over their reliability than we do for our own operations.

Question 11. As the Department of Transportation has moved from a minimum standards approach to a risk based approach, are there some existing pipeline safety regulations that are no longer necessary?

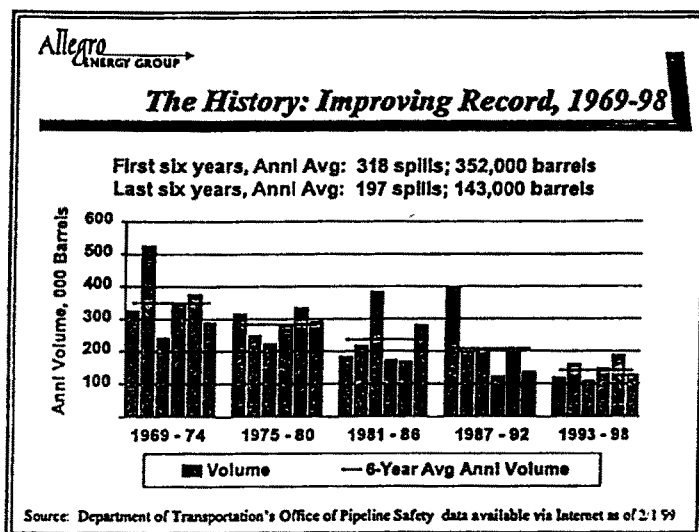
Response. The current leaders of the Department of Transportation, the Research and Special Programs Administration and the Office of Pipeline Safety, are sensitive to the need to remove or update any obsolete requirements so as to streamline and improve the efficiency of the pipeline safety regulatory program. For instance, we applaud recent efforts by RSPA to update industry standards and incorporate them into OPS regulations. Currently, we believe the reform of OPS rules is being carried out at an appropriate pace.

FACT SHEET ON THE OIL PIPELINE SPILL RECORD

Oil pipelines move about 12.5 billion barrels of crude oil and refined petroleum products annually. Pipelines distribute about 60% of the oil transported in the

United States, as measured in barrel-miles. (One barrel, transported one mile, equals one barrel-mile.)

The oil pipeline industry's record of spills and reportable events¹ has improved substantially over the last 30 years, with the annual number of spills falling by nearly 40% and the volume of oil spilled falling by about 60%. In the six years from 1969 through 1974, the pipeline system experienced 318 spills per year, for an average annual volume of 352,000 barrels. In the most recent six years, 1993-1998, the number of spills has averaged 197 per year, and the annual volume, 143,000 barrels.



In the years that stand out as peaks, a few very large spills pushed volumes higher. The largest spill in the database, for instance, occurred in 1970 at a pipeline company's tank farm; it incurred no property damage beyond company property. That spill accounted for more than 40% of the volume released in that year. In 1987, one large spill accounted for more than 30% of the volume. In 1998, one large spill accounted for 25% of the volume. Of particular note, however, was that 1998's largest spill was about 1/4 the size of 1987's and about 15% the volume of the 1970's largest.

The median spill size (half the spills are smaller, half are larger) has been dropping over the period, an indication that improved overall performance is not just a matter of reducing those infrequent large spills. In the first six years of the period, the median spill size was 290 barrels. In the latest six years, it was 100 barrels.

The volume of oil spilled from pipelines is equal to about one gallon (24/1000ths of a barrel) for every million barrel-miles of oil transported. In common household measures, this equates to less than one teaspoon per thousand barrel-miles.

The most important cause of spills from pipeline systems is "outside force damage," including so-called "third-party damage." (See table.) Outside force damage accounted for 38% of the 1993-98 volume overall and more than half of the volume spilled from line pipe in the system.

¹ The Office of Pipeline Safety publishes data from the Department of Transportation's Form 7000, required to be filed for incidents meeting any of the following criteria: loss of 50 barrels or more of liquid, escape of 5 barrels per day of highly volatile liquid, explosion, fire, death, bodily harm or estimated property damage exceeding \$50,000. The 1993-1998 data discussed here reflect information available in February 1999.

Releases from Liquids Pipelines, by Cause of Incident, 1993-98

Cause	Avg. Annual Volume (Barrels)	Share (%)
Outside Force Damage	53991	38
Corrosion	30759	21
Other	23957	17
Failed Weld	10651	7
Incorrect Operation By Operator Personnel	10286	7
Malfunction Of Control Or Relief Equipment	6888	5
Failed Pipe	6514	5
Total	143072	100

Note: Reflects data available from DOT's Office of Pipeline Safety's Internet site as of 2/1/99

The second largest cause of spills from pipeline systems over the 1993-98 period was corrosion, accounting for 21% of the volume lost. The industry and its suppliers are constantly struggling to identify technologies, construction methods and inspection tools that will eliminate the risk of a pipeline failure due to corrosion. While one year does not constitute a "trend," the latest data² on 1998 spills due to corrosion are promising: the volume, at about 10,000 barrels, was one-third of the multi-year average, and accounted for less than 8% of the total.

The Office of Pipeline Safety's data reflects estimates of liquids recovered directly, during the first clean-up phase in the immediate period following an event. The data exclude remediation and other recovery techniques that may take longer to complete. Even so, according to data available from the Office of Pipeline Safety Internet site as of February 1, 1999, initial recovery of spilled liquids equaled 57% of the gross loss over the 1993-98 period. For tank farms and pump stations, the initial, or direct, recovery was equal to almost 75% of the gross loss. Estimated direct recovery on the largest spill in 1998 was 99%, for example. In fact, estimated direct recovery from all liquids releases in 1998, from line pipe as well as tank farms and pump stations, was equal to nearly 75% of the initial volume lost.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
March 4, 1999

Honorable JOE BARTON
Chairman
Subcommittee on Energy and Power
2125 Rayburn H.O.B.
Washington, DC 20515

DEAR MR. BARTON: Enclosed, please find my responses to the follow-up questions concerning my testimony before the Energy and Power Subcommittee on February 3, 1999.

I appreciated the opportunity to appear before the Subcommittee to express the concerns of Kentucky and the National Association of Regulatory Utility Commissioners relating to reauthorization of the natural gas and hazardous liquid pipeline safety programs.

If there are further questions, or if I may be of further assistance to the work of the Subcommittee, please do not hesitate to contact me.

Sincerely,

EDWARD J. HOLMES
Vice Chairman, Kentucky Public Service Commission
Chairman, Committee on Gas,
National Association of Regulatory Utility Commissioners

Enclosure (1)
cc: Representative Markey

Question 1. What portion of State pipeline safety programs are funded through the Department of Transportation?

Answer. States are certified to carry out certain pipeline safety functions. These are funded up to 50 percent by the U.S. Department of Transportation.

Question. How is the remainder funded?

² As of January 27, 1999.

Answer. The remainder of the funds for the pipeline safety programs comes in most cases from the states' general funds allocated to the state regulatory agency. In some states, Public Utility Commissions are funded in total or in part through assessments on utilities.

Question 2. Who decides how much a State is going to spend on pipeline safety efforts?

Answer. Typically, the state regulatory agency submits a budget proposal in the same manner as other State executive agencies. The State regulatory agency submits the budget proposal to the U.S. Department of Transportation (DOT) for 50 percent funding. DOT awards funds up to 50 percent depending on availability of funds and on State scores in a DOT grant allocation formula. The DOT grant allocation formula factors in the state score on its annual evaluation, and certain information from the State Certification Agreement including the extent of state jurisdiction, inspector qualifications, number of inspection person-days, state adoption of maximum civil penalty requirement, state adoption of applicable federal regulations, One-Call system minimum requirements, state attendance at state/federal regional meetings, and meeting various deadlines.

Question 3. Approximately how much does a State Pipeline Safety program cost? Answer. State programs will vary according to certified responsibilities, staffing quality, territory, cost of living, and staffing level. The staffing levels are based on responsibilities and a recommended staffing level. The U.S. DOT will likely have listings of State program costs according to the types of responsibilities.

Question. What types of activities do the State programs support?

Answer. State activities vary according to the type of Certificate of Agreement filed with the U.S. Secretary of Transportation. A state could implement an inspection program to include but not be limited to comprehensive evaluations, construction project reviews, follow-up inspections, specialized audits, and incident investigations. The types of operators being regulated could vary from local distribution companies, intrastate transmission companies, master meter facilities, liquefied natural gas facilities, liquefied petroleum gas facilities, hazardous liquids pipelines, offshore gas and liquid transmission, direct sales connections, and gathering facilities.

