

# LEGISLATIVE HEARING TO EXAMINE PIPELINE SAFETY REAUTHORIZATION

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## HEARING BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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## **LEGISLATIVE HEARING TO EXAMINE PIPELINE SAFETY REAUTHORIZATION**

**TUESDAY, MARCH 1, 2016**

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

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2123 Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Olson, Shimkus, Latta, Harper, McKinley, Griffith, Johnson, Long, Mullin, Hudson, Upton (ex officio), Rush, McNerney, Tonko, Capps, Doyle, Yarmuth, Loebsack, and Pallone (ex officio).

Staff present: Gary Andres, Staff Director; Will Batson, Legislative Clerk, E&P, E&E; Leighton Brown, Deputy Press Secretary; Allison Busbee, Policy Coordinator, Energy & Power; Tom Hassenboehler, Chief Counsel, Energy & Power; A.T. Johnston, Senior Policy Advisor; Brandon Mooney, Prof. Staff Member, E&P; Annelise Rickert, Legislative Associate; Chris Sarley, Policy Coordinator, Environment & Economy; Dan Schneider, Press Secretary; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; Alexander Ratner, Minority Policy Analyst; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Tuley Wright, Minority Energy and Environment Policy Advisor.

### **OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Mr. WHITFIELD. Good morning and I would like to call our hearing to order this morning. And I would like to recognize myself for a 5 minute opening statement.

First of all, I want to thank all of our witnesses today. We have two panels of witnesses and I certainly want to thank Administrator Dominguez for her constructive comments and her commitment to work with our committee.

This morning we are going to be examining a discussion draft of a bill that reauthorizes the Pipeline and Hazardous Materials Safety Administration pipeline safety program. This discussion draft contains targeted mandates for PHMSA to increase transparency

and accountability, complete overview regulations, and improve safety.

I might say that working with the Transportation and Infrastructure Committee, the House successfully ushered through the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 on a bipartisan basis. Now it is time to update that law. With today's changing energy landscape and the need to modernize infrastructure greater than ever, we are looking forward to a productive discussion on our draft bill with a goal of reporting to the full House the legislation by this spring for its consideration. Our Senate colleagues, I might say, on the Commerce, Science and Transportation Committee reported S. 2276 the SAFE PIPES Act on December 9, 2015, and we believe that a strong, bipartisan, bicameral effort will yield a public law we can all be proud of.

I might say that I want to point out the unfinished business from the last reauthorization. The 2011 pipeline safety law included 42 mandates on PHMSA and 16 of them remain incomplete, well beyond the statutorily-imposed deadlines. So our discussion draft will require the Administrator to prioritize overdue regulations ahead of new rulemakings and keep us updated on that progress.

So I really look forward to our discussion this morning. And at this point, I would like to yield the balance of my time to the gentleman from Texas, Mr. Olson.

[The prepared statement of Mr. Whitfield follows:]

#### PREPARED STATEMENT OF HON. ED WHITFIELD

I am pleased that we are at the point of having a legislative hearing on pipeline safety reauthorization. I want to thank all of our witnesses for their time and thoughtful comments. In particular, I want to thank Administrator Dominguez for her constructive comments and her commitment to work with our committee.

The Energy and Commerce Committee has been at the forefront of improving pipeline safety. Members today will examine a discussion draft of a bill that reauthorizes the Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline safety program. The discussion draft contains targeted mandates for PHMSA to increase transparency and accountability, complete overdue regulations, and improve safety.

This committee has a proud, longstanding tradition of working together when it comes to pipeline safety. Together with the Transportation and Infrastructure Committee, the House successfully ushered through the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 on a bipartisan basis. Now it's time to update that law. With today's changing energy landscape and the need to modernize infrastructure greater than ever, we are looking forward to a productive discussion on our draft bill that allows this committee to move expeditiously, so we can report a bill to the full House this spring for its consideration. Our Senate colleagues on the Commerce, Science and Transportation Committee reported S 2276, the Safe PIPES Act on December 9, 2015. We believe that a strong bipartisan-bicameral effort will yield a public law we can all be proud of.

I do need to point out the unfinished business from the last reauthorization. The 2011 Pipeline Safety law included 42 mandates of PHMSA and 16 of them remain incomplete well beyond the statutorily imposed deadlines. Our discussion draft requires the Administrator to prioritize overdue regulations ahead of new rulemakings and keep us updated on their progress. To make sure we are not being too rigid, exceptions are allowed when there is a significant need for a new regulation.

Another provision of the draft bill that has received strong support is section 6, which would require the Secretary of Transportation, no later than 30 days after the completion of a pipeline inspection, to conduct a post-inspection briefing with the operator outlining any concerns. This provision will ensure that un-safe conditions are corrected as quickly as possible.



The draft legislation before us today also contains requirements for new safety regulations relating to underground gas storage facilities and underwater hazardous liquid pipeline facilities and response plans.

This is just a preview of some of the provisions reflected in the draft before us today. I look forward to a robust discussion about the lessons learned from the past and ways to prepare for the future.

Mr. OLSON. Thank you, Mr. Chairman. I will be very brief. Pipeline safety is bipartisan. I am a pro-energy, pro-growth congressman from the pro-growth, pro-energy city of Houston, Texas. But growth only happens if the people trust us, if we get safety right.

Industry does its best but government must do its part, too. Sensible rules need to be written and effectively enforced. Mistakes cost lives. Inaction costs lives. And that is why I would like to thank my friend and chairman for holding this hearing on a draft bill to reauthorize the Pipeline Safety Act. It is an important step forward. This bill includes some critical language on having safety inspectors that my good friend and fellow Texan, Gene Green, and I wrote with another Texan, Brian Babin and Janice Hahn, a Californian, who went to college in Amarillo and Abilene, Texas.

This process for having inspectors at the federal level is slow and difficult. Let us cut the red tape, put inspectors on the ground. Let us get safety right. I yield back.

Mr. WHITFIELD. The gentleman yields back. This time I recognize the gentleman from Illinois, Mr. Rush, for his 5 minute opening statement.

**OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. RUSH. I want to thank you, Mr. Chairman, for holding this important and timely hearing today on pipeline safety reauthorization. I want to also welcome Administrator Dominguez to the subcommittee and thank her for being here.

Unfortunately, Mr. Chairman, it seems that every time we have a hearing on pipeline safety, we do so with a backdrop of either an ongoing spill or in the immediate aftermath of one. Of course, the most recent high-profile incident involved in 2015 the Aliso Canyon natural gas storage field in Los Angeles where it is estimated that over 90,000 metric tons of methane escaped into the atmosphere and thousands of families have been impacted.

Other high-profile leaks include the May 2015 crude oil spill from a pipeline operated by Plains All American Pipeline, along the Santa Barbara County coastline. Before that, there was a July 2010 Enbridge spill near Marshall, Michigan. And later, that same year in September, there was also the Pacific Gas and Electric Company natural gas explosion in San Bruno in the suburbs of San Francisco just to name a few.

Mr. Chairman, we all know that pipelines are necessary and we must continue to build them to meet the energy needs of our nation. However, Mr. Chairman, we also know that many of the current pipelines are aging and they must be replaced, which may lead to additional problems if we keep kicking the proverbial can down the road.

Mr. Chairman, we must ensure the American public that this subcommittee or jurisdiction is doing everything within our author-

ity to ensure that more current and future pipelines are as safe as possible.

In the past, the issue of pipeline safety has been one that we are working on in a bipartisan manner. And it is my hope and my expectation that we will continue to do so in the same tradition as we address this important issue in this current Congress.

So again, Mr. Chairman, I applaud you and with that I yield the balance of my time to my wonderful colleague from great State of California, Ms. Capps.

Ms. CAPPS. Thank you. I thank my ranking member for yielding and thank you Chairman Whitfield and Ranking Member Rush for holding this hearing, Chairman Upton and Ranking Member Pallone, for ensuring we consider pipeline safety in this committee.

Welcome, Administrator Dominguez. Thank you for visiting my district recently.

On May 19th, the Plains Pipeline 901 ruptured in my district, dumping over 120,000 gallons of crude oil along California's Gaviota Coast and into the ocean. This incident not only affected public health and the environment, but also our local economy that is strongly reliant on tourism, as well as the fishing and shrimping industries. While the May spill happened in my community, nearly all of us have miles, hundreds of miles of pipeline running through our districts, allowing for the transport of natural gas and hazardous liquids, like crude oil, across our country.

So today's topic, pipeline safety, is incredibly important to each of us. That is why it is critical that our committee come together as it historically has to produce a strong bipartisan pipeline safety bill that builds on the lessons learned in the Plains spill, as well as incidents that have occurred across the country. I am hopeful we can again make this a strong bipartisan effort.

Unfortunately, the draft language as currently written is inadequate in providing the much-needed updates to pipeline safety legislation to ensure the protection of our public health and the environment.

Whether we are discussing the pipeline rupture in my district last May or the Aliso Canyon natural gas storage leak just to the south of my district, these incidents occur all too frequently. And each time a failure occurs, as it recently did in Chairman Upton's and Ranking Member Pallone's and my district, the need to act becomes even more clear. It is critical that we take the steps and the lessons from these incidents and use them to strengthen our pipeline safety infrastructure. For example, the spill in my district highlighted the inadequacies of the in-line inspection process currently used by PHMSA. Even with the shortened inspection interval, the Plains pipeline failed spilling crude across the landscape into the ocean.

So we have many results of this survey and PHMSA has the authority and the resources to require an appropriate time line for inspections for every single pipeline in our country. We must ensure that the results from these surveys are made available to PHMSA and the public in a timely manner. We must strengthen the high consequence areas designation, something this draft falls short on. And there is room to strengthen these provisions in the draft before us. We must.

We have this opportunity to improve the existing legislative requirements for pipeline safety. I ask that the chairman work closely with all of us to improve this bill. Thank you. And I yield back.

Mr. WHITFIELD. The gentlelady's time has expired. At this time, I recognize the chairman of the full committee, Mr. Upton, for 5 minutes.

**OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. UPTON. Thank you, Mr. Chairman. And let me just respond to my friend, Ms. Capps. I look forward to working with you and your staff and we are continuing to do that.

Pipeline safety is something that I take very seriously. And it has long been a priority for me as well as this committee. Spills, as we know, can be very disastrous and it is imperative that our laws stay up to date and work to minimize potential damage as well as try to prevent them from happening in the first place.

In the wake of the serious oil spill that affected the Kalamazoo River, just outside of my district, I worked on a strong bipartisan basis with my friend, John Dingell, in conjunction with our friends on the Transportation and Infrastructure Committee to enact the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. While the legislation's name might be hard to remember, its positive effects are not. This bipartisan bill, law, helps prevent pipeline failures, strengthens safety standards, and holds those responsible for pipeline accidents accountable.

We cannot achieve the intended objectives of the Pipeline Safety Act until it has been fully implemented. The hearing last July revealed that PHMSA has failed to implement many of the mandates required by the law under the Pipeline Safety Act of 2011. Today, over 4 years after enactment, at least 16 important safety regulations remain overdue. Rulemakings related to leak detection and emergency shutoff valves, public education and awareness, accident and incident notification are among some of the mandates PHMSA has failed to implement which would greatly improve pipeline safety.

The discussion draft before us today, Pipeline Safety Act of 2016, is a starting point in reauthorizing the 2011 law. The draft seeks to increase regulatory transparency, speed the completion of overdue safety regs, tighten standards for underground natural gas storage facilities and underwater oil pipelines and reauthorizes PHMSA's pipeline safety programs. Taken together, I believe that the provisions included within the draft will go a long way towards improving pipeline safety, increasing the public confidence in our nation's energy infrastructure.

And as we learned when examining the Kalamazoo spill, we needed to do a lot better job to improve pipeline safety. I think that we have made some progress with this draft and the draft bill is certainly an important step forward.

One of the things that I initiated is a new provision requiring annual inspections that are fully transparent for some deep water crossings of existing pipelines. That is, in fact, Section 12 of the discussion draft would require annual inspections for deep underwater pipelines. A change in the law would mean that lines that

cross under the Straits of Mackinac between the Upper and Lower Peninsula of Michigan would be required to be inspected every year, rather than every 5 years and those results made public.

Though I may not be able to stay for the entire hearing this morning, I would appreciate your comments, maybe even in your opening statement, as to the support, hopeful support, of that provision as part of this bill.

Feedback provided by our witnesses today will place us on a path towards enacting a bipartisan and meaningful reauthorization bill. I look forward to continuing with working with our colleagues on the Transportation and Infrastructure Committee, as well as our colleagues in the Senate, to get this bill done. And I yield back the balance of my time.

[The prepared statement of Mr. Upton follows:]

#### PREPARED STATEMENT OF HON. FRED UPTON

Pipeline safety is something I take very personally, and it has long been a priority for me, and this committee. Spills can prove disastrous, and it is imperative that our laws stay up to date and work to minimize potential damage, as well as try to prevent them from happening in the first place.

In the wake of the serious oil spill that affected the Kalamazoo River in my district, I worked on a bipartisan basis with my friend John Dingell—and in conjunction with our friends on the Transportation and Infrastructure Committee—to enact the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. While the legislation's name might be hard to remember, its positive effects are not. This bipartisan bill helps prevent pipeline failures, strengthens safety standards, and holds those responsible for pipeline accidents accountable.

We cannot achieve the intended objectives of the Pipeline Safety Act until it has been fully implemented. A hearing last July revealed that the Pipeline and Hazardous Materials Safety Administration (PHMSA) has failed to implement many of the mandates required by law under the Pipeline Safety Act of 2011. Today, over 4 years after enactment, at least 16 important safety regulations remain overdue. Rulemakings related to leak detection and emergency shutoff valves, public education and awareness, and accident and incident notification are among some of the mandates PHMSA has failed to implement and which would greatly improve pipeline safety.

The discussion draft before us today, the Pipeline Safety Act of 2016, is a starting point in reauthorizing the 2011 law. The draft seeks to increase regulatory transparency, speed the completion of overdue safety regulations, tighten standards for underground natural gas storage facilities and underwater oil pipelines, and reauthorize PHMSA's pipeline safety programs. Taken together, I believe the provisions included within the draft will go a long way toward improving pipeline safety increasing the public confidence in our nation's energy infrastructure.

As we learned when examining the Kalamazoo spill, we needed to do a lot better job to improve pipeline safety. We have made progress, much work remains, and this draft bill is an important step forward.

I'm hopeful the testimony and feedback provided by our witnesses today will place us on a path toward enacting a bipartisan and meaningful reauthorization bill. I also look forward to continue to working with our colleagues on the Transportation and Infrastructure Committee as we move ahead.

Mr. WHITFIELD. The gentleman yields back. At this time, I will recognize the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

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

Mr. PALLONE. Thank you, Chairman Whitfield and Ranking Member Rush for holding this hearing on pipeline safety reauthor-

ization and the discussion draft released by the committee last Friday. While I believe the draft could and should be much stronger, it is a good start and includes some important provisions on underground gas storage, pipeline safety, Technical Assistance Grants, and mandamus.

The vast network of transmission pipelines in this country are essentially “out of sight, out of mind” for most Americans. But when something goes wrong, these facilities can make themselves known in devastating and sometimes deadly ways. Over the last year, we have witnessed both 100,000 gallon crude oil spill into pristine coastline in Representative Capps’ district in California and a massive gas storage facility leak in Los Angeles. The leak forced thousands of people from their homes for long periods of time and released 96,000 metric tons of methane into the atmosphere, the climate-damaging equivalent of burning 900 million gallons of gasoline.

My own district experienced the devastation of a pipeline failure in 1994 when a pipeline exploded in Edison, New Jersey, destroying about 300 homes. Yet, two decades and four reauthorizations later, the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration, or PHMSA, has made little progress in my opinion in securing the safety of our nation’s pipeline infrastructure.

I hope that will soon change and I welcome the new Administrator Dominguez who I believe understands these concerns. It appears you and Secretary Fox are determined to bring positive change to this agency and I sincerely hope you succeed in your efforts to ensure the safety of our pipeline system. We look forward to helping you in any way that we can.

The discussion draft before us is a modest, but balanced starting point for that effort. The draft contains language to address regulation of underground gas storage facilities like Aliso Canyon in California that leaked methane for 5 months until just a week ago. However, I don’t believe that it goes far enough and I hope the committee will consider adopting the stronger language of H.R. 4578, authored by Representative Brad Sherman, who represents the residents around this facility and lives in the neighborhood that experienced the most direct adverse effects of the leak.

I am encouraged that this draft includes language authored by Mr. Green that will allow us to finally begin a conversation about the need for PHMSA to have a direct power of authority. It is also critical that we provide the necessary tools—including funding—so the agency can attract the best and brightest inspectors and safety experts in order to carry out its responsibilities. We should also give the agency carefully crafted emergency order authority to ensure that PHMSA can address situations and facilities that pose a threat to life, property, and the environment. And we should remove barriers to PHMSA’s success, such as the multiple layers of overly prescriptive risk assessment and cost benefit analysis that have hampered the agency’s efforts to improve safety.

Finally, I am pleased that the draft contains a provision restoring the ability of the public to compel PHMSA to perform its non-discretionary obligations. This provision is necessary to address an incorrect reading of the 2002 reauthorization by the Ninth Circuit.

While I have great respect for the courts, it is clear to me that the Ninth Circuit's reading of the Pipeline Safety Act with regard to mandamus was just plain wrong. The law always contemplated mandamus-type suits to ensure PHMSA does its job. The mandamus language added to the statute in 2002, as part of the whistleblower protection provision, was always intended to be in addition to what was already in the statute not in lieu of the existing language as the court incorrectly stated. At our hearing last year, we all voiced frustration at PHMSA's inaction on a number of fronts. While I know Administrator Dominguez is trying to change this situation, it is still important for the public to have the ability to access the courts to ensure PHMSA is keeping our pipeline system safe.

And while I believe the discussion draft could be stronger, it is important to know that the last three pipeline safety and reauthorizations were truly bipartisan efforts that moved our nation forward on safety. Our committee has always produced the best and strongest pipeline safety legislation and I look forward to continuing to work with Chairman Upton, Chairman Whitfield, Ranking Member Rush, Representative Capps, and colleagues on both sides of the aisle to produce truly meaningful legislation that protects lives, property, and the environment while providing more certainty and reducing unnecessary burdens on industry.

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

[The prepared statement of Mr. Pallone follows:]

#### PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you Chairman Whitfield and Ranking Member Rush for holding this hearing on pipeline safety reauthorization and the discussion draft released by the committee last Friday. While I believe the draft could and should be much stronger, it is a good start and includes some important provisions on underground gas storage, pipeline safety technical assistance grants and mandamus.

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I hope that will soon change, and I welcome new Administrator Dominguez, who I believe understands these concerns. It appears you and Secretary Foxx are determined to bring positive change to this agency. I sincerely hope you succeed in your efforts to ensure the safety of our pipeline system and we look forward to helping you any way we can.

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hire authority. It's also critical that we provide the necessary tools—including funding—so the agency can attract the best and brightest inspectors and safety experts in order to carry out its responsibilities. We should also give the Agency carefully crafted emergency order authority to ensure that PHMSA can address situations and facilities that pose a threat to life, property, and the environment. And, we should remove barriers to PHMSA's success, such as the multiple layers of overly prescriptive risk assessment and cost-benefit analysis that have hampered the agency's efforts to improve safety.

Finally, I'm pleased that the draft contains a provision restoring the ability of the public to compel PHMSA to perform its non-discretionary obligations. This provision is necessary to address an incorrect reading of the 2002 reauthorization by the Ninth Circuit. While I have a great respect for the courts, it's clear to me that the Ninth Circuit's reading of the Pipeline Safety Act with regard to mandamus was just plain wrong: the law always contemplated mandamus-type suits to ensure PHMSA does its job. The mandamus language added to the statute in 2002 as part of the whistleblower protection provision was always intended to be an addition to what was already in the statute, not in lieu of the existing language as the Court incorrectly stated. At our hearing last year, we all voiced frustration at PHMSA's inaction on a number of fronts. While I know Administrator Dominguez is trying to change this situation, it is still important for the public to have the ability to access the courts to ensure PHMSA is keeping our pipeline system safe.

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Thank you. I yield back the balance of my time.

Mr. WHITFIELD. Mr. Pallone yields back the balance of his time, so that concludes the opening statements.

And I would like to introduce our only witness on Panel 1 this morning and that the Honorable Marie Therese Dominguez, who is the Administrator for the Pipeline and Hazardous Material Safety Administration at the U.S. Department of Transportation. She has had an illustrious career. She was the Assistant Secretary for Civil Works over at the Army Corps of Engineers, as well as other positions. We are delighted that you are here. We look forward to your testimony and the opportunity to ask questions. So you are recognized for 5 minutes, Madam Administrator.

**STATEMENT OF THE HONORABLE MARIE THERESE DOMINGUEZ, ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

Ms. DOMINGUEZ. Thank you, sir. Good morning. Chairmen Upton, Whitfield, Ranking Members Pallone and Rush, and members of the subcommittee, thank you for inviting me to testify today on the reauthorization of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's pipeline safety program.

PHMSA operates in a dynamic and challenging atmosphere. The demand for our work has increased as has the complexity and scope of our mission and responsibilities. The development of new energy resources, advancements in technology, and the use of hazardous materials in everyday products impact transportation safety.

Recent incidents and increased public awareness and sensitivity to safety hazards and environmental consequences have resulted in

increased scrutiny of the agency and it demands that we become proactive, innovative, and forward-looking in all that we do.

Addressing the mandates in the Pipeline Safety Act of 2011 is a priority of PHMSA. The Act included 42 new congressional mandates to advance PHMSA's safety mission and we have completed 26 of those mandates to date.

Since I was appointed last summer, we have made progress in addressing four outstanding rulemakings, including publishing a final rule on pipeline damage prevention programs and proposed rulemakings on expanding the use of excess flow valves in distribution pipelines, as well as operator qualification, cost recovery, and accident notification, and a significant rule addressing safety of hazardous liquid pipelines.

We are currently and actually, I just got news this morning, that OMB has completed its review and we are planning on publishing within the next couple of weeks gas transmission, the gas transmission rule which has been outstanding.

Congress has made investments in PHMSA, providing 100 new positions for the pipeline safety program in the last year. And we have filled over 91 percent of these positions.

Moving forward, we must continue to utilize the investments Congress has provided wisely. Over the past 6 months, I have worked to better understand PHMSA's strengths, capability gaps, and areas for improvement. We have undertaken an organizational assessment that evaluated the agency's structure and processes. This assessment provided PHMSA's leadership team deeper insight into an organization where safety is a personal value for all of our talented and dedicated employees. And it also highlighted critical investment areas.

As a result, PHMSA has updated its strategic framework, recognizing the need to improve our capacity to leverage data and economic analysis, to promote continuous improvement in safety performance through the establishment of safety-management systems, both within the agency and across the industry, and by creating a division that will support consistency in mission execution. This new framework called PHMSA 2021 was directly informed by PHMSA employees and will allow us to be more predictive, consistent, and responsive as we fulfill our mission in protecting people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to the daily lives of all Americans.

PHMSA 2021 will allow us to better prioritize our work and be proactive in informing, planning, and execution. It will also allow us to be more predictive in our efforts to mitigate future safety issues and to implement data-driven, risk-based inspections, leading our regulated communities in a direction that powers our economy, cultivates innovation, and prioritizes safety.

Thank you for continuing to invest in PHMSA. I look forward to continuing to work with the Congress to reauthorize PHMSA's pipeline safety program and I would be pleased to answer any questions.

[The prepared statement of Ms. Dominguez follows:]





**WRITTEN STATEMENT OF  
THE HONORABLE MARIE THERESE DOMINGUEZ  
ADMINISTRATOR  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

**BEFORE THE U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON ENERGY AND POWER  
HEARING ON EXAMINING PIPELINE SAFETY REAUTHORIZATION**

**March 1, 2016**

Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee, thank you for inviting me to testify today on reauthorization of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline safety program.

PHMSA's mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives. PHMSA operates in a dynamic and challenging environment, which has increased the complexity of the agency's mission and responsibilities. Driven by new technology and market forces, the industries and operators PHMSA regulates are changing, as are the ways the American public consumes and interacts with energy and other hazardous materials. To better anticipate and address these changing market dynamics, PHMSA is updating our organizational framework to enhance our planning, performance, data and economic analysis. This new framework will better inform our inspection, enforcement and regulatory capabilities and overall program execution, allowing PHMSA to be more predictive, consistent and responsive as we execute our mission. My testimony today will provide an overview of our pipeline safety program, including an update on our progress in implementing the Pipeline Safety Act mandates and our efforts to become a more forward looking, proactive, innovative, and data-driven agency.

**Overview of PHMSA's Pipeline Safety Program**

Today, there are 2.6 million miles of pipelines that carry oil and natural gas in the U.S. The Nation relies on these pipelines and the products in them for economic growth and to support the daily lives of its citizens, and it's PHMSA's job to ensure they operate safely.

PHMSA establishes Federal pipeline safety, inspection and enforcement standards, and PHMSA's state pipeline safety partners are a critical part of the Nation's pipeline safety regime. PHMSA and its state partners are dedicated to ensuring pipeline operators comply with pipeline safety regulations. PHMSA also works with a variety of other partners, including other Federal agencies, state and local officials, emergency responders, environmental groups, and the public to ensure the Nation's pipeline network continues to operate safely and reliably.

PHMSA's FY 2017 request includes funding for 343 pipeline safety program positions to manage the pipeline safety programs including inspecting pipelines and developing regulations that guide the safe operation of pipelines, grant management, and pipeline safety research.

The growth of PHMSA's pipeline safety program advances a safe and reliable pipeline network. Resources Congress has provided over the years have enabled PHMSA to advance new functions and programs in its pipeline safety program. PHMSA launched a new pipeline safety auditing function that operates in tandem with Federal engineers to provide technical expertise, enhance PHMSA's field presence, and enable more robust inspection and enforcement oversight.

PHMSA will also establish a pipeline Accident Investigations Division to investigate incidents and share lessons learned with all stakeholders to improve safety. PHMSA is in the process of finalizing the new Accident Investigation Division framework and resource construct, and anticipates initial stand-up later this year. The division will strengthen our capacity and focus on root cause investigations for all significant pipeline incidents and accidents; identify lessons learned and evaluate safety data for emerging trends; bring consistency to safety investigations; and enhance PHMSA's training program for federal and state inspectors.

PHMSA is moving into its fourth year of a new inspection protocol for integrated inspections, where inspections are tailored to the risk profile of a pipeline operator. Inspection protocols are customized to focus resources on risks and are flexible enough to reflect new knowledge gained

during an inspection. Inspections include multiple facilities and more miles of pipeline; they are performed by a team of engineers and are completed over several months. As a result, PHMSA's inspection results are more comprehensive, and result in more expansive enforcement cases.

PHMSA's pipeline safety focus includes non-regulated stakeholders, such as the public, emergency responders, and others through investments in public outreach and education. Educating stakeholders through outreach activities and training programs like the 811 Call Before You Dig program plays an important role in reducing pipeline excavation damage related incidents, which continue to be one of the leading causes of pipeline incidents where people are injured or killed.

PHMSA also collaborates with industry and academic partners to fund research and development across all aspects of pipeline safety, including leak and mechanical damage detection and prevention, improved line system controls; and improved pipeline materials. Since 2002, this collaboration and investment has resulted in 47 technology demonstrations and 26 new technologies that prevent damage, and detect leaks and defects in difficult to inspect pipelines.

PHMSA's Competitive Academic Agreement Program (CAAP) supports university-level pipeline safety research. Since 2013, CAAP has invested in a wide set of solutions for corrosion and other pipeline integrity challenges, and exposed a new generation of students to the field of pipeline safety.

#### **I. SUSTAINED EFFORTS TO SATISFY MANDATES**

Safety is the Department of Transportation's top priority and completing Congressional mandates will result in critical improvements that advance PHMSA's safety mission. The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pipeline Safety Act) included 42 new requirements. PHMSA has completed 26 of the Act's mandates. Ten of the remaining mandates will be addressed as part of current rulemaking activities or reports. The remaining six are tied to reports and information collections that will inform future rulemaking.

**A. Hazardous Liquid Final Rule**

PHMSA published a Notice of Proposed Rulemaking (NPRM) for the safety of hazardous liquid pipelines on October 13, 2015. The rule proposed critical updates to the way that pipelines are assessed, operated and maintained across the U.S. The rule addresses several mandates from the 2011 Act, including:

- Section 5 – integrity management, which requires PHMSA to conduct a study on whether integrity management system requirements, or elements thereof, should be expanded beyond high-consequence areas and the appropriateness of applying repair criteria, such as pressure reductions and special requirements for scheduling remediation, to areas that are not high-consequence areas and periodic reassessments changes;
- Section 8 – leak detection, which requires PHMSA to promulgate regulations that require operators of hazardous liquid pipeline facilities to use leak detection systems where practicable; and establish technically, operationally, and economically feasible standards for the capability of such systems to detect leaks;
- Section 14 – biofuels, which requires PHMSA to update the definition of hazardous liquid to include the term biofuels; and
- Section 29 – seismicity, which requires PHMSA to amend 49 CFR Part 195 to require pipeline operators to consider the seismicity of an area when evaluating potential threats to their pipeline systems.

The proposed rule also addresses two recommendations from the National Transportation Safety Board (NTSB) and the Government Accountability Office (GAO). The rule was designed to improve protection of the public, property, and the environment by ensuring that operators detect and address unsafe conditions before an incident occurs.

PHMSA received more than 70 comments from stakeholders, including members of industry, environmental and advocacy groups, Federal, State and local government agencies and members of the public. The Liquid Pipeline Advisory Committee met on February 1, 2016, and voted to approve the proposed rule with several recommendations. PHMSA is considering all of the comments and recommendations, and plans to finalize the rule in the coming months.

**B. Gas Transmission Proposed Rule**

PHMSA plans to propose a NPRM for the safety of gas transmission lines in the next month. The NPRM will propose updates and clarifications regarding integrity management requirements and maximum allowable operating pressures for gas transmission lines and will address several mandates from the Pipeline Safety Act, including:

- Section 5 – integrity management, which requires PHMSA to evaluate whether integrity management system requirements, or elements thereof, should be expanded beyond high consequence areas. The mandate also requires PHMSA to evaluate whether integrity management mitigates the need for class location requirements and to establish guidelines for what constitutes sufficient justification to allow operators to extend reassessment intervals for gas transmission lines by 6 months;
- Section 23 – testing, which directs PHMSA to require operators to reconfirm the maximum allowable operating pressure of pipe lacking sufficient records and located in specific areas, and to require operators to conduct pressure testing or alternative equivalent means, such as in-line inspection programs for pipe not previously tested. The mandate also directs PHMSA to require the self-reporting of operators that do not have sufficient records to substantiate their pipeline's maximum allowable operating pressure.

**C. Other Rules: Operator Qualification, Excess Flow Valves, and Automatic and Remote Controlled Shut-Off Valves**

In July 2015, PHMSA published the Operator Qualification, Cost Recovery and Accident Notification proposed rule that addresses four NTSB recommendations and the following mandates from the Pipeline Safety Act:

- Section 9 – accident and incident notification: requiring PHMSA to revise regulations to require telephonic reporting no later than 1 hour following the “confirmed discovery” of an incident or accident; and
- Section 13 – cost recovery for design reviews: requiring PHMSA to prescribe a fee structure and procedures for assessment and collection in order to implement authority to recover design review costs for projects that cost over \$2.5 billion or that involve new technologies.

The agency is currently considering the comments received, and preparing to present the rulemaking proposal to the Gas and Hazardous Liquids Advisory Committees this spring.

The Excess Flow Valves Final Rule will fulfill Section 22 of the Pipeline Safety Act, which requires the agency to issue regulations requiring the use of excess flow valves on new or entirely replaced distribution branch service lines, or lines servicing multi-family facilities and small commercial facilities, if appropriate. The rule will also address one NTSB recommendation and would increase the level of safety for homes by requiring excess flow valves on all new and renewed gas service lines.

The Rupture Detection and Valves NPRM will address Section 4 of the Pipeline Safety Act, which directs PHMSA to, if appropriate, issue regulations requiring the use of automatic or remote-control shut-off valves, or equivalent technology, where it is economically, technically, and operationally feasible, on newly constructed or entirely replaced pipelines. The rule will also address Section 8 of the Pipeline Safety Act, which requires PHMSA to study and, if appropriate, issue regulations requiring the use of leak detection systems where practicable and establishing technically, operationally, and economically feasible standards for the capability of such systems to detect leaks. PHMSA intends to release the NPRM later this year.

#### **D. Reports and Other Actions: Study of Transportation of Diluted Bitumen**

In accordance with the Pipeline Safety Act of 2011, PHMSA commissioned the National Academy of Sciences (NAS) to perform a study on diluted bitumen (dilbit) to analyze the risk of transporting dilbit, including its effects on transmission pipelines, the environment and oil spill response activities. The NAS study determined that while dilbit does not pose an increased risk in transportation, it behaves differently than light and medium crude oils in the environment following a spill. Based on their findings, the NAS issued recommendations to PHMSA, the Environmental Protection Agency (EPA), U.S. Coast Guard (USCG), National Oceanic and Atmospheric Administration (NOAA), and the oil pipeline industries to ensure an adequate response to spills of dilbit.

In response to the recommendations in the NAS study, PHMSA will:

- Develop and publish an Advisory Bulletin highlighting the findings of the study and suggest voluntary improvements that onshore oil pipeline operators should make to their oil spill response plans to address plan improvement recommendations.

- Host a public workshop in the spring of 2016 to solicit input from interested parties, government agencies and members of the public on how it can improve and enhance 49 CFR Part 194 and address the NAS recommendations.
- Work with the National Response Team (NRT) and the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) to advance the recommendations included in the report.
- Continue to work with the American Petroleum Institute's Spill Advisory Committee, Spill Control Association of America, and other industry organizations to improve oil spill response planning and preparedness.

Completion of the mandated actions of the 2011 Pipeline Safety Act is a top priority and PHMSA is working to complete the outstanding requirements as quickly as possible. PHMSA posts regular updates about our progress in completing the outstanding requirements on our website at [www.phmsa.dot.gov](http://www.phmsa.dot.gov).

## **II. RESPONDING TO EMERGING RISKS**

The consequences of pipeline failures can have a tremendous impact on people and the environment. PHMSA implements a comprehensive oversight program that is data driven to forecast and address safety issues before they occur. PHMSA also takes proactive steps to incorporate lessons learned from accidents into new policies and regulations in order to prevent future occurrences of safety issues that are affecting the American people right now.

### **A. Pipeline Damage Prevention**

Pipeline excavation damage related incidents continue to be one the leading causes of pipeline incidents where people are injured or killed. In July 2015, PHMSA published a final rule to establish the process for evaluating State excavation damage prevention law enforcement programs and enforcing minimum Federal damage prevention standards in States where damage prevention law enforcement is deemed inadequate or does not exist.

PHMSA launched a comprehensive and transparent strategy to evaluate the adequacy of state programs, and to notify states of their adequacy determination. In addition to the final rule, PHMSA has undertaken a variety of efforts over many years to reduce excavation damage to

pipelines. These efforts include performing studies, advocacy, grant making, rulemaking, and partnership with a wide spectrum of excavation damage prevention stakeholders.

**B. Underground Storage**

The gas leak at the Southern California Gas Aliso Canyon underground natural gas storage facility in California has underscored the potential risks associated with the underground storage of natural gas. PHMSA has the authority to regulate the underground storage of natural gas and hazardous liquids incidental to the movement of these products by pipeline, but there are currently no federal regulations specific to the storage of natural gas at underground storage facilities such as Aliso Canyon.

PHMSA and a number of states participated in the development of national consensus standards that were published in the fall of 2015. These standards promote best practices to ensure the safety and integrity of underground storage facilities. On February 5, 2016, PHMSA issued an advisory bulletin directing operators to immediately review the overall integrity of underground natural gas storage facilities, to identify the potential for leaks and failures, and to review and update their emergency plans.

PHMSA is considering additional safety standards for underground natural gas storage facilities. Building off of the February 5 advisory bulletin on underground storage, PHMSA will host a public workshop for all stakeholders to seek input on new regulatory enhancements. The agency will work with states that currently have regulations in place and we will work with our state partners who have or want to develop regulations that exceed the minimum federal regulations for intrastate facilities.

**C. Liquefied Natural Gas**

The U.S. is experiencing a significant increase in the production of natural gas. This has resulted in a new market for liquefied natural gas (LNG) and the need for strong safety standards that regulate the transport and storage of LNG in the United States.

PHMSA's regulations establish the minimum federal safety standards for the design, operation and maintenance of LNG facilities. PHMSA is working to update codes and standards for the safe design and operation of LNG facilities to include current market trends and new technology.



PHMSA also continues to offer its assistance to the Federal Energy Regulatory Commission as a coordinating agency in the siting and review of LNG facilities under the National Energy Policy Act.

#### **D. Water Crossings**

Recent oil spills from pipelines in Montana and California underscore the importance of routinely assessing the condition, and evaluating the potential for external threats and mitigate risks associated with pipelines that cross or are close to the Nation's waterways.