Question 4. What level of resources is appropriate for reauthorizing legislation?

Answer. The amount required to actually provide 50 percent funding in support of the State partnership programs.

Question 5. Can the Risk Management Demonstration Program be applied on intrastate lines or is it only useful for interstate facilities?

Answer. At present, the Risk Management demonstration program is applicable only to approved interstate pipeline operators. If the project is successful, the Risk Management approach will, in all likelihood, be offered to intrastate pipeline facilities and even to local distribution companies.

Question 6. (From Mr. Markey) Considering how slow OPS has been in issuing regulations, do you think states should be able to set safety and environmental protection standards more stringent than federal standards?

Answer. It certainly does seem that states should have the opportunity to set standards that improve the minimum safety standards in the Code of Federal Regulations. This would seem to be a matter for each states' legislative or regulatory processes. I would think that most states have the ability to set such standards if desired.

As for the pace of OPS in issuing regulations, I am told that this is far better now than in past years and seems to be steadily improving as OPS/State working relationships mature further.

Question. Do you think state governments should be able to conduct inspections and enforce regulations for interstate pipelines that run through the state?

Answer. States may become certified to act as agents of the U.S. Department of Transportation with respect to interstate pipelines. Typically, such states conduct inspections and report their findings to the DOT for enforcement action by DOT. State regulatory agencies are not of one mind concerning whether states should be able to enforce regulations as well as to inspect. Some believe that it might be very confusing for an interstate pipeline to be subject to enforcement actions of several states. Others believe that state enforcement could be positive and should be done.

Question 7. (From Mr. Markey) In your prepared testimony you mention that while states are receiving inadequate funding, half a million dollars are earmarked for Risk Management feasibility studies. Do you think these feasibility studies are taking away from basic inspection and enforcement activities directed at safety and environmental protection?

Answer. As I stated in my testimony on behalf of NARUC, state regulatory agencies appear to agree that the pilot programs relating to risk management may show these to be valuable tools for ensuring safety. Our concern is that the development

and expansion of such programs should not unduly draw funds or attention away from the core pipeline safety programs conducted under State/OPS partnerships. We do not have data that indicate that such diversion or attention has occurred. However, we believe that care must be taken to ensure that the core programs continue undiminished as the basic guarantors of public safety concerning pipelines. And it is important to note that, at present, the risk management studies apply only to interstate operators.

FOLLOW-UP QUESTIONS FOR THE AMERICAN GAS ASSOCIATION

Question 1. Do you believe that the 1996 amendments which allowed the Department of Transportation to employ risk assessment and risk management approaches have resulted in pipeline safety regulations which work better and cost less? Why or why not

Response. A.G.A. believes that the 1996 Pipeline Safety Amendments for risk assessment and risk management approaches have resulted in better regulations being promulgated by DOT. "Front-end" loading the process by gathering information and hearing from stakeholders prior to entering the formal rulemaking process has enabled DOT to promulgate rules much more quickly than in the past. Furthermore, the rules issued after 1996 have been not been subject to court challenges resulting in even greater savings in outlays and personnel resources for the federal government. Finally, by working to understand the decision making process of pipeline operators through the risk management demonstration project, federal and state safety regulators are gaining additional knowledge that makes them more effective.

Question 2. What level of resources is appropriate for reauthorizing legislation?

Response. A.G.A. supports keeping funding levels through FY2004 level with FY2000 levels. An annual inflation adjustment for years 2001-2004 is acceptable. The Office of Pipeline Safety has largely completed several one-time initiatives to enable them to implement the 1996 pipeline safety act, i.e. developing protocols for cost-benefit and risk assessment analyses and a framework for risk management demonstration projects.

Question 3. The pipeline safety program is paid for through user fees. Who ultimately bears those costs? With the restructuring of the pipeline industry, are those costs still passed through on a full basis?

Response. Interstate pipeline operators initially pay the user fee costs. In the past these costs flowed to the ultimate consumer. However, with increased competition and unbundling of service the situation has changed. Although transmission operators frequently discount their charges to compete it is unclear how much of the user fee assessment they are absorbing. The amount varies from customer to customer depending on the circumstances. However, it is very likely that some part of these costs are passed through to local distribution companies (LDCs) who pass through all or part of these costs to their customers. Industrial and commercial customers of both interstate pipelines and LDC also share in the costs.

Question 4. The law currently requires OPS to fund "up to 50 percent" of safety pipeline safety efforts. The States have argued that OPS needs to be funding a greater share of state pipeline safety programs. Should interstate pipelines, which aren't regulated at the state level, pay a greater share of state regulatory efforts?

Response. DOT provides a portion of its user fees to states to offset up to 50% of the states pipeline safety program. States in turn agree to adopt the federal pipeline safety standards as minimum standards for their programs. Congress set up this partnership to ensure a consistent basis for providing for the public's safety in every State. This arrangement has worked well in the past and should be continued.

Each year States submit a form to DOT outlining their safety budget and their compliance with certain DOT performance standards. If the State meets these standards DOT may grant them up to 50% of their safety budget costs. Last year, States received 42% of these cost on average. The total funds provided to States under this program represent less than half of OPS' annual user fee assessment. At least half of all transmission user fees are either passed through to (LDCs) or borne directly by (intrastate transmission) entities regulated by the State. The current system of user fee assessments is both equitable and simple to implement. A.G.A. does not believe that interstate pipelines are subsidizing state regulatory efforts.

Question 5. What would be the result if the citizen suit provisions were modified to facilitate private enforcement actions?

Response. The result would likely be an increase in lawsuits without a corresponding increase in public safety or the protection of the environment. Under

current law, citizens can sue when the government fails to act on enforcement in a reasonable timeframe. Congress crafted this system to allow the regulators the opportunity to do their jobs while giving citizens the right to seek injunctive relief on their own if the system did not work properly. While some "citizens" may not agree with an enforcement decision, it does not follow that government enforcers are not acting properly or expeditiously. No modifications to the existing provisions of the law are justified.

Question 6. Should the risk management concept be applied more broadly? Are legislative changes needed to have a broader application of risk management principles?

Response. No legislative changes are needed at this time. A.G.A. believes that DOT presently has adequate authority to broaden the application of risk management principles. The key at this juncture is to thoroughly understand the principles and to work to identify areas of regulation where the application of risk management principles might be most effective. It is important to note that these pipelines and LDCs have been using some form of risk management analysis for many years. They use it to allocate resources expended over and above that necessary for compliance with regulations. In general companies spend twice as much on safety and maintenance as is required by strict compliance.

Question 7. How is the risk assessment approach to regulation working with respect to pipeline safety? Are legislative changes needed to improve how it is applied?

Response. The flexible risk assessment provisions of 1996 were modeled after President Clinton's "Reinventing Government" executive order 12866. They appear to be working very well. The most immediate result has been greater communication and information sharing between DOT and the regulated industry. DOT has worked with a stakeholder team to develop guidelines for applying risk assessment to new regulations and should begin this application in the near future. DOT also has utilized alternatives that the 1996 statute created that avoid do not require a risk assessment such as the negotiated rulemaking for operator qualification, adoption of industry standards for updating the LNG rules and pending consensus rules on corrosion and plastic piping.

Question 8. How has the risk assessment approach improved the amount of time it takes to complete a pipeline safety rulemaking? Do you feel that the Department Of Transportation is enacting better regulations as a result of using a risk assessment approach?

Response. The overall time to complete a rule is coming down. While the process is still lengthy, the approach of "front-end" loading has shown to result in more carefully crafted, consensus rules that are not challenged in court. Further, the official process from Notice of Proposed Rule to Final Rule has been significantly streamlined. Many of the issues before OPS are complex and necessitate the gathering of significant amounts of data. The process will never be fast enough for some but improvements are real.

Question 9. What is the status of the oil and gas pipeline community's Y2K preparedness efforts?

Response. Natural gas utilities are making substantial progress toward being ready to deliver gas into the Year 2000 and beyond, according to the American Gas Association (A.G.A.). According to the oil and natural gas industry survey, as of January 1999:

- More than four-fifths (86 percent) of the combined oil and gas industry companies indicated they are in the final stages of fixing and testing business information systems, such as software, to accommodate the Y2K date. That compares with 55 percent of the companies in the industry's September 1998 survey, cited by today's Senate report.
- Embedded chips do not pose a significant problem for the industries, as had previously been thought, according to the survey. The January survey found that 78 percent of all respondents said they are in the final stages of fixing and testing hardware and embedded systems for their operational integrity. This is far higher than the 46 percent response reported last September.
- Nearly all respondents (97 percent) said they expect to have Y2K contingency plans in place and tested by Sept. 30.