Following the 2011 ExxonMobil spill, PHMSA conducted a joint study with the State of Montana which revealed that many of the state's pipeline water crossings could be threatened by river flooding and channel migration. PHMSA worked closely with Montana state organizations, as well as Montana pipeline operators, to ensure that necessary steps were taken to safeguard existing crossings. These steps include: in-place safety procedures during flood conditions or increased river flow rates; increased frequency of patrols and depth of cover surveys during and after significant river-flow events; swift remediation measures, if needed; strengthening emergency response preparedness; and replacing trenched crossings with Horizontal Directional Drilled (HDD) pipelines.

While HDD pipelines are a critical and successful tool, operators must take a comprehensive approach to improving safety. PHMSA's pipeline safety Integrity Management regulations require all operators of pipelines located in environmentally sensitive areas ("High Consequence Areas") such as river crossings to carefully monitor their systems and take extra precautions to prevent and mitigate the potential impacts of accidents in such areas.

In April 2015, PHMSA issued an advisory bulletin to ensure operators were aware of the inherent risks associated with river crossings and remind them of the need to take extra steps to protect such environmentally sensitive areas.

### **III. PRINCIPLES FOR REAUTHORIZATION**

A critical part of PHMSA's safety program is to continually strive for improvement and to find new ways to raise the bar on safety. PHMSA will continue to improve safety through the

development of data-informed regulations, investment in research and development, education and outreach, and by enhancing inspections and enforcement.

**A. Incentivize High Performance Among State Partners**

Through agreements and certifications, states assume authority over more than 80 percent of intrastate gas and hazardous liquid distribution and transmission pipelines by inspecting and enforcing both Federal and state regulations. PHMSA supports pipeline safety by providing grant funding to support state damage prevention programs and technical assistance related to pipeline safety issues.

It is critical that state partners participate in activities that benefit pipeline safety on a national basis. Such activities include programs like PHMSA's Pipeline Safety Mentoring program, which pays for state inspectors to travel to and observe inspections being conducted by Federal or state personnel, service on pipeline safety standards setting committees and work groups.

**B. Establish A Workforce to Address Evolving Safety Challenges**

Thanks to resources provided by Congress, PHMSA's pipeline safety program is growing. In FY 2015, Congress funded 109 new positions (93 of those in our Field Operations), nearly a 50 percent increase in the size of PHMSA's pipeline safety program. PHMSA has hired 91 percent of the new positions and is continuing to bring new staff on board over the coming months. PHMSA has developed a robust recruitment and outreach strategy that uses the hiring authorities we currently have available, and is also developing new partnerships with colleges and universities with engineering programs to help the agency recruit for these critical positions. Even so, the dynamic energy market means that PHMSA frequently has to compete with industry to hire engineers and other technical experts. Direct Hire Authority would complement our recruitment efforts by reducing the agency's time to hire from more than 100 days to less than 30 days.

As PHMSA increases its workforce, training is critical to ensure the highest possible level of safety. PHMSA is enhancing training opportunities for both Federal and state inspectors by tailoring training and delivering the right mix of classroom and distance learning to provide an efficient and effective training program. Federal and state inspectors train side-by-side at PHMSA's Training and Qualifications Center in Oklahoma City, Oklahoma. This year, PHMSA

hired a new Director of Training at PHMSA's Training and Qualifications Center and developed a new pipeline safety inspection boot camp. The first boot camp courses began in February for new Federal and state inspectors.

As PHMSA carries out this hiring surge and looks ahead to reauthorization of the pipeline safety program, the agency is committed to using the resources Congress has provided to stay ahead of industry trends, strengthen state partnerships, and ensure the highest safety standards.

### **C. Balance Composition of Advisory Committees**

The rulemaking process is methodical and transparent to ensure that new rules are effective, efficient, and reflect feedback from all stakeholders. In addition to advancing the gas and liquid rules, PHMSA is working to balance representation on the gas and liquid pipeline technical advisory committees to ensure that the committee recommendations are borne out of balanced and robust conversations. While the Department of Transportation continues to make progress in filling vacant seats on these advisory committees, there are challenges retaining committee members, including changes in membership due to new appointments, retirements and career changes.

PHMSA's advisory committees, as prescribed under Section 60115 of Title 49, United States Code, contain five members on each committee, appointed from three distinct categories. The statute provides the Secretary the authority to appoint to each committee: (1) five individuals from departments, agencies, and instrumentalities of the U.S. Government and of the states; (2) five individuals from the natural gas or hazardous liquid industry, selected in consultation with industry representatives; and (3) five individuals selected from the general public. Section 60115(b)(4)(A) further directs the Secretary to appoint state commissioners to the category of individuals selected from departments, agencies, and instrumentalities of the U.S. Government and of the states. Adding flexibility to the requirement that the two members of each committee must be members of state public utility commissions would allow PHMSA to fill these positions with individuals who represent State and local government agencies.

### **D. Use Data to Inform Regulation**

To develop rules that are effective in mitigating risk and efficient, PHMSA needs to better understand market trends and collect and analyze reliable and accurate data. To that end, a

nationwide integrated database of pipeline inspection and enforcement data is required. PHMSA inspects 20 percent of the 2.6 million miles of pipeline within the United States; the remaining 80 percent is inspected by certified state partners. Linking state and federal inspection, enforcement, and geospatial data, and providing a consolidated national view of all pipeline data, is a vital component in identifying current and emerging risks that drive improved safety performance and informed regulations. PHMSA's FY 2017 request includes funding for communication efforts that will enable Federal and State inspectors and pipeline operators to share critical information such as the results of inspections and the condition of our Nation's aging network of pipelines.

Through PHMSA's Information Sharing System, Federal and State inspection and enforcement data will be combined with current incident and annual reporting data to provide complete safety records for all pipeline operators and a more complete view of the pipeline landscape to inform future regulation. This information will help inform risk models that will enable the agency to identify pipelines that pose a higher risk of failure and, when combined with information about the location of High Consequence Areas and other locations where a pipeline failure is likely to cause the greatest amount of harm to people or the environment, will give the agency more complete information when assessing significant determinations such as enforcement actions, expected consequences of failures by location or when considering the issuance of special permits.

**E. Enhance PHMSA's Enforcement Capabilities to Maximize Safety**

Pipeline safety would be enhanced by a comprehensive enforcement tool to address time-sensitive, industry-wide safety conditions through emergency orders. Unlike a Corrective Action Order (CAO) issued to a single operator, an emergency order would affect all operators and/or pipeline systems that share a common characteristic or condition. This situation could occur when a particular component, vintage of pipe, or other condition was broadly utilized or installed by industry, and the Department needs to address a safety issue in comprehensive and timely way.

This new enforcement tool would allow the Secretary to issue an emergency order prohibiting a dangerous practice or imposing a requirement when an unsafe condition, practice, or activity in

the transportation of gas/hazardous liquids in interstate pipelines poses a threat to life or significant harm to property or the environment.

#### **F. Drive Innovation to Enhance Pipeline Safety**

PHMSA collaborates with industry and other stakeholders on research and development to identify gaps in current technology and reach consensus on the sector's most pressing challenges. Current law requires that "at least 30 percent of the costs of program-wide research and development activities are carried out using non-federal sources." Although this 30 percent co-funding requirement is appropriate for technology development projects, it is not appropriate for work that is inherently governmental in nature, such as research and development related to our rulemaking efforts.

Also, PHMSA needs the ability to collect and expend funds needed to recoup costs under cost recovery provisions included in the Pipeline Safety Act of 2011. The Act authorized PHMSA to recover costs for facility design safety reviews where the project has design and construction costs totaling at least \$2.5 billion or involves new or novel technologies or design, such as Liquefied Natural Gas (LNG) or new materials. While the 2011 Act allowed PHMSA to recover cost for the design safety reviews, the Act did not allow PHMSA to use the funding to offset the related discretionary expenditures related to the design reviews with the monies collected. PHMSA seeks such authorization to use the monies collected for the intended purpose.

#### **IV. PHMSA 2021: A NEW DIRECTION FOR PHMSA**

Given the dynamic operating environment of the energy industry and advances in technology, PHMSA has updated the transportation agency's strategic framework and developed a bold new vision and mission that better reflect the Agency's focus on safety, innovation, and trust in the transportation of hazardous materials.

PHMSA is undergoing a transformation to better align resources and capabilities to more effectively deliver on its safety mission: To protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives.

#### **A. Becoming the Most Innovative Transportation Safety Organization in the World**

PHMSA's transformation focuses on strategic investments in people and processes; it restructures the organization, building upon the three key principles of safety, innovation, and trust. The five goals that enable this new framework are to:

- Invest in safety innovation to become more proactive and forward-looking by building PHMSA's innovation and analytics capabilities through partnerships;
- Build stakeholder and public trust through proactive and targeted outreach, engagement, responsiveness, and transparency;
- Cultivate organizational excellence by investing in employees and key capabilities, and strengthening PHMSA's safety culture;
- Pursue operational excellence through consistent and efficient business processes and by transforming how PHMSA leverages data to drive decision-making; and
- Promote continuous improvement in safety performance, including establishment of a framework and approach for implementing Safety Management Systems (SMS) internally and externally.

These changes will transform PHMSA into a next-generation safety agency that invests in people, safety innovation and technology and sets the standard for a strong safety culture.

#### **B. Leading the Implementation of SMS**

Safety Management Systems, or SMS, is the safety policy of the U.S. Department of Transportation. Actively advancing implementation of SMS and a strong safety culture within the pipeline and hazardous materials sectors is the next step in continuous safety improvement for America's hazardous materials transportation system. Continuous improvement is the foundation of SMS, and PHMSA is committed to adopting SMS within PHMSA and supporting the broad implementation of SMS within the industries we regulate. PHMSA will focus on better informing and controlling risk, detecting and correcting safety problems earlier, sharing and analyzing safety data more effectively, and measuring safety performance more accurately. These are just some of the benefits of an SMS focus and as PHMSA advances SMS, it is critical that industry share safety data with both regulators and other parts of industry so lessons learned can improve pipeline safety across the entire country. In 2010, the National Transportation Safety Board (NTSB) recommended that the American Petroleum Institute (API) facilitate the development of a safety management system standard specific to the pipeline industry, in

collaboration with industry, regulators and other stakeholders. PHMSA participated in the development of API Recommended Practice 1173, the recently published recommended standard for implanting Safety Management Systems in the pipeline industry.

PHMSA fully supports the implementation of RP 1173 and plans to promote industry-wide conformance to this voluntary standard. The recommended practice is a proactive, system-wide approach to reducing risks and provides operators with a comprehensive framework to address risk across the entire life cycle of a pipeline. The standard promotes pipeline safety, while implementing guidelines for continuous improvement.

Moving forward, PHMSA will leverage the powerful working relationships we have with states and other stakeholders to encourage the widespread adoption of SMS.

#### **C. Improving Transparency and Public Engagement**

PHMSA values and will continue to create opportunities to educate and engage with all pipeline stakeholders to collaborate on ideas and actions that enhance pipeline safety and expand transparency.

PHMSA is committed to making pipeline safety data more readily available and accessible to the American public. PHMSA maintains a public database of all our enforcement actions as well as operator incident, inspection, mapping, and other safety related records.

In addition to making pipeline safety data available, public education is vital to reducing pipeline risks. It is critical to engage local communities in the pipeline safety processes and decisions that impact their daily lives. PHMSA's Community Assistance and Technical Services program provides local communities and other stakeholders with a direct line to PHMSA.

#### **V. CONCLUSION**

As PHMSA works diligently to complete the remaining mandates from the 2011 Pipeline Safety Act, we must also look forward to reauthorizing and further advancing PHMSA's pipeline safety program. PHMSA's vision for 2021 is to become the most innovative transportation safety organization in the world. This vision for PHMSA's safety program will ensure the Agency is responsive and able to address emerging safety risks and other priorities. It will enable PHMSA

to invest in the capabilities and skills necessary to utilize data to provide timely and effective regulations, enforcement, implementation of innovative technology, research and development investments, and public outreach to become a more forward-looking, proactive, innovative, and data-driven organization. These and future changes will transform PHMSA into a next-generation safety agency and enable PHMSA's staff and other stakeholders to take advantage of new and exciting opportunities to advance transportation safety. We look forward to working with the Congress to continue to enhance PHMSA's safety mission.

Thank you again for the opportunity today to discuss PHMSA's pipeline safety program.

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Mr. WHITFIELD. Well, thank you, Administrator Dominguez, and I recognize myself for 5 minutes of questions.

In your opening statement you made reference to the gas transmission regulation. Is that proposed at this point? You all are not getting ready to finalize that.

Ms. DOMINGUEZ. It is a Notice of Proposed Rulemaking.

Mr. WHITFIELD. OK. And that was one of the—

Ms. DOMINGUEZ. That is one of the outstanding mandates.

Mr. WHITFIELD. And how many outstanding mandates are there right now?

Ms. DOMINGUEZ. Right now there are 16. If we address the gas transmission rule that addresses several different sections of the Pipeline Act of 2011. And as I said, that will be addressed in the coming weeks.

Mr. WHITFIELD. Right. Well, we appreciate that. You came to PHMSA, you had not been involved in PHMSA before. You were appointed to this position, I guess. You took over, was it in August?

Ms. DOMINGUEZ. I was confirmed in August of last year.

Mr. WHITFIELD. Yes. If you were speaking to the Rotary Club in rural Kentucky, for example, and you were talking about safety of our national pipelines, how would you characterize it to a layman today, our system here in the U.S.?

Ms. DOMINGUEZ. Well, having worked at PHMSA, I can tell you that first and foremost the employees of PHMSA are incredibly dedicated to our safety mission. And the safety mission encompasses hazardous materials and pipelines. And I can tell you that that level of dedication extends across the board to every aspect of our rulemaking, our inspection process, and our enforcement regime that we undertake as an agency. Pipelines is one aspect of that. It is a mode of transportation for hazardous materials that we regulate. We take our mission very seriously and look to make sure that we are continuously working to improve that framework for safety.

Mr. WHITFIELD. Now I think the pipeline industry safety record is generally improving, but concerns have been expressed about a series of accidents. You think overall we are doing better, right? Or are you concerned about overall—some of these pipelines are pretty old. Some of the improvements that need to be made have been delayed because of the uncertainty about regulations and so forth. Do you think that the fact that these mandates have not been completed yet, is that contributing in a significant way to increased safety issues in your view or not?

Ms. DOMINGUEZ. I think we have opportunity, given the 2011 requirements to continue to enhance safety. I think in particular the two rules that we have been working on most aggressively in the last 6 months certainly that I have personally engaged on are first the hazardous liquid rule, and second, this gas transmission rule. Both of those were requirements from the 2011 act and are very significant to actually improving the safety of both gas and liquid transmission. And they expand some of the requirements that will certainly enhance safety and we believe lead to greater protections across the board for people and the environment.

Mr. WHITFIELD. Section 15 of our discussion draft is in parentheses, and it would allow a private individual to file a lawsuit

against PHMSA for failure to perform a non-discretionary duty. Have you or has PHMSA taken a position on that particular part of this draft?

Ms. DOMINGUEZ. We have had a chance to review the language that was published by the committee. I would be happy to work with the committee moving forward on how to best frame that provision, that particular provision. But obviously, there are provisions for citizens to have the right to sue, whether it is the Federal Government or private entities.

Mr. WHITFIELD. They can sue you already as a matter of fact.

Ms. DOMINGUEZ. Yes.

Mr. WHITFIELD. OK. I will yield back the balance of my time. Thank you very much. I recognize Mr. Rush for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman.

Administrator Dominguez, last week we had a very informative and inspirational meeting in my office. We briefly discussed the process for hiring talent for PHMSA, the challenges that PHMSA faced when competing against the private sector, and I think that some of your insights need to be shared with the members of this subcommittee regarding some of the challenges and some of the possible remedies to help the agency attract top candidates to help you accomplish and achieve your mission.

And in your comments, would you include your thoughts about Mr. Green's proposal and whether or not this speaks towards the issue? Give us some insight into your challenges?

Ms. DOMINGUEZ. Thank you, sir. I believe you are referring to the ability for PHMSA to do direct hire. And the committee is certainly taking that up in their draft legislation. And I very much appreciate it.

The Congress has been incredibly generous in providing funds to PHMSA. Over the last year alone we were provided 122 new positions to the agency. One hundred nine of those positions went directly to the pipeline safety program. And we have been working diligently to try and fill those as quickly as possible. We are at about a 91 percent fill rate right now. But I will tell you that it is difficult to compete against the private sector in particular. Everyone is going after great talent in this country and the provision that has been provided on direct hire authority would greatly assist us regardless of what the market is in making sure that we can bring on folks in a timely way. And the federal process is such that direct hire authority would definitely assist us in making sure that we are able to access the folks with the talent and skills to work in these critical jobs.

Mr. RUSH. And so let me move on to another matter. What role should Congress play in helping to address the issue of replacing the nation's aging pipeline infrastructure? As you know, at one point during the negotiations of the larger energy bill last year, this subcommittee discussed the idea of creating a grant program to help mitigate the cost of replacing these aging pipelines for low-income families. Unfortunately, that program was scrapped.

What do you believe is the proper role that Congress should play in this debate? Should the role of Congress be one of providing for national support, offering guidance, lessening minimal safety standards or something else entirely?

Ms. DOMINGUEZ. I believe that the role of the Congress is to make sure that we provide the most stringent opportunity for safety in the pipeline area. And so the TAG grants that you are referring to, the Technical Assistance Grants that the states have offered are truly valuable investments to local communities. And they have helped educate communities on safety pipeline issues. They have helped emergency responders across the board. And PHMSA, I believe, has employed some very good internal controls on how we actually use those programs we have reviewed and our processes are such that how we award them and how they are actually administered is a good way forward. So we appreciated the provisions that were provided and they have clearly done good work in communities.

Mr. RUSH. I want to thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time, the chair recognizes the chair, Mr. Upton.

Mr. Olson, you are recognized for 5 minutes.

Mr. OLSON. I thank the chair. Welcome, Administrator Dominguez. I would like to talk about staffing at PHMSA, where are we now, where you would like to go, and how can DHA help? Following up on a lot of questions from Ranking Member Rush.

In your testimony, you mentioned that direct hire authority would cut hiring time from 100 days to 30 days, a 70 percent reduction by the math. As I mentioned in my opening statement, Gene Green and I have a bipartisan bill to give PHMSA, you, DHA authority for a few years as you work through the new regulations.

Obviously, hiring only matters if you get those inspectors in the field. Would you please talk about how PHMSA is improving training for inspectors?

Ms. DOMINGUEZ. Thank you for the question. We have, as I noted, we have been aggressively hiring and the opportunity right now, we have been able to fill about 91 percent of our positions. That said, as we bring people on board, we have a very rigorous training program that we have rehabbed and literally put in place. It is a boot camp of sorts, not only just for our new inspectors, but the states are also doing a lot of hiring as well. And the state inspectors are also participating in this training. It is being conducted at our Training and Qualifications Center in Oklahoma City, Oklahoma. We just hired a new director over the course of the last 6 months. He comes with a great deal of experience in this field. And as inspectors are deployed, they will have some of the latest and greatest tools at their dispense to use.

Mr. OLSON. And that's important. Thank you, ma'am. About Section 2 and Section 3 of the discussion draft. They require PHMSA to keep Congress and the public informed of the status of overdue rules and tackle them before beginning new rulemakings. Do you agree that this is a sensible and achievable requirement and any concerns about pressure points where you might feel some pressure to comply with these ideas, these new policies?

Ms. DOMINGUEZ. As I noted in my opening statement, the prioritization of the 2011 mandates is something we take extremely seriously at PHMSA and completing those mandates is truly a priority. That said, there is always emerging risk that needs to be addressed. And so I appreciate the opportunity to work with the Con-

gress to complete the mandates, but we also need to be in a position to address any emerging risk as it does appear.

Mr. OLSON. So it sounds like the 2011 mandates are pressure points. Any other pressure points you are concerned about going forward with keeping Congress and the public informed, more personnel, just whatever? I mean how can we make sure you do your job and the people back home know that this is safe?

Ms. DOMINGUEZ. Well, I thank you for the investment that has been made by the Congress thus far. We are going to continue to make sure that we are using those resources wisely. Part of what we are doing is making sure that we are structuring the agency for that level of success as well. And some of the investment is to actually make sure that we are creating opportunities inside the agency to be more forward looking, proactive, data-driven, and improve our economic analysis and data analysis so that our rulemaking is as strong as it possibly can be and meet the requirements.

Mr. OLSON. And one final question. This is on Section 6 of the discussion draft that requires PHMSA to conduct timely post-inspection briefings with operators of pipelines. If there is a safety hazard, the operator needs to know so they can fix it immediately. Would PHMSA have an issue complying with this section going forward to any issues with PHMSA?

Ms. DOMINGUEZ. I am terribly sorry, sir. Can you repeat the question, please?

Mr. OLSON. Yes, ma'am. Section 6 of the discussion draft requires PHMSA to conduct timely post-inspection briefings of the operators of pipelines. If there is a safety hazard that the operator needs to know so they can fix it immediately, how does that knowledge get to the operator? That is what I am saying. Can you take that mandate? Can you roll with that or do you need more help or something because these people need to have that information if they don't have it.

Ms. DOMINGUEZ. So we take our inspection process very seriously. And one of the things that is presently part of our requirement for all inspectors is to make sure that they conduct an exit interview in a timely way. Right now, it is a 30-day window for inspectors to complete their exit interview process. Moving forward, oftentimes it does take more time to develop any sort of enforcement requirements, whether that be a notice of proposed violation or other compliance measures that might be needed. So it is a very thoughtful process taking in all the data, assessing it, making sure. But I do appreciate the need to communicate with the operator and we continue to do that.

So I will say that meeting that 30-day window of our initial findings is something that we are looking to do more consistently across the board, but it is a requirement right now within PHMSA. And then moving forward, as we develop those recommendations and any kind of violation orders or anything else, we do take those very seriously and they are a very thoughtful process.

Mr. OLSON. Thank you very much. I am out of time. I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time, I recognize the gentleman from—I was going to say New Jersey, but I will say California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. I thank the chairman. We are a long way from New Jersey. But we have had three high-profile failures in California over the last several years, so my first question, Administrator Dominguez, is do you feel that the states should have the option of requiring measures like shut-off valves, pressure monitors, testing of down-hole devices, if the federal regulators fail to do so?

Ms. DOMINGUEZ. Thank you for the question. The way the process works right now and what Congress has mandated is that the Pipeline and Hazardous Materials Safety Administration, PHMSA, sets the minimum federal requirements across the board for all the states. The states are then allowed to go above and beyond those requirements and any given state can choose to do so regardless of what the requirement is.

Mr. MCNERNEY. So your requirements should be seen as floors, not ceilings?

Ms. DOMINGUEZ. Correct.

Mr. MCNERNEY. Thank you. Will the draft legislation help PHMSA prevent these and other failures, so the legislation that we are talking about, or are there holes in the legislation that you think need to be filled in?

Ms. DOMINGUEZ. Our requirements look to create what we believe to be the safety measure that needs to be put in place. And again, if states choose to do more and put in place more stringent requirements they are able to do so.

Mr. MCNERNEY. Well, I mean the current legislation we are talking about today—

Ms. DOMINGUEZ. Yes.

Mr. MCNERNEY. Are there things that you think should be added or subtracted from that that you would like to discuss?

Ms. DOMINGUEZ. We have put forward a series of principles that I think address any additional requirements. We are looking in particular at other ways that we can enhance our enforcement capabilities.

Mr. MCNERNEY. So you don't want to advise us here today?

Ms. DOMINGUEZ. The one thing that will say that is in my testimony is to look for additional opportunities to level emergency order authority, an ability that other federal agencies have and actually our hazardous material program has which is also under PHMSA's authority.

Mr. MCNERNEY. Thank you. Let us talk about smart pigs versus direct assessment. My understanding is that if smart pigs could have been used in one of the high-profile failures in California, it would have prevented that, but they weren't able to be used because the pipelines were so old. Is that a common problem that smart pigs can't be used throughout the country because of aging pipelines?

Ms. DOMINGUEZ. We do have an aging infrastructure system in this country and one of the things that we have looked to address across the board is really encouraging. We have done a call to action over the course of the last 5 years in encouraging states. About 37 states have actually addressed this by looking to incent and providing opportunities to replace aging pipes around the country. That said, there is still more work to be done and how to pay for that is a difficult proposition.

We are working directly with states and the industry to continue to encourage that replacement of pipe and as you look at different opportunities on the inspection process, regardless of the tool that you use, you need to make sure that you use the right tool to address the pipe that you are actually trying to assess so that it not only protects the integrity of the pipe, but you actually get the analysis that you are looking for.

Mr. MCNERNEY. Is there any technology on the horizon that will improve that capability?

Ms. DOMINGUEZ. We are constantly looking to invest in research and development. It is a big part of our program, R&D, to look to identify emerging technologies. The research that PHMSA has done to date is to identify 26 new technologies including sonar-related pigging capabilities. So it is a good investment.

Mr. MCNERNEY. Well, let us talk about substandard steel. Is this is an on-going problem or has that been resolved and new pipelines that go into use are up to standard steel?

Ms. DOMINGUEZ. I believe that PHMSA has addressed substandard steel in a variety of advisory bulletins and other things for the operators that have substandard steel to replace it.

Mr. MCNERNEY. Do you believe that the industry consensus standards often reflect the best practices or do they reflect something a little less capable than the best practices?

Ms. DOMINGUEZ. Consensus standards are a very good way to actually identify opportunities to work together both with states, the Federal Government, and the operators, to develop a set of requirements that the industry can then apply, both by executive order and by congressional action. Adoption of consensus standards is a way forward in lieu of rulemaking. That said, rulemaking in and of itself provides a very strong basis for actually implementing the safety measures.

Mr. MCNERNEY. Thank you, Mr. Chairman. I haven't run out of questions, but I have run out of time.

Mr. WHITFIELD. Yes, you have. Thank you. At this time, I will recognize the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Thank you, Mr. Chairman, and Administrator, thanks very much for being here today.

The recently proposed rulemaking addresses hazardous liquid pipeline shows some incremental progress to address safety. However, there are overdue regulations and I think you said that of the 42 you have addressed 26 and we have 16 to go. But when you are looking at some of these overdue regulations relating to leak detection and emergency shutoff valves, integrity management of natural gas pipelines, public education and awareness efforts, and accident and incident notification, do you know when we can expect some of these rules to be published?

Ms. DOMINGUEZ. Well, thank you for the question. We have addressed two major rulemakings, well, four in the last 6 months. But we are looking at—we published a Notice of Proposed Rulemaking for hazardous liquids last October. It was a Notice of Proposed Rulemaking that went out. We are working to finalize that rule right now. We collected comments. Our advisory committee met and we are working to finalize that rule. We hope to have it out this year.

As I noted, we have received confirmation that the Office of Management and Budget has completed its review of our gas transmission line as of this morning and we will be looking to publish that as a Notice of Proposed Rulemaking over the course of the next couple of weeks. That will be available publicly and then we will work to complete that rule as well.

Mr. LATTA. OK, so that timeline you say is going to be in the next, what, 3 weeks on the last one you said?

Ms. DOMINGUEZ. On gas transmission?

Mr. LATTA. Right.

Ms. DOMINGUEZ. As soon as we are able to, we will publish it, so hopefully some time, no later than the next 2 weeks.

Mr. LATTA. So just in the meantime though will PHMSA also commit to sharing a time line or the schedule for that completion then? So you are going to have that out? Is that correct?

Ms. DOMINGUEZ. Is that a question for the gas transmission rule?

Mr. LATTA. I beg your pardon?

Ms. DOMINGUEZ. I am sorry, can you repeat the question?

Mr. LATTA. That you will commit to sharing that time line, if it is 3 weeks for the one, but for the others, will you commit to a timeline in getting that out?

Ms. DOMINGUEZ. Yes. And actually, we do publish on our Web site the status of all of the requirements that are available and we update it regularly.

Mr. LATTA. Thank you. And what, if anything, has PHMSA done since creating the 811 Dial Before You Dig program to incorporate new technologies or best practices to improve communication between the stakeholders for receipt of an excavation notification until the successful completion of the excavation as recommended by PHMSA's nine elements of effective damage prevention programs?

Ms. DOMINGUEZ. Damage prevention is one of the leading causes of serious death and injury related to—it is one of the leading causes of pipeline incidents. And so we have invested an enormous amount of time and energy and resources to making sure that we are not only partnering with the states and the operators, but we are also working with common ground alliance to make sure that there is awareness across the board of these risks and making sure there are one-call centers available in states.

There are some states that have not adopted one-call provisions. We are working with them right now. 811, it is proven the metrics are there, that if you actually call before you dig the risk is almost eliminated of excavation damage. So there is huge value in making sure that those excavation rules are abided by and adopted.

Mr. LATTA. Thank you. And finally, with my last minute here, how do pipeline operators use the in-line inspection or so-called smart pig technology to find problems in their pipelines?

And then also, how accurate is the smart pig technology of finding cracks and other potential issues with the pipeline?

Ms. DOMINGUEZ. So as part of our requirements, we look to make sure that the integrity of any particular pipeline is assessed and we put the onus on the operators to actually assess their own pipelines. And we set the requirements for what they need to look at, how they need to look at it, etcetera, and interpret that data. And

then we go and inspect to make sure that they are actually complying with the requirements that we put forward.

The in-line inspection tools that are available are constantly advancing. And as we look to advance that technology, we will have more data that is available to actually understand the exact operation of any given pipeline, assess it, and make sure that the operator is actually doing what they need to do to improve and enhance safety.

Mr. LATTA. Thank you. And Mr. Chairman, it looks like my time has expired. I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time, the chair recognizes the gentlelady from California, Ms. Capps, for 5 minutes.

Ms. CAPPS. Thank you, Mr. Chairman. And thank you again, Administrator Dominguez, and your team for visiting the Gaviota Coast in my district and for appearing here today.

As you may know, I sent a letter to your office yesterday with many of the questions that continue to arise in the aftermath of the Plains oil spill and I ask unanimous consent to enter that letter into the records here which I have done.

[The information appears at the conclusion of the hearing.]

Ms. CAPPS. But today, I will try to narrow my questioning to a few of the still-pressing issues as the central coast of California recovers from the Plains spill with the goal that the answers will help make the legislation before us today as strong as possible.

As I said, the safety of our nation's pipeline infrastructure is critically important to protect public health and the environment and our local economies. I have several questions for you and so the briefer you can be in replying today, but longer answers could be submitted if you wish.

You mentioned in your testimony, Administrator, that PHMSA is working to tailor inspection requirements to the risk profile of the pipeline operator. In the preliminary findings regarding the Plains spill last May, past in-line inspection surveys used to assess the condition of the pipeline showed an increasing number of anomalies between surveys. All the while, Plains opted to decrease the inspection intervals between surveys voluntarily. Does PHMSA currently have the authority to mandate increased frequency of inspections for individual pipelines?

And other than the prescribed frequency for pipelines within the high-consequence areas, are there any established triggers that impact required frequency? For example, would a history of increasing anomalies discovered during sequential inspections, as was the case with this pipeline, would this automatically trigger a requirement for more frequent inspections? I am sorry, that is a mouthful.

Ms. DOMINGUEZ. We do have the authority necessary to look at the requirements for frequency of assessing any pipeline. And that is what we do. What we need to look at in particular with the Plains accident is to understand and we are looking at this as part of our final investigative report. As you know, first and foremost, thank you again for the opportunity to be in Santa Barbara with you and release our preliminary factual report—

Ms. CAPPS. Right.



Ms. DOMINGUEZ [continuing]. Which identified a number of these issues and the facts surrounding the Plains case. That said, we are still conducting the investigation. As a result of that, if there is additional corrective actions that need to be taken, including anything having to do with an inspection capability, we will certainly look at that as part of our recommendation.

Ms. CAPPS. OK, I hope this will be something that the proposed emergency order that you described would be used for, but I am going to turn now to the second question that I have.

The draft legislation would mandate that all response plans include procedures and a list of resources for responding to worst-case scenarios. Here is my question. How frequently are pipeline operators required to update response plans? Are operators required to provide interim confirmation that a plan is up to date between reviews? And how does PHMSA ensure that plans are up to date? Again, that is a lot to ask.

Ms. DOMINGUEZ. Thank you for the question. We review facility response plans for completeness and accuracy. If anything changes, the operator needs to send it back to us. We look at it again. We want to make sure that the operator has actually considered all the risks and resources that are available in accordance with our federal regulations. If they are not complete, we send them back to the operator and they must update them. And that is the procedure that we presently use with Facility Response Plans.

Ms. CAPPS. Thank you. I have one final question which, again I am running short on time, but given the tremendous damage that can be done to coastal areas, wherever they are, Great Lakes, the East Coast, West Coast, are these coastal areas that act as the transition from the land to the ocean—which is where the spill happened on our Gaviota coastline, the pipeline ran along the inland and found a culvert and ended up despoiling the ocean beneath it. Would it make sense to also increase the frequency of inspections to include these high-consequence areas?

Can you tell me how many pipelines or is there a way to get that on the record, how many pipelines actually exist in these coastal areas?

Ms. DOMINGUEZ. I would have to get back to you for the record on the mileage with regard to pipelines along a coastal area. But I will tell you that our rulemaking is such that for hazardous liquids, we look to make sure that any area that we are providing the safest requirements possible for hazardous liquids and our gas transmission rule that we are looking at right now, we are looking to expand the definition of a high-consequence area. So we will also expand that coverage as part of the gas transmission rule.

Ms. CAPPS. I yield back.

Mr. WHITFIELD. The gentlelady yields back. At this time I recognize the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

Ms. Dominguez, since the law was passed in 2011, 5 years ago, everything I have read has indicated that the rate of accidents, ruptures, leaks, explosions, has not decreased. Do you have something to the contrary over the last 5 years of whether we are making progress?

Ms. DOMINGUEZ. I believe that safety is a process of continuous—

Mr. MCKINLEY. Can you speak a little closer? I am very hard of hearing.

Ms. DOMINGUEZ. Sure. I believe that safety is a process of continuous improvement. So as we have transitioned in this country to a very robust energy environment, it has been a very dynamic energy environment certainly the last decade, we are looking to make sure that all of our safety requirements are as—

Mr. MCKINLEY. I know that. I understand. It is why you got this job, apparently. You didn't have a lot of background in hazardous material, but you did have a good background in communicative and political skills. So I am just trying to ask a direct question.

Everything I have read is that the rate of accidents are not decreasing and in many respects actually increasing since pipeline safety went into effect. So I know your mission. You want to achieve that, but from what we have read—that is why I was asking you. Do you have evidence that ever since the pipeline safety that it has been an effective tool that you have actually been able to reduce it? Because coming from where we are in eastern Ohio, western Pennsylvania and all of West Virginia, we have a rush of pipelines, and as I said last year to your predecessor, virtually every month there is an accident, a flame, some rupture, some leak, something happening that we weren't experiencing before. So I am trying to find a way to get some sense of confidence for the American public that our pipeline program is worth the investment and the time to do that.

So again, let me try it again with you. Do you have evidence that our pipeline accident rates are decreasing or stay status quo?

Ms. DOMINGUEZ. I would say that you should have every confidence that not only is PHMSA robustly addressing our mission on pipeline safety, that we have a level of dedication to make sure that that actually takes place and that the accidents that we are looking at we are learning from and making sure that we have—whether it is Santa Barbara—

Mr. MCKINLEY. Can you get back to me then? I am sorry if I am putting you on the spot. You are trying to play politics. I don't want to play. I just wanted some facts. Are we increasing or decreasing? I would appreciate that.

The other is the lack of not having completed—I think last year we had 16 or 17 weren't completed, and then your statement you said 16 aren't completed. I am missing something. Why aren't they finished? If there was a law passed, is this part of the administration to say we are just not going to do it? We are not going to enforce the law?

Ms. DOMINGUEZ. So in the last 6 months, we have moved forward on four and now five of the requirements from the 2011 Act. So we are moving as aggressively as we possibly can. It has been a priority for the agency to address these 2011 mandates and I can tell you that our focus is very laser-like on making sure that these requirements are met.

That said, the rulemaking process is one that is intended to be thoughtful and methodical and it takes time. So I am not using that as—

Mr. MCKINLEY. Well, you had 5 years to do that. I would think if you were industry, I think you probably would have been fined by now. If you were an industry and violated the law. So I will be curious to see what the consequences are in finishing. I think your answer earlier was you were going to get back to us with some of the answers or what the deadline might be, your time line in getting those. I would sure like to see that as well.

But the bottom line here is we have so much pipeline being constructed in West Virginia for the Marcellus and the Utica, that if we took a poll right now I am afraid a lot of the residents would turn on the pipeline because they see so many problems associated with it. So I am trying to get the confidence. If we are going to be energy independent and we are going to be able to tap into this for our energy sources in the future, they have got to have confidence with that farmer, if there is going to be a 42-inch pipeline across his field, that he doesn't have to worry about it. And right now, I don't think the American public has confidence in government now as giving us that assurance. So I really hope that you can finish your work that you were charged to do 5 years ago and get this thing at a point we can see a marked decrease in the amount of accidents across this country.