Question 10. As the Department of Transportation has moved from a minimum standards approach to a risk based approach, are there some existing pipeline safety regulations that are no longer necessary?

Response. It is not entirely accurate to state that DOT has moved to a risk based approach. DOT's program is actually a combination of both minimum standards and a risk-based approach. Existing regulations are not required to be reassessed using risk assessment but it may prove useful to do so in order to make sure the regulations provide safety in the most effective and efficient manner.

U.S. DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
March 17, 1999

The Honorable JOE BARTON
House of Representatives
Washington, DC 20515-2017

DEAR MR. BARTON: Respectfully submitted for the record is the Research and Special Programs Administration's Office of Pipeline Safety's responses to Edward J. Markey's questions resulting from the February 3, 1999, subcommittee hearing on pipeline safety. A copy of this letter and the responses have been directly faxed to Lowell Ungar per Congressman Markey's request.

If you have any questions or concerns, please contact me or Patricia Klinger, Acting Director, Office of Policy and Program Support, at (202) 366-4831.

Sincerely,

KELLEY S. COYNER

Enclosure

cc: Edward J. Markey

RESPONSES TO QUESTIONS FROM REPRESENTATIVE EDWARD J. MARKEY

Question 1: The Pipeline Safety Act of 1992 required OPS to develop pipeline standards to protect the environment, specifically requiring OPS to identify areas "unusually sensitive to environmental damage" by October 1994 and to require periodic inspections of pipeline infrastructure in those areas by October 1995. Why has OPS still not issued these environmental regulations four years after the first deadline? When can we expect these rules to be issued?

Answer: After extensive consultation with numerous federal and state agencies, environmental groups and academia, RSPA developed a USA conceptual model that focuses on drinking water and ecological resources. The drinking water resources include public water systems, wellhead protection areas and sole source aquifers. The ecological resources include the following: threatened and endangered, critically imperiled, and imperiled species; depleted marine mammals; and areas containing a large percentage of the world's population of a migratory waterbird species.

OPS is currently pilot testing this USA conceptual model, using drinking water and ecological data created and maintained by other government agencies and environmental organizations like The Nature Conservancy. During the pilot test period from March through June of this year, Federal and States agencies will be considering the model's adequacy in identifying the most important environmental areas in California, Texas and Louisiana, and the appropriateness and accessibility of environmental data to support this decision making. OPS is asking Federal, state and other water and ecological experts to verify that the USAs identified by the model are unusually sensitive areas, and that the model has not missed other USAs. This pilot testing provides a needed basis for regulation on USAs.

A Federal Register notice that will seek comments on the evaluation of the USA conceptual model will be published in March 1999. This experience will lay the groundwork for regulatory action in fiscal year 2000.

Question 2: In 1996 Congress added requirements for cost-benefit analyses of regulations. Has this added burden taxed your staff resources or slowed issuance of the regulations? Why are environmental effects of pipeline accidents not included in the cost-benefit analyses?

Answer: The Accountable Pipeline Safety Act of 1996 included a provision requiring peer review for cost-benefit analyses of pipeline safety regulations. OPS was already preparing cost-benefit analyses under Executive Order 12866 and the Department's policy. Thus, the statutory requirement was not an added burden to our regulatory process.

In response to the 1996 mandate, OPS has worked with a government/industry task group to develop a risk assessment/cost-benefit framework during the past 18 months. We provided a draft of this framework to our two pipeline safety advisory committees and briefed both committees on the work of the task group. We will be seeking public comment and then finalizing the document. The final framework document will be provided to the pipeline safety advisory committees this summer.

Environmental effects of pipeline accidents are included in cost-benefit analysis. Complete and precise estimates of monetary damage from pipeline spills are often difficult or impossible to quantify. Therefore, environmental damage from pipeline spills is often described qualitatively rather than quantitatively.

Question 3: According to the National Transportation Safety Board, the Office of Pipeline Safety has only accepted 68% of NTSB recommendations, the worst accept-

ance rate of any Department of Transportation administration. Why has OPS failed to follow so many NTSB recommendations?

Answer: DOT and the NTSB both have important roles to play in pipeline safety. NTSB investigates pipeline accidents and makes recommendations; RSPA evaluates their recommendations. We believe that OPS and NTSB are in agreement on key safety issues, but sometimes differ on the way to resolve those issues. Often, the disagreement is over the OPS selection of a non regulatory solution.

RSPA is making every effort to work more closely with the NTSB. Areas of particular collaboration are improvements to corrosion regulation, damage prevention, data improvements and investigation of human factors' impact on safety. At RSPA's initiative, we established meetings with NTSB staff every six months to discuss all open recommendations and RSPA's response to each of them. We do this in addition to the written responses and follow-ups that are required for every NTSB recommendation. We also coordinate informally with NTSB staff on the nature and status of our response to each recommendation.

We have included NTSB experts in ongoing efforts to address pipeline safety problems, even without any recommendation from NTSB. For example, we have met with state governments, standards groups, and gas pipeline groups to discuss how underground clearances for utilities are addressed in various laws, regulations, and standards.

The NTSB statement that OPS has only accepted 68% of NTSB recommendations includes all recommendations issued to OPS since the early 1970s. Of all recommendations closed by the NTSB during the last ten years, 83% were classified by NTSB as acceptable. Of the NTSB recommendations that are currently classified as open, 14 are classified as acceptable and seven as unacceptable. OPS continues to work to allow NTSB to close these recommendations as acceptable. In 1998, OPS updated NTSB on actions being taken to address each open recommendation.

In addition, the 27 NTSB recommendations issued in the last two years have not been classified by NTSB as either acceptable or unacceptable because OPS is now in the process of providing initial responses or because NTSB has yet to issue a classification determination.

Question 4: Since the 1996 amendments, OPS has approved six demonstration projects among the 2,200 regulated operators. How much OPS staff time has gone into those six projects? Has the staff time used in these projects reduced OPS ability to issue regulations mandated by the Congress? Since the projects directly affect only a small percentage of operators, how has the information teamed from the projects affected generic regulations?

Answer: OPS has allotted two full-time engineers to risk management, and regional staff and other experts are used on an as-needed basis. To date, this amounts to approximately five person-years annually. This allocation of staff resources has not reduced OPS's ability to issue regulations mandated by the Congress. OPS augments in-house risk management capability by contracting with risk management experts and consulting with representatives from state agencies.

The Demonstration Program represents OPS's most ambitious test of risk-based approaches to improve safety, environmental protection, and service reliability. While risk management may not be the appropriate regulatory alternative for every operator, it has provided information and techniques that OPS is already using with other operators in the compliance program and in shaping new regulations.

In the compliance area, our experience in the Demonstration Program has influenced us to move away from a piecemeal inspection process to a system-based approach. Using this approach on Alyeska Pipeline, we are conducting a risk-based review of all the valves on the system resulting in repair and replacement of valves in environmentally sensitive areas. Using this approach on Colonial Pipeline, we have worked with the Department of Justice to order system wide evaluation of all water crossings on a risk basis.

To extend the risk assessment process outside the pipeline companies, OPS now routinely uses internet-accessible information systems, electronic town meetings, and other approaches that solicit and incorporate broad-based public input into the Risk Management Demonstration Programs. In addition, we now solicit involvement on other programs such as damage prevention, mapping and system integrity, using techniques that were first developed for the Demonstration Program.

Question 5: In 1996 we assigned peer review of risk assessment to the existing advisory committees. What risk assessments have been peer reviewed by the advisory committees? What changes have been made in response to the committee reviews? One-third of these committees are composed of industry representatives. What steps have you taken to ensure that conflicts of interest do not color their reviews?

Answer: A table of rulemaking projects for which risk assessments were reviewed by the advisory committee is attached. To the extent that any changes are made

in a rule because of advisory committee comments, these are noted in the rule-making documents published in the Federal Register. To date, there has been only one significant change to a proposed rule because of the peer review. After providing risk assessment information to the advisory committee and a full discussion of our proposed requirement, in 1998, RSPA added an environmental factor to the hydrostatic pressure testing requirement for hazardous liquid pipelines.

Although one-third of the advisory committee membership is composed of representatives from industry, two-thirds are derived from the public and state and federal agencies with expertise in issues relevant to pipeline safety and environmental protection. RSPA has been successful in its effort to include government and public members with environmental interests and expertise as well as a broad range of engineering and safety expertise. The full and open discussion of the advisory committee process provides the necessary balance between interests.