Ms. DOMINGUEZ. Thank you. And I will tell you that not only are we working diligently to complete the mandates that Congress has provided, but we are also looking to enhance our safety performance by employing safety management systems which will raise the bar not only for PHMSA, but more importantly for the industries that we regulate to make sure that we are identifying and addressing all of the emerging risk, analyzing data, and truly informing that risk model moving forward. So safety management systems are really that next level of improvement on safety. And that is something that I am personally committed to, the agency is personally committed to, and I know we are working aggressively with all involved to get there.

Mr. MCKINLEY. My time has expired.

Mr. WHITFIELD. The gentleman's time has expired. At this time I will recognize the gentleman from Pennsylvania, Mr. Doyle, for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman, and I would like to thank you for holding this hearing today and to thank our witnesses for testifying.

I am glad we are considering this important reauthorization legislation and I think the discussion draft under consideration represents a good first step in the process.

Administrator Dominguez, I am concerned that PHMSA is still far from completing mandates instituted under the Pipeline Safety Act of 2011. Overdue regulations include those related to leak detection and emergency shutoff valves, as well as public education and awareness efforts.

What are the biggest challenges facing you right now in getting these completed?

Ms. DOMINGUEZ. We have been working through a very diligent and thoughtful rulemaking process and we have completed two, I think, of the most significant, although they are all significant re-

quirements in the last 6 months alone. The first one was on the hazardous liquid rule which was published in October of last year.

The one that I was addressing today which OMB has announced that they have completed their review and will be looking, we, PHMSA, will be looking to publish that over the course of the next 2 weeks is on gas transmission. It is a very comprehensive rule addressing a number of areas with regard to integrity management of gas transmission and really looking at strengthening both hazardous liquid and gas transmission rules.

Mr. DOYLE. So what assistance can our committee provide to ensure that this is done as quickly and responsibly as possible? How can we be of assistance to you in that regard?

Ms. DOMINGUEZ. Well, I appreciate that Congress has invested in PHMSA. We have received, as I mentioned, 109 new positions. Most of those positions have gone to the field. Those are inspectors. We are training them and getting them up to speed as quickly as possible. And we are also using the remaining funds to strengthen our capabilities. As I mentioned, one of the things that we are engaged in is organizing the agency itself to be more data driven, more innovative, more predictive. And one of the things we are doing is looking at enhancing our data and analytics capabilities which will, in turn, help us in our rulemaking by collecting data and informing our regulations in a more productive way moving forward.

Mr. DOYLE. I want to also ask you about emergency order authority and authority other administrators enjoy. Can you describe in greater detail potential events that could justify the use of such authority and how having such an authority would be beneficial in those circumstances?

Ms. DOMINGUEZ. Thank you for the question. You are correct. Even within PHMSA's own program, we are responsible for both hazardous materials and pipeline operation, pipeline safety. And emergency order authority, we have it on our hazardous materials program side. We are seeking it on the pipeline safety side.

An example of where we might use it would be—there have been in the past defective fittings for pipelines that have been found. If we were able to have emergency order authority we would be able to ask that directly that operators address those defective fittings. Pre-1970s pipe and anything that was low-grade steel that needed to be addressed, that has in the past been found to be a problem. That is the type of work that we would do, something that would need to be addressed on a national basis. That would be the circumstance for an emergency authority.

Mr. DOYLE. Thank you. I am also interested in LNG exports and certainly share your support for strong safety standards in this area. Are there particular areas within this subject that you think require additional direction from our committee or the administration?

Ms. DOMINGUEZ. We have been working to actually look to see. The LNG market has really transformed in this country over the course of the last 10 years alone. As you know, the United States has gone from importing LNG to now being a major exporter. I was just down in Louisiana a few weeks ago at the Cheniere facility which is now online and exporting LNG on a global basis.

So as we move forward, we have got a very changing energy market and a very changing dynamic. And we have the authority to actually establish and enforce the safety standards for onshore LNG facilities, so while we look at other methods of transporting LNG, that is something that PHMSA is aggressively looking at right now, making sure that we are keeping pace with innovation and technology for other forms of transportation of LNG.

Mr. DOYLE. Thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time, the chair recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Well, thank you very much, Mr. Chairman. And thank you, Administrator Dominguez, for joining us today.

Section 11 requires that PHMSA issue new regulations for underground natural gas storage facilities. And the recent incident at an underground natural gas storage facility in California certainly highlights the importance of this requirement. So does PHMSA support this provision in Section 11?

Ms. DOMINGUEZ. I don't have the exact language in front of me. But I believe that——

Mr. JOHNSON. But you know that it requires you guys to issue regulations. So do you support that?

Ms. DOMINGUEZ. I will tell you that we have the authority right now to regulate the underground storage of natural gas. We do not presently have in place regulations that would address anything below the surface. So that would be something that we would work on.

Mr. JOHNSON. Do you think it is important for states to retain a cooperative role in overseeing these facilities?

Ms. DOMINGUEZ. We have been working cooperatively with the states for many years.

Mr. JOHNSON. No, but do you think it is important that they retain that, that cooperative relationship?

Ms. DOMINGUEZ. Absolutely. I think that what we need to do is work cooperatively across the board. While PHMSA sets the minimum federal standards, the states are always able to exceed those standards and should they want to put in place more additional requirements, they would be able to do so.

Mr. JOHNSON. Section 16 of the discussion draft would reauthorize PHMSA's pipeline safety and grant programs and later today, we will hear from the states who would like to see an increase in state grants. The states do the bulk of the inspection work and the pipeline statute allows them to be reimbursed up to 80 percent by the Federal Government. Did the states receive the full 80 percent reimbursement in 2014?

Ms. DOMINGUEZ. PHMSA, I will first and foremost tell you that we very much value our partnership with the states. And as you have stated, part of the money, a good portion of the monies that Congress provides us, we in turn grant to the states for their work——

Mr. JOHNSON. We know. That is what I just said. So my question to you is did they receive the full 80 percent reimbursement in 2014?

Ms. DOMINGUEZ. The way that the process is done is——

Mr. JOHNSON. Did they receive it? That is a simple question. Did they receive it?

Ms. DOMINGUEZ. The auditing is that so long as they provide the records, we reimburse them for the requirement—

Mr. JOHNSON. That is history. That is part of your records. Did they receive the full 80 percent?

Ms. DOMINGUEZ. I will have to go back to look and check the actual—

Mr. JOHNSON. Well, I can tell you the answer, but would you get it and get it back to this committee, please?

Ms. DOMINGUEZ. I would be happy to.

Mr. JOHNSON. The answer is no, they did not. It was only 75 percent and can you give us any idea why they did not?

Ms. DOMINGUEZ. Again, as part of our process what we look for is confirmation of—we sent out a series of requirements for the states. They have to then provide their expenditures and then we reimburse them.

Mr. JOHNSON. Would PHMSA support a relative increase in funds for state grants? You have acknowledged that the states do the bulk of the work, would you support an increase, a relative increase in those funds for state grants?

Ms. DOMINGUEZ. I think the balance that we have right now, we are always looking to enhance safety, if that was a measure. The balance that we have now between the state and federal relationship is a good balance and if there were more funds available for PHMSA to help execute its state grant program, we would be happy to consider that.

Mr. JOHNSON. I would think that balance would be improved if the states got the full reimbursement for their 80 percent though. Would you agree with that?

Ms. DOMINGUEZ. Again, I want to be clear. Because part of the measure here is that there is transparency in the expenditures and so while it may be 80 percent or 75 percent reimbursement, I will check and get back to you for the record. That is something that is actually reviewed very seriously as we reimburse states for their expenditures.

Mr. JOHNSON. OK, all right. Very quickly, PHMSA, as you know, I believe, should encourage performance based risk management regulations whenever possible because this data-drive approach to safety offers the greatest flexibility allowing pipeline operators to adapt their programs and plans to provide an adequate margin of safety.

So it has been reported that some rules under consideration by PHMSA are unable to pass the cost benefit analysis. If this is the case, why is PHMSA having difficulty incorporating cost into a risk-based regulation?

Ms. DOMINGUEZ. PHMSA's pipeline safety program, in order to regulate, we have a requirement that Congress provided that our benefits have to exceed our costs. So our rulemakings contain that requirement across the board.

Mr. JOHNSON. OK, Mr. Chairman. I yield back.

Mr. WHITFIELD. The chair now recognizes Mr. Loebsack of Iowa for 5 minutes.

Mr. LOEBSACK. Thank you, Mr. Chair. Thank you for being here, Administrator Dominguez, and taking the time to testify. This has been a pretty enlightening hearing for me. We have 99 counties in Iowa and we have got pipelines everywhere just like everyone up here and safety, obviously, is the biggest concern.

As I read your testimony and as I hear your responses and what folks are saying here as well, and again, I am just trying to learn what you folks do exactly, what your oversight role is and all the rest.

Correct me if I am wrong, but it seems that a lot of what you do is after the fact, after pipelines have been put in the ground, after they have been built. Is that the case?

Ms. DOMINGUEZ. Actually, we have a great deal of responsibility on the front end.

Mr. LOEBSACK. Can you talk about that a little bit?

Ms. DOMINGUEZ. Sure.

Mr. LOEBSACK. Because that is really what I am more interested in than anything.

Ms. DOMINGUEZ. So part of our requirements for pipeline safety include requirements around new construction for pipeline. So our requirements look at making sure that operators fully evaluate any newly constructed pipelines that go in to check on any issues that could affect a pipe's ability to operate safely once it is actually in operation. So our inspectors go out. They look at welding. They look at any kind of coating. And especially for new construction, I can tell you that we have applied about 20 to 25 percent of our resources in inspections to actually go out and look at new pipe that is being—

Mr. LOEBSACK. If I can ask, I mean again, that is kind of after the fact, right? That is once the pipes are already there.

What about, for example, when states are considering new pipelines? What kind of a role do you folks play in that whole process? A utilities board, for example, is looking at putting the possibility of putting a new pipeline in, might run across the state, might be part of the state. What role do you play at that point in that process, if any?

Ms. DOMINGUEZ. PHMSA is not directly responsible for any of the siting issues that occur, so if it is an intrastate pipeline, the state would take that. If it is an interstate gas pipeline, FERC would take that responsibility. That said, we always work in close coordination and we have been working with the State of Iowa, as you have looked to educate, talk about the safety issues around pipelines. We have tried to work very cooperatively. I think we have done some good work with the State of Iowa as you look to expand your pipeline network.

Mr. LOEBSACK. Who determines the integrity of these pipelines before a utilities board, for example, actually makes a decision as to whether the pipeline is going to be cited or not? Are those federal guidelines? Are those state guidelines? What are those guidelines, for example?

Ms. DOMINGUEZ. The actual integrity of the pipeline and its operations is something that PHMSA takes on directly.

Mr. LOEBSACK. And so the State of Iowa, for example, would know what those specifics are when that pipeline before it goes into the ground, what those specifics ought to be. Is that correct?

Ms. DOMINGUEZ. The requirements for an operation of a pipeline and new construction criteria are standards that PHMSA sets.

Mr. LOEBSACK. Right, and the integrity of the pipeline itself, if you will.

Ms. DOMINGUEZ. Yes, we monitor the integrity of the pipeline itself. We put the onus of that operation through our integrity assessment requirements and integrity management practices that we have. We put that burden directly on the pipeline operator. The pipeline operator then has to collect data and we go about inspecting that and then if there is any anomalies or anything that we find, we take enforcement action against that.

Mr. LOEBSACK. But all that information is known to a utilities board prior to their making a decision as to whether they are going to site a pipeline or not?

Ms. DOMINGUEZ. We provide a lot of educational material to NARUC and a number of the public utilities commissions around the country.

Mr. LOEBSACK. Will the proposed legislation here have any effect whatsoever on that—on those particulars and on that process?

Ms. DOMINGUEZ. I would have to look at the legislation and respond back to you. I am not familiar with the particular section of the proposed legislation.

Mr. LOEBSACK. I just want to make sure that not only the utilities board in any particular state, but the public who are involved in the process have all that information as well because there are public hearings, as you know, whenever there is a siting.

Ms. DOMINGUEZ. We have a great deal of material. PHMSA has a great deal of material on our Web site that talks about all of the many aspects that we actually cover with regard to new construction of pipeline, assessment, and enforcement actions.

Mr. LOEBSACK. Thank you. Thank you very much. Thank you, Mr. Chair. I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time, the chair recognizes the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Mr. Chairman, and thank you for holding this meeting.

Ma'am, we do appreciate you being here. I know you are fairly new and you are trying to get your head wrapped around it. And I commend you for what you are trying to do. Unfortunately, what we have seen as PHMSA has got a lot of concerns from Congress right now and the way that you are spending money and the grant programs that they are going to. And so that is one of the questions I have.

To the Technical Assistance Grants program run by your agency, it seems to be a tremendous help providing additional training and education on training pipeline safety issues. Unfortunately, I am increasingly concerned that some of these taxpayer dollars are being awarded to groups that publicly oppose new pipeline infrastructure which was not the intent of Congress. With Congress looking to reauthorize the program, can you assure us that you will



provide the oversight necessary to ensure these grants are being executed as Congress intended?

Ms. DOMINGUEZ. The Technical Assistance Grants that we have provided to states, I believe are valuable programs for education for emergency responders as well as the communities around the country. PHMSA indeed has very strong internal controls, to answer your question, about how these grant applications are not only reviewed, but also how they are awarded and administered. And so that would continue moving forward.

Mr. MULLIN. Specifically, directing though the issue, how are these grants getting into the hands of people that are opposing it? If it is supposed to go for training, how is it going to people that oppose the pipelines? That has nothing to do with training. That has to do with people that are environmentalists, that they don't want the infrastructure built to begin with and they are spending money to oppose the pipelines to begin with. It has already been happening, so how can you assure us it is not going to continue to happen? The oversight, what steps has your agency taken since you have been at the helm since August?

Ms. DOMINGUEZ. So as move forward on Technical Assistance Grants, we would look to make sure that indeed all of those requirements, whether it is review—

Mr. MULLIN. What are those requirements?

Ms. DOMINGUEZ. There is a series of requirements that each applicant has to meet before—

Mr. MULLIN. Specifically, do you know what those requirements are?

Ms. DOMINGUEZ. I don't have them with me, but I would be happy to provide them to you.

Mr. MULLIN. Are those the same ones that have been in place? Or have they been changed since you been there?

Ms. DOMINGUEZ. They are the same that have been in place—

Mr. MULLIN. So no changes have been made to assure these programs can be made. What we are trying to do here, ma'am, is we want to make sure that the tax dollars are being used for their intended purpose. And if there has been no changes made, we already know that these technical grants that went to organizations that don't support pipelines period, they oppose them. These are for training to provide safety for those that are installing the pipelines and maintaining the pipelines, not for opposition groups. So if you haven't made any changes to it, then you can't assure us that it is not going to continue to be spent in the wrong way.

Ms. DOMINGUEZ. I would be happy to look and do an assessment of the recipients of the Technical Assistance Grants to see where some of the actual recipients, what they have done with the money, but I can tell you that we do that as part of an annual process and review of our grants in general.

Mr. MULLIN. But even by saying that you did it annually, there has been no changes. So does that happen annually then? Have you not done it since you have been there?

Ms. DOMINGUEZ. Not since I have been there, but we are coming up on a review of the programs right now, so I will certainly take a look at it.

Mr. MULLIN. Could you please do me a favor? When you do look at it, could you get back to either this committee or to my office and let us know what changes are going to be made? Because I can tell you that if it is going to continue the way that it is going, then there is no way I am going to be able to support reauthorization.

Our number one goal is to have the intent of what Congress had for the tax dollars to be spent that way. And when we have opposing groups that are provided with grants that are supposed to be for safety and technical training and they are using it to oppose the projects to begin with, it seems like that is a waste of taxpayer dollars. Would you agree?

Ms. DOMINGUEZ. I am not aware of a direct instance where a group has come into those dollars, federal dollars, but I will certainly look—

Mr. MULLIN. We will be happy to provide you with a list of those that have received those grants.

Now to switch real quick to my last question, I want to talk about states. What is the relationship between the states and PHMSA right now as far as with pipeline safety and training and working with the states and not against the states?

Ms. DOMINGUEZ. I think we have a very good working relationship with the states across the board. PHMSA is the federal regulator. The states often across the board have authority and through a certification process with PHMSA to conduct inspections within their respective states. We work cooperatively on that entire process. It is one where we are constantly exchanging information.

One of the things that we are looking to do in this reauthorization is make sure that the inspection data that the states are collecting is something that we can collect at a federal level as well, to make sure that the data analysis is as robust as it can be in identifying risk and that is through our information sharing system.

Mr. MULLIN. Thank you and I went over my time. Thank you, Mr. Chairman, for yielding more time to me. Thank you.

Mr. WHITFIELD. The gentleman yields back his time. The chair recognizes the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair. And Administrator Dominguez, welcome. Thank you for your leadership.

As you may know, my district which is in the Capital District region in Upstate New York, has become a hub for energy transportation in recent years, seeing a tremendous boom in crude by rail shipments.

Can you provide an update on the crude by rail spill response plan rulemaking?

Ms. DOMINGUEZ. Thank you for the question, sir. We are moving that rulemaking very quickly. As you know, the Congress passed the FAST Act. It made some changes to some of the provisions. We have updated the rulemaking to reflect those changes that the Congress passed in the FAST Act and we have moved that forward through the Department, the rulemaking, and are working with our colleagues at OMB for a review of that rule right now.

Mr. TONKO. Thank you. And I know you cannot comment on the specifics of that package, but can you explain just what was under consideration, what is under consideration?

Ms. DOMINGUEZ. For the oil spill response?

Mr. TONKO. Yes.

Ms. DOMINGUEZ. We are looking at the provisions that were outlined by the Congress and some of the requirements under the FAST Act to make sure that all of those provisions are addressed.

Mr. TONKO. Right. And you mentioned the FAST Act and the fact that you had to incorporate that into your actions. Are there new requirements or timelines that you need to take under consideration, other time lines?

Ms. DOMINGUEZ. There are. There are new requirements for retrofit schedules and other things with regard to tank car top fittings and other aspects of the redesign that we have now taken into account based on the FAST Act.

Mr. TONKO. Let me just state that I believe that it is critical for the public and the emergency responders' safety that they have all the information, the resources, and equipment in place to respond to an incident quickly and effectively. And spill plans are an important part of that effort.

I am encouraged that you are moving forward. I hope that it is done expeditiously so that we can finish the rule and provide those elements to the individuals and groups that I just mentioned.

But to bring this back to pipeline safety, the National Academy of Sciences had a recent study that raised issues with PHMSA's review of spill response plans. Does PHMSA review, do their review plans based on completeness? Do they base it on completeness or is the adequacy of those plans also taken under consideration?

Ms. DOMINGUEZ. PHMSA actually looks very directly at facility response plans for completeness and accuracy to ensure that the operators considered all of the risk and the resources in accordance with our federal regulations.

Mr. TONKO. Does PHMSA make recommendations about those plans that it feels are inadequate?

Ms. DOMINGUEZ. Yes, we do. We comment directly on them. We send them back to the operators if they are not complete and require them to address any inconsistencies or any failings that we find in the response plan. They are obligated to then update them and resubmit them for review before we approve them.

Mr. TONKO. And just how does that work in a functional way? Do they respond to those concerns about inadequacy?

Ms. DOMINGUEZ. Yes they do. It is an iterative process.

Mr. TONKO. I didn't hear what you said.

Ms. DOMINGUEZ. It is an iterative process, so they are constantly being updated.

Mr. TONKO. OK.

Ms. DOMINGUEZ. Where they are constantly being updated.

Mr. TONKO. Thank you very much. And is PHMSA's decision not to regularly conduct two-stage reviews, one for completeness, one for adequacy for spill plans an issue of lack of agency resources or is it a lack of legal authority?

Ms. DOMINGUEZ. As I stated, we do look for both completeness and accuracy for facility response plans.

Mr. TONKO. OK, and has PHMSA made any progress in instituting the NTSB's recommendations on this issue?

Ms. DOMINGUEZ. I believe that our requirements now meet the NTSB requirements, but I will check and make sure and respond directly to you.

Mr. TONKO. OK. And with an issue of resources, is there an adequate amount of resources to provide for an expeditious response to these efforts that come before the PHMSA group or are there areas of resource activity that could be strengthening your response?

Ms. DOMINGUEZ. We have worked very diligently over the course of the last couple of years to make sure that all of the facility response plans that PHMSA reviews are up to date and complete. And we have put an enormous amount of resources in that process to make sure that that has occurred. Moving forward, if there are additional areas for investment, we will be sure to circle back with you. Thank you.

Mr. TONKO. I would appreciate that. And with that, Mr. Chair, I yield back.

Mr. WHITFIELD. The gentleman yields back. This time the chair recognizes the gentleman from North Carolina, Mr. Hudson, for 5 minutes.

Mr. HUDSON. Thank you, Mr. Chairman. And thank you for being here with us today. I want to follow up on the line of questioning from my colleague, Mr. Mullin, talking about—and I was pleased to hear you talk about the importance of the cooperation with states, but my question is if states are so vital to PHMSA's pipeline safety program, why did PHMSA announce that it intended to rescind existing state-interstate agreements and disallow additional states to become interstate agents?

Ms. DOMINGUEZ. So I appreciate your question. One of the things that we have continued to work on is exactly how we would continue to make sure that not only are we working as cooperatively as possible, I had a chance, actually, one of the first meetings that I did was go and meet with the National Association of State Pipeline Safety Representatives. These are the folks in every single state that represents the state inspection process and are our partners across the board. And that group is a very dedicated group of professionals looking to undertake pipeline safety at a very, very local level and we greatly appreciate our partnership with them.

That said, we want to make sure that everything that we look at, that we use the money that Congress has given us to make sure that if there is a state that has been in trouble, that we are using the dollars to make sure that we are investing in that state to help rehabilitate them. The last thing we want to do is look to decertify a state for their state program.

So any monies that are given to us for investment in a state would literally be used to help rehabilitate a state and make sure that we are not in a position of revoking their authority. That would be the last measure that we would look to take. Rather, we would look to invest in them and help them strengthen their program first and foremost.

Mr. HUDSON. So this announcement of the intention of rescinding existing state-interstate agreements is only focused on states where there is a problem? Is that what you are saying?

Ms. DOMINGUEZ. I am not aware of an announcement that PHMSA has made with regard to decertifying states. We would, again, our first action would be to work directly with the states and look to make sure that we enhance their capability to perform their program.

Mr. HUDSON. OK, well, let me switch gears and talk about gathering lines for a second. Section 21 of the 2011 law directed PHMSA to review and report to Congress on existing federal and state regulations for all gathering lines. With this report, which was submitted more than a year late, PHMSA stated that it is considering the need to propose additional regulations to ensure the safety of natural gas and hazardous liquid gathering lines.

Is PHMSA reviewing the need to propose changes to existing exemptions from federal regulation for gathering lines? If so, when will this review conclude?

Ms. DOMINGUEZ. We are in the process of looking at that right now. Part of the work that we have done with our gas transmission rule includes gathering lines. And so as we look to publish the requirements in a Notice of Proposed Rulemaking for our gas transmission rule, it will include gathering lines.

Mr. HUDSON. OK. And when do you expect that to conclude?

Ms. DOMINGUEZ. We received noticed this morning that OMB is concluding their review and we hope to publish the Notice of Proposed Rulemaking for gas transmission sometime in the next 2 weeks.

Mr. HUDSON. Thank you. Switching gears one more time here before I run out of time, the issue of Maximum Allowable Operating Pressure. Section 23 of the 2011 law directed PHMSA to require each pipeline owner or operator to verify that the records accurately reflect the physical and operational characteristics of the pipeline and to confirm the established Maximum Allowable Operating Pressure of the pipelines. Inadequate records for older pipelines have been a long-standing concern. The statutory deadline was July 3, 2013. When can we expect PHMSA to finalize the regulation addressing this issue?

Ms. DOMINGUEZ. For Maximum Allowable Operating Pressure, a good portion of that is covered in the two regulations that I mentioned earlier, hazardous liquid rule and our gas transmission rule. So the hazardous liquid rule is covered, a portion of that. But the gas transmission rule also covers how we would best address that for gas.

Mr. HUDSON. So that addresses the issue with the older pipelines where we had insufficient records?

Ms. DOMINGUEZ. Correct.

Mr. HUDSON. OK. Thank you for that. I am about out of time, Mr. Chairman. I yield back.

Mr. WHITFIELD. The gentleman yields back. This time the chair recognizes the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman. Mr. Doyle kind of hit on this question earlier, but your agency still needs to fulfill 16 of the 42 mandates from the 2011 Pipeline Safety Act. And in your testi-

mony you mentioned that ten mandates will be addressed as part of the current rulemaking activities, but the remaining six are tied to reports and information collections. Why are several of these still in the early information collection phase?

Ms. DOMINGUEZ. We are working through those. Right now, several of these reports are tied to some of the rulemakings that we are doing. So as we publish the rules, we will be publishing some of the reports. Moving forward, we are still doing some information collection. Technology is advancing and we still have opportunity to collect some more data to inform our reports moving forward and that is what we are focused on.

Mr. LONG. So tell me again the technology is advancing and that is slowing down the—I mean technology is advancing all the time.

Ms. DOMINGUEZ. It is. So we are still working on information collection on several of those fronts. I am happy to give you the details about exactly the specifics that you are looking at, but I think that the two remaining information collection opportunities we have under way and I can give you a report. It is also on our Web site. But I will be happy to give you a direct update on it.

Mr. LONG. OK, because what I am kind of looking for is how we can speed up that process and get the information. So production of liquefied—excuse me, I didn't know I had a frog in my throat before I started this. Production of liquefied natural gas has increased significantly, as you know, in the last few years. How has your agency kept up with the LNG boom and have you been able to effectively update codes and design standards to keep up with this boom?

Ms. DOMINGUEZ. So we have been looking very directly at LNG. It is something that, as you noted, has really changed the landscape of the United States. And one of the things that we are looking at is how we would update our regulations to make sure that we are keeping pace with the technology as it moves forward.

We are updating our regs right now to provide for certainty in the design in the construction and the operation of small scale liquefaction facilities moving forward.

Mr. LONG. How effectively do you work with FERC as a coordinating agency for siting and reviewing LNG facilities?

Ms. DOMINGUEZ. We have a good working relationship with FERC and they are directly responsible for a number of the siting requirements, in particular, for large scale LNG facilities.

Mr. LONG. In your testimony, you mention the important role states play in inspecting and enforcing both federal and state regulations. How closely do you work with these states in developing those regulations?

Ms. DOMINGUEZ. We work very closely with the states. The Pipeline and Hazardous Materials Safety Administration is directly responsible for setting the federal standards and in turn, states then adopt those standards and are able to go above and beyond our requirements. And as the states directly carry out through a certification process with PHMSA, some of the inspection requirements, we work hand-in-glove with them, not only to make sure that their state inspectors come to our training facility, can take advantage of our—and we help provide funds to make sure that they are able to come and get trained on the requirements. But then we also

work very directly with them in the execution of their state programs.

Mr. LONG. Of the what?

Ms. DOMINGUEZ. Their state programs.

Mr. LONG. OK, so setting safety standards, things of that nature?

Ms. DOMINGUEZ. Correct.

Mr. LONG. OK, thank you. Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time, the chair recognizes Mr. Griffith of Virginia for 5 minutes.

Mr. GRIFFITH. Thank you very much, Mr. Chairman. I do appreciate you being here today. I apologize. We had a meeting related to the coal industry and black lung. We had a round table with Chairman Bobby Scott and another committee was hosting and I have a district that has produced a lot of coal over the years, and so that was an important issue as well.

Now along those lines, we have a lot of pipelines being built now because of what I would see as the EPA's war on coal and the shut-down of like half of the industry in the last couple of years. The EPA is moving to regulate emissions of methane in the oil and gas industry by requiring oil and gas processing and transmission facilities to find and repair methane leaks. This was part of a speech given last week by the EPA director, administrator.

PHMSA has already proposed a leak detection rule and has worked with the industry to reduce leaks. In fact, I think overall, methane emissions are down about 13 percent in the last couple of years through various things that you all are doing. I have concerns about the EPA imposing new regulations on pipeline operations that PHMSA already regulates.

Has PHMSA provided any advice or guidance to the EPA in the development of their strategies and their proposals? Has EPA solicited any advice from you all? And does PHMSA foresee working with the EPA in the development of yet new regulations in this arena?

Because time is short, if you could answer all of that quick, I would appreciate it.

Ms. DOMINGUEZ. I think that one of the issues that we need to continuously look at in this country is the issue of aging infrastructure writ large. And one of the by-products of aging infrastructure is leaks, particularly in natural gas pipelines.

So as we look to invest in replacement of old pipe, that helps reduce methane emissions, but also across the board helps with that larger goal. We always look to partner with our federal—

Mr. GRIFFITH. Yes, ma'am.

Ms. DOMINGUEZ. Across the board, so would be happy to continue to do that.

Mr. GRIFFITH. Well, it appears that you all have been doing a fairly good job, so I hope they don't come in and start changing a lot of things. I would also have to note that according to Ms. McCarthy, the administrator of the EPA, methane is upwards to 25 times more potent than carbon dioxide, so I am a little concerned about that because they have been working so hard to eliminate coal, the fossil fuel that is used in this country of which we have an abundant supply. I wonder if this is just the opening salvo in a new war on natural gas?

That being said though, we do have a lot of natural gas pipelines being built. The Mountain Valley Pipeline is coming through my district. I am very pleased to see that you all participated in the scoping hearings related to the Mountain Valley Pipeline. And so I guess I have to ask what role do you all play in advising or assisting either the pipeline companies or FERC prior to FERC approval of a new gas pipeline?

Ms. DOMINGUEZ. Thank you for the question. We are truly in an advisory and a support role, both to the states and to FERC during the siting process. So if there are questions about safety, we often partner with FERC or the states to make sure that if citizens have questions during public meetings, et cetera, we talk through what our requirements are for design, construction, etcetera, of new pipeline.

Mr. GRIFFITH. I appreciate that. In mountainous crossings, and my district has got a lot of mountains in it, what are PHMSA's top concerns and where do you see the greatest difficulty ensuring the long-term structural safety of pipelines when they are crossing over and through mountains?

Ms. DOMINGUEZ. I would tell you that our requirements are fairly robust in the new construction criteria. And so regardless of terrain, there are requirements that look at the geology of any particular area and that those requirements are met as new pipe is constructed.

Mr. GRIFFITH. And are there other areas that you believe that PHMSA and FERC could collaborate to a greater extent to ensure the safety concerns that a lot of my constituents are raising and can you get in early in that process as well?

Ms. DOMINGUEZ. We, I believe, have been working. I had a chance to meet with the chairman of FERC, Norman Bay, and we have been working very collaboratively at a very local level to make sure that we are addressing citizens' concerns. And PHMSA's role in all of that is to again articulate what our safety mission is and how the actual operation of a pipeline would work once it is in the ground.

Mr. GRIFFITH. Thank you so much. Appreciate it. And Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back and that concludes the questions, except I have one other question before I let you go. Frequently, we see charts of reportable incidents on pipeline safety and it seems to be going up. What is the actual definition of an incident or a significant incident at PHMSA?

Ms. DOMINGUEZ. I don't have the actual definition, if it is published, ready at hand, but I will tell you that any time there is an impact on people or the environment that impacts the work that we do as a result of the operation of a pipeline. So—

Mr. WHITFIELD. So if a pipeline leaks any amount, is that an incident that must be reported?

Ms. DOMINGUEZ. I will be happy to clarify for the record exactly what the requirement is for reporting on an actual incident.

Mr. WHITFIELD. OK. I would appreciate that because I think that is important for us to know.

Madam Administrator, thank you very much for taking the time to be with us today. We appreciate your testimony and look for-



ward to working with you as we move forward and that concludes the questions for you.

So at this time I would like to call up the second panel of witnesses. On the second panel of witnesses we have five panelists. And rather than introduce all of them right now, I am just going to introduce them one time and that is when I recognize them for their testimony.

Our first witness this morning is Mr. Norman Saari who is the Commissioner for the Michigan Public Service Commission. And he is testifying on behalf of the National Association of Regulatory Commissioners. So Mr. Saari, thanks very much for joining us and you are recognized for 5 minutes.

**STATEMENTS OF NORMAN J. SAARI, COMMISSIONER, MICHIGAN PUBLIC SERVICE COMMISSION (ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS); RON BRADLEY, VICE PRESIDENT OF GAS OPERATIONS, PECO ENERGY (ON BEHALF OF THE AMERICAN GAS ASSOCIATION); ANDREW BLACK, PRESIDENT AND CEO, ASSOCIATION OF OIL PIPE LINES; DONALD SANTA, PRESIDENT AND CEO, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA; AND CARL WEIMER, EXECUTIVE DIRECTOR, PIPELINE SAFETY TRUST**

#### **STATEMENT OF NORMAN J. SAARI**

Mr. SAARI. Chairman, ranking member, committee members, thank you for the opportunity to appear today. I want to personally thank you for the invitation to share some thoughts and the commitment from a state regulator's perspective of the importance of safe and efficient——

Mr. WHITFIELD. Be sure to just turn that microphone on.

Mr. SAARI. I beg your pardon, sir. I want to thank you for the opportunity to be here today. When Henry Ford rolled his first car off the assembly line in 1913, it may have traveled on a roadway that already had natural gas pipeline buried beneath it. That Ford Model T is likely now in a museum, but there may be some of the city's original gas pipeline still intact and still in use. That car was probably taken out of service because of its reliability and safety. We have a responsibility to make sure that the pipeline meets up-to-date reliability in current safety standards or it, too, must be taken out of service or replaced.

The Michigan Public Service Commission joins with regulators nationwide to work on programs that ensure safe operations of the existing natural gas infrastructure on new projects with a top priority of protecting public health and safety in an environmentally-conscious manner. We join and collaborate with the Pipeline and Hazardous Materials Safety Administration, PHMSA, the U.S. Department of Transportation, FERC, and other federal agencies to coordinate these programs between federal interstate pipeline jurisdiction and state intrastate regulation.

As I have highlighted in my submitted testimony, states rely upon a working partnership with PHMSA to develop and coordinate pipeline safety programs. This mutual effort requires sufficient federal funding needed to achieve the excellence we seek to

administer one-call programs, complete timely inspections of new and existing natural gas lines, monitor and regulate gas storage facilities, and promote public education and awareness.

The Michigan Commission works with its local companies to regulate programs for gas main construction and replacement and gas storage field operations and safety upgrades, while finding the proper balance of what its rate payers can afford to pay.

Meeting the completion targets of replacement over 7,000 miles in Michigan of natural gas mains will require expenditures over the next decade in the hundreds of millions of dollars. Other states have similar financial challenges. Staying on track and on target to meet these goals will require increased financial support from PHMSA to the states.

Current law says that the states may be reimbursed up to 80 percent by the Federal Government. During the 4 years prior to 2014, states averaged only 73 percent reimbursement and needed to request suspensions to merely achieve that level of reimbursement. In 2014, the latest year money was reimbursed to the states, the base grant was about \$42.2 million for gas and hazardous liquids. The state spent about \$56.4 million on these pipeline safety programs. This meant states as a whole were reimbursed approximately 75 percent of what they spent.

In order to keep state programs where they currently are, we would respectfully request an authorization for appropriation and appropriation for the fiscal year 2016 of no less than \$49.5 million for state base grants increasing by no less than 4 percent each fiscal year thereafter. We need to be fully authorized and funded to carry out our mission.

We all benefit from a sharing of information on best work practices, best regulatory approach, and best use of resources to meet these goals.

Thank you for the opportunity to tell you that Michigan joins with NARUC and all other state regulators to work collaboratively with government and various stakeholder groups to achieve a world class pipeline safety program. Thank you, sir.

[The prepared statement of Mr. Saari follows:]

**BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON ENERGY AND POWER**

**TESTIMONY OF THE HONORABLE NORMAN J. SAARI  
COMMISSIONER, MICHIGAN PUBLIC SERVICE COMMISSION**

**ON BEHALF OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

**ON**

**“Pipeline Safety Reauthorization Legislation”**

**March 1, 2016**



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Regulatory Utility Commissioners  
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**Summary for Testimony of the Honorable Norman J. Saari  
On Behalf of  
The National Association of Regulatory Utility Commissioners**

- State Utility Commissions and State inspectors have direct safety authority over approximately 2.1 million miles of pipeline out of the approximately 2.5 million miles of pipeline in the nation, approximately 84% of the total.
- Current law says that the States may be reimbursed up to 80% by the federal government. During the 4 years prior to 2014, States averaged only 73% reimbursement but needed to request and receive waivers or “suspensions” to merely achieve the 73% reimbursement level. In 2014, the latest year money was reimbursed to the States; the base grant to the States was approximately \$42.2 million (for gas and hazardous liquids.) The States spent about \$56.4 million on their pipeline safety programs. This means that in 2014 the States as a whole were reimbursed approximately 74.8% of what they spent. In order to keep State programs where they currently are, we would respectfully request an authorization for appropriation and appropriation for FY 2016 of no less than \$49.5 million for State base grants, increasing by no less than 4% each fiscal year thereafter.
- NARUC strongly opposes Section 15 of the discussion draft.
- NARUC respectfully requests that the following provisions be added to the bill during the markup process:
  1. Eliminate outdated exemptions for gathering line regulation for rural areas and based on gathering lines of a particular diameter. States can and are willing to perform these additional inspections if associated incremental funding is provided.
  2. Odorization of natural gas in all pipelines.
  3. Require PHMSA to enter into an interstate agent agreement with any willing State that is capable of performing pipeline safety inspections on interstate facilities. Additionally, language should be included to prevent PHMSA from rescinding existing agreements without cause.
  4. Strike Maintenance of Effort section in current law.
  5. Include language to allow for recovery of all federally approved indirect costs claims by all State pipeline safety programs.
  6. Increase One-call grant for States to \$5 million from \$1 million.
  7. Permit the Secretary of Transportation to apportion up to 1% of travel appropriations to the States.

8. Provided eligibility for funding that originates for State pipeline safety programs to the National Association of Pipeline Safety Representatives (NAPSR).
  9. Permit State participation in One Call grants, even though their State may not have a specific provision of law addressing exemptions within the one-call State law, but has policies pertaining to the structure, development, and function of a well-organized One Call System that are equivalent elsewhere in State statute.
  10. The draft legislation should be amended to ensure that State pipeline safety regulatory authorities have the ability to request that PHMSA conduct a design safety review.
- NARUC's membership was and continues to be sincerely hopeful that our proactive engagement of providing specific legislative language to Congress and PHMSA would produce a reauthorization proposal that would truly lead to enhanced public safety. Unfortunately, without the changes discussed above, it is the opinion of the NARUC membership that this bill does little, if anything, to improve safety at the State and local level and therefore, although NARUC will not oppose the bill at this time, we cannot support this legislation as it is currently drafted. The opportunity to make effective enhancements to the nation's pipeline system should not be bypassed in the interest of expediency. Congress ought to use this instance to advance pipeline safety initiatives.

Good morning Chairman Whitfield, Ranking Member Rush, and Members of the House Committee on Energy and Commerce, Subcommittee on Energy and Power. My name is Norman Saari and I serve as a Commissioner on the Michigan Public Service Commission. Today, I am here to present testimony on behalf of the National Association of Regulatory Utility Commissioners (NARUC), however, where noted, I will also be offering positions reflective of the Michigan commission.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to assure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

Thank you for the opportunity to testify today regarding the pipeline safety reauthorization legislation discussion draft. My comments today will focus on aspects of the bill that are within the purview of State utility regulators. I applaud the Committee for holding today's hearing so that stakeholders may provide insights on the specifics of the draft proposals. For the nation's State economic utility regulators, ensuring safe, reliable, and affordable utility service is our highest priority. This has been our responsibility for the last 126 years. With the changes confronting the gas and electric sectors, this mission will only grow in importance in the future.

State regulators and State pipeline safety inspectors are the mainstay for pipeline safety. We do the bulk of the work and, for obvious reasons, have the most intimate knowledge of pipelines located in our respective jurisdictions. Currently, State Utility Commissions and State inspectors have direct safety authority over 2.1 million of the approximately 2.5 million miles of pipelines in the United States.

In the federal/State partnership (between the Pipeline and Hazardous Material Safety Administration (PHMSA) and the States), States retain responsibility for the safety of about 84% of the pipelines.

State safety inspectors are the “first line of defense” and the “boots on the ground” at the community level. We enforce pipeline safety, enact and enable underground utility damage prevention programs, and promote public education/public awareness campaigns regarding pipeline safety. The obvious focus of State pipeline safety programs is to ensure public safety. Our efforts are designed to increase public confidence that the pipeline system is the safest and most reliable in the world.

All States are required to certify to the Secretary of the U.S. Department of Transportation that their programs will adopt regulations that are at least as stringent as the Federal Pipeline Safety Regulations.

However, 45 States have gone beyond the federal minimum and adopted more stringent safety rules. Nationally, in 2012, State mandated safety requirements and initiatives that are more stringent than Federal Pipeline Safety Regulations numbered over 1,300. These are detailed in the “Compendium of State Pipeline Safety Requirements & Initiatives Providing Increased Public Safety Levels compared to Code of Federal Regulations.” This 344 page document is jointly produced by the National Association of Pipeline Safety Representatives

(NAPSR) and NARUC and can be found online at: [www.napsr.org/compendium](http://www.napsr.org/compendium). The last update of this compendium was released in 2013. A new update is being compiled now.

Last July, NARUC's Committee on Gas Chair, Georgia Commissioner Stan Wise testified before this Subcommittee on pipeline safety.

In his testimony, he presented 10 modest, commonsense legislative proposals that will almost certainly enhance pipeline safety for natural gas and hazardous liquids transported throughout the United States. NARUC also provided those proposals to the other House and Senate Committees with jurisdiction over pipeline safety reauthorization legislation, as well as to our federal partner, PHMSA.

We are deeply troubled when the State agencies responsible for approximately 84% of the pipeline safety mission come to their elected Members of Congress with suggested changes to current law – changes that should improve overall safety on those systems we regulate – and those changes fall on deaf ears.

Unfortunately, the discussion draft does not contain any language presented for this Committee's consideration by Commissioner Wise in July. In fact, this draft does not even mention those issues, much less provide or contemplate compromise language that address the deficiencies in current law raised by Commissioner Wise's testimony.

One reason NARUC was pleased to be asked to testify, was to have the opportunity to again respectfully suggest the following changes be included in any pipeline safety reauthorization bill that is approved by the U.S House of Representatives.



**NARUC Legislative Priorities****1. Authorization of Appropriations**

Since this Subcommittee held its July hearing regarding pipeline safety, the Senate Committee on Commerce, Science and Transportation reported the “SAFE PIPES Act.” This Senate bill, unfortunately, added a crucial issue that, if unaddressed, can only undermine pipeline safety in the United States – funding for inspection programs. Current law says that the States may be reimbursed up to 80% by the federal government for pipeline safety programmatic costs.

In 2014, the last year money was reimbursed, the base grant was approximately \$42.2 million (for gas and hazardous liquids.) However, States spent about \$56.4 million on pipeline safety. This means that in 2014, States as a whole were reimbursed about 74.8% of what was actually expended on safety programs. .

Over the last 10 years, States’ pipeline safety program costs have increased an average of 4% more each year. The overwhelming majority of those increases are caused by expenses, like employee/inspector medical premium costs, over which there is little control.

The Senate bill ignores these facts.

Specifically, Section 2 of the Senate bill authorizes for FY 16 – the first year of the reauthorization – State grants of about \$42.5 million. From FY 16 through FY 19 – the last year of the reauthorization – the State grant increases only by 1% per year to finish at approximately \$43.8 million.

The looming deficit in funding safety efforts is even worse than it appears at first glance. During this period Florida, a State that has traditionally not participated in the PHMSA reimbursement grant program, has applied for approximately \$1.2 million per year. This has the effect of diluting the funds available to each State even further. Moreover, California has

recently announced that it is seeking to increase its hazardous liquid inspector workforce by 17 more inspectors even though the May 2015 Santa Barbara County oil pipeline rupture was a federal responsibility.

If funding is authorized and appropriated at the level proposed in the Senate bill, States could be looking at reimbursement percentages decreasing to the 60% range - effectively the same amounts available 6 years ago.

This can have only one impact. It will discourage the hiring of additional State inspectors. It will stress constrained budgets. It will require States to look for ways to stretch existing resources to oversee a rapidly growing and expanding infrastructure.

To at least keep existing State programs operating at current efficiency levels, it is vital for Congress to include an authorization for appropriation for FY 2016 of no less than \$49.5 million for State base grants. Moreover, the authorization should provide that the base increases by no less than 4% each fiscal year.

If Congress includes NARUC proposed and long over-due expansion of inspections to include gathering lines, the appropriation would necessarily have to be increased by approximately \$11 million each fiscal year to cover the additional required oversight.

Curiously, given the national interest in pipeline safety, in comparison, the Senate has proposed funding PHMSA quite a bit better than States. PHMSA's authorization from 2015 will increase by about \$25.4 million. PHMSA's per year increase from 2016 to 2019 is twice what was proposed for the States - approximately 2% per year.

It seems obvious, given the relative responsibilities, that constituents in each of your States will be better served by shifting the Senate's proposed \$25.4 million increase in PHMSA's authorization (and the associated yearly increases) over to support the base grants that maintain

crucial State safety programs. States fund these programs in advance and their projections are based on the expectation that Congress will continue to provide reimbursements at equitable levels that keep up with easily anticipated program costs.

We understand, Mr. Chairman, that this is not the Committee on Appropriations. However, we respectfully request that you and your colleagues consider these crucial State expenditures as you work on the text of your bill and most importantly on the final appropriated funding levels for States.

## **2. Gathering Line Regulation**

Currently, the legislation does not address the regulation of gas associated with Class 1 gathering lines. Class 1 gathering line regulation should be included in any reauthorization legislation.

Class 1 Gathering Pipelines are the only pipeline designation not addressed in the current Act. There is no sound basis for having certain Gathering Lines exempted and thus non-jurisdictional to both federal and State governments for safety oversight. New gathering lines can operate at pressures up to 2000 psig and pipe size as large as 40+ inch diameter, which are on a par with those that are built for transmission pipelines. Still, under current law, new gathering lines at many locations are not required to be part of an underground damage prevention system, do not require odorization, do not have to meet welding or pressure test standards, and do not have to be installed at specific depths. Moreover, the owners also do not have to perform leak surveys or even have to report locations of the lines to PHMSA or State authorities. This means gathering line incident data is almost non-existent because there are limited reporting requirements.

Incidents that are not reportable obviously do not require any investigation.

Gathering lines are increasingly interfering with existing transmission systems and can interfere with the Corrosion Protection Systems and Public Awareness Plans of transmission operators. Recently, in Sissonville, West Virginia, NTSB investigated an incident regarding a 4" diameter gathering line. The local fire chief was bewildered because he had no idea that any gathering line was located there.

Today gathering lines are more numerous and in some cases larger than those installed years ago. They require oversight. Your constituents deserve the same pipeline safety oversight regardless of whether they reside in rural areas, suburban, or urban areas. Safety oversight should not depend on whether a particular pipeline is characterized as gathering or distribution.

### **3. Transportation of Un-odorized Gas in Gathering and Transmission Lines**

The legislation that is reported should include a provision to require the odorization of natural gas in all pipelines. The existing Act only requires natural gas odorization to those gathering lines and transmission pipelines that are currently jurisdictional (excludes Class 1 and rural gathering).

Gas odorization is the basic foundation for natural gas safety. All pipelines, no matter the location, should be odorized to alert and warn the public in the event of a failure. Currently, a federal requirement does not exist requiring the odorization of natural gas in Class 1 locations and certain areas of Class 2 and Class 3 locations for transmission pipelines.

An odorant exclusion in the Act is an unacceptable risk to the safety of the general public. NARUC and NAPSR stand fast that odorization of all pipelines is a safety requirement that should not be compromised. Time and time again we hear the many stories that it is the odor of the gas that is the trigger for first detecting that a gas pipeline is either leaking or has

ruptured. It is this same odorant that allows for necessary time to evacuate and find the failed pipeline so that proper and timely investigations and repairs can be performed.

To help better understand how the PHMSA odorization rule works in 49 CFR 192.625, NEXUS Gas Transmission, and L.L.C. is constructing a 255 mile 36 inch diameter 1.5 billion cubic foot of gas transmission line in mostly class 1 locations. Under the current regulation, only the last 7.3 miles would require odorization and NEXUS is requesting a Special Permit from PHMSA so they do not have to odorize this section. This can be read more thoroughly in docket # PHMSA-2016-0009 at <http://www.regulations.gov>.

#### **4. Interstate Agent Agreements New and Existing**

Language should be added to the bill to require PHMSA to enter into an interstate agent agreement with any willing State that is capable of performing pipeline safety inspections on interstate facilities. Additionally, language should be included to prevent PHMSA from rescinding existing agreements without cause.

There can be no justification for reducing the number of State cops on the beat.

The only impact can be a reduction in the level of oversight.

Currently, States are permitted to enter into an agreement with PHMSA to inspect interstate pipeline facilities located within the State's borders. PHMSA in December 2014 announced that it intended to rescind existing State interstate agent agreements and not allow additional States to become interstate agents.

Currently, New Hampshire has State law that requires requesting interstate agent status every year but has been denied by PHMSA.

The Kentucky Legislature has a legislative proposal that requires interstate agent status.

Maryland has requested interstate agent status but was denied by PHMSA.

In Michigan, there are proposals for Michigan to become interstate agents.

Pennsylvania has several bills in its legislature that would require a Pennsylvania State program to perform inspections on interstate natural gas pipelines and hazardous liquid pipelines either as interstate agents or as a State inspection.

PHMSA has intentions of hiring more federal inspectors for this purpose.

However, from a budgetary perspective, this makes little sense.

States can perform the same pipeline inspection duties as PHMSA at a reduced cost, due in part to the State salaries and fringe benefits being less than those of the federal government. Utilizing States who want to perform the interstate inspection function would minimize the need for increasing the number of federal inspectors, and the associated travel expenses, resulting in lower costs to the pipeline safety program.

Moreover, State inspectors are more likely to be familiar with the pipelines and their operators as they inspect other pipelines in the same rights of way, thus providing equal or greater inspection capabilities.

##### **5. Maintenance of Efforts Clause**

The maintenance of effort section in current law should be stricken. PHMSA issues pipeline safety base grants to the States as a result of a certification agreement with the U.S. Department of Transportation, (USDOT) – PHMSA. These base grants are defined as reimbursement grants. By default under a reimbursement grant, States have to pay in advance the costs associated with State pipeline safety programs and then subsequently request reimbursement from PHMSA.

Logically, since the States fund their pipeline safety programs for more than 12 months without reimbursement, the States have already met any realistic the “maintenance of effort”

threshold. States that have such programs are necessarily already committed to a “maintenance of effort (MOE)” standard. Currently, the Act requires, as part of a MOE, the States to spend an average of their three prior fiscal years’ for their pipeline safety program costs. Requiring States to spend at an average of three prior fiscal years has caused almost all States to be unable to meet the maintenance of effort standard in the Act. This in turn, required PHMSA to invent the Suspension Funding mechanism to facilitate funding and avoid undermining crucial State programs. The States are thankful to PHMSA for creating a mechanism to transfer State funds back to the States; however, this action is an unnecessary bureaucratic tangle. It doesn’t make sense for a law to set up a system by which it is agreed that the States should be reimbursed for providing a service that the federal government knows it cannot do on its own, and then under that same law make it impossible for the States to be reimbursed for the work, unless a waiver is granted.

If the MOE language from the current Act is kept in place, PHMSA will have to continue the use of the Suspension Funding mechanism and approve additional MOE waivers (PHMSA calls this waiver a “suspension of the MOE”). PHMSA will also need to request that the USDOT Secretary grant these waivers and the Secretary will have to continue to approve said waivers. This process is not just inefficient – it highlights the flawed mechanism in the current law. When language exists that requires States to annually apply for waivers then that fundamental language needs to be corrected. If a State does not incur costs based on an average of three prior fiscal years as required for the MOE, then PHMSA has declared that the State would not be able to attain any grant money for the year and would lose grant eligibility. Should this occur, who will continue to provide for the safety of the pipeline system in that State?

#### **6. Indirect Cost Limitation Elimination**

NARUC is requesting that language be added to the bill to allow for recovery of all federally approved indirect costs claims by all State pipeline safety programs.

The original Pipeline Safety Act had a limitation of 20% on indirect cost reimbursement; but that limitation was recognized as impractical and was removed from statute (§60125). Further, the current Act does not distinguish between direct and indirect costs.

However, PHMSA continues to limit State reimbursements to 20% of the indirect costs even though some States have a federally approved Indirect Cost plan that is at a higher level than 20%. For Calendar year 2015, PHMSA for the first time is willing to pay the actual negotiated indirect cost rates to those with greater than 20% of direct cost. States should have protections in the law to prevent these arbitrary reimbursement practices. Fortunately, States do have the option of taking a 10 percent indirect cost rate without having to go through the negotiated rate process. In each State the indirect costs are different because of the sizes and complexities of their programs. In some smaller States the Administrative Staff is small and shared by all sections within the agency and are thus considered an indirect cost, whereas in larger State programs, the Pipeline Safety Section has its own administrative personnel who may be classified as a direct cost to the program.

#### **7. Increasing One-Call Grant Amounts**

Language should be added to the bill that increases the one-call grant from \$1 million to \$5 million. The One Call grant is vital to ensuring safe operations of underground facilities. The number one safety issue for all States' pipeline safety programs is damage to underground pipeline facilities. PHMSA statistics, year after year, point out that excavation damage is the leading cause of incidents. The simplest and quickest way to reduce incidents nationally is to



inject an increased amount of funding targeted to States that will lead to greater enforcement. The amount of this grant awarded to States has not changed since 1993. In the past, many States utilized the One Call grant to recover costs associated with enforcement activities, but the small amount of the grant precludes its usefulness for enforcement.

#### **8. State Pipeline Safety Related Travel**

Language should be added that would permit the Secretary of the Department of Transportation to apportion up to 1% of travel appropriations to the States. This proposed NARUC change to the current Act will provide economic savings to the State pipeline safety programs with regards to traveling to meetings, technical committee work, or training. Currently, PHMSA is permitted to grant funds to cover the expenses resulting from State Program Manager's travel to meetings associated with pipeline safety. However, these funds have been limited by PHMSA. NARUC's proposal would allow the State programs to recover more funds for State Program managers and key staff members who serve as subject matter experts on national standards organizations to recover the costs of the additional travel requirements. The proposal would also enable State programs to more fully engage in a mentoring program for inspectors and save travel costs to the State programs.

#### **9. State Pipeline Safety Grants**

NARUC proposes that language be included in the legislation so that the National Association of Pipeline Safety Representatives (NAPSR) will be eligible for funding that originates from State pipeline safety programs. The bill should include language that eliminates the limiting cap language that currently limits funding of the State programs at 80% and allows for 100% funding of this specific provision for NAPSR. Additionally, the language should include a provision to fund the NAPSR Administrative Manager position salary and benefits.

The administrative position is an integral part of the partnership between PHMSA and NAPSRS to coordinate pipeline safety activities such as increased communications in the pipeline safety community, performing vital committee work, and allows program managers to participate as NAPSRS Board of Director members. The Administrative Manager position is vital to NAPSRS's mission and is currently funded through a PHMSA grant. The proposed language allows for the automatic funding of the position through the Pipeline Safety Act.

**10. Exemption Requirement for One-Call Grant**

NARUC proposes the bill be amended to allow for States to be eligible to participate in One Call grants, even though their State may not have a specific provision of law addressing the one-call program, but has equivalent policies pertaining to the structure, development, and function of a well-organized One Call System elsewhere in State statute. If a State's policy directs the One Call System's function, then the State should be eligible to participate in the grant process. Without this provision, States that have policies that mirror other States' laws would be prohibited from applying for One Call grants. Essentially, this proposed provision maintains the intent of current law by including States' policies toward One Call functionality.

**11. Design Review Requirement when requested by State**

The draft legislation should be amended to ensure that State pipeline safety regulatory authorities have the ability to request that PHMSA conduct a design safety review. A design safety review is an engineering analysis of the proposed construction project to ensure that the proposed project meets the requirements of the jurisdictional body. Under current statutory wording, there is no standard for when or how PHMSA must conduct such a review. This would enable State authorities to receive the design specifications, construction plans and procedures, and related materials prior to initiation of construction.

Additionally, section 15 of the discussion draft is extremely concerning. This provision would, in effect, give the federal judicial branch jurisdiction over our pipeline safety infrastructure. We do not understand how this jurisdictional shift enhances pipeline safety. Jurisdiction for the safety of the nation's pipeline system must stay with the State regulators and inspectors that do this job every day of the week and their federal partners. This provision would risk the federal-State partnership each time an incident happens. NARUC strongly opposes inclusion of this provision.

I would now like to spend a few moments to provide the Subcommittee with some information related specifically to the pipeline safety program in Michigan. Michigan's Gas Safety rules were originally adopted in 1957 and have been regularly updated to reflect changes in technology and federal regulation. The Michigan Public Service Commission adopted in December 2014 the 23rd edition of the state's gas safety regulations, ensuring best practices are in place and properly coordinated for intrastate pipelines and in compliance with PHMSA regulations for interstate facilities.

Michigan established the nation's first one-call system in 1970 to promote safety practices with property owners, underground facility owners and excavators while excavating. The MISS DIG system now logs in over three-quarters of a million calls annually to implement and locate and marking program prior to excavation activities.

The MPSC is working with major natural gas utilities in the state to address the age and structural integrity of gas distribution lines. The state regulates about 57,000 miles of underground natural gas distribution mains and 3.2 million services. The gas main replacement programs have been established using risk-based prioritization methods that consider material types, historical leaks and maintenance through the years among other physical attributes and

safety considerations. Utilities are working toward achieving replacement programs for these higher risk materials that will be completed in 25-30 years. To meet safety and efficiency requirements, the programs will be modified over the next few years to meet the replacement goals.

Michigan's underground gas storage fields have the volumetric capacity to be the largest in the nation. The storage fields are primarily located in depleted gas reservoirs, and, to a lesser extent, former salt caverns. The fields can cumulatively store some 675 billion cubic feet of natural gas to augment daily pipeline supply to meet customer's needs.

| Type of Infrastructure                               |           | Companies Inspected |
|--|-----------|---------------------|
| Natural Gas (MPSC Inspection based on 2014 year end) |           |                     |
| Number of Services                                   | 3,247,804 | 12                  |
| Estimated Miles of Services                          | 53,940    |                     |
| Miles of Gas Distribution                            | 57,367    |                     |
| Miles of Intrastate Gas Transmission Main            | 5,208     | 36                  |
| Miles of Interstate Gas Transmission Main            | 3,538     | 8                   |
| Miles of Regulated Gathering Lines                   | 364       | 18                  |

In conclusion, Mr. Chairman, NARUC's membership was, and remains, truly hopeful that our proactive engagement of providing specific legislative language to Congress and PHMSA would lead to a reauthorization proposal that was worthy of having the term "safety" included in the title. Unfortunately, without the changes discussed above, it is the opinion of the

NARUC membership that this bill does little, if anything, to improve safety at the State and local level and therefore, although NARUC will not oppose the bill at this time, we cannot support this legislation as it is currently drafted.

NARUC and our members stand ready to work with you on this legislation. We believe our minimal, commonsense enhancements to the bill's language will increase pipeline safety across the nation. Thank you very much for your attention and I look forward to your questions.

Mr. WHITFIELD. Mr. Saari, thank you very much.

Our next witness is Mr. Ron Bradley who is vice president of Gas Operations at PECO Energy. And you are testifying on behalf of the American Gas Association. Welcome, and you are recognized for 5 minutes, Mr. Bradley.

#### **STATEMENT OF RON BRADLEY**

Mr. BRADLEY. Good morning, Chairman Whitfield and members of the committee. My name is Ron Bradley, and I serve as vice president of Gas Operations at PECO, which safely provides reliable electric and natural gas service to approximately two million customers in southeastern Pennsylvania.

PECO is part of the Exelon family of companies. Exelon is the nation's largest competitive energy provider serving more than eight million electric and natural gas customers in Illinois, Maryland, and Pennsylvania. Today, I am testifying on behalf of the American Gas Association which represents more than 200 local distribution companies, also known as LDCs.

AGA members' companies operate 2.5 million miles of underground pipeline safely delivering clean, affordable natural gas to more than 71 million customers. LDCs provide the last critical link in the energy delivery chain connecting interstate pipelines directly to homes and businesses. Our focus every day is ensuring that we keep the gas flowing safely and reliably.

As part of an agreement with the Federal Government, most states assume primary responsibility for the safety and regulation of LDCs, as well as intrastate transmission pipelines. Many states adopt standards that exceed federal requirements. Additionally, our companies are in close contact with state pipeline safety inspectors which permit a greater number of inspections to occur than is required by federal law.

In addition to a culture of compliance, LDCs embrace the culture of proactive, collaborative engagement. Each company employs trained safety professionals, provides safety training, conducts rigorous system inspections, testing, maintenance and repair, and replacement programs, and educates the public on natural gas safety. AGA's commitment to enhancing safety adopted in 2011 provides a summary of these commitments beyond federal regulation.

The commitment to enhancing safety has been modified several times to address new issues that have been identified and was recently modified to include actions to improve the safety of underground storage operations. The AGA has also developed numerous pipeline safety initiatives focused on raising the bar on safety including peer-to-peer reviews and best practice forums that share best practices and lessons learned throughout the industry. Each year, LDCs spent approximately \$22 billion on safety. Approximately half of that on our voluntary actions. This number continues to escalate as work commences on newly approved accelerated pipeline replacement programs.

Now turning to a review of the legislation. The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 and the Pipeline Safety, Regulatory Creation, and Job Creation Act of 2011 created new programs to improve the safety of the industry. AGA member companies have implemented aspects of these programs ei-

ther voluntarily or through DOT regulation. However, many of these programs are in their infancy in terms of implementation, and we encourage Congress to allow these programs to develop and mature in order to realize their full impact.

In the case of the unanimously passed 2011 Act, several regulations have yet to be promulgated or finalized. The progress that is being made is very important that the focus be on finishing the outstanding work. We commend the committee for emphasizing this in its initial draft. Layering new laws and regulation on to companies before existing regulations have been finalized and provided time to succeed creates uncertainty that undermines our shared safety goals.

While we appreciate the committee's efforts to put forward a bipartisan bill, we are supportive of most of the text. We are very concerned that Section 15 of the draft bill would allow a person to bring a civil action in a District Court of the United States for injunction against PHMSA for failure to perform any nondiscretionary duty, even if PHMSA was engaged in enforcing its mandatory obligations under the law. This would have a deleterious effect of undermining and thus weakening the federal regulatory oversight this committee seeks to enhance and could cause market uncertainty.

Moreover, to the extent that PHMSA would have to dedicate resources and time to litigation or complying with a court order, it could significantly diminish the agency's ability to work on other congressional priorities, thus negatively impacting pipeline safety.

The creation of such a legal remedy could be used by individuals, however well intentioned, in a way that would be counter to the best interests of the nation, individual states, industry, and ultimately consumers while not necessarily enhancing safety. Thus, we respectfully urge the removal of Section 15 of the bill. The industry is already experiencing significant uncertainty regarding PHMSA's implementation of outstanding mandates in the 2011 bill.

Regarding replacement of cast iron mains, a focus of the 2011 pipeline safety reauthorization. The quantity of these mains continues to steadily decline. As of today, overall cast iron mains makes up less than two percent of total mileage. Natural gas utilities are working with legislators and regulators to accelerate the replacement of these pipelines. To date, 39 states and the District of Columbia have adopted specific rate mechanisms that facilitate accelerated replacement of pipelines that are primary candidates for system enhancement.

In addition to what I have highlighted, my written testimony provides updates on the industry's efforts with regard to incident notification, data collection, and information sharing, and research and development. I am pleased to answer questions on these topics or any other topics that you have.

[The prepared statement of Mr. Bradley follows:]

**Testimony of  
Ron Bradley  
Vice President of Gas Operations, PECO  
On Behalf of the American Gas Association**

**Before the  
Subcommittee on Energy and Power  
Committee on Energy and Commerce  
U.S. House of Representatives**

**Legislative Hearing to Examine Pipeline Safety Reauthorization**

**March 1, 2016**

Good morning, Mr. Chairman and members of the Committee. Thank you for this opportunity to provide testimony on the important issue of pipeline safety. I commend you and your colleagues on the work this committee has done over the years to ensure that America has the safest, most reliable pipeline system in the world.

My name is Ron Bradley, and I serve as Vice President of Gas Operations at PECO, which safely provides reliable electric and natural gas service to more than 1.6 million electric customers and more than 508,000 natural gas customers in southeastern Pennsylvania.

PECO is part of the Exelon family of companies. Exelon is the nation's largest competitive energy provider. In addition to Exelon's generation, power and unregulated businesses, our sister utilities include BGE in Baltimore and ComEd in Chicago. Combined we serve 6.6 million electric customers in Illinois, Maryland and Pennsylvania, and more than 1.1 million natural gas customers in Maryland and Pennsylvania.

At PECO, we have six core values: Safety, Integrity, Diversity, Respect, Accountability and Continuous Improvement. Safety is first and foremost among these. My commitment, and the commitment of our leadership at PECO and our parent company, Exelon, is that everyone goes home safe.



This includes not only our employees, but also our customers, our contractors and everyone in the communities we serve. Among utilities, PECO's safety performance is ranked as one of the best in the nation. PECO has been recognized as Pennsylvania's safest utility by the state Department of Labor & Industry and has also received awards from the Energy Association of Pennsylvania, the Southeastern Electric Exchange and the American Gas Association.

I am testifying today on behalf of the American Gas Association (AGA). AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 72 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent - nearly 69 million customers - receive their gas from AGA members. Natural gas pipelines, which transport approximately one-fourth of the energy consumed in the United States, are an essential part of the nation's infrastructure. Indeed, natural gas is delivered to customers through a safe, 2.5 million mile underground pipeline system. This includes 2.2 million miles of local utility distribution pipelines and 300,000 miles of transmission pipelines that stretch across the country, providing service to more than 177 million Americans.<sup>1</sup>

Shale production has resulted in abundant supplies of domestic natural gas, and this robust supply situation has translated into affordable and stable natural gas prices for our customers. America needs clean and abundant energy and America's natural gas provides just that. This has made the safe, reliable and cost-effective operation of the natural gas pipeline infrastructure even more critically important. It is our job to ensure the safe and reliable delivery of natural gas, and I assure you we take this responsibility very seriously. Indeed, safety is our number one priority. Through an effective partnership between America's natural gas utilities, state regulators, Congressional and state legislators, governors and other key stakeholders working together to advance important safety policies, we have been able to both enhance system integrity and support increased access to natural gas service for homes and businesses.

#### **DISTRIBUTION PIPELINES**

Distribution pipelines are operated by natural gas utilities, sometimes called "local distribution companies" or LDCs. The gas utility's distribution pipes are the last, critical link in the natural gas delivery chain. Gas distribution utilities bring natural gas service to their customers we are seen as the "face of the gas industry."

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<sup>1</sup> See Attachment 1: *Natural Gas Pipelines Across the U.S.* "

Our customers see our name on their bills, our trucks in the streets and our company sponsorship of many civic initiatives. We live in the communities we serve and interact daily with our customers and with the state regulators who oversee pipeline safety. We take very seriously the responsibility of continuing to deliver natural gas to our communities safely, reliably, responsibly and affordably.

AGA and its members support the development of reasonable regulations to implement new federal legislation as well as the recommendations of the National Transportation Safety Board, the U.S. Department of Transportation (DOT) Inspector General, Government Accountability Office, National Association of Pipeline Safety Representatives (NAPSR) and the National Association of Regulatory Utility Commissioners (NARUC). Within this testimony are actions that are being, or will be, implemented by AGA or individual operators to help ensure the safe and reliable operation of the nation's 2.5 million miles of natural gas pipelines. In implementing these actions, AGA and its individual operators recognize the significant role that their state regulators or governing bodies will play in supporting and funding these actions to fulfill our commitment to our customers.<sup>2</sup>

#### **REGULATORY AUTHORITY**

As part of an agreement with the federal government, in most states, state pipeline safety authorities have primary responsibility to regulate natural gas distribution utilities as well as intrastate transmission pipeline companies. Under these agreements, state governments adopt as a minimum the federal safety standards promulgated by the U.S. Department of Transportation.

The states may also choose to adopt standards that are more stringent than the federal regulations, and many have done so. LDCs are in close contact with state pipeline safety inspectors on a regular basis and as a result of these interactions, distribution operator facilities are subject to more frequent and closer inspections than required by the federal pipeline safety regulations.<sup>3</sup>

In addition to state pipeline safety inspectors, state public utility commissions are also a key part the safety matrix. We believe state commissions, and in Pennsylvania's case, our Department of Labor and Industry, play a critically important role in ensuring pipeline safety and thus support NARUC's request that there be adequate funding for state pipeline safety programs.

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<sup>2</sup> See Attachment 2: "*Natural Gas Delivery System*"

<sup>3</sup> See Attachment 3: "*Regulators and Stakeholders*"

It is essential that the states have sufficient funding so that their inspectors can receive adequate training, participate in pipeline safety initiatives, and support excavation damage prevention efforts.

On behalf of AGA, I would like to raise serious concerns regarding language included in the Discussion Draft for consideration that would establish a private right for any person to bring a civil action in an appropriate district court seeking an injunction against the U.S. Government for failure to perform any non-discretionary duty under this chapter.

Congress passed the Natural Gas Pipeline Safety Act to create an Agency within the Department of Transportation with specific expertise to ensure the safe, reliable and environmentally sound operation of our nation's pipeline transportation system. PHMSA oversees a regulatory program that provides for public input, regulatory procedures, information requirements, and enforcement actions based on its comprehensive knowledge of this industry. This provides a predictable framework for pipeline regulation while ensuring that the public interest is protected.

The pervasive judicial role created under the proposed formula under discussion in Section 15 would undermine this balance and shift oversight of the industry away from regulators with decades of experience and expertise and into courts who lack this knowledge and perspective. I strongly urge you to delete this section and maintain PHMSA's primary role as the regulatory authority of the pipeline industry as Congress intended.

#### **COMMITMENT TO SAFETY**

Our commitment to safety extends beyond just government oversight. Safety is our core value – a source of pride and a matter of corporate policy for every company. Each company employs safety professionals; provides on-going employee safety training; conducts rigorous system inspections, testing, and maintenance, repair and replacement programs; distributes public safety information; and complies with a wide range of federal and state safety regulations and requirements. Individual company efforts are supplemented by collaborative activities in the safety and technical committees of regional and national trade organizations. Examples of these groups include AGA, the American Public Gas Association, the Interstate Natural Gas Association of America, the Southern Gas Association, the Northeast Gas Association, the Western Energy Institute, the Midwest Energy Association, and the Northwest Gas Association.

When I last testified on behalf of AGA before this committee on the topic of pipeline safety, natural gas utilities were spending an estimated \$19 billion a year in safety-related activities. Today, that number has grown to \$22 billion—and it will continue to grow as more of the recently approved replacement programs commence. Approximately half of this money is spent in complying with specific federal and state regulations. The other half is spent as part of our companies' voluntary commitment to help ensure that our systems are safe and that the communities we serve are protected. Moreover, we are continually refining our safety practices to help improve overall safety and reliability.

On October 26, 2011, AGA released our "Commitment to Enhancing Safety," which outlines just a few of the industry's commitments above and beyond regulations. Our companies feel so strongly about these voluntary actions that the AGA "Commitment to Enhancing Safety" has been updated twice in the past six months to incorporate lessons learned from implementation of pipeline safety regulations and recent industry incidents. This is just one example of how the industry is leading on safety by demonstrating the highest level of commitment to constant improvement and by upholding pipeline safety as our number one priority.<sup>4</sup>

Outside of regulation and legislation, AGA members are striving to improve pipeline safety:

- Through AGA's Safety Culture Statement, each AGA member has committed to promoting positive safety cultures among their employees throughout the natural gas distribution industry. All employees as well as contractors and suppliers providing services to AGA members, are expected to place the highest priority on employee, customer, public and pipeline safety.

- As noted above, AGA's Commitment to Enhancing Safety outlines industry's continued commitment to improving pipeline safety through voluntary actions above and beyond federal regulations. This includes actions beyond regulations to build pipelines safely, operate pipelines safely, and enhance pipeline safety. A recent addition to the Commitment to Enhancing Safety is promotion of the use of recently released recommended practices for underground storage facilities. AGA and its member companies also state their commitment to proactively collaborate with public officials, emergency responders, excavators,

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<sup>4</sup> See Attachment 4: "AGA's Commitment to Enhancing Safety"

consumers, safety advocates and members of the public to continue to improve the industry's longstanding record of providing natural gas safely and effectively to 177 million Americans.

- AGA has also developed numerous pipeline safety initiatives focused on raising the bar throughout the natural gas distribution industry. Two such programs are AGA's Peer Review Program and AGA's Gas Utility Operations Best Practices Program. Both allow subject matter experts from AGA member companies to help improve industry practices through reviewing and sharing individual company policies, procedures and practices.

#### **REVIEW OF PIPELINE SAFETY LEGISLATION AND REGULATION**

From a regulatory perspective, the past ten years have easily included more significant pipeline safety mandates and rulemakings than any other decade since the creation of the federal pipeline safety code in 1971. I want to assure the committee that the natural gas distribution industry has worked vigorously to implement those provisions that are related to our sector. In some cases, it takes considerable time for complicated rules to be promulgated, vetted, finalized and then fully implemented, but please know that we are constantly working on ways to better manage the system and improve safety and, in most cases, take actions to begin implementing proposed regulations before they become final.

The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 and the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 each outlined significant industry-changing pipeline safety programs. While AGA members have implemented aspects of these programs either through DOT regulation or voluntarily, it is important to note that many of the programs are still in their infancy. Thus, we urge Congress to allow these programs to continue to be developed and mature in order to realize their full impact.