Table of Rules Reviewed by the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) Since 1996

Rulemaking Topics	Committee	Status
Leak Detection and Emergency Flow Restriction Devices.	THLPSSC	Final rule published governing computerized leak detection methods. Further action pending development of "unusually sensitive area" definition
Risk-Based Approach to Hydrostatic Testing.	THLPSSC	Final rule published allowing operators to exclude certain low risk pipelines and certain pipelines in which an instrumented pig is run from the requirement to hydrostatically test older hazardous liquid pipelines
Excess Flow Valve Performance Standards and Customer Notification.	TPSSC	Final rules published establishing standards for the performance of excess flow valves installed in gas pipelines, and for notifying gas customers of the availability of such valves
Low-stress Hazardous Liquid Pipelines.	THLPSSC	Final rule published excluding certain short, low risk pipelines from the hazardous liquid pipeline safety standards
Standards for Breakout Tanks	THLPSSC	Notice of proposed rulemaking (NPRM) published to seek comments on new design, construction, and maintenance standards for certain hazardous liquid storage tanks
Siting, Design, and Construction Standards for Liquefied Natural Gas Plants.	TPSSC	NPRM published proposing revised standards for liquefied natural gas plants associated with gas pipelines
Metrication	TPSSC and THLPSSC	Final rule was issued adding metric measurements to the gas and hazardous liquid pipeline safety standards

ENVIRONMENTAL DEFENSE FUND
WASHINGTON, DC 20009
March 25, 1999

The HONORABLE JOE BARTON, CHAIRMAN
Subcommittee on Energy and Power
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515-6115

DEAR CONGRESSMAN BARTON: Thank you once again for holding a hearing on February 3, 1999 on reauthorization of the natural gas and hazardous liquid pipeline safety programs, and for inviting testimony from the Environmental Defense Fund (EDF). The following are EDF's responses to the Questions posed in your February 19, 1999 letter:

Question #1: Do you believe that the 1996 amendments which allowed the Department of Transportation to employ risk assessment and risk management approaches have resulted in pipeline safety regulations which work better and cost less? Why or why not?

Answer #1: The risk assessment provisions of the 1996 amendments have not yet been fully implemented for any proposed or final regulation for natural gas or hazardous liquid pipelines, and the cost-benefit analysis protocol is still under development. Thus, there is currently no basis for assessing whether the risk assessment provisions have resulted in better or cheaper pipeline safety regulations. Note that the examples of recent regulatory improvement given by John Zurcher in his testimony representing the Interstate Natural Gas Association of America, are unrelated to the risk assessment provisions of the amended pipeline safety statute. The mandatory risk assessment provisions of the law have, if anything, slowed down regu-

latory development by the Office of Pipeline Safety (OPS) in the over two year period since the law's passage.

The risk management provisions of the 1996 amendments have not resulted in any improvements to the pipeline safety regulations, as no new regulations or initiatives, nor changes to existing regulations, have been proposed by OPS based on knowledge gained through the risk management demonstration projects.

Question #2: What level of resources is appropriate for reauthorizing legislation?

Answer #2: EDF agrees with the testimony of state pipeline officials that the annual appropriation levels should be sufficient to cover 50% of states' costs, since state officials perform the vast majority of pipeline safety inspections. Section 60107(a) of the pipeline safety law authorizes federal grants to reimburse states for "up to 50 percent" of their costs.

Additionally, EDF believes Congress should be concerned that OPS may be devoting too much of its annual appropriations to the Risk Management Demonstration project program, while simultaneously not meeting Congressionally-mandated deadlines for standards needed to protect the environment. These deadlines include the 1994 deadline to identify environmentally sensitive areas (Section 60109), and the 1995 deadline for companies to periodic inspect pipelines in such areas (Section 60102(f)(2)). Some language ensuring that OPS meets these deadlines expeditiously should accompany Congressional appropriations.

Question #3: Should the risk management concept be applied more broadly? Are legislative changes needed to have a broader application of risk management principles?

Answer #3: To date, there is no evidence of superior pipeline performance for pipelines participating in the risk management program than would otherwise have been the case. Moreover, as stated in my February 3 testimony:

During the two year period of this program, OPS only has approved four of these projects and granted only one regulatory exemption . . . [the risk management program] in no way provides the public with additional information about pipeline risks, nor does it demonstrate problems with existing standards that need to be overcome through an individualized process. In fact, because companies can undertake nearly all these actions without the formal involvement of OPS (e.g., implementing environmental management systems), it is unclear why this program even needs to be part of the statute.

Before expanding this program, there needs to be conclusive evidence of its benefits. There are extensive costs to government for the risk management program, and these costs come at the expense of other important federal activities such as meeting Congressional deadlines for environmental protection standards.

Question #4: How is the risk assessment approach to regulation working with respect to pipeline safety? Are legislative changes needed to improve how it is applied?

Answer #4: See the answer to Question 1. Additionally, as noted in my February 3 testimony, "despite EDF's efforts, OPS staff have not included language covering environmental benefits into any of its draft documents on performing cost-benefit analyses." Such language is essential to ensure development of regulations that adequately protect human health and the environment.

Question #5: How has the risk assessment approach affected the amount of time it takes to complete a pipeline safety rulemaking? Do you feel that the Department of Transportation is enacting better regulations as a result of using a risk assessment approach?

Answer #5: See the answers to Questions 1 and 4.

Question #6: As the Department of Transportation has moved from a minimum standards approach to a risk based approach, are there some existing pipeline safety regulations that are no longer necessary?

Answer #6: As discussed in my February 3 testimony, the trend for releases from hazardous liquid pipelines has been upward since 1995, or around the time OPS began moving toward a risk based approach. For this reason, and the lack of evidence that a risk based approach has resulted in superior performance for the overall pipeline universe, EDF observes that the greater problem appears to be regulatory deficiencies rather than over-regulation of natural gas and hazardous liquid pipelines. As the attached article from the March 8, 1999 Boston Globe states, National Transportation Safety Board chairman Jim Hall gives the federal Office of Pipeline Safety a "big fat F" on its performance in overseeing pipelines.

I apologize for the delay in sending these responses to you but, as your staff was aware, your letter arrived at my office during the beginning of a multi-week vacation.

Please let me know if I can be of any further assistance. Thank you very much for this opportunity to respond to your questions.

Sincerely,

LOIS N. EPSTEIN, *P.E.*
Senior Engineer

cc: The Honorable Ralph Hall, Ranking Democratic Member
Attachment

[Monday, March 8, 1999—The Boston Globe]

'BIG FAT F' ON PIPELINE SAFETY

[By Scott Allen—Globe Staff]

Avila Beach, Calif.—This used to be Hollywood's idea of a funky beach town, a sunbaked row of businesses sandwiched between green hills and endless Pacific surf. The poster from a 1978 movie filmed here, "California Dreaming," still hangs proudly in the Custom House restaurant.

But that was before a clothing shop owner "struck oil" when she tried to expand a few years ago. Now, bulldozers are demolishing most of downtown to clean up massive oil contamination from leaking pipelines that went undetected for years.

"This town used to have its own hip atmosphere," said a disgusted Lindsey Olsen, looking at the metal sheeting that encloses the land where her favorite nightclub once stood. "Now look at it. It's ugly."

While the United States has taken strides in reducing tanker spills since the Exxon Valdez accident of 10 years ago, the country has made less progress against other dangerous spills, especially pipeline leaks. Nearly 8 million gallons of hazardous liquids escaped US pipelines in 1998, the most since 1991.

Though pipeline leaks don't get the attention of tanker accidents they are nearly as destructive. Unocal Corp. spilled at least 8.5 million gallons of petroleum products from pipelines in a fragile dune area near Avila Beach as well as more than 400,000 gallons that flowed under the village.

The National Transportation Safety Board, which investigates pipeline accidents, has warned for years that many pipelines are old, poorly maintained, and operated by underqualified people—sometimes with deadly results. Two teenagers in Lively, Texas, were killed in 1996 when liquid butane escaped from a corroded pipe, causing an explosion.

But the National Transportation Safety Board chairman, Jim Hall, complains that the US Department of Transportation office in charge of regulating the nation's 157,000 miles of pipeline hasn't been listening.

"The Office of Pipeline Safety has just had a pretty terrible track record for a number of years," Hall said, adding that the office adopts significantly fewer Safety Board recommendations than federal agencies such as the Federal Aviation Administration. He said he'd give the Office of Pipeline Safety "a big fat F on everything they've done."