Over the years we have found that it is best to fully implement new safety programs and regulations prior to layering on additional requirements. This allows for the gathering of conclusive data to aid in determining specifically what, if any, adjustments or changes need to be made. In the case of the unanimously passed Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011, several of the bill's required regulations have yet to be promulgated or finalized. Therefore, we would strongly encourage the committee to be judicious in making new changes to the law.

The specifics of the 2011 Act included very substantive changes to the federal pipeline safety law, such as changes to incident notification timelines, testing of certain gas transmission lines, requirements for valves, as well as changes in areas related to gathering lines, leak detection, and integrity management. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) is still working to address a number of those significant requirements through rulemakings and other initiatives. These efforts impact such comprehensive issues as expansion of transmission integrity management, additional pressure testing requirements on transmission pipelines, excavation damage prevention, rupture detection and valves, excess flow valves beyond single family homes, and plastic pipe regulations. We are pleased that PHMSA is continuing to work on these outstanding regulations and we look forward to the certainty that final rules will bring. In the interim, PHMSA has issued a number of significant guidance documents, released the results of a congressionally-mandated study on leak detection, conducted research and development focused on improving pipeline safety, provided pipeline safety grants to states and local communities, and created an online database to track progress in replacing cast iron and bare steel pipelines. Each of these actions has been very important and impactful.

Given that so many of the mandates from the 2011 bill remain to be completed, we believe it would be unwise to legislate numerous new requirements on PHMSA at this time. We are concerned that additional mandates could lead to a detour from the significant work that is already underway. Companies work day in and day out to make sure they continue to improve the safety of their systems, and it is critical that progress on pending regulations remains the focus so as to help ensure that these safety improvements are not negated. The work that PHMSA has completed to date, the important initiatives taken by industry on its own, and the significant actions taken by NPSR, NARUC, individual public utility commissions and state legislatures around the country have produced significant improvements in pipeline safety over the last several years. While natural gas distribution companies are eager to move forward with other aspects of the 2011 Act, they and their state commissions are hesitant to do so without the certainty that will come for the issuance of final rules. The predicament that is presented to pipeline operators is the desire to meet the intent of specific legislative language, but the fear that their work will need to be redone once a final rule is issued. Any requirement to undo actions or else add further requirements would result in additional costs. These costs would be paid for by the customers of the natural gas distribution company and could create significant disruption to the public.

AGA members desire a path forward that entails regulatory certainty rather than a path filled with uncertainty, potential duplicative actions, or additional cost burdens on their customers.

#### **CAST IRON**

Natural gas utilities continue to be ever vigilant and committed to systematically upgrading infrastructure based on enhanced risk-based integrity management programs. A lot of discussion during the development of the 2011 bill focused on cast iron and unprotected bare steel, and the need to increase efforts to replace those materials in a more accelerated fashion. As a result, there is a continually growing effort underway to accelerate the replacement of pipelines that may no longer be fit for service. This work is being facilitated by specific state regulatory and state legislative policies that establish innovative rate mechanisms which allow for accelerated replacement and modernization of natural gas pipelines. For example, through Pennsylvania's Distribution System Improvement Charge or "DSIC", PECO is now spending \$61 million dollars annually on cast iron and bare steel main and service line replacement. As a result of more of these specific replacement programs being approved, and existing programs being expanded around the country, the quantity of cast iron main continues to steadily decline. I am delighted to be able to report that as of today, overall cast iron makes up less than two percent of the total distribution mileage -- and that number is continuing to go down.<sup>5</sup>

Today, PHMSA reports that there are 29,358 miles of cast iron pipelines in use. The approximate cost of removing these pipelines is over \$80 billion. The specific costs associated with replacement vary depending on the size of the pipeline, if the pipeline is in a rural or very urban setting, if the pipeline is under pavement or under grass, the depth of the pipeline, and the difficulty of continuing to provide natural gas to the customers served by that pipeline. To be certain, all utilities have an infrastructure replacement program and seek to remove pipelines no longer fit for service as rapidly as they are able and allowed through their regulatory construct. However, since the industry and regulators across the country have stepped forward to respond to the Call to Action set forth by former Secretary of Transportation Ray LaHood back in 2011, we have gone from 18 states that had a specific rate mechanism facilitating accelerated replacement of pipelines that are primary candidates for system enhancement, to now 39 states and the District of Columbia having such mechanisms.

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<sup>5</sup> See Attachment 5: "Total Cast Iron Main"

In 2013, nine states moved to adopt such programs and three more and the District of Columbia moved to do so in 2014. In 2015, WV also passed legislation to allow for faster pipeline replacement, while IL, MA, MI, MS, NJ, NY and PA each moved to strengthen and expand upon existing replacement programs and efforts.<sup>6</sup> Of the states without a specific accelerated replacement rate mechanism, AK, ID, ND, VT and WI have all finished replacing their cast iron and bare steel. Additionally, WY has finished replacing its cast iron and bare steel mains and has a limited quantity of bare steel services remaining.<sup>7</sup> The cumulative result of all of these important actions is that the industry is replacing cast iron pipe, as well as bare steel, as quickly as possible in a safe and cost-effective manner.

NARUC has always considered pipeline safety a leading priority and in 2013 demonstrated real leadership by prioritizing the issue of accelerating pipeline replacement by passing a resolution calling on commissions to: "explore, examine and consider adopting alternative rate mechanisms as necessary to accelerate modernization, replacement and expansion of the nation's gas pipeline systems." We commend NARUC for its leadership on this critically important issue.<sup>8</sup>

#### **EXCAVATION DAMAGE**

Excavation damage continues to represent the single greatest threat to distribution system safety, reliability and integrity. A number of initiatives have helped to prevent excavation damages and resulting incidents. These include a three digit number, "811," for excavators to call before they dig, a nationwide education program promoting 811, "best practices" to reduce excavation damage and regional "Common Ground Alliances" that are focused on preventing excavation damage. Additionally, AGA and other partners established April as National Safe Digging Month, encouraging individuals to dial 811 before embarking on any digging or excavation project. Since the Call 811 campaign was launched, there has been approximately a 40 percent reduction in excavation-related incidents. A significant cause for this reduction is the work done by the pipeline industry, regulators, other underground facilities and excavators in promoting the use of 811.

Regulators, natural gas operators, and other stakeholders are continually working to improve excavation damage prevention programs. This concerted effort, combined with the effort that states are undertaking to create robust, and effective, state damage prevention programs based on the elements contained in the 2006 PIPES Act, is having a positive impact.

<sup>6</sup> See Attachment 6: "States with Accelerated Infrastructure Replacement Programs"

<sup>7</sup> See Attachment 7: "States with Limited Cast Iron or Bare Steel Inventory"

<sup>8</sup> See Attachment 8: "NARUC Resolution"



But as always, more can be done – and the industry will continue to remain vigilant in collaborating with other stakeholders and the public to help ensure the safety of our pipeline systems. To support the industry’s efforts, it is important that states have sufficient funding for their excavation damage prevention efforts, including state one call systems, public excavation damage prevention education, and effective excavation damage prevention enforcement.

#### **DISTRIBUTION INTEGRITY MANAGEMENT**

The 2006 PIPES Act required DOT to establish a regulation prescribing standards for integrity management programs for distribution pipeline operators. The DOT published the final rule establishing natural gas distribution integrity management program (DIMP) requirements on December 4, 2009. The effective date of the rule was February 12, 2010. Operators were given until August 2, 2011 to write and implement their program.

The DIMP final rule is a comprehensive regulation that provides an added layer of protection to the already-strong pipeline safety programs implemented by local distribution companies. It represents the most significant rulemaking affecting natural gas distribution operators since the inception of the federal pipeline safety code in 1971. It impacted more than 1,300 operators, 2.1 million miles of pipe, and 70 million customers. The final rule effectively took into consideration the wide differences that exist between natural gas distribution operators. It also allows operators to develop a DIMP plan that is appropriate for the operating characteristics of their distribution delivery system and the customers that they serve.

#### **PUBLIC EDUCATION/AWARENESS**

AGA appreciates DOT’s work with the public, emergency responders, and industry to improve the public’s awareness of pipelines and natural gas safety. The public awareness initiative has been successful and has effectively improved the public and emergency responders’ awareness of pipeline infrastructure and appropriate actions to be taken in the event of a pipeline emergency. We are eager to work with DOT to identify performance metrics that are critical in assessing program effectiveness. Industry is working to help ensure that 911 operators are identified as an important stakeholder audience and receive all needed pipeline awareness information. AGA and the industry look forward to continuing to work with all regulatory agencies to help improve the methods utilized to educate the public regarding pipeline awareness.

### **VERIFICATION OF MAXIMUM ALLOWABLE OPERATING PRESSURES**

There is significant uncertainty in the pipeline industry surrounding the method by which PHMSA will implement provisions in the 2011 Act pertaining to Maximum Allowable Operating Pressure (MAOP). PHMSA has developed the Integrity Verification Process (IVP), but has yet to incorporate this concept into a proposed rulemaking. While waiting for action by PHMSA, AGA members have completed a verification of records as mandated in the legislation, for class 3 and class 4 locations and class 1 and class 2 high consequence areas. However because proposed regulations pertaining to MAOP verification and the drafted IVP have not yet been published, and because what has been proposed by PHMSA varies significantly from the directive provided by Congress, operators are uncertain if their actions and use of state-of-the-art technologies, such as in-line inspection tools, to address missing or incomplete records will be nullified by future DOT regulations.

### **INCIDENT NOTIFICATION**

AGA members are committed to finding new and innovative ways to inform and engage stakeholders, including emergency responders, public officials, excavators, consumers and safety advocates and members of the public living in the vicinity of pipelines. AGA and INGAA sponsored a workshop that was presented by the National Association of State Fire Marshals. The workshop had approximately 60 emergency responders, PHMSA staff and 40 operator personnel in attendance. There are also a number of efforts at the state and local level to engage emergency responders, government officials and the public in pipeline safety efforts.

### **DATA COLLECTION AND INFORMATION SHARING**

Collecting quality data, data analysis, and data integration are all integral to making informed decisions on areas for potential pipeline safety improvement. AGA and PHMSA co-chair a data quality and analysis team made up of representatives from government, industry and the public, similar to the PHMSA technical advisory committees. The team analyzes data collected by PHMSA and determines opportunities to improve pipeline safety based on the analysis of that data. The team is also identifying gaps in data that are collected by PHMSA and others, opportunities to improve the quality of the collected data, and is working on consistent messages based on the data.

AGA has 16 technical committees and an Operations Managing Committee focusing on a wide range of operations and safety issues.

The technical committees develop and share information, including those issues raised by PHMSA, the National Transportation Safety Board, and other pipeline safety stakeholders. In addition, AGA has a Gas Utilities Operations Best Practices Program focused on identifying superior performing companies and innovative work practices that can be shared with others to improve operations and safety. AGA's newest information sharing initiative, launched in 2015, is the Peer Review Program. This program promotes open dialogue among program participants and aids natural gas distribution operators in continuing to elevate safety within the industry. AGA is also the Secretariat for the National Fuel Gas codes, the Gas Piping Technology Committee, and manages the Plastic Pipeline Database which includes more than 45,000 records of plastic material and component failures that have been voluntarily submitted by the industry.

#### **RESEARCH AND DEVELOPMENT**

More industry research is necessary to improve in-line inspection tool quality and capabilities, operator use of tool data, direct assessment tools, non-destructive testing and leak detection, and inspection tool platforms. Many pipeline companies have direct memberships in research consortiums and contribute towards research, development and deployment. These research consortiums include the Pipeline Research Council International (PRCI), NYSEARCH, Operations Technology Development (OTD), Utilization Technology Development (UTD) and Sustaining Membership Program (SMP). In the last five years, hazardous liquid and gas pipeline operators have contributed more than \$115 million to research and development. However, R&D cannot be successful without cooperative planning between industry and government. As noted above, AGA is committed to improving the transparent collaborative relationship with PHMSA that has historically enhanced pipeline safety R&D.

#### **SUMMARY**

The natural gas utility industry has a strong safety record. Recognizing the critical role that natural gas can and should play in meeting our nation's energy needs, we are committed to working with all stakeholders to consistently make improvements to the safety and reliability of our systems. To that end, we applaud this committee's focus on the common goal: to enhance the safe delivery of this vital energy resource.

Recent pipeline safety reauthorizations contained significant changes to pipeline safety programs. Many of these changes are not yet in federal regulation and others are in their infancy. PHMSA is working on a number of significant rules that will substantially change the federal gas pipeline safety regulations and the industry looks forward to the certainty that those final rules will bring.

Natural gas distribution companies are eager to take action on the aspects of the 2011 Act that have yet to be finalized, but their actions may be nullified if DOT's final regulations do not follow the specifics in the legislation. If there are differences, operations would then need to take additional actions or repeat their work, adding unnecessary cost to customers and a disruption to the public. AGA members desire a path forward with certainty rather than with uncertainty, duplicative actions, or additional cost burdens on their customers.

We would urge that we stay the course in developing comprehensive, risk based rules to comply with the legislation and provide the regulatory certainty that is essential to ensuring a safe and reliable natural gas distribution system. Many of these rules have been implemented recently and need time to work before assessing whether additional changes need to be made in order to enhance safety.

Natural gas is a key to our energy future and America's natural gas utilities are upgrading our delivery systems to meet this growing demand. We see a future where natural gas is the foundation fuel that heats our homes, runs our vehicles, and supports other forms of renewable energy and there is a tremendous opportunity for consumers and our nation as a whole through greater use of natural gas. We are building and continually improving our infrastructure to deliver on this promise.

1. Area of Review around gas storage wells and facilities to ensure that gas storage zones are adequately confined and no conduits will allow gas to migrate to protected water or the surface
2. Maintenance, safety, and emergency planning protocols developed by operators and approved by regulators

*Well Construction*

3. Basic well construction rules in place (including drilling, casing, cementing, completion, and evaluation)
4. Tubing and packer requirement – wells should be equipped with tubing and packer, which provides an additional layer of isolation and allows for more robust leak monitoring
5. Wellhead design – wellheads should be designed with appropriate redundancies and ability to perform maintenance activities under pressure
6. Safety devices – all wells should be equipped with automatic fail safe shut-off systems appropriate for the well's geology, condition, and operating parameters

*Maintenance/Testing*

7. Internal/External Mechanical Integrity Testing – wells should be regularly tested for ability to hold pressure and for cement integrity, both of which are critical to preventing leaks inside and adjacent to the well
8. Continuous annular pressure monitoring – this is a critical early warning system for leaks
9. Corrosion testing – this allows operators to discover potential leak sites before leaks occur
10. Surface equipment testing – this makes sure that the wellhead is functioning properly and not leaking
11. Leak detection – in addition to monitoring the subsurface aspects of the well for leaks, regular surface leak detection using best available technology

*Plugging and abandonment*

12. Timelines and standards for plugging wells when they do not meet safety or environmental standards, after a certain period of being idle, or at the end of their useful lives

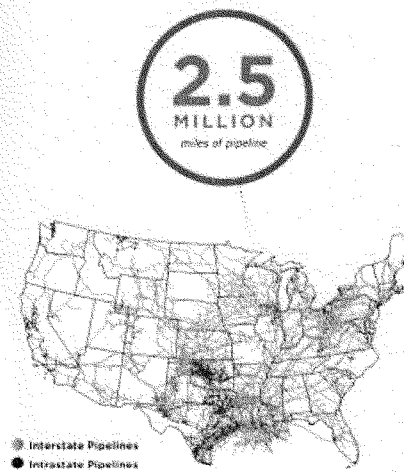
**4. What would be the effect of requiring the installation of subsurface safety valves for all wells, vintage wells, and/or wells whose depth is longer than a pre-determined threshold?**

All gas storage wells should be equipped with automatic fail-safe shut off valves. However, the safety valve solution appropriate to any particular well will depend on the well's characteristics, the operating parameters and the surrounding geology. Operators should work with regulators to determine the appropriate safety valve solution for each well in a gas storage project. In any case the safety valves should be regularly calibrated and tested per the manufacturers' recommended practices.

Attachment 1: Natural Gas Pipelines across the U.S.

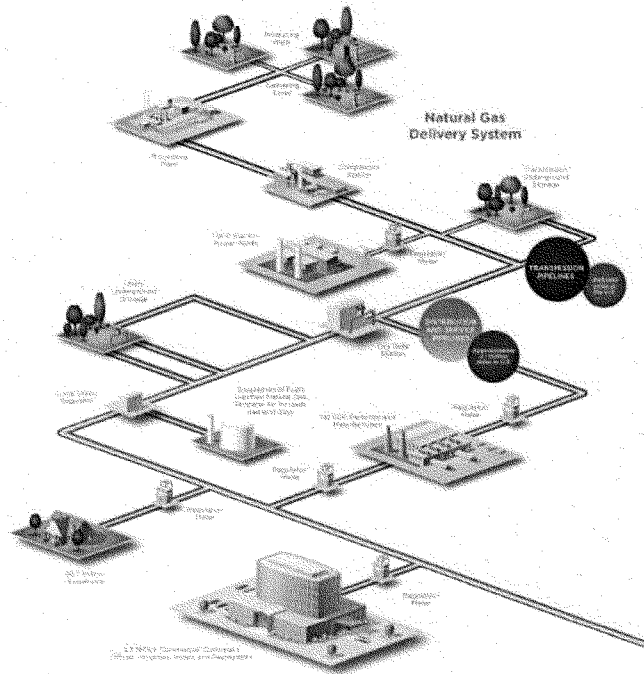
Safely transported  
**Across the  
Country**

Natural gas pipelines, which transport approximately one-fourth of the energy consumed in the U.S., are an essential part of the nation's infrastructure. Transportation by pipeline is the safest form of energy delivery in the country.



## Attachment 2: Natural Gas Delivery System

Natural Gas  
**Getting It to Homes and Businesses and  
 to Work for America**



Attachment 3: Regulators and Stakeholders

## Many Regulators and Stakeholders





**Attachment 4: AGA's Commitment to Enhancing Safety****AGA's Commitment to Enhancing Safety: Revised February 2016**

AGA and its members are dedicated to the continued enhancement of pipeline safety. As such, we are committed to proactively collaborating with federal and state regulators, public officials, emergency responders, excavators, consumers, safety advocates and the public to continue improving the industry's longstanding record of providing natural gas service safely, reliably and efficiently to 177 million Americans. AGA and its members support the development of reasonable regulations to meet federal objectives and National Transportation Safety Board recommendations.

Below are voluntary actions that are being taken by AGA or individual operators to help ensure safe and reliable operation of the nation's 2.5 million miles of natural gas pipeline which span all 50 states with diverse geographic and operating conditions. AGA and its individual operators recognize the significant role that their state regulators or governing bodies play in supporting and funding these actions.

It is the consensus of AGA members that the actions listed below enhance safety, gas utility operations, and reduce greenhouse gas emissions when implemented as an integral part of each operator's specific safety programs. However, both the need to implement and the timing of implementation of these actions will vary with each operator. Each operator will need to evaluate the actions in light of system and geographic variables, the operator's independent integrity assessment, risk analysis and mitigation strategy and what has been deemed reasonable and prudent by their state regulators. Therefore, not all of these recommendations will be applicable to all operators.

**Building Pipelines for Safety****Construction**

- Expand requirements of the Operator Qualification rule to include new pipeline construction.
- Review established pipeline construction oversight procedures to ensure adequacy and compliance with those procedures.
- Implement industry leading practices when installing new pipelines to help prevent damage to other facilities.

**Emergency Shutoff Valves**

- Support a risk based approach to the installation of automatic and/or remote control isolation valves where technically and operationally feasible on newly constructed or entirely replaced transmission lines.
- Work with regulatory agencies and policy makers to develop guidelines for consideration of automatic and/or remote control isolation valves on transmission lines that are in service.
- Expand the use of excess flow valves (EFVs) to new and fully replaced branch services, small multi-family facilities, and small commercial facilities where technically and operationally feasible.

**Operating Pipelines Safely****Integrity Management**

- Advance integrity management programs and principles to mitigate system specific risks. This includes operational activities, repair, replacement or rehabilitation of pipelines and associated facilities where it will most improve safety and reliability.
- Collaborate with stakeholders to develop and promote effective cost-recovery mechanisms to support pipeline assessment, repair, rehabilitation, and replacement programs.
- Develop industry guidelines for data management to advance data quality and knowledge related to pipeline integrity.
- Support development of processes and guidelines that enable the tracking and traceability of new pipeline components.

**Excavation Damage Prevention**

- Support strong enforcement of the 811 – Call Before You Dig program, and advocate for the reduction of excavator exemptions within state damage prevention laws.

- Improve engagement between the operator and excavators on the need to call before digging to reduce excavation damage.

#### **Physical and Cybersecurity/System Controls**

- Take actions that help strengthen the physical and cybersecurity of the gas utility industry.
- Enhance system monitoring and control of gas systems.

#### **Enhancing Pipeline Safety**

##### **Safety Knowledge Sharing**

- Expand the voluntary national Peer Review Program to allow companies to observe their peers, identify what is working well, identify opportunities to improve, and share leading practices.
- Evaluate the work of other industries to improve safety. Identify and implement models that will assist in enhancing safety and encourage knowledge exchange among operators, contractors, government and the public.

##### **Workforce Development**

- Collaborate with industry, government, educational institutions and labor groups to develop solutions to address the need for a qualified, diverse workforce.

##### **Public Awareness and Emergency Response**

- Evaluate methods to effectively communicate with public officials, excavators, consumers, safety advocates and the public about the presence of pipelines. Implement tested and proven communication methods to enhance those communications.
- Partner with emergency responders to share information and improve emergency response coordination.

##### **Pipeline Planning Engagement**

- Work with a coalition of Pipelines and Informed Planning Alliance (PIPA) Guidance stakeholders to increase awareness of risk based land use options and adopt existing PIPA recommended best practices.

##### **Advancing Technology Development**

- Increase investment, continue participation, and support research, development and deployment of technologies to improve safety.

#### **AGA's Commitment to Enhancing Safety: Industry Actions That Exceed 49 CFR Part 192**

##### **Building Pipelines for Safety**

###### **Construction**

- Maintain a clearinghouse on effective cost-recovery mechanisms that states have used to fund infrastructure repair, replacement and rehabilitation projects.

###### **Emergency Shutoff Valves**

- Install EFVs on new and fully replaced branch services, small multi-family facilities, and small commercial facilities where technically and operationally feasible.

##### **Operating Pipelines Safely**

###### **Integrity Management**

- Advocate programs to accelerate the risk-based repair, rehabilitation and replacement of pipelines.
- Support development of processes and guidelines that enable tracking and traceability of pipeline components.
- Continue the Plastic Pipe Database Committee's work to collect and analyze plastic material failures.
- Incorporate systems and/or processes to reduce human error.
- Promote the use of API RP 1171, *Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs*, and API RP 1170, *Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage*. This includes teleconferences, workshops and roundtables to share lessons learned from companies voluntarily adopting the recommended practices.

###### **Excavation Damage Prevention**

- Use a risk-based approach to improve excavation monitoring.
- Support the Common Ground Alliance, the use of 811 and other damage prevention initiatives through outreach, education, intervention and enforcement.
- Influence and/or support state legislation to strengthen damage prevention programs.
- Encourage participation in One-Call by all underground operators and excavators.

###### **Physical and Cybersecurity/System Controls**

- Participate in a Downstream Natural Gas Information Sharing & Analysis Center (DNG ISAC).
- Conduct cybersecurity vulnerability assessments.
- Collaborate with government to develop and implement guidance, such as DOE ONG-C2M2, DOE Energy Sector & TSA Transportation Sector Framework Implementation Guidance and NIST Energy Sector Cybersecurity Framework Implementation Guidance
- Create industry guidance and hold events to strengthen the physical and cybersecurity of the natural gas infrastructure, including the *Natural Gas Utility Threat Analysis Elements & Mitigations Guidance*,

*Cybersecurity Procurement Language Guidance*, an AGA Energy Delivery Cybersecurity Executive Summit, cyber threat analysis workshops, insider threat workshops, workshops on the Oil and Natural Gas Cybersecurity Capability Maturity Model (ONG C2M2), and an annual AGA/EEI Security Conference.

#### **Enhancing Pipeline Safety**

##### **Pipeline Safety Management Systems**

- Promote the use of API RP 1173, Pipeline Safety Management System (PSMS) Recommended Practice, including piloting of the PSMS, teleconferences and workshops to share lessons learned, and tools that can help the industry implement the PSMS.
- Promote the AGA Safety Culture Statement and a positive safety culture throughout the natural gas industry.

##### **Safety Knowledge Sharing**

- Continue AGA Board Safety Committee initiatives, such as sharing lessons learned through the Safety Information Resource Center, safety alerts through the AGA Safety Alert System, safety communications with customers, supporting AGA's Safety Culture Statement, and holding an annual Executive Leadership Safety Summit.
- Recognize statistical top safety performers, promote safety performance and encourage knowledge sharing through AGA Safety Awards.
- Continue the work of the AGA Best Practices Programs to identify superior performing companies and innovative work practices that can be shared with others to improve operations and safety.
- Conduct workshops, teleconferences, discussion groups, and other events to share information including pipeline safety reauthorization, DIMP/TIMP, fitness for service, records, in-line inspection, emergency response, and other key safety initiatives

##### **Workforce Development**

- Support of the efforts of the Center for Energy Workforce Development, Energetic Women, natural gas boot camps, regional gas associations, and educational institutes on solutions to address the need for a qualified, diverse workforce.

##### **Public Awareness and Emergency Response**

- Explore ways to educate, engage and provide appropriate information to stakeholders to increase pipeline public awareness and the need to call if you smell gas.
- Support public awareness programs targeted at damage prevention and pipeline safety awareness
- Use industry training facilities and evaluate opportunities to expand outreach/education programs to external stakeholders.
- Reach out to emergency responder community in order to enhance emergency response capabilities.
- Collaborate with stakeholders near existing transmission lines to increase awareness/adoption of appropriate PIPA recommended best practices.
- Conduct organizational response drills to improve emergency preparedness.
- Participate in state, regional and national multi-agency emergency response training exercises.
- Support industry participation in a mutual assistance program.
- Search for new and innovative ways to inform, engage and provide appropriate information to stakeholders, including emergency responders, public officials, excavators, consumers, safety advocates, and the public living near pipelines.
- Educate the Pipeline Safety Trust and other public stakeholders on distribution and intrastate transmission pipelines, AGA and industry initiatives to improve pipeline safety, and receive input.
- Develop publications dedicated to improving safety and operations.

##### **Pipeline Planning Engagement**

- Build an active coalition of AGA member representatives to work with PHMSA and other stakeholders to implement PIPA recommended practices pertaining to encroachment around existing transmission pipelines

##### **Advancing Technology Development**

- Support R&D investment, pilot testing and technology implementation.
- Work with PHMSA and other stakeholders on opportunities to increase R&D funding and deployment of technologies.
- Advocate to state commissions the inclusion of research funding in rate cases.

#### ***AGA's Commitment to Enhancing Safety: Actions Completed***

##### **Building Pipelines for Safety**

###### **Construction**

- ✓ Review and revise established construction procedures to provide for appropriate (risk-based) oversight of contractor installed pipeline facilities.
- ✓ Extend Operator Qualification to include tasks related to new main & service construction.
- ✓ Implement applicable portions of AGA's technical guidance document, "Oversight of new construction tasks to ensure quality."

###### **Emergency Shutoff Valves**

- ✓ Expand EFV installation beyond single family residential homes to small commercial and multi-family residential services.

- ✓ Begin risk-based evaluation on the use of automatic shutoff valves, remotely controlled valves or equivalent technology in HCAs.

#### **Operating Pipelines Safely**

##### **Integrity Management**

- ✓ Confirm the established Maximum Allowable Operating Pressure (MAOP) of transmission pipelines.
- ✓ Under DIMP, evaluate risk associated with trenchless pipeline techniques and implement initiatives to mitigate risks.
- ✓ Under DIMP, identify distribution assets where increased leak surveys may be appropriate.
- ✓ With PHMSA, create a Data Quality & Analysis Team to analyze data PHMSA collects, determine what the data is telling us, issue reports, identify missing information and how best to collect that data, and key metrics that indicate safety concerns.
- ✓ Implement appropriate meter set protection practices identified through AGA Gas Utility Best Practices Program.

##### **Excavation Damage Prevention**

- ✓ Implement applicable portions of AGA's technical guidance, "Ways to improve engagement between operators & excavators."

##### **Physical and Cybersecurity/System Controls**

- ✓ Create a DNG ISAC.
- ✓ Create a Cybersecurity Task Force to develop products and programs that strengthen cybersecurity.
- ✓ Conduct an all hazard threat analysis and physical security benchmarking survey.
- ✓ Work with TSA to develop and implement Pipeline Security Guidelines.
- ✓ Create a Cybersecurity Assessment Program, including workshops that will allow industry to address their cybersecurity risks.
- ✓ Hold workshops and events: Workplace Violence Prevention & Insider Threats, SCADA, Control Room Management.

#### **Enhancing Pipeline Safety**

##### **Safety Knowledge Sharing**

- ✓ Create a voluntary AGA Peer Review Program that allows subject matter experts from gas utilities to review peer companies, identify areas that are working well and areas for potential improvement.
- ✓ Work with INGAA, API, AOPL, Canadian Gas Association and Canadian Energy Pipeline Association on a comprehensive safety management study that explores initiatives currently utilized by other sectors and the pipeline industry.
- ✓ Create a Safety Information Resources Center for the sharing of safety information.
- ✓ Hold regional operations executives' roundtables annually to discuss safety initiatives.
- ✓ Annually host roundtables focused on operator experience and lessons learned during the AGA Operations Conference.
- ✓ Develop guidance: To determine a distribution or transmission pipeline's fitness for service and MAOP, and the critical records needed for that determination; For oversight of new construction tasks to ensure quality; For trenchless pipeline installations; That presents benefits and disadvantages of the installation of ASV/RCV block valves on new, fully replaced and existing transmission pipelines; On intergenerational transfer of knowledge for Field Supervisors; Emergency response; Natural gas infrastructure physical security.

##### **Workforce Development**

- ✓ Annual AGA Executive Leadership Development Program.
- ✓ Annual Center for Energy Workforce Development (CEWD) Summits.
- ✓ Create an AGA Diversity & Inclusion Task Force.
- ✓ Participate in government/industry initiatives to foster workforce development, such as the Utility Workforce Advisory Council composed of the Departments of Energy, Defense, Labor, Veterans Affairs; AGA, Edison Electric Institute, Nuclear Energy Institute, National Rural Electric Cooperative Association, American Public Power Association, International Brotherhood of Electrical Workers, Utility Workers Union of America, and CEWD.

##### **Public Awareness and Emergency Response**

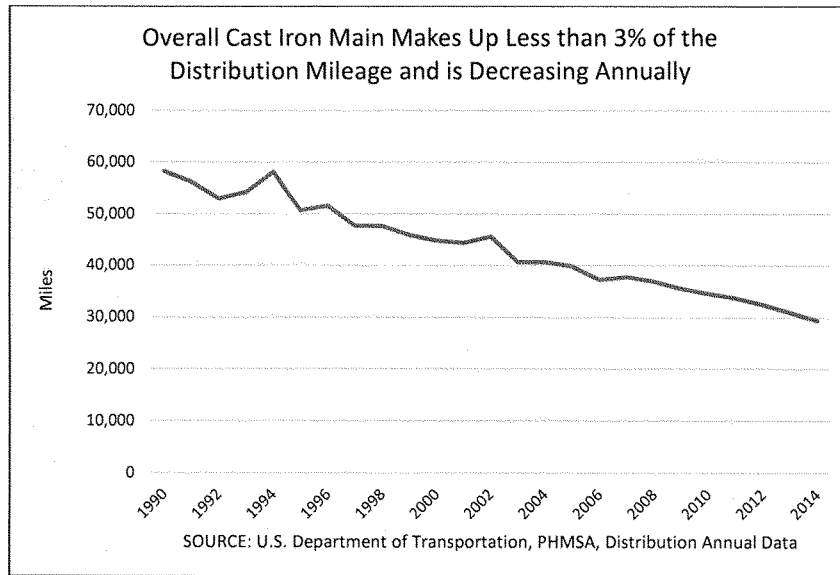
- ✓ Incorporate an Incident Command System (ICS) type of structure into emergency response protocols.
- ✓ Integrate applicable provisions of AGA's emergency response white paper and checklist into emergency response procedures.
- ✓ Create a Safety Alert Notification System that will allow AGA or its members to quickly notify other AGA members of safety issues that require immediate attention.
- ✓ Develop an Emergency Planning Resource Center and a Mutual Assistance Database.
- ✓ Implement AGA discussion groups to address safety issues including technical training and knowledge transfer, material supply chain issues, DIMP implementation, TIMP risk models, Pipeline Safety Management Systems, pipeline safety/compliance/oversight, GPS/GIS and work management systems, contractor/quality management, management of company standards, odorization, compressor operations, public awareness, and damage prevention.

##### **Pipeline Planning Engagement**

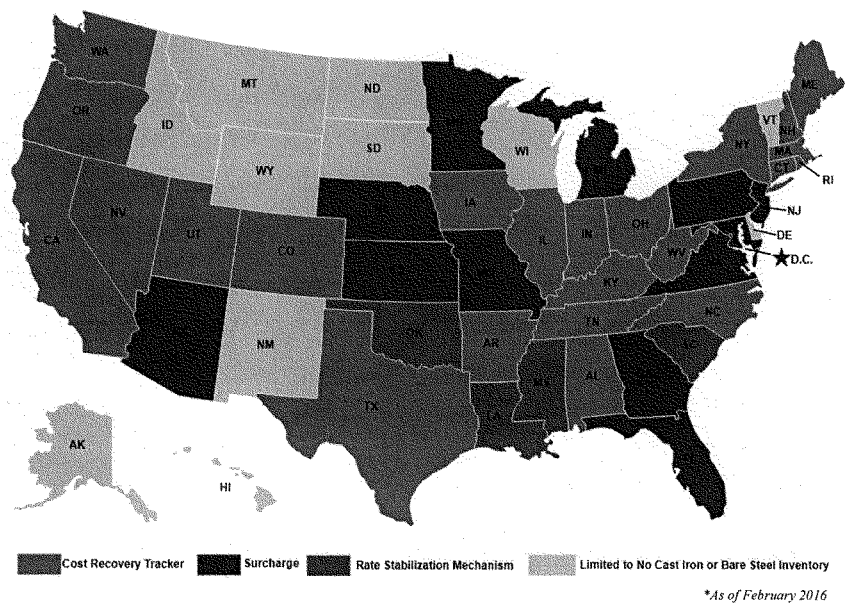
- ✓ Develop a task group comprised of AGA staff and members to work closely with Pipelines and Informed Planning Alliance (PIPA) to ensure AGA member concerns are addressed in joint PIPA initiatives.

**Advancing Technology Development**

- ✓ Work with INGAA, research consortiums and other pipeline trade associations to provide the NTSB with a compilation of the progress that has been made in advancing in-line inspection technology.

**Attachment 5: Overall Cast Iron Main**

**Attachment 6: States with Accelerated Infrastructure Replacement Programs**



- *The overall trend is positive*
- *States address this issue differently*
- *The basis for these decisions is always just and reasonable rates for consumers*

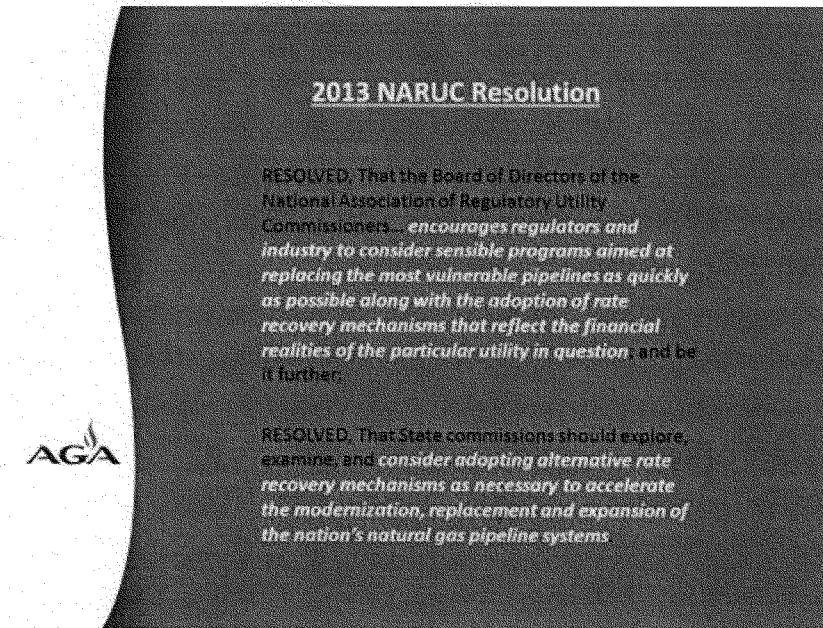
Attachment 7: States with Limited to No Cast Iron or Bare Steel Inventory

| <u>State</u>  | <u>Main -Steel<br/>Unprotected<br/>Bare (Miles)</u> | <u>Main -<br/>Cast/Wrought<br/>Iron (Miles)</u> | <u>Estimated<br/>Miles of<br/>Services -<br/>Steel<br/>Unprotected<br/>Bare</u> | <u>Estimated<br/>Miles of<br/>Services -<br/>Cast/Wrought<br/>Iron</u> |
|---------------|---|---|---|--|
| <u>AK</u>     | <u>0</u>  | <u>0</u>  | <u>0.00</u>   | <u>0.00</u>  |
| <u>DE</u>     | <u>11.122</u>                                       | <u>82.173</u>                                   | <u>9.97</u>   | <u>0.00</u>  |
| <u>HI</u>     | <u>105</u>  | <u>0</u>  | <u>86.06</u>  | <u>0.00</u>  |
| <u>ID</u>     | <u>0</u>  | <u>0</u>  | <u>0.00</u>   | <u>0.00</u>  |
| <u>MT</u>     | <u>5.43</u>   | <u>0</u>  | <u>6.98</u>   | <u>0.00</u>  |
| <u>ND</u>     | <u>0</u>  | <u>0</u>  | <u>0.00</u>   | <u>0.00</u>  |
| <u>NM</u>     | <u>6</u>  | <u>0</u>  | <u>0.0</u>  | <u>0.0</u>   |
| <u>SD</u>     | <u>0.068</u>  | <u>2.65</u>                                     | <u>3.20</u>   | <u>0.00</u>  |
| <u>VT</u>     | <u>0</u>  | <u>0</u>  | <u>0.00</u>   | <u>0.00</u>  |
| <u>WI</u>     | <u>0</u>  | <u>0</u>  | <u>0.00</u>   | <u>0.00</u>  |
| <u>WY</u>     | <u>0</u>  | <u>0</u>  | <u>22.67</u>  | <u>0.00</u>  |
| <u>Totals</u> | <u>127.62</u>                                       | <u>84.823</u>                                   | <u>128.88</u>   | <u>0</u>   |

Source: U.S. Department of Transportation Data

- *Alaska, Idaho, North Dakota, Vermont and Wisconsin have finished replacing their cast iron and bare steel pipe*
- *Wyoming has finished replacing its cast iron and bare steel main, and has a limited quantity of bare steel services remaining*
- *Other states on the list are on the verge of completing their cast iron and bare steel replacement*



Attachment 8: NARUC Resolution

Mr. WHITFIELD. Thank you, Mr. Bradley. Our next witness is Mr. Andrew Black. I am delighted to have you back at the Energy and Commerce Committee, Andy. He is president and CEO of the Association of Oil Pipelines and also, my understanding, testifying on behalf of API. So you are recognized for 5 minutes.

#### STATEMENT OF ANDREW BLACK

Mr. BLACK. Thank you, chairman, ranking member. The Association of Oil Pipelines who deliver crude oil, refined products like gasoline, diesel fuel, and jet fuel and natural gas liquids such as propane. As the chairman indicated, I am also testifying on behalf of the American Petroleum Institute.

Our U.S. pipelines safely deliver more than 16.2 billion barrels of crude oil and energy products a year. Pipelines play a critical role in delivering energy to American workers and families. Americans use the energy our pipelines deliver in their cars and trucks to commute to work or drive on the job, provide rural heating and crop drying and support good paying manufacturing jobs. The average barrel of crude oil or petroleum products reaches its destination safely, by pipeline, greater than 99.999 percent of the time.

Addressing Mr. McKinley's question earlier, according to PHMSA data, significant liquids pipeline incidents that could affect high-consequence areas are down 8 percent over the last 5 years. Significant incidents per mile that are over 50 barrels in size are down 19 percent over the last 5 years. But even with these positive pipeline safety performance numbers, the member companies of AOPL and API are constantly working to improve pipeline safety further.

Last year, operators completed development of a number of industry-wide recommended practices and technical reports to improve our ability to detect pipeline cracking, integrate safety data, manage safety efforts holistically, manage leak detection programs, and better plan for and respond to pipeline emergencies.

This year, we turn to implementation of these safety recommendations industry wide. A prime example is our effort to encourage and assist implementation of API Recommended Practice 1173 for pipeline safety management systems. Recommended by the NTSB and developed in conjunction with PHMSA and state pipeline regulators, this tool is helping pipeline operators comprehensively manage all the safety efforts underway across the company. The aviation, nuclear power, and chemical manufacturing industries have benefitted from safety management systems. Now more pipeline operators are benefitting, too.

This year, pipeline operators will also complete expansion of industry wide recommended practice on river crossings, develop a new one for construction quality management, and update industry-wide recommendations for pipeline integrity program management. This last safety improvement action brings us to last summer's pipeline release near Refugio, California. We echoed Transportation Secretary Foxx calling the preliminary instant report from PHMSA "an important step forward that will help us learn what went wrong so that everyone involved can take action and ensure that it does not happen again." Our members are committed to doing just that.

PHMSA's preliminary factual findings could be described as the what of the incident. We expect PHMSA's final report later this year will contain root cause analysis and recommendations describing the still unknown how and why this incident occurred. At a minimum, we know there is opportunity for further industry-wide discussion and perhaps guidance for those operators that use the specific type of pipe involved in that incident, insulated pipe transporting heated crude. As part of our update of this industry-wide integrity management guidance, we will ensure learnings from industry-wide review and PHMSA incident report recommendations are reviewed and incorporated where appropriate. The effort should be finished later this year, far more expeditiously than could occur through an agency notice and comment rulemaking process.

Turning to the next reauthorization, there is still much left for PHMSA to do from the 2011 law. PHMSA is working to finalize a broad liquids pipeline rulemaking as the administrator said, and may propose a rulemaking on valves soon.

We commend Congress for its recent oversight in PHMSA, which has resulted in the administration issuing several rulemaking proposals and promising additional proposals and we encourage your ongoing oversight. Pipeline operators have not stood by and instead have advanced safety initiatives on inspection technology, cracking, data integration, safety management, leak detection, and emergency response. With the numerous recent industry initiatives addressing current pipeline safety topics, and additional PHMSA regulatory actions still to come, we encourage Congress to reauthorize the pipeline safety program soon without adding significant new provisions.

Upon a brief review of the committee's discussion draft, AOPL and API would find it difficult to support the draft with the inclusion of Section 15. Private mandamus civil actions to compel agencies to perform certain duties have earned the moniker "sue and settle" because of their abuse at agencies such as EPA. A Chamber of Commerce report identified 60 cases of "sue and settle" lawsuits from 2009 to 2012 resulting in 100 new EPA regulations costing from tens of millions to billions of dollars each. "Sue and settle" circumvents public participation, dilutes congressional oversight, bypasses standard administration review and analysis, and it limits agency transparency.

In January, the House expressed its concern with "sue and settle" abuse by passing H.R. 712, reforming these processes in legislation that sadly appears unlikely to become public law. We urge that Section 15 be removed from the draft.

Thank you for inviting me here today and I look forward to answering any questions.

[The prepared statement of Mr. Black follows:]

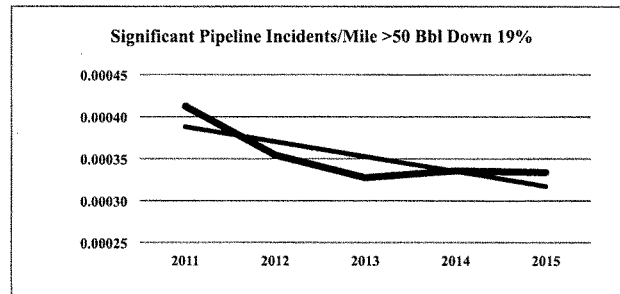
**Testimony of Andrew J. Black**  
**Association of Oil Pipe Lines, President & CEO**  
**before the**  
**U.S. House Committee on Energy & Commerce**  
**Subcommittee on Energy & Power**  
 March 1, 2016

Thank you. I am Andy Black, President and CEO of the Association of Oil Pipe Lines (AOPL). I am also testifying today on behalf of the American Petroleum Institute (API). We represent transmission pipeline operators who deliver crude oil, refined products like gasoline, diesel fuel and jet fuel, and natural gas liquids such as propane and ethane. Our U.S. pipelines extend over 199,000 miles throughout the country, safely delivering more than 16.2 billion barrels of crude oil and energy products a year.

Pipelines play a critical role in delivering energy to American workers and families. Americans use the energy our pipelines deliver in their cars and trucks to commute to work or drive on the job. Our pipelines also transport products like propane that farmers use for rural heating and crop drying and raw materials such as ethane that American workers use for their good-paying manufacturing jobs.

Pipelines are an exceedingly safe way to deliver the energy America needs. The average barrel of crude oil or petroleum products reaches its destination safely by pipeline greater than 99.999 percent of the time. According to Pipeline and Hazardous Materials Safety Administration (PHMSA) data, significant liquids pipeline incidents that could affect an environmentally sensitive area or population center, so-called "high consequence areas", are down 8 percent over the last 5 years. Significant liquids pipeline incidents per mile that are over

50 barrels in size are down 19 percent over the last 5 years meaning incidents of significant size are not increasing, but decreasing.



Data Source: PHMSA Pipeline Safety - Flagged Incidents at [www.phmsa.dot.gov](http://www.phmsa.dot.gov)

Even with these positive pipeline safety performance numbers, the member companies of AOPL and API are constantly working to improve pipeline safety even further. While pipelines may be one of the safest modes of energy transportation, our ultimate goal is zero pipeline incidents. While pipeline incidents compared to the amount of product we deliver are infrequent, we are committed to continuously developing new ways to improve pipeline safety.

The AOPL and API *Pipeline Safety Excellence* initiative embodies the work of nearly a dozen industry-wide pipeline groups to improve pipeline operations and safety. We are funding research and development on pipeline inspection technologies, enhancing our threat detection and response capabilities, expanding safety culture and management systems, and boosting our emergency response capabilities.

In 2015, liquids pipeline operators completed development of a number of industry-wide recommended practices and technical reports to improve our ability to detect pipeline cracking, integrate safety data, manage safety efforts holistically, manage leak detection programs, and better plan for and respond to pipeline emergencies.

With development now complete, we have turned in 2016 to the implementation of these safety recommendations industry-wide and throughout the country. A prime example is our effort to encourage and assist implementation of the API Recommended Practice (RP) 1173 for Pipeline Safety Management Systems. Recommended by the National Transportation Safety Board (NTSB) and developed in conjunction with PHMSA and state pipeline regulators, Pipeline Safety Management Systems is helping pipeline operators comprehensively and holistically manage all the safety efforts underway across a company. Other industry sectors, such as aviation, nuclear power and chemical manufacturing, have benefited from safety management systems. Now, more pipeline operators are benefiting, too.

Pipeline Safety Management System RP implementation efforts by liquids pipeline operators include:

- *Implementation Workshop* - Mid-level managers responsible for implementing the pipeline safety management system recommended practice gathered in Houston last week for a full day meeting to share implementation strategies

- *Implementation Overview Booklets* – Three handy, easy to digest implementation overview booklets describing the new recommended practice, illustrating its benefits to pipeline operators, and providing implementation advice;
- *Gap Analysis Tool* – An implementation tool for operators to analyze their current programs, compare them to the new recommended practice, and identify any gaps requiring implementation action;
- *Peer-to-Peer Guide* – An implementation tool to facilitate small groups of pipeline operators coming together and sharing their pipeline safety management system challenges and successes;
- *Evaluation Tool* – An evaluation tool expected later this year to help pipeline operators identify and review the 100-plus key activities associated with the Pipeline Safety Management System RP; and
- *Implementation Website* – This resource will serve as a repository for all the booklets and tools for operators, as well as a location for information allowing the public to learn more about the value of a safety management system.

In addition to these implementation activities, in 2016 pipeline operators within AOPL and API will also complete expansion of industry-wide guidance on river crossings, develop a new recommended practice for construction quality management, and update our industry-wide recommended practice for pipeline integrity program management, API RP 1160.

This last safety improvement action brings us to last summer's pipeline release in Refugio, California. Pipeline operators recognize the impacts a spill can have on surrounding

communities and the environment. The operator involved in this incident has expressed regret for the hardship this incident has caused and has worked with authorities on appropriate post-incident actions.

From an industry-wide perspective, we echo the words of Transportation Secretary Foxx last week at the release of PHMSA's preliminary incident report calling it, "an important step forward that will help us learn what went wrong, so that everyone involved can take action and ensure that it doesn't happen again." AOPL and API members are committed to using the lessons learned from the incident to take industry-wide action to prevent a release like this from happening again.

The February 17, 2016, PHMSA preliminary factual findings could be described as the "what" of the Refugio incident. Therein PHMSA provided a chronology of events the day of the incident and a basic rupture location description. We eagerly anticipate PHMSA's final report later this year with root cause analysis and recommendations describing the still unknown "how" and "why" this incident occurred.

We know that the pipe operated in this incident was different than the majority of pipelines operating across the country. As the report indicated, the pipe at Refugio involved insulated pipe transporting heated crude oil. Pipe in much of the rest of the country does not transport heated crude, and therefore, does not have an extra insulation layer. Whether and how these factors contributed to the corrosion, how fast it spread, possible interference with smart pig results, the access of moisture to the pipe surface, or the ability of cathodic protection systems to



ward away corrosion are still unknowns. Without this information, we do not know if the incident was rooted in the unique pipe attributes or whether there are broader nationwide lessons to be learned.

At a minimum, we know there is opportunity for further industry-wide discussion and perhaps guidance for those operators that use heated insulated pipe systems. Further, many of the operators running these systems are already taking action above and beyond current integrity practices. We want to ensure all operators in the pipeline industry have access to the benefits of this knowledge. This year, as part of our 2016 update of API RP 1160 on pipeline integrity management, we will ensure lessons learned from industry-wide review and discussion of these matters and PHMSA Refugio incident report recommendations are reviewed and incorporated where appropriate. This will be in addition to liquids pipelines incorporating lessons learned on crack management, data integration and pipeline safety management systems. Coming in 2016, the revised RP 1160 will accelerate implementation efforts more expeditiously than could occur through an agency notice and comment rulemaking process.

As we move closer to the next reauthorization of the national pipeline safety program, there is still much left for PHMSA to do from the 2011 reauthorization law. PHMSA is working to finalize a broad liquids pipelines rulemaking, which was started before the 2011 law was enacted. A PHMSA rulemaking on valves from the 2011 law likely to be proposed this spring will also not be finalized until later this year or beyond. We commend Congress for its recent oversight of PHMSA, which has resulted in the Administration issuing several rulemaking proposals and promising additional proposals, and encourage your ongoing oversight. PHMSA

under its new leadership has certainly expressed its resolve to move expeditiously to meet its statutory and regulatory mandates.

As described above, pipeline operators have not stood by, and instead have advanced safety initiatives on inspection technology, cracking, data integration, safety management, leak detection and emergency response. With the numerous recent industry initiatives addressing current pipeline safety topics and additional PHMSA regulatory actions still to come, we encourage Congress to reauthorize the PHMSA pipeline safety program soon without adding significant new provisions.

Upon a brief review, and pending closer review in the coming days, AOPL and API would find it difficult to support the Committee's February 26 Discussion Draft with the inclusion of Section 15 (Actions by private persons). Section 15 is placed in brackets presumably because its inclusion is tentative.

Private mandamus civil actions to compel agencies to perform non-discretionary duties have earned the moniker "sue and settle" because of their abuse at agencies such as the U.S. Environmental Protection Agency. "Sue and settle" cases such as those allowed by Section 15:

- circumvent public participation with settlement agreements negotiated in private and approved by a court containing quick deadlines for regulatory action and sometimes even substantive agreements that agencies are reluctant to change given the prior court approval;

- bypass review and analysis provided by Executive Orders and the Office of Management and Budget;
- limit agency transparency because agencies often times do not reveal notice of a suit or filings until a settlement agreement is worked out with private parties and filed with the court; and
- diminish Congressional oversight of agencies because agencies are bound by settlements reached with private parties, which can require appropriations for compliance and override Congressionally set priorities.

A 2013 report<sup>1</sup> by the U.S. Chamber of Commerce documented special interest advocacy groups between 2009 and 2012 brought 60 “sue and settle” lawsuits resulting in 100 new EPA regulations costing from tens of millions to billions of dollars each.

In January, the House expressed its concern with “sue and settle” abuse by passing H.R. 712, the “Sunshine for Regulatory Decrees and Settlements Act of 2015”, by a vote of 244-173. H.R. 712 would require agencies provide public notice of a potential sue and settle agreement, require public comment on the proposed settlement agreement and an agency response, allow for a public hearing, and require submission of these materials to the court with the proposed settlement. To date, the Senate has not acted on the House bill, making the protections of H.R. 712 becoming law uncertain at best.

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<sup>1</sup> U.S. Chamber of Commerce, Sue and Settle: Regulating Behind Closed Doors, May 2013 <http://uscham.com/1uKMTToQ>.

AOPL and API would oppose any expansion of Section 12 (Requirements for certain hazardous liquid pipeline facilities) to a broader set of pipelines or an even higher set of requirements. Deep water crossings should be, and are, given an added layer of protection in PHMSA regulations and pipeline operator practices. PHMSA regulations already require special treatment for water crossings and extensive risk assessments in which pipeline operators develop inspection programs appropriate to reflect those risks. PHMSA regulations currently and rightfully require pipeline operators to schedule inspections reflecting the type, condition, operational history, construction technique and manufactured properties of a pipeline. Widespread arbitrary inspection requirements unsupported by pipeline integrity management principles could divert safety spending away from other pipelines and segments identified as requiring attention and toward areas without established risk.

Thank you for inviting me here today, and I look forward to answering any questions you may have for me.

####

Mr. WHITFIELD. Thank you, Mr. Black. Our next witness is Mr. Donald Santa who is president and CEO of the Interstate Natural Gas Association of America.

Welcome back, Mr. Santa, and you are recognized for 5 minutes.

#### STATEMENT OF DONALD SANTA

Mr. SANTA. Good morning and thank you, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. My name is Donald Santa, and I am president and CEO of the Interstate Natural Gas Association of America, or INGAA. INGAA represents interstate natural gas transmission pipeline operators in the U.S. and Canada. The pipeline systems operated by INGAA's 24 member companies are analogous to the interstate highway system, transporting natural gas across state and regional boundaries.

INGAA testified before this subcommittee last July regarding pipeline safety and reauthorization of the Pipeline Safety Act. In that testimony, I outlined INGAA's safety commitments, undertaken in 2011, and the most recent amendments to the law that specifically affect natural gas transmission safety programs. I direct my testimony today to the specifics of the draft reauthorization bill now before the subcommittee.

INGAA has consistently advocated three goals in connection with the pending reauthorization of the Pipeline Safety Act. These goals are first, establish authorized funding levels for the pipeline safety programs at PHMSA for the next 4 fiscal years; second, continue to focus PHMSA rulemaking resources on the completion of the remaining mandates from the 2011 reauthorization, with one exception below; and third, that exception, create federal minimum safety standards and regulations for underground natural gas storage facilities.

The discussion draft meets these three goals. There is also very similar to the bill, S.2276, approved last December by the Senate Committee on Commerce, Science and Transportation. That legislation is now pending before the full Senate and may be approved as early as this week. We appreciate that this subcommittee's discussion draft parallels the Senate bill in most respects because this will make it far easier to conference the two bills.

A few quick points. First, the fiscal years covered by this authorization. The Senate legislation covers fiscal years 2016 through 2019. This technically would be a 4-year authorization. As a practical matter, fiscal year 2016 has already been appropriated, and by the time this legislation is enacted, the current fiscal year will be close to an end. For this truly to be a 4-year authorization, INGAA suggests beginning with the fiscal year 2017 authorization or in the alternative, making the authorization effective through fiscal year 2020.

Second, we agree with the manner in which the underground natural gas storage section was drafted and especially the clarification that PHMSA may delegate to a state the authority to regulate intrastate storage facilities. This provision has our support.

Discussion draft, however, differs from the Senate bill in one important respect. Namely, the draft includes a provision that would allow an individual petition a federal district court to enjoin PHMSA in connection with that agency's alleged failure to act. As

explained further in my written testimony, INGAA believes that this provision is ill-advised. It would allow the priorities of individual parties and the judgment of a federal district court judge to supplant the pipeline safety priorities and the allocation of agency resources established by PHMSA pursuant to the guidance provided by Congress. INGAA would seriously consider opposing the Pipeline Safety Bill if this provision were included.

My written testimony includes comments on several other provisions in the draft bill which in the interest of time I will omit for my oral statement.

Mr. Chairman, thank you for the opportunity to provide INGAA's views on the discussion draft. I would be happy to answer your questions at the appropriate time.

[The prepared statement of Mr. Santa follows:]

**STATEMENT OF  
DONALD F. SANTA  
PRESIDENT AND CEO  
THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

**BEFORE THE  
SUBCOMMITTEE ON ENERGY AND POWER  
COMMITTEE ON ENERGY AND COMMERCE  
U.S. HOUSE OF REPRESENTATIVES**

**REGARDING  
LEGISLATIVE HEARING TO EXAMINE PIPELINE SAFETY  
REAUTHORIZATION**

**MARCH 1, 2016**

Good morning Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. My name is Donald F. Santa, and I am President and CEO of the Interstate Natural Gas Association of America, or INGAA. INGAA represents interstate natural gas transmission pipeline operators in the U.S. and Canada. The pipeline systems operated by INGAA's 24 member companies are analogous to the interstate highway system, transporting natural gas across state and regional boundaries.

INGAA testified before this subcommittee last July regarding pipeline safety and reauthorization of the Pipeline Safety Act. In that testimony, I outlined INGAA's safety commitments, undertaken in 2011, and the most recent amendments to the law that specifically affect natural gas transmission safety programs. I direct my testimony today to the specifics of the draft reauthorization bill now before the subcommittee.

**Summary**

The discussion draft is very similar to the bill (S. 2276) approved last December by the Senate Committee on Commerce, Science and Transportation. That legislation is now pending before the full Senate and may be approved as early as this week. We appreciate that this committee's discussion draft parallels the Senate version in most respects, because this will make it far easier to conference the two bills. The discussion draft, however, differs from the Senate bill in one important respect.

Namely, the draft includes a provision that would allow an individual to petition a federal district court to enjoin the Pipeline and Hazardous Material Safety Administration (PHMSA) in connection with that agency's alleged failure to act. As explained further in this testimony, INGAA believes this provision is ill-advised. It could allow the priorities of individual parties and the judgment of a federal district court judge to supplant the pipeline safety priorities, and the allocation of agency resources, established by PHMSA pursuant to the guidance provided by Congress. INGAA would seriously consider opposing the pipeline safety bill if this provision were included.

**INGAA Comments on Draft**

INGAA has consistently advocated three goals in connection with the pending reauthorization of the Pipeline Safety Act. These goals are:



1. Establish authorized funding levels for the pipeline safety programs at PHMSA for the next four fiscal years;
2. Continue to focus PHMSA rulemaking resources on the completion of the remaining mandates from the 2011 reauthorization (2011 Act), with one key exception below; and
3. Create federal minimum safety standards and regulation for underground natural gas storage facilities.

INGAA expressed concerns about several amendments to S. 2276 that were offered and ultimately adopted during the Senate committee markup last December. Nonetheless, we support the underlying bill because it meets INGAA's three stated goals. Our concerns about the amendments added during the Senate committee markup are technical, so we remain optimistic that those matters can be addressed, and that a final bill will have our support.

INGAA's specific comments on this subcommittee's discussion draft include the following:

*Regulatory Updates and Statutory Preference*

Sections 2 and 3 of the discussion draft address the second of INGAA's three stated goals for the reauthorization; namely, maintaining a focus at PHMSA on fulfilling the mandates from the 2011 Act. These provisions largely track similar provisions in the

Senate legislation. Section 2 references the use of a “direct final rule” or “interim final rule” as options for expediting rulemakings that have a significant level of stakeholder consensus. While we doubt that the pending rulemakings from the 2011 Act could achieve that high level of consensus, it is possible that a rulemaking on underground natural gas storage, consistent with the provisions in section 11 of the discussion draft, could meet that high standard. Finally, while INGAA wants to ensure that fulfilling the 2011 mandates is the primary rulemaking focus at PHMSA, INGAA also supports action on an underground storage regulation, an issue that was not addressed by the 2011 Act. We, therefore, recognize that PHMSA needs some discretion to act on other matters, especially if there is sufficient consensus to allow prompt action using a direct final rule or an interim final rule process.

#### *Integrity Management Review*

Section 4 of the discussion draft largely tracks provisions in S. 2276 requiring the Government Accountability Office (GAO) to prepare a report on the effectiveness of the natural gas transmission and hazardous liquid pipeline integrity management programs. This provision in the discussion draft omits an analysis, included in S. 2276, on legacy class location requirements for gas transmission pipelines. These class location requirements are a vestige of the first federal pipeline safety rules adopted in 1970. The need for these rules has in many ways been supplanted by the more sophisticated and data-driven integrity management programs adopted pursuant to subsequent pipeline safety laws and PHMSA rules. Nonetheless, gas transmission operators still are required

to comply with two redundant regulatory requirements intended to address the same need. Congress should task GAO, as part of this review, to analyze the effectiveness of integrity management for gas transmission pipelines and whether any purpose is served by these duplicative regulations. (Hazardous liquid pipelines do not have class location requirements.)

#### *Inspection Report Information*

This is another provision that parallels S. 2276. We appreciate the intent of this provision and the desire to obtain feedback on PHMSA inspections in a timely manner. Based on the experience from INGAA's member pipeline companies, PHMSA normally provides a post-inspection briefing shortly after the inspection is completed. However, the provision in the draft states that in addition to this briefing, a written finding (to the extent practicable) must also be provided. The 30-day deadline makes it difficult to meet the written requirement under the best of circumstances. We suggest deleting this second requirement, or in the alternative specifying a 180-day deadline for the written requirement.

#### *Underground Gas Storage Facilities*

While it is similar to the Senate provision on underground natural gas storage, section 11 of the discussion draft includes several refinements that INGAA supports. First, the discussion draft clarifies that PHMSA may delegate the oversight of intrastate

underground gas storage facilities to the states, and that PHMSA may allow a state to participate as an “agent” in the oversight of interstate gas storage facilities, as currently permitted in sections 60105 and 60106 of Title 49. This is consistent with long-held practice with respect to natural gas pipelines and makes sense for the regulation of underground natural gas storage.

Second, the user fee authority in the discussion draft is clearer in its intent. That is, the user fee provision in the discussion draft makes clear the funds collected pursuant to this user fee will be directed to a discretionary account that will be used to offset the annual cost incurred by PHMSA to administer the cost of underground natural gas storage regulation (rather than sending the proceeds from the user fee to the Treasury).

#### *Actions by Private Persons*

The pipeline safety statute already includes a private right of action. 49 U.S.C. 60121 provides an individual the right to file for an injunction against a pipeline operator (or other regulated entity) alleging that the operator is in violation of a regulation, as long as the appropriate regulator or chief law enforcement officer (federal or state) is not acting to correct that violation. This authority has been used on several occasions, and remains in force.

The provision in the discussion draft would go beyond the existing authority, however, by allowing a private party to seek injunctive relief against PHMSA based on its alleged

failure to perform “any nondiscretionary duty” under the federal pipeline safety law. If enacted, this provision could result in the pipeline safety priorities and the allocation of agency resources, established by PHMSA pursuant to the guidance provided by Congress, being supplanted by the priorities of individual private litigants and the judgment of a federal district court judge.

In addition, while the provision in section 15 of the discussion draft refers to an injunction against the agency “for failure to perform any nondiscretionary duty under this chapter,” experience demonstrates that litigants will attempt to use such authority to challenge the sufficiency of an agency’s action in addition to allegations of inaction. Consequently, if enacted, this provision would create yet another avenue for challenging PHMSA’s actions in addition to those already provided by the Administrative Procedure Act.

For example, this provision would be another arrow in the quiver of those opposing new pipeline construction, as they could seek injunctive relief in connection with PHMSA’s review of the design of a proposed new natural gas pipeline. In addition, the provision could be used to seek injunctive relief compelling PHMSA to update existing rules or pursue other actions based on the allegation that the agency’s inaction was a failure to perform a nondiscretionary duty under the pipeline safety law. If allowed, this situation could rapidly deteriorate into a regime of “regulation by litigation.”

Oversight is the role of Congress and not the courts. This ill-advised provision should be removed from the discussion draft.

*Authorization of Appropriations*

INGAA generally supported the suggested authorization levels in the Senate legislation. S. 2276 established a baseline consistent with the amount now appropriated for fiscal year 2016, and then authorized an increase in the funding level of approximately 2 percent for each of the next three years.

We would like to make a point about the fiscal years covered by this authorization. The Senate legislation covers FY16 through FY19. While this technically would be a four-year authorization, as a practical matter FY16 has already been appropriated, and by the time this legislation is enacted, the current fiscal year will be close to an end. For this truly to be a four-year authorization, INGAA suggests beginning with the FY17 authorization or, in the alternative, making the authorization effective through FY20.

*Conclusion*

Mr. Chairman, thank you again for the opportunity to provide our views on the discussion draft. I would be happy to answer questions at the appropriate time.

Mr. WHITFIELD. Thank you, Mr. Santa, and our next witness is Mr. Carl Weimer.

Welcome back, Mr. Weimer, and he is testifying on behalf of the Pipeline Safety Trust where he is the executive director, and you are recognized for 5 minutes.

#### STATEMENT OF CARL WEIMER

Mr. WEIMER. Thank you. Good afternoon, Chairman Whitfield, Ranking Member Rush, and members of the committee. Thank you for inviting me to speak today on the important subject of pipeline safety.

The Pipeline Safety Trust came into being after a pipeline disaster that occurred nearly 17 years ago. At that time, we were asked by the federal courts to create a watchdog organization over both the industry and the regulators. We have been trying to fulfill that vision ever since, but the increase in the number of significant incidents over the past decade driven primarily by releases from liquid pipelines from causes well within pipeline operators' control, makes us sometimes question whether our message is being heard.

Today, I would like to dedicate my testimony to the memory of Peter Hayes who I met shortly after a Chevron pipeline dumped oil into Red Butte Creek in Salt Lake City. Mr. Hayes, a school teacher, was raising his family in a home that set on the banks of Red Butte Creek and he was extremely concerned about the possible long term health effects to the people in that area who were not evacuated immediately and experienced many different health symptoms associated with exposure to crude oil. He pushed hard for better emergency response and for someone to follow up with a study to determine whether people so exposed would experience any long term health problems. No one ever did such a study and in a tragic twist of fate, Mr. Hayes came down with a rare lung disease that may, in part, be caused by such exposure to environmental pollutants. He died last year.

The need for studies on the health effects of exposure to oil spills has long been a void in our national pipeline safety system and was recently again called for by a National Academy of Sciences panel. Often in these hearings the focus is on how PHMSA has failed to implement various mandates and moved too slowly on regulatory initiatives. While we agree that those things are all important and fair game at such hearings, today we would like to focus our testimony on how the pipeline safety system that Congress has created also has much to do with PHMSA's inability to get things done.

PHMSA can only implement rules that Congress authorizes them to enact and there are many things in the statutes that could be changed to remove unnecessary barriers to more effective and efficient pipeline safety. The pipeline safety statutes are the responsibility of Congress and today we will speak to issues where Congress needs to act if there is a real desire to improve pipeline safety.

Some of the things that Congress could change fairly easily would be to provide PHMSA with emergency order authority like other transportation agencies have. This would allow PHMSA to quickly correct dangerous industry-wide problems such as a lack of minimum rules for underground gas storage or the lack of valid verification of maximum allowable operating pressures. At the

same time, by eliminating the unique and duplicative cost benefit requirement in the program statute, normal rulemakings could proceed at more than the current glacial speed.

Congress also needs to harmonize the criminal penalty section of PHMSA's statutes so in the rare case when pipeline companies willfully or recklessly cause harm to people or the environment, they can be prosecuted as is necessary. And Congress should also add a strong mandamus clause as suggested in this committee's working draft bill to allow the federal courts to force PHMSA to fulfill their duties when it is the agency that is dragging its feet.

As I mentioned earlier, the National Academy of Sciences recently completed a congressionally-mandated study that showed there were a number of serious issues with the way that PHMSA oversees spill response planning and the contents of those plans. We hope you will rapidly move to ensure that PHMSA is reviewing these plans not only for completeness, but also for efficacy as other agencies do and require companies to provide clear information so first responders know what they are up against.

We also ask that you honor the memory of Peter Hayes and request an additional study by the National Academy of Sciences to help alleviate the lack of information about how to better protect people from the short and long term health effects of when pipelines fail.

Finally, we have a few concerns with the language included in various reauthorization bills and hope you can address these concerns in your own bill. In particular, we think the wording in the statutory preference section of your draft bill may slow needed rules. We also think the language regarding underground gas storage needs to be clarified to ensure an open rulemaking process happens as soon as possible and that whatever is passed allows states to set stricter standards for facilities within their borders.

And finally, we think the language in the Senate bill regarding small LNG facilities pushes PHMSA too much to rely on industry-developed standards and hard to enforce risk based systems.

I see my time is about up, so I thank you for this opportunity to testify today and I would be glad to answer any questions now or in the future.

[The prepared statement of Mr. Weimer follows:]





Credible.  
Independent.  
In the public interest.

TESTIMONY OF THE PIPELINE SAFETY TRUST



<http://www.pipelinesafetytrust.org>

Presented by:

Carl Weimer, Executive Director

FOR THE  
SUBCOMMITTEE ON ENERGY AND POWER  
OF THE  
COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING TO  
EXAMINE PIPELINE SAFETY REAUTHORIZATION

MARCH 1, 2016

### **Summary of Testimony**

Today we would like to focus our testimony on the following issues that represent things that Congress can fix within the pipeline safety statutes

**Lack of Emergency Order Authority**

**Needed Harmonization of Criminal Penalties - 49 USC § 60123**

**Needed Improvements in Spill Response Planning**

**Cost-Benefit Requirements - 49 USC § 60102**

**Actions of Private Persons - Title 49 USC § 60121**

**No Permit Required to Operate a Pipeline**

**Funding Pipeline Safety Information Grants to Communities - 49 USC § 60130**

We also would like to speak to some concerns we have with some of the language in the **Securing America's Future Energy: Protecting our Infrastructure of Pipelines and Enhancing Safety Act** that the Senate has been considering

**Section 6005 - Statutory Preference**

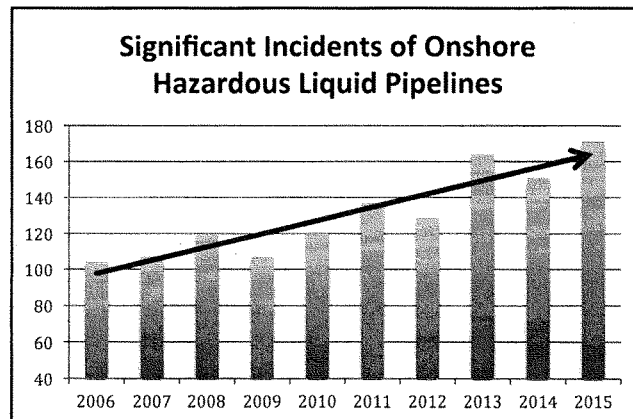
**Section 6009 - Inspection Report Information**

**Section 6016 - Underground Natural Gas Storage Facilities**

**Section 6021 – Small Scale Liquefied Natural Gas Facilities**

Good morning Chairman Whitfield, ranking member Rush, and members of the Committee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Carl Weimer and I am the Executive Director of the Pipeline Safety Trust. I am also a member of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee. I also serve on the Governor-appointed Washington State Citizens Committee on Pipeline Safety, and bring a local government perspective to these discussions as a three term elected member of the Whatcom County Council in Washington State.

The Pipeline Safety Trust came into being after a pipeline disaster that occurred nearly seventeen years ago - the 1999 Olympic Pipeline tragedy in Bellingham, Washington that left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption. While prosecuting that incident the U.S. Justice Department was so aghast at the way the pipeline company had operated and maintained their pipeline, and equally aghast at the lack of oversight from federal regulators, that they asked the federal courts to set aside money from the settlement of that case to create the Pipeline Safety Trust as an independent national watchdog organization over both the industry and the regulators. We have been trying to fulfill that vision ever since, but the increase in the number of significant incidents over the past decade, driven primarily by releases from liquid pipelines from causes well within pipeline operators' control, makes us sometimes question whether our message is being heard.



PHMSA Significant Incident Data – 2/19/2016

Today I would like to dedicate my testimony in the memory of Peter Hayes. I met Mr. Hayes in 2010 shortly after a Chevron pipeline dumped oil into the Red Butte Creek drainage in Salt Lake City for the second time in a single year. Mr. Hayes was raising his family in a home that sat on the banks of Red Butte Creek and he was extremely concerned about the possible long-term health effects to the people in that area who were not evacuated immediately and experienced many different health symptoms associated with exposure to crude oil. He pushed hard for better emergency response, and for someone to follow up with a study to determine whether people so exposed would experience any long-term health problems. No one ever did such a study. In a tragic twist of fate Mr. Hayes came down with a rare lung disease that may in part be caused by exposure to environmental pollutants, and died last year. The need for studies on the health effects from exposure to oil spills has long been a void in our pipeline safety system, and was recently again called for by a National Academy of Science panel working on a study required by Congress. I will speak to that more in my testimony, and hope you will read the Op-ed attached at the end regarding Mr. Hayes to give you some context for why this is so important.