Few believe that better regulation would have helped at Avila Beach, where the leaks began decades ago and where the state accused Unocal of withholding information about the spill outside of town. However, Safety Board officials say other spills could be avoided with tougher regulation.

In particular, Hall wants tougher rules to prevent corrosion, the cause of the Texas explosion as well as a major fuel oil spill in South Carolina's Reedy River in 1996.

Hall also believes lax employee training requirements have contributed to accidents such as the propane explosion in San Juan that killed 38 people in 1996. Gas company workers failed to find the leak despite repeated efforts.

Department of Transportation officials say they agree with the Safety Board's general concerns, but disagree that their agency isn't making pipelines safer. They say the Office of Pipeline Safety adopts far more Safety Board recommendations now than in the past and that the volume of spills in the 1990s is less than in previous decades.

"We've made tremendous strides in improving pipeline safety," said Kelley F. Coyner, administrator of the Research and Special Programs Administration, which oversees the Office of Pipeline Safety.

She said the office recently worked with industry, state regulators, and others to come up with stronger pipeline worker qualifications, though the Safety Board criticized the proposals as weak. Also, Coyner said that new rules on leak detection will go into effect in July and that her agency is experimenting with education programs to reduce construction accidents.

That's not enough for the National Pipeline Reform Coalition, a group of environmentalists as well as labor unions and business and government leaders who are pushing for tougher laws and pipeline safety enforcement.

Lois Epstein of the Environmental Defense Fund, a member of the coalition, told a congressional committee last month that the Office of Pipeline Safety has not identified environmentally valuable areas near pipelines, despite a 1992 law to do so. And she said the agency's fines are so low that it may be cheaper for pipeline operators to pay rather than prevent leaks.

At Avila Beach, about to virtually shut down for 18 months for the oil cleanup, Tony Quale doesn't have to be convinced that pipelines are dangerous. As the clean-up project rumbled behind him, he said nostalgically, "The loudest sound used to be the crashing of the waves."

U.S. DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
March 29, 1999

The Honorable JOE BARTON
Chairman, Subcommittee on Energy and Power
Committee on Commerce
House of Representatives
Washington, DC 20515-2017

DEAR MR. BARTON: Respectfully submitted for the record is the Research and Special Programs Administration's consolidated response to follow-up questions from the February 3, 1999, subcommittee hearing on pipeline safety. Although questions 17 through 21 were previously forwarded under separate cover to Mr. Markey, they are also included for your convenience.

If you have any questions or concerns, please contact me or Patricia Klinger, Acting Director, Office of Policy and Program Support, at (202) 366-4831.

Sincerely,

KELLEY S. COYNER

Enclosure

RESPONSES TO QUESTIONS FROM CHAIRMAN JOE BARTON

Question 1: Could you please explain how the risk assessment provisions from the 1996 reauthorization are being implemented?

Answer: We have developed a policy framework to address the risk assessment provisions from the Accountable Pipeline Safety and Partnership Act of 1996 and the cost-benefit provisions of E.O. 12866. First, both the Technical Hazardous Liquid Pipeline Safety Standards Committee (hazardous liquid pipelines) and the Technical Pipeline Safety Standards Committee (gas pipelines) have been briefed on the risk assessment and cost-benefit requirements that must guide the preparation and presentation of regulatory proposals. Each committee has five public members, five government members and five industry members.

Second, RSPA has worked with a government/industry task group to develop a risk assessment/cost-benefit framework during the past 18 months. The framework is a guidance document that establishes the steps to follow in identifying and evaluating cost and benefits of proposed initiatives affecting regulated pipelines. We provided a draft of this framework to our two pipeline safety advisory committees and briefed both committees on the work of the task group. Shortly, we will be seeking public comment and then finalizing the document. The final framework document will be provided to the pipeline safety advisory committees this summer.

Third, RSPA is now providing risk assessment and cost-benefit analyses with each proposed rule submitted to the advisory committees for voting via the mail or at semi-annual meetings. The advisory committees also receive full briefings by RSPA staffers on all proposals at the semiannual pipeline safety advisory committee briefings. The advisory committees must vote on all proposed regulations after a review of the risk assessment and cost-benefit information. RSPA makes adjustments to the proposals based on the input of the committee members.

Question 2: How has it affected the amount of time it takes to complete a rule-making?

Answer: It has had little effect on the amount of time required to process a rule-making. Analysis of costs and benefits and of risks was already being done for pipeline safety standards under DOT policy and Executive Order 12866. Submitting the risk assessment information to our technical advisory committees, the Technical Hazardous Liquid Pipeline Safety Standards Committee or the Technical Pipeline

Safety Standards Committee, has not required any more time since the committees already are required to judge the technical feasibility, reasonableness, and practicability of all of our proposed rulemakings before the rules are issued. In other words, RSPA practice was codified and no delays have been experienced in providing risk assessment information or processing votes by mail ballot or at semiannual meetings of the committees.

Question 3: Are modifications to the risk assessment portion of the statute needed to make it work more effectively?

Answer: Based on our experience modification to the statute is not needed.

Question 4: There are three rulemakings that the Department of Transportation is required to complete under prior reauthorizations which have not yet been completed. Could you please explain the status of those rulemakings and when they are likely to be completed?

Answer: The three rulemakings follow:

Emergency Flow Restricting Devices (Docket No. PS-133). Under 49 U.S.C. 60102(j), we are required to survey and assess the effectiveness of emergency flow restricting devices (EFRD) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and minimize product releases. Further, we are required to prescribe standards on the circumstances under which an operator of a hazardous liquid pipeline facility must use an EFRD or another procedure, system, or equipment.

In January 1994, we issued an advance notice of proposed rulemaking to obtain information about the performance of EFRDs and leak detection systems now in service (59 FR 2802). We also investigated the use of computerized systems to collect pipeline operational data and detect leaks. On September 29, 1995, we published a report of the results. And, in October 1995, we held a public workshop on issues involved in regulating the use of EFRDs. Then on July 6, 1998, we published rules on using software-based systems to detect leaks on hazardous liquid pipelines (63 FR 36373). The rules require that operators who use these systems must design, operate, and maintain them in accordance with the consensus standard, "API 1130, Computational Pipeline Monitoring," published by the American Petroleum Institute. These rules were needed to advance the industry's acceptance of the technology, and to reap the safety and environmental advantages inherent in API 1130, which are accelerated leak detection and response. We plan to conduct further rulemaking on EFRDs and leak detection systems after completion of a separate proceeding now underway to define areas that are unusually sensitive to environmental damage in the event of a hazardous liquid pipeline accident (see below). We recognize that these areas are leading candidates for the use of EFRDs and leak detection systems.

Areas Unusually Sensitive to Environmental Damage (Docket No. PS-140.) The pipeline safety laws (49 U.S.C. 60100 *et seq*) require the DOT to define areas unusually sensitive to environmental damage in the event of a hazardous liquid pipeline accident and to prescribe regulations that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in these unusually sensitive areas (USAs). RSPA has sought public participation through six public workshops and a series of technical meetings.

RSPA developed a USA conceptual model that focuses on drinking water and ecological resources. The drinking water resources include public water systems, well-head protection areas and sole source aquifers. The ecological resources include threatened and endangered; critically imperiled and imperiled species; depleted marine mammals; and areas containing a large percentage of the world's population of migratory waterbird species. We are currently pilot testing this model in California, Texas and Louisiana, using data created and maintained by other government agencies and environmental organizations like The Nature Conservancy. During the pilot, RSPA is asking Federal, state and other water and ecological experts to verify the adequacy of the model. The pilot testing will provide us practical experience on which to base a regulation on USAs.

We are planning to issue an NPRM on defining and identifying USAs in late 1999 (fiscal year 2000). The definition will provide a basis for associated rulemaking actions Congress has called for on EFRDs and increased inspections.

Increased Inspection Requirements (Docket No. PS-141). Under 49 U.S.C. 60102(f)(2), we are to prescribe, if necessary, additional standards requiring the periodic inspection of certain pipelines located in high-density population areas, in areas unusually sensitive to environmental damage, and in crossings of commercially navigable waterways. The standards must include any circumstances under which an inspection must be conducted with an instrumented internal inspection device and, if the device is not required, use of an inspection method that is at least as effective as using the device in providing for the safety of the pipeline.