Last year as discussions regarding PHMSA's reauthorization began we told the House Energy and Commerce Committee:

***"While we have many ideas for further ways to increase pipeline safety, perhaps a straight reauthorization of the current program this year would allow PHMSA to expand and train staffing as new levels of funding allow, finally produce all the rules and reports they have yet to produce, and address the long list of recommendations from the NTSB. We would support a quick straight reauthorization, as long as Congress remains actively involved in oversight to ensure the Administration is doing the things they have been charged with."***

We still believe that a relatively quick and simple reauthorization without a huge new load on mandates on PHMSA is preferable, but as others have suggested ideas for reauthorization we would like to provide you with some of our thoughts as well.

Often in these hearings on reauthorization or oversight the focus is on how PHMSA has failed to implement various mandates, moved too slowly on regulatory initiatives, not provided information to the public in a timely manner, or even lacks the will to make the pipelines safer. While we agree that those things are all important and fair game at such hearings, and you have heard many of those complaints from us in the past, today we would like to focus our testimony on how the pipeline safety system that Congress has created also has much to do with PHMSA's inability to get things done. PHMSA can only implement rules

that Congress authorizes them to enact, and there are many things in the statutes that could be changed to remove unnecessary barriers to more effective and efficient pipeline safety. The pipeline safety statutes are the responsibility of Congress, and today we will speak to issues where Congress needs to change things if there is a real desire to improve pipeline safety.

### **Lack of Emergency Order Authority**

If after incidents or through inspections PHMSA finds a significant problem that cannot be remedied through the existing rules it can order an individual pipeline operator to immediately change their operation, but under the current rules PHMSA has no authority to issue such emergency orders industry-wide if the situation has the potential to cause significant harm from more than a single operator. Recent pipeline failures, such as the 2010 San Bruno tragedy, have highlighted this problem since during that investigation it became clear that potentially a significant portion of the entire industry had not been implementing necessary safety procedures. Currently all PHMSA can do in such situations is issue non-binding “advisories”, hope the industry pays attention, and then go through a multi-year rulemaking process to correct the problem. Other transportation administrations, such as the Federal Railroad Administration, do have authority to quickly issue emergency orders to correct potentially deadly situations as evidenced by **Title 49 USC § 20104. Emergency authority**. We ask that you put into this reauthorization bill a similar provision for PHMSA so they have the ability to rapidly address critical industry-wide safety issues.

### **Needed Harmonization of Criminal Penalties - 49 USC § 60123**

Fortunately it is very rare that a pipeline operator violates the regulations in a way that would be considered criminal. Our organization, the Pipeline Safety Trust, was born from one of those rare incidents where an operator’s actions were proven to be so reckless as to kill members of the public and do uncounted environmental harm. In that case the U.S. Justice Department under President Bush did an outstanding job prosecuting that case, fining the company, and actually getting jail time for company employees. There have only been a handful of other incidents caused by such reckless behavior from pipeline companies since that case 16 years ago, but it is important not to create barriers that make it difficult to hold companies accountable when they knowingly or recklessly ignore the laws meant to keep people safe. The current statute that applies to pipeline safety - **Title 49 USC § 60123. Criminal Penalties** – sets an unusually high bar for holding companies accountable for criminal behavior. We ask that you align the pipeline safety rules under PHMSA with the Hazmat rules under PHMSA and change 60123 to adopt the “willfully or recklessly” language from the Hazmat statute in **Title 49 USC § 5124. Criminal Penalties**.

### Needed Improvements in Spill Response Planning

Based on a congressional mandate the National Academy of Sciences (NAS) recently completed a study entitled **Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response**. In that study NAS noted some serious issues with the way that PHMSA reviews spill response plans and the required content of these important plans. For instance the study notes this significant shortcoming of how PHMSA reviews these spill plans compared to other agencies that review spill plans:

*“At PHMSA, the review of plans is focused on completeness, using the Part 194 regulations as a checklist to ensure that all necessary components are present. Assuming the plan is complete, PHMSA’s long-standing position is that it is legally obligated to approve the plan, and that it has no discretion to evaluate its likely adequacy and effectiveness or to recommend improvements. By contrast, USEPA and USCG review plans in two stages, the first focusing on completeness and the second on adequacy.”<sup>1</sup>*

The study also found that different companies use different terminology for naming the fuels moving through their pipelines, and there was no requirement that specific Safety Data Sheets be included in the spill response plans

*“In addition to the response plan itself, the Safety Data Sheet (SDS) submitted by the pipeline operator is potentially a vehicle for identifying the type of crude oil and its properties. In conjunction with the plan and other information sources, a detailed SDS containing the pertinent information would assist responders setting near-term priorities directly following a spill of diluted bitumen. It would also assist the public in understanding the nature and consequences of the spill. The Part 194 regulations recommend but do not require that response plans include SDSs for the crude oil being transported by the pipeline section.”<sup>2</sup>*

These noted shortcomings put the public, emergency responders, and pipeline company employees at risk when responding to spills.

After the nearly one-million-gallon spill into the Kalamazoo River in Michigan in 2010 the National

<sup>1</sup> National Academy of Sciences, Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response, page 90

<sup>2</sup> National Academy of Sciences, Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response, page 92.

Transportation Safety Board recommended that the Secretary:

***Audit the Pipeline and Hazardous Materials Safety Administration's onshore pipeline facility response plan program's business practices, including reviews of response plans and drill programs, and take appropriate action to correct deficiencies.<sup>3</sup>***

***Allocate sufficient resources as necessary to ensure that the Pipeline and Hazardous Materials Safety Administration's onshore pipeline facility response plan program meets all of the requirements of the Oil Pollution Act of 1990.<sup>4</sup>***

That audit has been underway in the Secretary's Office for years now, but has still not been released. So we ask that as part of this reauthorization you direct PHMSA by a date certain to review and improve their regulations on spill response planning contained in Part 194, make necessary changes as noted by the NAS study, and at a minimum require:

- plans to be reviewed for adequacy and effectiveness
- language that makes it clear that specific Safety Data Sheets need to be included for each different type of oil carried
- language that makes it clear that plans need to identify all of the different types of transported crude oils using specific industry standard names

Spill response planning also brings up the need to clearly understand and address the human health effects of spills. The NAS study listed as a research need "Ecological and human health risks." In many fairly recent pipeline failures, such as the Enbridge spill into the Kalamazoo River, the Chevron spill in Salt Lake City, and the Exxon Mobil spills into the Yellowstone River and in Mayflower Arkansas, people, and particularly children, experience a range of similar immediate health issues, some of them quite acute. This leaves the public wondering whether they were evacuated adequately and what the future long-term health effects of such exposures to a wide range of possibly toxic chemicals might be. The story I started my testimony off with regarding Peter Hayes who was exposed to chemicals during a pipeline spill in Salt Lake City, and then later developed and died of a rare lung disease helps bring this public concern home.

At the recent Aliso Canyon natural gas leak it was reported that ***"people from 600 households near the leak at the Aliso Canyon gas storage unit reported headaches, nosebleeds, nausea and other symptoms to***

<sup>3</sup> [http://www.nts.gov/\\_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-001](http://www.nts.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-001)

<sup>4</sup> [http://www.nts.gov/\\_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-002](http://www.nts.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=P-12-002)

county officials.” That same article<sup>5</sup> went on to report:

*“We’re dealing with a gap in the science,” said Michael Jerrett, professor and chairman of the Department of Environmental Health Sciences at the University of California, Los Angeles. “We just don’t have a very good scientific understanding of what that means for long-term health effects.”*

In my own experience as an elected official serving on our Local Emergency Planning Committee and attending various tabletop emergency exercises I have often asked what is the threshold for particular chemicals that we use to inform the need to evacuate, and who has that monitoring equipment and how soon is it deployed? When I ask these questions the lack of answers confirms what we have heard nationally – no one really knows what the critical chemical thresholds are, and often equipment to monitor for chemical exposure at appropriate low levels is not available soon enough to make a difference.

If you are interested in more information about the lack of federal exposure guidelines, long-term health studies, and how this translated into confusion at a particular pipeline oil spill, we suggest you read the article **What Sickens People in Oil Spills, and How Badly, Is Anybody's Guess**<sup>6</sup> by the Pulitzer Prize winning news organization InsideClimate News.

For these reason we ask that as part of this reauthorization you direct PHMSA to undertake another study with the National Academy of Sciences to better understand the potential long term health effects from pipeline failures, and provide recommendations for threshold levels that should inform evacuation decisions and necessary equipment to measure such thresholds as part of spill response plans.

### **Cost-Benefit Requirements Under 49 USC § 60102**

The 5 years between 2010 and 2015 found us too often examining the failures that led to major pipeline incidents: Marshall, Michigan; San Bruno, California; Allentown, Pennsylvania; Sissonville, West Virginia; Harlem, New York; Mayflower, Arkansas; two spills into the Yellowstone River, and too many more. Against that backdrop of incidents and Congressional directives, NTSB and GAO recommendations, those five years also provided a perfect example of a broken regulatory process that left PHMSA incapable of producing a

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<sup>5</sup> **What Will Be the Health Impact of 100+ Days of Exposure to California's Methane Leak?**

<http://insideclimatenews.org/news/17022016/health-impacts-aliso-canyon-porter-ranch-methane-leak-california-social-gas>

<sup>6</sup> <http://insideclimatenews.org/news/20130618/what-sickens-people-oil-spills-and-how-badly-anybodys-guess>



single major new safety rule. The reasons for the process not working are numerous. Among them:

- 1) information needed to produce new rules under the current cost benefit requirements is predominantly controlled by pipeline operators who are reluctant to agree to new reporting requirements that are necessary for PHMSA to meet cost benefit requirements to strengthen its rules - that is, if PHMSA can't find out where there are problems or how big they are, they can't make rules to fix them;
- 2) too few staff for PHMSA to undertake investigations and studies that might provide the agency additional information to quantify the potential costs and benefits;
- 3) a costly, duplicative, and unnecessary cost benefit analysis process; and
- 4) delays from the Secretary's Office and OMB that are beyond PHMSA's control

Some of those issues are being ameliorated by recent increases in PHMSA staffing levels, and we're hopeful those new staffers will allow PHMSA to more efficiently move rules forward. The duplicative and procedural hurdles are a different question, but they are something that Congress can do away with in this reauthorization.

In 1996, a concerted Congressional effort was made to insert cost-benefit analysis requirements into rulemaking requirements under a whole host of environmental protection and health statutes, presumably as a way to codify the requirements for regulatory cost benefit analyses put in place by Presidents Reagan and Clinton in Executive Orders. While those Congressional efforts ultimately fell short of wide spread success, the 1996 reauthorization of the pipeline safety program represents the only health and safety or environmental protection statute to contain an explicit directive to an administrative agency to base regulation of risk on a cost-benefit test.

PHMSA rulemaking is therefore subject to two sets of cost-benefit requirements - one under the Pipeline Safety Act and one under the Executive Order that requires an economic analysis of every major rule reviewed by OMB before being published as a proposed rule and subject to comment. We urge you to put PHMSA's rulemaking on an even playing field with all other agencies by amending 49 USC § 60102 to eliminate references to the risk assessment/cost-benefit analysis in §60102(b)(2)(D) and (E); §60102(b)(3), (4), (5) and (6). PHMSA would remain subject to the requirements of the Executive Orders requiring a cost benefit analysis of major rules proposed by any agency, and the requirements for transparency in rulemaking provided by the existing statute and procedures.

A clear example of problems excessive cost benefit analysis can cause can be seen in the lack of regulation of rural natural gas gathering lines. According to a briefing paper from PHMSA<sup>7</sup> they estimate that there are 230,000 miles of such gathering lines in the country, with over 210,000 miles of these gathering lines falling outside of any federal or state pipeline safety regulation. Many of these lines are the same size and pressure as transmission pipelines, so pose the same risk. The regulation of these lines has been one of our top priorities for years now, and it is now one of the state regulator's top priorities also. In 2010 the state regulators passed a resolution<sup>8</sup> that says in part:

***WHEREAS: In the newer gas gathering systems, it is not uncommon to find rural gas gathering pipelines up to 30" in diameter and operating at a MAOP of 1480 psi.***

***NOW THEREFORE BE IT RESOLVED: That NAPSR urge PHMSA to modify 49 CFR Sections 192.8 and 192.9 to establish regulatory requirements for gathering lines in Class 1 areas:***

Since these 210,000 miles of pipelines are unregulated no one collects any information about their location, construction, size, pressure, risks, failure incidents, etc. Since no one collects any information it is nearly impossible for PHMSA to pass regulations because how can they quantify the required costs or benefits? Knowing full well that the industry will challenge any such regulation PHMSA finds itself in a no win situation based on cost benefit requirements that effectively make it impossible to move forward on needed rules without first going through years of information collection, (which will also be opposed by industry), to be able to complete a cost benefit analysis.

### **Actions of Private Persons - Title 49 USC § 60121**

After the PG&E pipeline failure and explosion in San Bruno California in 2010, as the systemic issues with PG&E's pipeline system and the questionable regulatory history of the California Public Utility Commission became better known, the City and County of San Francisco became concerned about the safety of the PG&E lines under its own streets. They sought the help of the federal courts to require PHMSA to reject the State of California's certification that its natural gas regulatory system was sufficient under the Pipeline Safety Act to take responsibility for regulating the safety of intrastate natural gas lines. Unfortunately, the courts decided that the statutory language in 49 USC 60121(a)(1) that allows for an individual to seek an injunction against another person, including the United States, did not allow an individual to seek an

<sup>7</sup> PHMSA Briefing Paper, Onshore Gas Gathering, Technical Pipeline Safety Standards Committee Meeting, March 2011

<sup>8</sup> <http://www.napsr.org/SiteAssets/NAPSR-Resolutions-Open/201002%20Gas%20gathering%20line%20class%201%20Resolution.pdf>

injunction against the United States *in its role as regulator*. The court instead relied on similar language in the Endangered Species Act previously interpreted by the Supreme Court in holding that the statute did not provide a basis for the City's claim. The court's analogy to the Endangered Species Act and its interpretations failed to give meaning to the Congressional language of the PSA authorizing injunctive relief against the US in the pipeline safety context, *where its only role is that of regulator*, and not an operator or permit applicant. The courts' interpretation rendered that provision of the PSA meaningless. We are very happy to see that this Committee has language in the discussion draft of the Pipeline Safety Act of 2016 that will restore what we believe to have been Congress' original intent: to make abundantly clear that when the federal regulators fail to fulfill a duty imposed under the PSA, the courts may enforce those duties by issuing injunctions against the United States. We hope you will work with other committees and the Senate to ensure such language is included in the bill that is eventually agreed upon and passed.

### **No Permit Required to Operate a Pipeline**

Under the current statutes there is no requirement that a pipeline company obtain any permit or permission to operate a pipeline in this country. The public finds this hard to understand since we all need a permit to operate our cars, and many of us need permits and government inspections to replace a hot water tank, or build a deck on the back of our homes. How can it be that someone can operate a huge pipeline, carrying tons of potentially explosive materials, across multiple states, and not have to obtain some sort of permit for its operation? The benefit of requiring PHMSA to issue permits to operate transmission pipelines is that would provide the agency another tool to ensure the safety of those pipelines, and a regular review interval for such permits would force the agency to ensure that the company is still following all necessary rules. Permits could also provide the public, local governments, and academics their only real opportunity to review and comment on the companies' safety operations, which may help provide important local information and new ideas, and should ultimately improve pipeline safety.

### **Funding Pipeline Safety Information Grants to Communities - 49 USC § 60130**

In 2002 Congress established a Community Technical Assistance Grant program to ensure better education and involvement of the communities by helping to provide **“technical assistance to local communities and groups of individuals relating to the safety of pipeline facilities in local communities.”** This relatively small grant program has allowed local government to obtain and implement GIS data so their departments better understand where pipelines are, implement programs to better prepare emergency personnel to respond to releases of fuels, and examine ways they can use their planning and zoning authority to increase the safety of people and pipelines. It has allowed small utilities to better train their personnel and utilize new

leak detection equipment. It has helped fund the development of important new pipeline protection programs such as the marine pipeline location and education program in Louisiana to ensure better awareness of underwater pipelines by the shipping industry. And it has allowed communities that have experienced pipeline failures and contentious pipeline issues, such as Salt Lake City, Fort Worth, San Bruno and Contra Costa County, CA to bring their citizens together to better understand the pipeline safety system that exists, an accurate view of the risks posed, and ways that citizen can make pipelines even safer.

Here are just a few examples of some of the 160+ grants that have been awarded under this program:

**Michigan FY 2014 – Miss Dig System** received grant to produce information about the importance of using the One Call System and follow up survey to test effectiveness.

**Kentucky FY 2014 – City of Olive Hill** received grant to purchase a remote gas leak detector, provide GIS mapping of pipelines, and provide educational outreach to schools and senior centers to increase public safety

**Texas FY 2015 - Permian Basin Regional Planning Commission** received grant to address the public safety and economic resiliency challenges associated with rapid economic growth due to oil and gas drilling and a growing pipeline infrastructure

**Tennessee FY 2014 – Oak Ridge Utility District** received grant to develop a system whereby it can notify its customers of safety related issues via email or mobile devices in case of emergencies.

We were happy to see the commitment to this program in the funding authorization in the bill the Senate has been working on, and we ask you will support this grant program also. For reasons that still have not been explained, in the rush to pass a budget in December the appropriations for this program were lost. We hope you will do all you can to make sure that the program is not only authorized, but also actually funded through necessary appropriations.

### **Concerns we have with the Senate’s *Securing America’s Future Energy: Protecting our Infrastructure of Pipelines and Enhancing Safety Act***

#### **Section 6005 - Statutory Preference**

Under sections 6003 and 6005 of the bill being considered in the Senate, PHMSA is required to report on a regular basis the status of their rulemaking efforts, and to prioritize their efforts on mandated and rules

currently in progress over starting new rulemakings. We certainly support the reporting requirements to hold PHMSA accountable and to make clear to the public and Congress the status of various rulemaking efforts. We do have concerns that the prioritization language in Section 6005 may further delay long-identified needed rules, or needed new rules that may be identified through investigations or incidents. The National Transportation Safety Board, the National Academy of Sciences, and PHMSA themselves have identified many needed rules. Even in the current rulemaking on hazardous liquid pipelines PHMSA has identified a number of important initiatives regarding the identification of High Consequence Areas, leak detection, valve placement, automated valves, and integrity verification that have not been addressed in the current proposed rule, but have been put off to “future” rulemakings. We would hate to see new rules on these issues delayed even further because of such prioritization language, or some mistaken interpretation of the language. We ask that you make it clear that such prioritization language does not further delay long talked about and needed rules from progressing.

#### **Section 6009 - Inspection Report Information**

We support the goal of this section, which is to provide some timely feedback and certainty to operators regarding recent inspections. It is unclear to us whether the 30-day requirement is adequate for producing the final inspection report, or whether that needs a slightly longer time period – say 60 or 90 days. Clearly one way this section can be improved would be a requirement that all such final inspection reports be made publicly available on PHMSA’s enforcement website. The National Energy Board of Canada and the Washington Utilities and Transportation Commission recently began to post all such inspection reports to their public websites to increase the transparency and public understanding of their efforts. The vast majority of such reports find little or nothing wrong with a pipeline and posting the reports is a great way to help the public better understand the inspection process and gain trust in the inspection system.

#### **Section 6016 - Underground Natural Gas Storage Facilities**

The Aliso Canyon natural gas storage disaster has finally made clear the need for minimum standards for the underground storage of gas. Such standards have been requested for decades, and in 2010 the state pipeline regulators through their National Association of Pipeline Safety Representatives passed a resolution to urge PHMSA to:

*“Develop regulations and policies to address the assessment of the integrity of existing wellbores used for the purposes of storing natural gas or hazardous liquids; the safe operations and construction of natural gas and hazardous liquid storage wellbores; and the safe operation of the geologic formations used for gas and hazardous liquid storage.”*

We are happy to see the Senate and now the House considering ways to ensure that finally such minimum standards get adopted. While the language in the Senate bill is a good first start we think there are ways to improve upon it to ensure we get truly the best regulations after having to wait so long. Here are the steps we hope you will adopt:

- Give PHMSA the authority to adopt emergency temporary standards as soon as possible (as we previously pointed out the need for Emergency Order authority) that include the provisions spelled out in their February Advisory Bulletin ADB-2016-02<sup>9</sup>, and the recently created API storage recommended practices, API RP 1170 and API RP 1171, along with other standards determined appropriate by the Secretary.
- Direct PHMSA by a date certain to prescribe regular minimum standards for underground storage facilities through their typical rulemaking process so as to ensure the possible inclusion of ideas from state regulators, academics and the public along with those of the industry. In developing such standards, PHMSA shall look beyond current "consensus standards" by conducting its own independent analysis of risks, and risk control options, and include a full range of stakeholders in reviewing that analysis.
- Add in the statute a definition that makes clear that any storage facility that falls wholly within the borders of a single state is considered an Intrastate facility, and that a state authority may adopt additional or more stringent regulations for such facilities.

We would like to stress that while the API standards may be a good starting point, there are important things they do not include, so a PHMSA led analysis, and a regular rulemaking that allows a range of stakeholders to provide additional suggestions is very important. Even the API makes this point when in the section discussing the scope of the API 1171 Recommended Practice they state:

***"The contents of this Recommended Practice are not all inclusive, or intended to replace the utilization of detailed information found in textbooks, manuals, technical papers, or other documents. This document is intended to supplement, but not replace, applicable local, state, and federal regulations."***<sup>10</sup>

<sup>9</sup> <https://federalregister.gov/a/2016-02228>

<sup>10</sup> API Recommended Practice 1171, First edition, September 2015, Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs, Page 1

If you need good language that includes most everything we believe needs to be included in underground storage regulations we suggest you start with H.R. 4578 recently introduced by California Representative Sherman.

### **Section 6021 – Small Scale Liquefied Natural Gas Facilities**

We support the adoption of minimum safety standards for permanent small scale liquefied natural gas facilities. Such facilities can provide an alternative fuel for the shipping and trucking industries with many benefits including reduced emissions, costs, and noise. While we support the proposed regulations and the growth in this industry the wording in the Senate bill leaves many questions. In particular the definition of Small Scale Liquefied Natural Gas Facility is imprecise and leaves too much up to interpretation. At a minimum the definition needs to be modified to include a phrase such as “is not a facility under the jurisdiction of the Federal Energy Regulatory Commission.”

Because of the nature of the product the larger LNG import and export facilities fall under a regulatory system that includes many fairly prescriptive rules meant to ensure the safety of surrounding communities. The language in the Senate bill seems to push a risk-based regulatory system built upon industry-developed standards and best practices. We ask that any authorization for PHMSA to move forward on new rules for these facilities requires the agency to equally weigh the failures that have been caused by operators who do not properly assess the risks to their pipelines, the difficulties in enforcing risk-based systems, and the wisdom of allowing the regulated industry to draft their own regulations.

We make this request for good reason. Two liquid pipeline incidents in the past few years exemplify major failings of the industry-dominated risk-based rulemaking process followed by PHMSA under the existing statutory dictates. In both instances, an operator failed to identify or mitigate for a particular risk or threat to its pipeline, and those risks ultimately manifested in ruptures of their lines - one spilled 1500 barrels of oil into Montana's iconic Yellowstone River, and one spilled 5,000 barrels of dilbit into a Mayflower, Arkansas subdivision, sickening residents and threatening the quality of a large heavily used lake and wildlife refuge. In each case, ExxonMobil argued in PHMSA enforcement proceedings that its integrity management and operational plans were in compliance with PHMSA's risk-based minimum federal pipeline safety regulations, so the fact that there had been a spill could not be held against them.

The horror of this scenario is twofold: First, that the regulations encourage operators to believe that failures of this size do not necessarily mean that an enforceable pipeline safety violation has occurred. The risk-based regulations, often based on industry-developed standards, completely fail to establish a

measurable standard for sufficiency of an integrity management plan or its implementation, creating a regulatory environment that is so ambiguous as to be nearly unenforceable. The regulations don't say "Take all necessary measures" to prevent a pipeline failure, they just say "take measures." It's as if rather than establishing a speed limit of 60 miles per hour, PHMSA's rules merely caution operators to do the best they can to drive safely.

And the second horror, following from the first, is that in certain circumstances, ExxonMobil's belief may be right. Without a rulemaking process that allows the creation of clear standards for integrity management plans through an open non industry-controlled process, and without any regulatory approval process for those plans, the existing system relies upon the discretion of operators to make the right choices, to take *enough* measures to protect public safety and the environment. Recent incident history suggests that reliance is too often misplaced.

Thank you again for this opportunity to provide this testimony. The Pipeline Safety Trust hopes that you will closely consider the concerns we have raised and the requests we have made. If you have any questions now or at anytime in the future, we would be pleased to answer them.



Mr. WHITFIELD. Mr. Weimer, thank you, and thank all of you for your testimony. And at this time I will recognize Mr. Olson of Texas for 5 minutes of questions.

Mr. OLSON. I thank the chair for his courtesies. And welcome to our witnesses. A special welcome to Mr. Black and Mr. Santa.

As we all know, the first exports of American crude oil left Corpus Christi a few weeks ago and this week the first exports of American liquefied natural gas left Texas and Louisiana this week as well. Thank you, thank you, thank you. That is American liquid freedom going to Latin America and going to Europe. You guys are rock stars back home because of that.

But let us talk about corrosion. In the investigation of the 2015 pipeline spill at Refugio Beach in California, they found corrosion in the pipeline. That fact should be no surprise. Obsolete gas pipelines and liquid pipes operate in tough environments. Soil corrodes. The product within the pipeline corrodes. And these aren't always brand-new pipes.

As I saw in our Navy, corrosion starts from day one. In fact, they attack it every day with what is called a paint and chip detail. The young sailors have a scraper, a bucket of paint, and a brush and go all over the ship trying to curtail corrosion. It is a big challenge.

So can you both, please, with you Mr. Black and Mr. Santa, discuss how you plan to control corrosion in your pipelines? Feel free. Big question, I know.

Mr. BLACK. Corrosion may have been the biggest target of the modern integrity management regulations and it has been a success. Internal and external corrosion is down by greater than 50 percent. I think there is a 70 percent over 10 years and I am happy to get that fact for you.

Mr. OLSON. Thank you.

Mr. BLACK. External corrosion has been reduced greatly by the practice of cathodic protection in pressing the current on to the pipeline and turning the pipeline into a cathode and anode, suffers the corrosion consequences. Internal corrosion has been worked on by cleaning pigs and then of course, the in-line inspection.

Mr. OLSON. A smart pig is right across the hall, I think, actually. A smart pig is there right now.

Mr. BLACK. Yes, exactly. They are supposed to gather that information. Like you, we are concerned by what we heard in the PHMSA initial incident report and we are eager, as an industry to get the final results on that so that we can develop our industry-wide recommendations to operators to address corrosion.

We have already committed to updating API Recommended Practice 1160, Pipeline Integrity Program Management, to address the properties related to the special type of pipe, heated, insulated pipe, transporting heated crude.

Mr. OLSON. Mr. Santa, natural gas people, your pipelines, any concerns about corrosion, but what is your biggest—what is your plan to deal with corrosion to control it?

Mr. SANTA. First, as Mr. Black said, I think we have a success story here. As a result of the Integrity Management Programs that were prescribed by Congress, and then PHMSA acting pursuant to that, corrosion incidents on interstate pipelines are down dramatically, as a result of the Integrity Management Program.

As you noted in setting up your question, that corrosion has a lot more to do with the environment in which the pipeline exists and not necessarily the age of the pipeline, the important point here is a pipe, regardless of its age, to ensure that it is fit for service.

As a result of fulfilling the mandates in the regulations on integrity management, in fact, interstate pipelines have tested far greater mileage than that which is mandated just because of the nature of where these devices are inserted and removed from the pipelines.

As part of INGAA's voluntary commitments that were made in 2011, INGAA's members committed to expanding the scope of integrity management practices and we also expect to see the expansion of integrity management addressed as part of the upcoming PHMSA rulemaking on natural gas transmission pipelines.

Mr. OLSON. So still the safest way to transport liquids is with pipelines pure and simple.

Mr. SANTA. Yes.

Mr. OLSON. Another question for you, Mr. Black. PHMSA is looking to require remotely operated automatic shutoff valves in pipelines in the future. GAO has done a report on that and found that there are some safety concerns in some cases where they are used on liquid pipelines. What are your thoughts on automatic shutoff valves and what issues do they pose for liquid lines?

Mr. BLACK. Well, I would like to distinguish automatic acting from automated valves, a practice in liquid pipelines construction today is to use remote controlled automated valves to safely shut down a pipeline in the event that the pipeline needs to be shut down. Self-operating, self-actuating automatic shutoff valves cause safety concerns. GAO found that there can be a pressure build up with an automatic valve closing quickly and that can damage the pipeline.

We reviewed and found nine incidents caused by conditions similar to an automatic shutoff valve closing abruptly, one of which had more than 400 barrels put along the right of way. So remote controlled, automated shutoff valves are important to be used in liquids pipelines and are.

Mr. OLSON. I yield back the balance of my time. Thank you.

Mr. WHITFIELD. The gentleman's time has expired. At this time I recognize the gentleman from Illinois, Mr. Rush for 5 minutes.

Mr. RUSH. Thank you, Mr. Chairman. Mr. Weimer, in your testimony you state that reauthorization should include directing PHMSA to conduct a study with the National Academy of Sciences to better understand the potential long term health benefits from pipeline failures and provide recommendations for threshold levels in order to better inform the evacuation decisions and the equipment necessary to measure such thresholds as part of the spill response plan.

How did you come to this conclusion and why do you think this issue is so important that Congress should address it in the upcoming reauthorization bill?

Mr. WEIMER. Yes, thank you for the question. We came to that conclusion from a number of sources. The recent National Academy of Sciences study mentioned the need for greater studies on both

human and environmental impacts of crude oil spills. But we have seen it over and over again after incidents that have happened in the last few years. The first one that I became aware of was the one I mentioned in my testimony in Salt Lake City. A number of people and their children got quite ill after a spill when they weren't evacuated. There was general confusion at that spill of who was in charge, whether it was the local health department, whether they had equipment to measure the vapors and what people were breathing and when evacuation should occur. We saw similar things in Michigan after the big spill into the Kalamazoo River. And then in Mayflower, Arkansas when crude oil ran through a neighborhood there, we saw the types of illnesses.

Each state seems to have different thresholds for when they might evacuate people. There seems to be confusion who is in charge in those on-going incidents of those spills and those same health effects. Regardless of the type of crude oil has led us to the desire, along with the National Academy of Sciences that such a study be done to clarify what equipment needs to be on scene, how quickly and what those thresholds should be measured at.

Mr. RUSH. That is pretty alarming, and it seems as though we are—that is a real nightmare of a thought that you have a pipeline rupture and not have any idea about its effect on your family's health. That is pretty alarming.

Are communities around this nation, are they generally well informed and educated about pipeline projects and the number of pipelines and the capacity of things and what really is being transmitted through those pipelines? Are they aware about the benefits of these pipelines and potential costs of these pipelines and if they are not, then what are some of the tools that we can use to help spread awareness among the American people regarding these pipelines?

Mr. WEIMER. Yes, thank you again for that question. I think communities are becoming more aware. Unfortunately, the communities that seem to pay attention are the ones where there has been an incident, so it is after the fact.

PHMSA has done a very good job, actually, putting a lot of information available on their Web site in trying to push out information, but it still hasn't sunk in. A lot of it falls on the industry. There is a lot of emphasis from the industry to work with the local communities to make sure emergency response and emergency plans are in place. But we need the communities to pay attention to that.

There is a lot of lack of information. I am an elected official in the country where I am from and I have been on the Emergency Planning Committee. When I ask these questions about do we have MSDS sheets like the National Academy of Sciences asked for or do we have monitoring equipment that will be put in place quickly if there is an incident, most of the emergency planners in my community and other places we have checked with just don't have that information. So there need to be more proactive efforts by all of us involved to make sure local governments are paying attention.

Mr. RUSH. Well, thank you, Mr. Chairman. I have run out of time.

Mr. WHITFIELD. The gentleman's time has expired. I will recognize myself for 5 minutes of questions. I had asked Administrator Dominguez as she was leaving, what is a reportable incident? And I would ask those of you on the panel when are you required to report an incident to PHMSA? Do you know, Mr. Weimer?

Mr. WEIMER. It is funny that you ask that question because Mr. Black and I were joking about that because we are both on a committee with PHMSA working on indicators and there is a number of different reporting requirements depending—there are serious incidents. That is when somebody gets killed or hospitalized. Those number of incidents have actually been declining so that is a good trend. There are significant incidents. That is when you do \$50,000 worth of damage, property damage, you kill or injure somebody or you spill a certain amount. I think it is like 50 barrels for liquid pipeline.

Mr. WHITFIELD. Fifty barrels?

Mr. WEIMER. Fifty barrels, a couple thousand gallons. That would be considered a significant incident or if there is an explosion or fire.

Mr. WHITFIELD. OK.

Mr. WEIMER. And then there are reportable incidents and I think that is as low as five barrels or maybe even five gallons for hazardous liquid pipeline.

Mr. WHITFIELD. OK, so there is like three or four different levels, OK.

Mr. BRADLEY. Those thresholds apply to natural gas as well. They rack up to the dollar amount.

Mr. WHITFIELD. OK.

Mr. SANTA. Let me add to Mr. Bradley's point there that in some ways sometimes that leads to nonsensical results because if you think about the variability of natural gas or oil commodity prices, not natural gas prices.

Mr. WHITFIELD. Yes.

Mr. SANTA. And if in reporting the damage you are reporting the dollar value of the gas that was emitted, well, that is going to be a far greater value when the price of gas is a dollar versus when it may be four dollars. So probably something there to ensure greater consistency to really measure what are the tangible dangers or effects rather than something that depends upon the commodity price that makes sense.

Mr. WHITFIELD. And Mr. Black, how many miles of oil pipeline do we have in the U.S.?

Mr. BLACK. One hundred ninety-nine thousand of liquids, oil, refined products, natural gas liquids, and CO<sub>2</sub>, yes, sir.

Mr. WHITFIELD. And natural gas?

Mr. SANTA. Natural gas transmission pipelines, it is over 300,000 miles, about 220,000 interstate.

Mr. WHITFIELD. And how much of the crude oil that has been transported through pipelines is heated?

Mr. BLACK. Very little.

Mr. WHITFIELD. Very little?

Mr. BLACK. Only if it is necessary.

Mr. WHITFIELD. OK. One comment I want to make because as you notice, the Section 15 of our draft in parentheses they have got

this private action of suit. And I noticed after the San Bruno incident, I think maybe I read this in your testimony, Mr. Weimer, where the City of San Francisco sued in federal court asking that the federal court require PHMSA to reject the State of California certification that the pipeline system met the federal standards.

And I had a little bit of a problem with that myself because that is the mission of PHMSA to make sure that—so here you have the City of San Francisco suing the State of California basically, as well as the Federal Government, asking a federal judge to mandate that they not accept a certification from the state.

So I have a real problem with Section 15 myself and the “sue and settle” for example at EPA has really been a major headache because what we see, third parties file the suit. They enter into a settlement with EPA and its lawyers or Justice and the states affected by those suits are not able to even participate in the settlements which I find unacceptable.

And so I agree with the three of you that this is a real issue and having said that, I mean I am going to try to not include this, but having said that I have got 50 seconds left and I know Mr. Weimer disagrees, so I will turn it over to you to make your argument.

Mr. WEIMER. All right, thank you for that. Yes, we saw that after the California, the San Bruno incident you mentioned. I think the City of San Francisco and others—

Mr. WHITFIELD. Is your microphone on?

Mr. WEIMER. Yes. Were pretty aghast at the way that the California Public Utility Commission had overseen the law over the past few years. There is still, I think, even criminal investigations going because the connections between the California Public Utility Commission and the industry out there. And that led San Francisco to file that.

We are agnostic on the arguments that San Francisco made, but when we saw the federal court step in and try to throw out the idea that the citizens or local governments could go to court to try to force PHMSA to do what their jobs requires them to do that is when we thought it was important.

Mr. WHITFIELD. Thank you. My time has expired. At this time, I recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Well, I thank the chairman. I thank the panelists for coming in here today.

I am going to start with you, Mr. Weimer. Do you believe that there is adequate representation across all interested parties on the advisory committees at PHMSA?

Mr. MCNERNEY. Yes. The advisory committees are made up of the three groups, regulators, the public, and the industry. And I think the way it is designed it is pretty well, the slots don't always get filled in a timely manner. Like at our last Technical Committee meeting when we were talking about the liquids rule, there were still two public slots that were open, so it would be nice before major rules are considered if all the slots are filled.