Regardless of their location, all gas and hazardous liquid pipelines are subject to inspection requirements under DOT's pipeline safety standards (49 CFR Parts 192 and 195). We began investigating the need for additional inspection requirements for pipelines in the areas described above by holding a public workshop in Washington, DC, on October 19, 1995. The purpose of the workshop was to exchange information with the public on various issues associated with requiring additional inspections, including whether present inspection requirements are sufficient, the effectiveness of instrumented internal inspection devices, the circumstances that might demand additional inspections, and the costs involved. We will take further action to assess the need for additional inspection requirements after defining areas that are unusually sensitive to environmental damage in the event of a hazardous liquid pipeline accident, as discussed above.

Question 5: As the Department of Transportation has moved from a minimum standards approach to a risk-based approach, are there some existing pipeline safety regulations that are no longer necessary?

Answer: The risk-based approach we are implementing addresses the most safety sensitive matters on a priority basis. We do not anticipate abandoning the minimum standards approach, but rather improving it by using explicitly risk-based criteria to ensure that each pipeline company, whether large or small, can select the set of safety solutions that are appropriate to individual circumstances.

A report is due to Congress on March 31, 2000, documenting the results of the risk management demonstration program. While this report will evaluate whether or not application of risk management should be incorporated in the pipeline safety program on a permanent basis, it may identify circumstances when certain existing safety regulations may no longer be necessary.

Question 6: What portion of State pipeline safety programs are funded through the Department of Transportation? How is the remainder funded?

Answer: In 1998, the Federal pipeline safety grant allocations represented 41 percent of the estimated State requests in both the natural gas and hazardous liquid programs. Most states fund their pipeline safety programs through a 'gross receipts' assessment of the utilities. There are a few states that have a user fee assessment on pipeline facilities. Generally, these assessments complement the funding they get from the pipeline safety grant program.

Question 7: What level of resources is the Office of Pipeline Safety requesting for FY 2000?

Answer: We have requested \$38,187,000 and 105 FTE.

Question 8: Should the risk management concept be applied more broadly? Are legislative changes needed to have a broader application of risk management principles?

Answer: Because we are just beginning to evaluate the application of risk management in our oversight of operators' programs, an assessment of whether to extend risk management principles would be premature. Based on what we have seen, the concept is promising.

Question 9: What is the status of the Office of Pipeline Safety and the oil and gas pipeline community's Y2K preparedness efforts?

Answer: RSPA is working collaboratively with government and industry through the President's Council on Y2K Conversion Energy Sector Oil and Gas Workgroup. Working with the Council Oil and Gas Work Group, RSPA participated in creation of a comprehensive industry survey to assess industry readiness and contingency planning. The survey will be updated quarterly and is our primary means of tracking and monitoring industry Y2K progress. The survey indicates a high degree of awareness throughout industry and demonstrates that an effort is underway to assure a high level of readiness. The results of the Work Group's first survey are cautiously optimistic, projecting that pipeline Y2K failures will be minimal.

We are working to promote industry and government cooperation, public awareness, coordination of potential issues and solutions, and companies active resolution of identified problems. We are coordinating our efforts with the Council Sectors on Transportation, Environment, and Emergency Services to facilitate solutions and contingency planning. We serve as a critical link between state pipeline safety agencies, state utility commissions, and the oil and gas industry. We work with state programs to keep them informed of Y2K developments and to encourage their monitoring of companies they regulate.

Last year, we sent an advisory bulletin to industry and our state partners that outlined the problem, the Work Group's strategy, and identified industry and government contacts for companies needing advice. We also provide advice and assistance to companies during inspections.

During 1999, we will encourage the pipeline industry to conduct testing after taking steps to protect the public and the environment from possible failures during

testing. We are about to issue a *Federal Register* notice encouraging testing by operators and informing them of our enforcement policy for companies which do not take appropriate planning actions. RSPA has authority to inspect records as needed to enforce the pipeline safety statutes. If a Y2K related safety risk were identified through inspection, further Y2K compliance information could be requested. If pipeline facilities operations are determined to pose a hazard to life, property, or the environment, RSPA can issue a corrective action order after providing notice and an opportunity for a hearing. Notice and hearing may be waived if a situation presents an imminent threat to life, property, or the environment.

Existing regulations already address many of the potential failure areas of Y2K. For example, in the event of failure of SCADA systems, telecommunications, or electricity, operators already are required to have contingency plans including preparation for manual operations. As operators progress with their Year 2000 assessments, the industry is generally moving at a fast pace to replace old potentially vulnerable systems with new Year 2000 compliant systems. We feel that the industry will be safer as a whole as a result of the massive effort underway to assure Y2K compliance.

Question 10: Recently, both the Department of Transportation and the Environmental Protection Agency have begun to assert jurisdiction over petroleum storage tanks (breakout tanks). As a result, tank operators are being asked to meet different and conflicting regulatory requirements. What efforts are being taken to resolve this situation? When is a resolution likely to occur?

Answer: RSPA and Environmental Protection Agency (EPA) Region and Headquarters representatives are working to resolve and clarify jurisdictional issues regarding storage tanks, particularly those that serve both pipelines and other modes of transportation. We will hopefully reach agreement on the best way for each agency to exercise its regulatory authority without creating undue burdens on industry. In this regard, we are working to (1) clarify each agency's jurisdiction to issue pollution prevention and response planning regulations, and define which facilities are jointly regulated and which are exclusively subject to EPA or RSPA regulations; (2) develop a way to resolve site-specific jurisdictional disputes; (3) develop information that explains each agency's jurisdiction at intermodal facilities; (4) jointly oversee operator compliance; (5) address response preparedness issues at certain facilities; and (6) commit additional resources to regional response activities. RSPA and EPA staff will meet again in March to continue their discussions.

Question 11: (From Mr. Dingell) In its testimony, the Department discusses its formation of a cost-benefit framework working group that will establish the framework for future cost-benefit analysis.

(a) When does DOT expect to complete this framework?

(b) How will this framework differ from the Clinton Administration's Executive Order on Risk Assessment?

Answer: (a) We have developed a policy framework to address the risk assessment provisions from the Accountable Pipeline Safety and Partnership Act of 1996 and the cost-benefit provisions of E.O. 12866. We provided a draft of this framework to our two pipeline safety advisory committees and briefed both committees on the work of the task group. Shortly we will be seeking public comment and then finalizing the document. The final framework document will be provided the pipeline safety advisory committees this summer. We expect to have a completed product for the November, 1999 committee meetings.

(b) This framework does not substantially differ from that provided for by Executive Order on Regulatory Planning and Review, E.O. 12866. We created the framework to the advisory committees who are now changed by law to review risk assessment information for each proposed regulation. The framework elaborates on the steps to follow in identifying and evaluating information on costs and benefits.

Question 12: (From Mr. Dingell) What is the status of OPS action under Sec. 60102(f) regarding standards for the replacement of pipeline to accommodate internal inspection devices and periodic inspection of pipelines?

Answer: A final rule amending the gas and hazardous liquid pipeline safety regulations to require that certain new and replaced pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices was issued on April 12, 1994 (59 FR 17275). All new gas transmission and all new and replaced hazardous liquid pipelines must now accommodate internal inspection devices. However, because of two petitions for reconsideration and extensive public comment and advisory committee recommendations, the requirements have been stayed with respect to certain replaced sections of gas transmission and all offshore gas pipelines. We expect to complete rulemaking on these last issues in 1999.

Question 13: (From Mr. Dingell) Has OPS issued standards designed to identify pipelines in high density population areas pursuant to Sec. 60109?

Answer: Both the gas and hazardous liquid pipeline safety regulations were written prior to enactment of that section in 1996 and contain requirements for pipelines located in high density populated areas and these areas are defined. In the gas pipeline safety regulations they are referred to by class location and in the hazardous liquid pipeline safety regulations they are referred to by definition.

High density population areas are identified in the national pipeline mapping system which is being created now based on voluntary operator participation. We expect 75% of operators to provide information for the system by the end of year 2000. The system will accurately depict pipelines in relation to people and environmentally important areas. RSPA has issued mapping standards for collection of data in the national and state repositories. These standards have been coordinated with the Department's Bureau of Transportation Statistics and comply with Federal Geographic Data Standards for spacial data. Ten state agencies, six pipeline mapping vendors, and 22 pipeline companies pilot tested the national pipeline mapping system and we are actively soliciting data now from all hazardous liquid and natural gas transmission operators.

Question 14: (From Mr. Dingell) In addition to the previously referenced OPS activity, the Pipeline Safety Act requires DOT to promulgate a number of regulations and standards. Please provide an inventory on DOT's progress to date in fulfilling these requirements. (a) For completed actions, please provide the date on which the action was finalized. (b) For pending actions, please provide an expected completion date. (c) For actions that required completion by a statutory date certain, please reference the required statutory deadline in your response.

Answer: The chart below describes all outstanding mandated pipeline safety rulemakings and those completed since 1998.

Docket No.	Title	Current Phase	Schedule
PS-94	Qualification of Pipeline Personnel	Final Rule being prepared	Final Rule 8/99
PS-118	Excess Flow Valve (EFV) Customer Notification.	Final Rule published 2/98	
PS-126	Passage of Internal Inspection Devices.	Final Rule for gas pipeline "replacement" sections being prepared.	Final Rule 6/99
PS-133	Emergency Flow Restricting Devices (EFRDs).	NPRM awaiting definition for unusually sensitive areas.	NPRM 12/00 ¹ Final Rule not yet scheduled
PS-140	Areas Unusually Sensitive to Environmental Damage (USAs).	NPRM being prepared	NPRM 12/99 Final Rule not yet scheduled
PS-141	Increased Inspection Requirements.	NPRM awaiting definition for unusually sensitive areas.	NPRM 12/00 ² Final Rule not yet scheduled
RSPA-97-2094 ..	Underwater Abandoned Pipeline Facilities.	NPRM being prepared	NPRM 5/00 ³ Final Rule not yet scheduled
RSPA-97-3001 ..	Periodic Underwater Inspections ..	NPRM being prepared	NPRM 6/01 ⁴ Final Rule not yet scheduled
RSPA-98-4868 ..	Gas Gathering Line Definition	Preparing for an electronic public meeting in April 1999.	Meeting 7/00 ⁵ Final Rule not yet scheduled

¹ Statutory deadline 10/96

² Statutory deadline 10/95

³ Statutory deadline 4/94

⁴ Statutory deadline 10/95

⁵ Statutory deadline 10/94

Question 15: Please provide a history of all federal enforcement actions related to the Colonial Pipeline System since enactment of the Hazardous Liquid Pipeline Safety Act of 1968.

Answer: The tables below provide a listing of open and of closed enforcement cases relating to Colonial Pipeline as of January 25, 1999.

Colonial Pipeline—Open Enforcement Cases as of 1/25/99

CPF	Date Opened	Type of Case	Brief Summary of Case
10504A	8/24/90	Agreement	This case was initiated after a December 18, 1989 fatigue failure in Orange County, VA, on the operator's 32-inch pipeline. This case requires the operator to conduct an ORA on the 32-inch pipeline. See CPF # 14501H.

Colonial Pipeline—Open Enforcement Cases as of 1/25/99—Continued

CPF	Date Opened	Type of Case	Brief Summary of Case
13503H	3/30/93	Hazardous Facility Order (3/30/93).	Initiated following a March 28, 1993 pipeline rupture near Reston, VA, this case requires the operator to expose portions of a 36-inch pipeline to determine if dents or gouges are present and make repairs where appropriate. Additionally, the operator is required to internally inspect and repair the pipeline to ensure its integrity. See CPF # 14501H.
14501H	5/16/94	Consent Order (8/15/95) ...	This case was initiated as a proposed hazardous facility order following evaluation of the information generated by CPF # 13503H. This case incorporated certain requirements from two other previous cases CPF # 13503H and 10504A in an expanded integrity verification program. The operator is required to internally inspect (and in some cases, reinspect) or hydrostatically test portions of the pipeline system. All anomalies are to be evaluated and repairs made where appropriate. All three cases remain open until all of the items in CPF 14501H are completed.
26503H	7/31/96	Consent Order (7/3/97)	Initiated as a hazardous facility order following the June 26, 1996 pipeline failure near Simpsonville, South Carolina, this case was later modified to a Consent Order. The operator is required to internally inspect certain pipe segments and complete work on pressure controlling switches.
27501	12/5/97	Final Order (3/8/99)	This case found several violations and requires the operator to: <ul style="list-style-type: none"> • implement a refresher training program; • evaluate the adequacy of post accident alcohol testing procedures; • conduct a comprehensive survey for pipelines exposed to the atmosphere; and • conduct an ORA which will consider internal inspection results, over pressure protection devices, overall system integrity and the practicality of future re-hydrate testing and/or repeated internal inspection of certain pipeline segments. The case remains open pending completion of these items.
28501	1/15/98	NOPV & PCP of \$45,000 ...	This case alleges several probable violations including isolation of thermal relief devices, improper set points for relief valves, and inadequate maintenance inspections. The case proposes a civil penalty of \$45,000. The operator has requested a hearing.
28502	3/13/98	NOPV & PCP of \$5,000	This case alleges the operator failed to file an accident report in a timely manner and proposes a civil penalty assessment of \$5,000. The operator paid the civil penalty before issuance of a final order and has taken steps to prevent recurrence.
28505	8/20/98	NOPV & PCO	Initiated following a March 30, 1998 pipeline failure in the Morgan Falls landfill near Atlanta, GA, this case alleges several probable violations including inadequate pipe support, failure to follow procedures, and record-keeping errors. The case proposes to issue a compliance order requiring the operator to identify pipeline segments crossing landfill areas, evaluate stresses placed on the segments and re-evaluate internal inspection results of certain areas. Additionally, the case requires the operator to modify its right-of-way inspection procedures and record-keeping. The operator has requested a hearing.
28506M	8/20/98	NOA	This case requires the operator to amend its patrolling procedures and emergency response plan. The operator is revising the procedures.

CPF—Compliance Progress File; PCP—Proposed Civil Penalty; NOPV—Notice of Probable Violation; NOA—Notice of Amendment; PCO—Proposed Compliance Order; ORA—Operation Reliability Assessment.

Colonial Pipeline—Closed Enforcement Cases as of 1/25/99

CPF #	Date Opened	Type of Case	Date Closed
4W0300	4/13/84	Warning Letter	4/13/84
2W0123	4/23/84	Warning Letter	4/23/84
2W0143	3/1/85	Warning Letter	3/1/85

Colonial Pipeline—Closed Enforcement Cases as of 1/25/99—Continued

CPF #	Date Opened	Type of Case	Date Closed
2510	7/7/88	NOPV & PCP of \$25,000 & NOA ...	4/10/89 Final civil penalty assessment of \$15,000.
2WO267	6/5/89	Warning Letter	6/5/89
1094	9/20/88	NOPV & PCP of \$10,500	8/29/89 Final civil penalty assessment of \$10,500
1103	11/27/89	NOPV & PCP of \$5,000	3/4/91 Final civil penalty assessment of \$5,000
21502	11/7/91	NOPV & PCP of \$5,000	7/27/92 Final civil penalty assessment of \$3,000
21505H	12/20/91	Hazardous Facility Order	5/29/92
22506W	8/31/92	Warning Letter	8/31/92
22501	3/11/92	NOPV & PCP of \$1,500	5/12/93 No civil penalty assessed
23501W	2/3/93	Warning Letter	2/3/93
44508	5/2/94	NOPV & PCP of \$25,000	11/4/97 Final civil penalty assessment of \$5,000
25505W	4/17/95	Warning Letter	4/17/95
25506W	6/16/95	Warning Letter	6/16/95
26500	3/7/96	NOPV & PCP of \$8,500 & NOA	3/25/97 Final civil penalty assessment of \$8,500
26505	10/17/96	NOPV & PCP of \$1,250	6/24/98 Final civil penalty assessment of \$1,250
26506	11/8/96	NOPV & PCP of \$25,000 & PCO ...	7/27/98 Final civil penalty assessment of \$25,000
28500C	1/15/98	Letter of Concern	1/15/98
28504C	7/21/98	Letter of Concern	7/21/98
28507C	8/20/98	Letter of Concern	8/20/98

CPF—Compliance Progress File; PCP—Proposed Civil Penalty; NOPV—Notice of Probable Violation; NOA—Notice of Amendment; PCO—Proposed Compliance Order; ORA—Operation Reliability Assessment.

Warning Letters—Warning Letters are the least serious enforcement actions issued. The operator is warned to correct circumstances leading to probable violations but no final determination of violation is made. The operator is advised that enforcement action may be initiated in the future if it is found that corrective action has not been taken.

Letter of Concern—Letters of Concern are not considered enforcement actions. These documents are used to bring areas of concern to the operator's attention.

Question 16: Has OPS ever removed a state's authority to regulate intrastate pipelines?

Answer: Yes, the State of Hawaii was decertified in 1993 under the Natural Gas Pipeline Safety Program as a result of the state experiencing a revenue shortfall causing the state to not be able to provide adequate technical staff. At that time, safety jurisdiction for Hawaii intrastate pipelines reverted to the Federal government.

Question 17: (From Mr. Markey) The Pipeline Safety Act of 1992 required OPS to develop pipeline standards to protect the environment, specifically requiring OPS to identify areas "unusually sensitive to environmental damage" by October 1994 and to require periodic inspections of pipeline infrastructure in those areas by October 1995. Why has OPS still not issued these environmental regulations four years after the first deadline? When can we expect these rules to be issued?

Answer: After extensive consultation with numerous federal and state agencies, environmental groups and academia we have developed a USA conceptual model that focuses on drinking water and ecological resources. The drinking water resources include public water systems, wellhead protection areas and sole source aquifers. The ecological resources include the following: threatened and endangered, critically imperilled, and imperilled species; depleted marine mammals; and areas containing a large percentage of the world's population of a migratory waterbird species.

OPS, in cooperation with the American Petroleum Institute (API), state and federal government agencies, environmental groups, and academia will pilot test a USA conceptual model. The pilot will provide the opportunity to consider the model's adequacy, its effectiveness as a basis for operator decision making, and the appropriateness and accessibility of environmental data to support this decision making. We plan to ask water and ecological experts to verify that the USAs identified by the model are unusually sensitive areas, and that the model has not missed other USAs. This pilot testing will provide us with practical experience prior to creating a regulation on USAs.

A Federal Register notice that will seek comments on the USA conceptual model is expected to be published in March 1999. The pilot testing will begin soon after and is expected to take about a year. This experience will lay the groundwork for regulatory action in fiscal year 2000.

Question 18: (From Mr. Markey) In 1996 Congress added requirements for cost-benefit analyses of regulations. Has this added burden taxed your staff resources or slowed issuance of the regulations? Why are environmental effects of pipeline accidents not included in the cost-benefit analyses?

Answer: The Accountable Pipeline Safety Act of 1996 included a provision requiring peer review for cost-benefit analyses of pipeline safety regulations. OPS was already preparing cost-benefit analyses under Executive Order 12866 and the Department's policy. Thus, the statutory requirement was not an added burden to our regulatory process.

In response to the 1996 mandate, RSPA has worked with a government/industry task group to develop a risk assessment/cost-benefit framework during the past 18 months. We provided a draft of this framework to our two pipeline safety advisory committees and briefed both committees on the work of the task group. We will be seeking public comment and then finalizing the document. The final framework document will be provided to the pipeline safety advisory committees this summer.

Environmental effects of pipeline accidents are included in cost-benefit analysis. Complete and precise estimates of monetary damage from pipeline spills are often difficult or impossible to quantify. Therefore, environmental damage from pipeline spills is often described qualitatively rather than quantitatively.

Question 19: (From Mr. Markey) According to the National Transportation Safety Board, the Office of Pipeline Safety has only accepted 68% of NTSB recommendations, the worst acceptance rate of any Department of Transportation administration. Why has OPS failed to follow so many NTSB recommendations?

Answer: The OPS acceptance rate for NTSB recommendations is at 68% for two reasons. First, we sometimes disagree with the NTSB recommendation. Second, we often implement safety actions that the NTSB rates as unacceptable despite the fact that the action is one we believe addresses NTSB's safety concern. In other words, we believe that OPS and NTSB are in agreement on key safety issues but sometimes differ on the way to resolve these issues.

It is worth noting that of all pipeline safety recommendations issued to OPS in the last 10 years, 83% were classified acceptable by the NTSB. A recent spate of unacceptable closings of older recommendations drove OPS from the middle of the Department's ratings to the bottom. We regret this action and are working with NTSB to respond more favorably to the safety actions we are taking in 21 pending and 27 as yet unclassified recommendations.

Question 20: (From Mr. Markey) Since the 1996 amendments, OPS has approved six demonstration projects among the 2200 regulated operators. How much OPS staff time has gone into those six projects? Has the staff time used in these projects reduced OPS ability to issue regulations mandated by the Congress? Since the projects directly affect only a small percentage of operators, how has the information learned from the projects affected generic regulations?

Answer: OPS has allotted two full-time engineers to risk management, and regional staff and other experts are used on an as-needed basis. To date, this amounts to approximately five person-years annually. This allocation of staff resources has not reduced OPS's ability to issue regulations mandated by the Congress. OPS augments in-house risk management capability by contracting with risk management experts and consulting with representatives from state agencies.

The Demonstration Program represents OPS's most ambitious test of risk-based approaches to improve safety, environmental protection, and service reliability. While risk management may not be the appropriate regulatory alternative for every operator, it has provided information and techniques that OPS is already using with other operators in the compliance program and in shaping new regulations.

In the compliance area, our experience in the Demonstration Program has influenced us to move away from a piecemeal inspection process to a system-based approach. Using this approach on Alyeska Pipeline, we are conducting a risk-based review of all the valves on the system resulting in repair and replacement of valves in environmentally sensitive areas. Using this approach on Colonial Pipeline, we have worked with the Department of Justice to order system wide evaluation of all water crossings on a risk basis.

In the regulatory area, the Demonstration Program has influenced our rewrite of corrosion standards to include options for addressing the highest risk areas in a way that addresses system specific safety issues. In other words, operators will be able to prevent and fix corrosion problems on a risk basis. We also issued a risk-based regulation requiring testing and evaluation of older liquid pipelines. This action will prevent spills and ruptures in high risk areas.

To extend the risk assessment process outside the pipeline companies, OPS now routinely uses internet-accessible information systems, electronic town meetings, and other approaches that solicit and incorporate broad-based public input into the Risk Management Demonstration Programs. In addition, we now solicit involvement on other programs such as damage prevention, mapping and system integrity, using techniques that were first developed for the Demonstration Program.

Question 21: (From Mr. Markey) In 1996 we assigned peer review of risk assessment to the existing advisory committees. What risk assessments have been peer revised by the advisory committees? What changes have been made in response to the committee reviews? One-third of these committees are composed of industry representatives. What steps have you taken to ensure that conflicts of interest do not color their reviews.

Answer: A table of rulemaking projects for which risk assessments were reviewed by the advisory committee is attached. To the extent that any changes are made in a rule because of advisory committee comments, these are noted in the rule-making documents published in the Federal Register. To date, there has been only one significant change to a proposed rule because of the peer review. This was the addition of an environmental factor to the rule providing a risk-based alternative to pressure testing hazardous liquid pipelines issued in 1998.

Although one-third of the advisory committee membership is composed of representatives from industry, two-thirds are derived from the public and state and federal agencies with expertise in issues relevant to pipeline safety and environmental protection. RSPA has been successful in its effort to include government and public members with environmental interests and expertise as well as a broad range of engineering and safety expertise. Although the industry representatives are concerned with the economics of safety and environmental protection, RSPA believes that this interest is not inconsistent with either safety or environmental protection. The dynamics of the advisory committee process provides the necessary balance of interests.

Table of Rules Reviewed by the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) Since 1996

Rulemaking Topics	Committee	Status
Leak Detection and Emergency Flow Restriction Devices.	THLPSSC	Final rule published governing computerized leak detection methods. Further action pending development of "unusually sensitive area" definition
Risk-Based Approach to Hydrostatic Testing.	THLPSSC	Final rule published allowing operators to exclude certain low risk pipelines and certain pipelines in which an instrumented pig is run from the requirement to hydrostatically test older hazardous liquid pipelines
Excess Flow Valve Performance Standards and Customer Notification.	TPSSC	Final rules published establishing standards for the performance of excess flow valves installed in gas pipelines, and for notifying gas customers of the availability of such valves
Low-stress Hazardous Liquid Pipelines.	THLPSSC	Final rule published excluding certain short, low risk pipelines from the hazardous liquid pipeline safety standards
Standards for Breakout Tanks ...	THLPSSC	Notice of proposed rulemaking (NPRM) published to seek comments on new design, construction, and maintenance standards for certain hazardous liquid storage tanks
Siting, Design, and Construction Standards for Liquefied Natural Gas Plants.	TPSSC	NPRM published proposing revised standards for liquefied natural gas plants associated with gas pipelines
Metrication	TPSSC and THLPSSC.	Final rule was issued adding metric measurements to the gas and hazardous liquid pipeline safety standards