Mr. MCNERNEY. How about the actual staff of PHMSA? Is there adequate staffing or is there an urgent need to fill more positions?

Mr. WEIMER. I think Congress has given them a huge budget increase that allowed them to add over a hundred new inspectors.

That was good. And they are also working on some program enhancements. So I think time will tell over the next couple of years whether they can fill those slots and whether that is an adequate number.

Mr. MCNERNEY. Well, in your testimony you mentioned something about cost benefit analysis. Could you expand on that discussion a little bit, please?

Mr. WEIMER. Sure. I think it was back in the '90s. It might have been the 1996 Act. Congress put in a cost benefit requirement in the pipeline statute. As far as we can determine, this is the only administration that has kind of this double cost benefit, both in the statute and also then when the rules go to OMB. Talking with a number of people that do those things, they really think that can kind of slow down the process and as everybody on this committee has mentioned you know, PHMSA has been kind of slow to meet some of these. So since all of the rules that go to OMB have to go through a cost benefit, this double cost benefit analysis early on and then when it goes to OMB may be slowing down rules unnecessarily.

Mr. MCNERNEY. Would industry object if the cost benefit requirements were eased?

Mr. WEIMER. You would probably have to ask them.

Mr. MCNERNEY. Mr. Santa?

Mr. SANTA. Yes, Mr. McNerney. I would suggest that before the committee amend the law or propose to amend the law to address that that it examine whether there, in fact, have been any instances in which the statutory cost benefit analysis has added to the time and the burden. I would agree that the amount of time that it takes to get a rule through OMB is very troublesome and that that ought to be addressed and that that often seems to reflect the priorities of a particular administration that is in office where some rules go through very, very quickly and others get terribly bogged down.

Mr. MCNERNEY. Mr. Black, you said that you felt Congress should pass the law pretty much as it is now in the discussion draft form. At least that is what I understood.

Mr. BLACK. Without adding significant new mandates to PHMSA, yes, sir.

Mr. MCNERNEY. So mandates. Because I was going to say Administrator Dominguez, her one recommendation to me was that they should have additional authority to react to critical situations. Would you agree with that or not?

Mr. BLACK. Well, if PHMSA is aware of some safety information like the defective fittings she mentioned, we encourage them to get that word out as soon as possible. They have got that process right now through the advisory bulletin process and I can tell you I have seen first-hand how important those advisory bulletins are to the industry. I am not aware of any incidents that would have been avoided in the past if emergency order authority was in place. We are ready to look at a proposal, but we would think it should have a high standard. It should address emergency conditions that pose imminent threats or widespread harm, should be narrow in scope, should be subject to expedited review. Happy to look.

Mr. MCNERNEY. There is no doubt in my mind that you all and industry want to prevent incidents. There is no doubt in my mind about it and that you will take steps to do that, but I have a feeling that if it is left to industry, it will tend to be optimistic and you need a little oversight to make sure the optimism doesn't cause problems.

Mr. BLACK. If PHMSA is aware of information like a defect, we want to hear about it as soon as possible. Their quickest way to get that information out is the advisory bulletin process.

Mr. MCNERNEY. And not only that, creating rules that—high standards that cause industry to have safety standards that prevent incidents.

What is the typical industry response to an advisory bulletin by PHMSA, Mr. Black?

Mr. BLACK. Read very carefully. We have industry groups, employees working on pipeline safety issues focusing on improvement and they are dissecting those very closely. We have got instances of advisory bulletins in the last couple of years that have led to operators getting that aha moment and taking that back to their companies.

Mr. MCNERNEY. Thank you. Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time I recognize the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTI. Thanks, Mr. Chairman. And thanks very much to the panel for being here today.

Mr. Santa, if I could start with a few questions for you. Can you comment on how your members use the 811 Dial Before You Dig program and do you believe that it would be helpful to incorporate new technologies or best practices to improve the communication between the stakeholders from receipt of excavation notification until successful completion of the excavation?

Mr. SANTA. Mr. Latta, INGAA's members strongly support 811. One of the significant causes of pipeline incidents is excavation damage and so we very strongly support 811 and strong programs to ensure that all excavators are subject to such programs.

If there are specific proposals on how via using technology, the effectiveness of those programs can be improved, I think we would be very interested in hearing that.

Mr. LATTI. Let me follow up with that. How can the Federal Government help advance the adoption of developing those technologies? Are there technologies out there that we should be doing, the Federal Government should be helping to advance?

Mr. SANTA. Well, PHMSA has dollars in its budget that it can use at its own discretion for research and development. Also, there is the ability to do cost-shared research and development with the industry since we all share the goal of improved pipeline safety and developing technologies that can prove that.

Mr. LATTI. Thank you. Mr. Black, how do pipeline operators use in-line inspection, the so-called smart pig technology to find problems in their pipelines?

Mr. BLACK. Well, you put this cylinder-shape robot inside the pipeline and push it through with the force of the liquid and it collects information about the properties of the pipeline, terabytes of information. That information is then taken out of the smart pig

and it is analyzed by a third party vendor working with the pipeline operator to determine what features need to be investigated. They follow industry practices and PHMSA regulations about which features need to be uncovered and inspected in person by a pipeline to determine whether there needs to be a repair or whether it is just an issue that hasn't become a problem yet. The results of this which cost more than \$2.2 billion in 2014, has been a dramatic decrease in corrosion-related incidents and in all types of incidents since modern integrity management practices were put into place.

Mr. LATTA. So you are saying that the technology we have today has really increased the ability to find those cracks that are out there in the pipeline?

Mr. BLACK. Yes. It is finding more. That is more for pipeline operators and these third-party vendors to look at. Now the challenge is taking all of this information, finding out what are those true positives that need to be addressed and finding those issues and repairing them before they become a problem.

Mr. LATTA. Let me ask this also. In the draft bill that we have here today, there is a provision for the use of the smart pigs not less than once every 12 months for certain deep water pipelines. Is that a reasonable interval for that?

Mr. BLACK. It would address pipeline water crossings of greater than 150. We would not support that being applied to a greater set of pipelines and I will explain why. Right now, pipeline operators are required to assess the condition of their pipelines and to prioritize areas based on risk. Determining a 1 year inspection schedule is not really supported by the conditions of that pipeline. It is not reported by what has been found. It is arbitrary. If that is to be expanded, we would find that it is diverting safety dollars from areas of greater risk.

One year in pipeline integrity management for inspections is probably too soon. Any time that pipeline operator does that smart pig and gets that result, some features that they find require analysis within a year. Some are immediate. But to run a smart pig every year, you may not learn that much new from year to year.

Mr. LATTA. OK. Well, thank you very much, Mr. Chairman. I yield back the balance of my time.

Mr. WHITFIELD. The gentleman yields back. At this time, the chair recognizes the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask a couple of questions of Mr. Weimer. In Ms. Dominguez' testimony, she requested that Congress give PHMSA emergency order authority. And PHMSA already has corrective action authority that allows it to direct a single operator to take action to protect life, property, and the environment. But as I understand it, emergency order authority would allow the secretary to take such action on an industry-wide basis. Seems like a common-sense tool for the agency to have. I am kind of shocked that they don't have it already.

Could you just please talk more about this request and specifically what would the benefits of emergency order authority be for communities to which pipelines are routed? For instance, between 2007 and '09, pipe was being produced for market that did meet



industry standards. In your opinion, would this have been a situation in which emergency order authority would have been helpful, just as an example?

Mr. WEIMER. Yes. Thank you for the question. I think you hit the point right on the nose, that there is a number of issues that come up that are found because of an incident on a specific pipeline. And PHMSA has the authority to order that specific pipeline to change their ways, but currently they don't have the authority to change, order the whole industry, nationwide, to change things. Whether it is pipeline that wasn't made to specs, that I think you were mentioning that came to light a few years ago, the fittings that Ms. Dominguez mentioned or other serious things that become obvious that it is a nationwide problem, at this point they have to go through a rulemaking that can take years as we have seen. They do have the ability to put out advisory bulletins like Mr. Black mentioned, but the industry is a broad spectrum of different people and while we think most of the industry pays attention to the advisory bulletins, there may be some within the industry that don't.

Mr. PALLONE. All right, thank you. And then a second topic deals with the TAG grants. The Pipeline Safety Information Technical Assistant Grants are very important to me and a number of members. I think you know that the grants came into being as a compromise in 2002 after this committee reached an impasse on right-to-know language for pipeline inspection data. And I, for one, think we still need a strong right-to-know provision in law. If we have that, I think it would be appropriate to discuss changes to the TAG grant program. The fact is that we don't have the right to know in the statute, so we need these grants in order for communities to have access to the technical expertise and info they need to truly understand pipeline risks in their area.

A few minutes ago, my colleague, Mr. Mullin, raised some concerns about the TAG grants and I would like to give you a chance to respond to those concerns. First, does the Pipeline Safety Act allow TAG grants to be used for lobbying?

Mr. WEIMER. Well, I think specific to the statute, there are two things that are precluded from use of the money. One is lobbying. You are not allowed to use any of the TAG grant money for lobbying and you are not allowed to use it for any type of lawsuit against a pipeline company.

Mr. PALLONE. So the answer is no, it can't be used for lobbying. It can't be used for litigation.

Mr. WEIMER. Correct.

Mr. PALLONE. Is there any evidence of a widespread abuse of TAG grants or do the majority of such grants go for useful, lawful purposes?

Mr. WEIMER. Well, there has been over 160 TAG grants that have been let out over the course of the program. I am certainly not knowledgeable of all of those, but I don't know of any specific grants that have gone toward lobbying or lawsuits. Most of them have been used by local governments, local communities, looking at improving safety through GIS works, emergency response, looking at specific issues and not for lobbying or lawsuits.

Mr. PALLONE. My final question is by allowing communities to hire experts to obtain independent pipeline safety assessments,

doesn't that help everyone, industry included, by ensuring that there is real, credible data out there on a pipeline? I mean that is what these TAG grants are all about, right?

Mr. WEIMER. Yes, absolutely. And we certainly have seen evidence of that. We were involved with a TAG grant from a group that got a TAG grant in California this past year and they had a concern about a hazardous liquid pipeline that ran through their community. Once we looked at the incidents from that pipeline and went and met with that community, we kind of assured them that that pipeline wasn't as big a deal as perhaps working with the local governments in that community to ensure that they are dealing with emergency response correctly. Their concerns for that particular pipeline were kind of overblown once we shared the correct information with them.

Mr. PALLONE. All right. Thanks a lot. Thank you, Mr. Chairman.

Mr. WHITFIELD. The gentleman yields back. This time I recognize the gentlelady from California, Ms. Capps, for 5 minutes.

Ms. CAPPS. Thank you, Mr. Chairman. And thank you to all of our witnesses for your testimonies today. Throughout the course of this hearing, we have heard over and over about the need to maximize the safety of natural gas and hazardous liquid infrastructure. The truth is that far too many of us have had direct experience with a devastating pipeline or storage facility incident that has led to significant harm to public health, the environment, or the local economy. And in every case, just as it did in my district in response to the Plains spill this last May, these incidents highlight inadequacy in an existing management requirement. As we learn from these tragedies, it is critical that we apply this knowledge to make all of our communities safer.

Mr. Weimer, you mentioned—my questions are addressed to you, Mr. Weimer. You mentioned in your testimony that the number of pipeline incidents has been steadily increasing over the past 10 years. Can you elaborate on a few? And I have several questions, so you can make it just one or two, what are the causes leading to this increased number that we are experiencing? Does the abundance of aging and outdated infrastructure have anything to do with the uptick in incidents?

Mr. WEIMER. Yes, thank you for the question. And there was a graph in my written testimony.

Ms. CAPPS. Right.

Mr. WEIMER. That showed that the significant incidents on liquid pipelines has been increasing. It is again one of those measurement things about what are the things that make up incidents, but there certainly has been a rash of big incidents like the one that happened in your own district, the Marshall, Michigan spill; the one in Mayflower, Arkansas that kind of brought this to a head.

The major causes, when you look at the PHMSA data are things within pipeline operators' control, things like use and operation of the pipeline, corrosion and bad equipment.

Ms. CAPPS. In other words, they are preventable. As a follow-up, can you elaborate on how emergency order authorizations could help ensure that systemic issues in pipeline infrastructure could be responded to in a more timely manner? As you know, there was quite a significant time lag between the start of this spill and a re-

sponse, even though by chance, emergency responders were very nearby.

Mr. WEIMER. Yes, clearly, if PHMSA had emergency order authority it could help in situations where they learn something. Like the pipeline that failed in your own district, there is evidence coming out now and it is not for sure yet, that because that was an insulated pipeline that may have affected that pipeline differently.

Ms. CAPPS. Yes.

Mr. WEIMER. If it turns out that is the truth, an emergency order would allow PHMSA to correct that problem nationally.

Ms. CAPPS. Exactly. Well, you have led to a topic that we should be addressing here in our committee.

Now I want to turn to the need for improved response planning to quickly and adequately react to spills when they do occur. Without up to date and appropriate response plans in place is it possible to respond to incidents such as pipeline failures and spills? In your view, what must all response plans include and when should these plans be updated, for example, in response to changing conditions or new knowledge to ensure that they are both adequate and current? That is a big question. I am sorry, but you can answer quickly and then respond in writing for the record, if you would.

Mr. WEIMER. Sure. There is a number of things. The National Academy of Sciences pointed out that PHMSA mainly looks at these response plans for completeness, not for effectiveness.

Ms. CAPPS. Right.

Mr. WEIMER. They need to change that. They need to ensure more testing.

Ms. CAPPS. Thank you. And finally, you touched on a lack of stringent criminal penalties with regard to violations in pipeline safety. Are the current criminal and civil penalties regarding pipeline safety adequate to dissuade operators, especially the bad actors from committing violations? Can you elaborate on the need to expand upon existing penalties? I hope you can.

Mr. WEIMER. Sure. The language currently in the pipeline safety statute is different than what it is on the hazmat side for PHMSA where they include recklessness as one of the things that can be prosecuted. We think it should be harmonized with what they have on the hazmat side and with what a lot of other safety agencies also have.

Ms. CAPPS. And again, Mr. Chairman, I hope we can follow up with discussion of some of these topics.

I appreciate your answers to my questions. It is clear there are many avenues for improving upon existing pipeline regulations. It is also clear to me that we must ensure that PHMSA has the necessary tools to make these changes, including those that have yet to be implemented from the last reauthorization to minimize risks associated with natural gas and hazardous liquid infrastructure.

Once again, I would like to reiterate that I look forward to continuing to work with the chairman and ranking member to continue to improve upon the draft that we have so that we can ensure that we are crafting legislation that will minimize the frequency and impact of all future spills and protect our communities. Thank you and I yield back 3 seconds.

Mr. WHITFIELD. Thank you for yielding back 3 seconds. I want to thank all of you for joining us today. We look forward to continuing dialogue as we move forward on this legislation.

And Mr. Saari, we didn't have a lot of questions for you, but we did pay attention to your testimony and do appreciate your bringing to the forefront the state grant issue and the adequate compensation to the states. And particularly in Michigan, I guess you all have more underground storage of natural gas than any state in the country is my understanding.

But anyway, that will conclude today's hearing. We will keep the record open for 10 days. And I would like to enter into the record a statement from American Public Gas Association, as well as letters from Representative Capps to PHMSA, dated February 29, 2016, regarding the Plains pipeline accident in California. Without objection, it is entered into the record.

And thank you all again, and that concludes today's hearing.

[Whereupon, at 12:48 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

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**Congress of the United States**  
**House of Representatives**

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February 29, 2016

Ms. Marie Therese Dominguez  
Administrator  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
East Building, 2<sup>nd</sup> Floor  
1200 New Jersey Ave., SE  
Washington, DC 20590

Dear Administrator Dominguez:

I write to express my gratitude for your February 17, 2016 visit to the 24<sup>th</sup> Congressional district of California, which I represent, to view the site of and provide an update regarding the May 19, 2015, failure of Plains Pipeline, LP's (Plains) Line 901 pipeline (pipeline) and the subsequent crude oil spill along the Gaviota Coast. Your visit was not only informative, but it was important for the residents of my district to have the opportunity to interact with you directly.

However, several additional questions have arisen since your visit. I ask that you please provide my office with answers to the following questions about PHMSA policies and processes within two weeks of the receipt of this letter (March 14, 2016):

- 1) After the discovery of an incident (e.g., a spill, release, etc.), what requirements are in place for a company to report the problem to the National Response Center? Specifically, how quickly must a provider inform NRC of the incident and is the provider required to inform any other federal or state entity, such as PHMSA, directly?
- 2) Are In-Line Inspection (ILI) surveys required to be completed by multiple devices per inspection in order to verify results, or is a single inspection run considered sufficient per inspection? Is there any requirement for consistency of inspection contractors or devices between subsequent inspections in order to ensure consistency for comparison of inspections over time? Does PHMSA have the ability to mandate increased frequency of ILI surveys for a provider? If so, what triggers this requirement?
- 3) What methods does PHMSA have within its authority to ensure that anomaly detection during ILI accurately reflects the state of the pipeline (within tolerance)? What proof of quality is required to be submitted by either the inspection contractor or pipeline provider to certify or confirm that inspections are accurate?

- 4) What does PHMSA use to determine the best available technology for corrosion prevention standards? Does PHMSA have different corrosive prevention standards for different pipeline constructions? Does PHMSA inspect pipelines to ensure that corrosion prevention methods are working and appropriate for a pipeline?
- 5) Does a pipeline have to be classified as interstate in order for it to be under PHMSA jurisdiction? How is the interstate designation determined by PHMSA? How does PHMSA determine that a pipeline is under their jurisdiction? Is an interstate designation determined based on the physical structure of the pipeline or the final destination of the product being transported? Does PHMSA ever reevaluate the interstate designation of and their authority over regulating a pipeline? If so, what triggers this reevaluation? Can a pipeline be considered both inter- and intrastate for purposes of regulation, and if both designations are possible, what state and federal agencies are responsible for regulatory and integrity oversight for the pipeline?
- 6) Does PHMSA have the authority to communicate with other federal, state, or local regulatory agencies, such as the Federal Energy Regulatory Commission or a state's Fire Marshall? If so, what triggers these communications and how often do they occur?

I also wish to express my gratitude for the release of the preliminary factual findings regarding the Plains Spill during your visit. Release of the preliminary report has raised additional questions over the specifics of the Plains pipeline and spill. I ask that you please provide answers to the following questions specific to the May 19<sup>th</sup> Plains spill—either in your response to the above questions or in a separate response as soon as the information requested becomes available. As appropriate, please also address these concerns in the final investigation findings report to be released late Spring 2016:

- 1) The preliminary findings highlight an 89 minute delay between the discovery of the incident and the subsequent notification reaching NRC. Why was NRC not notified immediately upon discovery of the pipeline failure by Plains? What was the cause of this delay and what impact did this delay have on the promptness of the Coast Guard response?
- 2) The preliminary findings showed an increasing number of anomalies between 2007 and 2015 in ILI data. Can PHMSA comment on the equivalency between these inspections? Did PHMSA consult with Plains in the decision to increase inspections to every three years?
- 3) The preliminary findings indicated that ILI survey results for the Plains pipeline indicated that “less than 50% depth were generally measured in the field to not be within tolerance, or were ‘under-called’.” Would these discrepancies have been discovered in the absence of the follow-up inspection resulting from the pipeline rupture? How did previous ILI surveys compare with actual condition of the pipeline in question?
- 4) The preliminary findings suggest that the Cathodic Protection mechanism in place along the Plains Pipeline “reveal[ed] protection levels that typically are sufficient to protect non-insulated, coated steel pipe.” However, the pipeline of concern is insulated. Are there

different standards for corrosion prevention for insulated and non-insulated pipe? Did PHMSA inspectors ever document moisture under the insulation prior to the pipeline rupture? Why, if previous inspections documented an increasing number of anomalies during ILI, was there not a mandate to change or improve the corrosion prevention methods in place for this pipeline?

- 5) There have been questions as to why the Plains 901 pipeline was designated as interstate and under the jurisdiction of federal oversight. When did PHMSA first determine that the Plains pipeline was interstate and under their regulatory authority? Did PHMSA reevaluate this designation at any point in the past and, if so, why? If there is a change in designation for the Plains Pipeline in my district, will PHMSA maintain authority over the investigation and enforcement of any mandates within corrective action orders?

While I understand that PHMSA is in the process of finalizing the full investigation report, I ask that you do everything in your power to ensure that this is completed quickly, while at the same time ensuring that the findings are as thorough as possible. Again, thank you for taking the time to travel to my district and for your efforts to thoroughly investigate the causes and impacts of the Plains spill. I look forward to your prompt responses to these questions and to the final investigation findings report. Thank you for your continued attention to this issue.

Sincerely,



**LOIS CAPPS**  
Member of Congress  
California 24<sup>th</sup> District

**TESTIMONY OF THE AMERICAN PUBLIC GAS ASSOCIATION  
BEFORE THE HOUSE ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY  
AND POWER  
MARCH 1, 2016**

Mr. Chairman and Members of the Committee, the American Public Gas Association (APGA) appreciates this opportunity to submit testimony on behalf of public gas systems to the Committee for this important legislative hearing on the "Pipeline Safety Act of 2016."

APGA is the national association for publicly-owned natural gas distribution systems. There are currently approximately 1,000 public gas systems located in 37 states. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. Public gas systems range in size from the Philadelphia Gas Works which serves approximately 500,000 customers to the city of Freedom, Oklahoma which serves 12 customers.

Public gas systems are an important part of their community. Our members' employees live in the communities they serve and are accountable to local officials (and their friends and neighbors). Public gas systems are generally regulated by their consumer-owners through locally-elected governing boards or appointed officials. However, when it comes to pipeline safety, nearly all of our members are regulated by their respective state's pipeline safety office. All of our members must comply in the same manner as investor- and privately-owned utilities



with pipeline safety regulations issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

While the manner of safety regulation may be the same, one major difference between the average investor-owned utility and the average public gas system is in the number of employees. Approximately half of the 1,000 public gas systems have 5 employees or less. Only a handful have in-house engineering staff. As a result, regulations that impose significant administrative burdens such as paperwork and technical analysis have a significantly greater impact upon a small public gas system than upon a larger system serving hundreds of thousands or millions of customers and utilizing an in-house engineering staff with several hundred or even thousands of employees.

Safety is the number one issue for public gas systems. No other issue rises to the level of safety for the local distribution company (LDC) providing natural gas service to its consumers. Gas utilities are the final step in moving natural gas from the production field to the end user, be it a homeowner or business. As such, our members' commitment to safety is second to none and they remain focused on providing safe and reliable service to their customers. A key part of safety is education and public awareness.

**Education and Public Awareness**

Even before there were federal pipeline safety regulations, public gas systems conducted public awareness programs. Utilities add odorant to the gas to give it its distinctive smell so that people can smell it at one fifth of its lowest flammable limit. Educating the public so that the public recognizes a gas odor and calls the utility if they smell gas is a critical component of each utility's safety program. Another critical component is educating the public about the existence of buried gas lines in the community and the importance of notifying the one-call center to have lines marked before digging.

A public gas utility's public awareness issues are different from those of interstate liquid or natural gas pipeline operators. Unlike some liquid pipelines, natural gas utilities transport just a single product, natural gas, so our messages about recognizing and reacting to a possible leak are straightforward. In addition, LDC lines bring natural gas directly into the homes and businesses in the communities we serve, so our product is something that many in the public encounter in their daily lives. People may not expect there to be oil pipelines or gas transmission pipelines in their neighborhood, but they do know that there are buried gas lines, especially if they have gas service in their home. In 2015, APGA polled nearly 600,000 randomly selected people in towns and cities served by public gas systems. Over 89 percent were aware they should call before digging. And nearly 96 percent believed that they have adequate information about natural gas safety such as how to recognize a leak and what they should do if they smell gas in the home.

Public gas systems had effective public awareness programs before new regulations were established, they have effective public awareness programs now and APGA believes the current programs are adequate to ensure public awareness of natural gas safety into the future.

#### **Reauthorization**

As the Committee considers the Pipeline Safety Act of 2016, APGA wants to communicate its support for reasonable regulations to ensure that individuals who operate and maintain the nation's network of distribution pipelines are provided the training and tools necessary to safely operate those systems. In this regard, over the past several years, the industry has had numerous additional requirements placed on it, such as, for example, the Distribution Integrity Management Program (DIMP), excess flow valves (EFVs), control room management, operator qualification, public awareness and more. Many APGA members are in the process of working to comply with the administrative burdens of these additional regulations and it will take time for all of the impacts of these already existing regulations to be fully understood. Given that public gas systems are non-profit systems and in many cases have limited resources, these additional regulations, while important, do impose an additional operational burden upon them. APGA urges the Committee to seriously weigh the benefits versus the burdens of new regulations before imposing any additional regulatory burdens upon LDCs through this reauthorization effort.

**Funding via User Fees**

As originally established, user fees for funding PHMSA are to be collected by natural gas transmission operators from their downstream customers. This has been the approach used since the inception of PHMSA user fees, and it has worked well since it minimizes the points of contact between the government and those from which it is collecting the user fees. These user fees are treated by the Federal Energy Regulatory Commission as part of the transmission operators' legitimate cost of service and hence are includible in the transmission operators' rates. The thousands of customers of each transmission operator, including local distribution companies (LDCs), reimburse the transmission operators for these user fees through the rates they pay for the transmission service and in the case of LDCs, are passed through to their end-use consumers. This historical approach for assessing and collecting user fees is logical and straight-forward in that the money collected by the relative handful of transmission operators is passed on to PHMSA effectively and efficiently.

The logical question is why anyone would want to change the current streamlined approach to something obviously more complicated and less efficient from the Government's point of view and the customers'. The answer, very simply, is that many pipelines in this country are substantially over-recovering their costs of service, i.e., their rates are no longer just and reasonable.<sup>1</sup> According to a study by the Natural Gas Supply Association which analyzes Form 2 data submitted by pipelines, from 2010-2014 pipelines over-collected \$780 million/year or \$3.9 billion over five years. Thus, these pipelines do not want to file for pass-through of the PHMSA

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<sup>1</sup> NGSA 2010-2014 Pipeline Cost Recovery Report (issued February, 2016).

costs because such a filing would reveal that these pipelines should reduce, not increase, their rates in order to conform with the Natural Gas Act's (NGA) 'just and reasonable' rate standard. Pipelines would prefer to either move the PHMSA user fee downstream or initiate a tracker mechanism whereby they are shielded from a rate review under the NGA just and reasonable standard.

APGA supports the current approach, which has worked well over the years and commends the Committee for not including within the legislation a change in the user-fee structure. APGA is strongly opposed to any changes in the current approach that would either shift the user fees collection point downstream to the LDCs and other pipeline customers or permit the pipelines to bypass the NGA just and reasonable standard through a tracker mechanism. The Federal Energy Regulatory Commission has never turned down a request to include pipeline safety user fees in transportation rates charged by interstate pipelines, so the *only* risk to the pipelines is that, despite being permitted to include the PHMSA user fees as a legitimate operation and maintenance cost, their rates would be reduced because they are otherwise over-recovering their overall just and reasonable cost of service. Such pipelines should not be permitted to "track" costs that simply ensure their continuing over-recovery.

In brief, Congress should not tamper with the existing collection mechanism by cobbling together statutory relief for a non-problem, which relief can only exacerbate pipeline over-recovery and harm consumers by inappropriately raising their rates. Times are tough enough for American consumers without imposing on them extra costs for which there is no rational basis.

**Definition of “Transmission”**

Section 6 of the SAFE PIPES Act as amended in the Senate would require the Comptroller General of the United States to submit a report to Congress on the effectiveness of the natural gas integrity management program including an analysis or recommendations regarding changes to the current definition of high consequence areas or expanding integrity management beyond high consequence areas. Since the concept of high consequence areas is unique to transmission integrity management programs, this provision is clearly intended to apply to PHMSA’s transmission integrity management program. APGA believes that is appropriate. We are concerned, however, that the Comptroller General’s report should take care to differentiate between the type of large diameter, high pressure pipelines one normally thinks of as transmission lines and the smaller, lower pressure pipelines operated by public gas utilities that PHMSA also classifies as “transmission.” According to PHMSA’s transmission annual report data, public gas systems operate just over 2,800 miles of pipeline classified as transmission. Nearly 2,300 miles of these “transmission lines” are 12 inches or less in diameter, and 800 miles are 6 inches or smaller. APGA encourages Congress to ask the comptroller General to include in the report an analysis of the appropriateness of PHMSA’s current definition of “transmission” which includes both a risk-based operating stress component and a functional component that results in some small diameter, low stress lines being classified as transmission despite the very low level of risk.

**Conclusion**

Natural gas is critical to our economy, and millions of consumers depend on natural gas every day to meet their daily needs. It is critical that they receive their natural gas through safe, affordable and reliable delivery by their LDC. Public gas systems are proud of their safety record, and safety has been, and will continue to be, their top priority. We look forward to working with the Committee towards reauthorization of the Pipeline Safety Act.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
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March 22, 2016

The Honorable Marie Therese Dominguez  
Administrator  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Dear Administrator Dominguez:

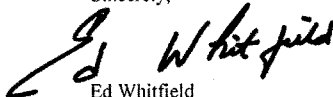
Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, March 1, 2016, to testify at the hearing entitled "Legislative Hearing to Examine Pipeline Safety Reauthorization."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on April 5, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Will.Batson@mail.house.gov](mailto:Will.Batson@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

cc: The Honorable Bobby Rush, Ranking Member, Subcommittee on Energy and Power

Attachment



**House Energy and Commerce  
Subcommittee on Energy and Power**

**Additional Questions for the Record  
March 1, 2016 Hearing on Pipeline Safety Reauthorization**

**The Honorable Lois Capps**

1. **Administrator Dominguez, please elaborate on the various mechanisms that PHMSA currently has to mandate increased frequency (e.g., more frequent than once per five year in a high consequence area) of inspections for individual pipelines?**

**RESPONSE:** PHMSA, under normal circumstances, does not have regulatory authority to require operators to modify or increase the number of their in-line inspection (ILI) surveys. If an operator does not properly conduct risk assessments for threats to the pipeline, PHMSA, through the enforcement process, could require an increased number of ILI surveys.

- A. Are there specific triggers, such as a history of increasing anomalies that automatically result in increased inspection frequencies?**

**RESPONSE:** In the event of a pipeline accident or to abate a condition that “is or would be hazardous” to life, property or the environment, PHMSA can mandate through the enforcement process increased number of ILI surveys along with other preventative and mitigative measures. This type of enforcement action can be implemented through a corrective action order under 49 C.F.R. § 190.233.

- B. How many times has PHMSA required increased inspection frequency in the last ten years and can you please provide several examples?**

**RESPONSE:** Over the last 10 years, PHMSA has issued 76 Corrective Action Orders, Safety Orders and other actions directing safety improvements on regulated pipelines. Within those orders, PHMSA either required new or rerun of ILI inspections in 53 different cases. In most cases, the requirement for ILI inspection was part of a larger remedial work plan designed to address specific safety concerns and included more than single ILI inspections. In six cases, PHMSA ordered companies to increase the long-term frequency of their ILI runs.

Examples:

- Following a pipeline failure in Virginia, Williams was required to run a high-resolution magnetic flux leakage (metal loss) tool and a deformation tool on the section of its Transcontinental Line A pipeline.

- As part of a remedial work plan, Conoco Phillips was required to run an ILI and increase their ILI frequency based on the findings.
- Southern Natural Gas was required to conduct an ILI as part of a remedial work plan and subsequently conducted accelerated maintenance ILIs.
- ANR Pipeline was required to review previous ILI information as part of a remedial work plan and incorporate the results into their ILI schedule.
- Rockies Express was required to conduct a high-resolution caliper tool run of Spread 1 within 30 days of an order and subsequently perform a second high-resolution caliper tool run at a later date so that results could be compared.

2. **Please provide examples of the type of incidents that would warrant issuing an Emergency Order if PHMSA were granted this authority. For example, could the understanding that insulated pipes are more prone to corrosion be addressed using an Emergency Order?**

**RESPONSE:** In the event that PHMSA is granted emergency order authority, the types of situations in which the agency could use this authority will likely be very dependent on the final text of the statutory provision and its precise scope. In addition, any prerequisites or limitations in the provision may apply to various emergencies differently and may have to be applied on a case-by-case basis. As we understand the intent, this authority would be limited to implementing requirements that are relatively short-term in duration and limited in scope to addressing imminent hazards. If that is the case, the agency would limit its use of the authority to require operators of all affected facilities to abate a condition, practice, or activity that poses an immediate threat to life or significant harm to property or the environment. Examples could include instances where pipeline components have significant failure rates, such as a particular model of a valve known to have manufacturing defects. With respect to insulated pipes, PHMSA would need to tailor the emergency order such that it applied to only those lines for which there was evidence that the insulation was the cause of a corrosion threat that constituted an imminent hazard under the circumstances in which those lines were being operated.

3. **Are operators required to provide interim confirmation that spill response plans are up to date between required update intervals?**

**RESPONSE:** PHMSA requires pipeline operators to resubmit response plans every 5 years following the original date of submission or approval. Plans for facilities that could pose “significant and substantial harm” to the environment are re-reviewed and approved by PHMSA, if appropriate, while plans for facilities that could pose “substantial harm” to the environment are simply resubmitted to PHMSA.<sup>1</sup> A line section can be expected to cause significant and substantial harm to the environment in the event of a discharge of oil into or on the navigable waters or adjoining shorelines if the pipeline is:

- Greater than 6 5/8 inches in diameter;

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<sup>1</sup> 49 C.F.R. § 194.121(a)

- Longer than 10 miles in length;
- Experienced two or more reportable releases in the last five years, or, one release greater than 1,000 barrels in the same timeframe;
- Containing any electric resistance welded pipe, manufactured prior to 1970, operates at a maximum operating pressure established under 49 CFR Part 195.406 that corresponds to a stress level greater than 50 percent of the pipe's specified minimum yield strength;
- Located within a five mile radius of potentially affected public drinking water intakes; and
- Located within a one mile radius of potentially affected environmentally sensitive areas.

Additionally, operators must immediately modify their response plans to address different operating conditions or information that would substantially affect the implementation of a response plan. Operators must submit the updated plan to PHMSA within 30 days of making such a change.<sup>2</sup>

4. **Can you tell me both the number of pipelines and the total mileage of pipelines in coastal areas?**

**RESPONSE:** PHMSA has identified 81 pipelines that intersect the "coastal recreation water" lines, also referred to as beach lines. PHMSA has identified 134 miles of gas transmission and hazardous liquid pipelines within 1,000 feet of coastal recreation shorelines. Of these pipelines, 94 miles are already within a high consequence area (HCA) area mapped in the NPMS and 66 miles are hazardous liquid pipelines.

**A. Are any of these coastal pipelines not in designated high consequence areas?**

**RESPONSE:** Of the 81 coastal pipelines identified, a total of 29 gas transmission and hazardous liquid pipelines totaling 40 miles are not within an HCA.

5. **Can you please elaborate on what records are available in the public database and on how the public can gain access to these documents?**

**RESPONSE:**

PHMSA's pipeline safety program provides a variety of data about federally-regulated and state-regulated natural gas pipelines, hazardous liquid pipelines, and liquefied natural gas facilities on its website at: <http://www.phmsa.dot.gov/pipeline/library/data-stats>. The operators of these facilities report this data in accordance with Part 191 and Part 195 of PHMSA's pipeline safety regulations. PHMSA's website provides downloads of the raw data, yearly summaries, multi-year trends of safety performance metrics, and inventories tracking the removal of aging and other higher-risk infrastructure.

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<sup>2</sup> 49 C.F.R. § 194.121 (b)

PHMSA provides pipeline data sets for the following:

**Annual Report Data from Gas Distribution, Gas Gathering, Gas Transmission, Hazardous Liquids, and Liquefied Natural Gas (LNG) Operators**

Operators are required to submit annual reports to PHMSA. Reports include information such as total pipeline mileage, commodities transported, mileage by material, and installation dates. Gas Transmission and Hazardous Liquids reports include integrity inspection and assessment data. Gas Distribution reports include integrity management performance measures.

**Incident / Accident Data from Gas Distribution, Gas Gathering, Gas Transmission, and Hazardous Liquids and LNG Operators**

Operators of LNG facilities and gas and hazardous liquid pipelines are required to submit reports to PHMSA within 30 days of an incident or accident (49 CFR Parts 191, 195). Reports include incident times and locations, injury and/ or fatality counts, commodity spilled/gas released, causes of failure, evacuation procedures, and other relevant information.

**Safety-Related Condition Reports (SRCRs)**

PHMSA tracks Safety-Related Condition Reports submitted by operators of LNG facilities and gas and hazardous liquid pipelines when certain hazards (e.g., corrosion, movement caused by extreme weather) are discovered.

**Mechanical Fitting Failure Data from Gas Distribution Operators**

Gas distribution pipeline operators are required to submit annual reports on all hazardous leaks that involved a mechanical fitting (49 CFR Parts 191, 192). Operators submit date and location information, the type of mechanical fitting involved, and the apparent causes of leaks.

**Safety Program Data for Pipeline and LNG Operators**

Since 2012, operators of pipelines and liquefied natural gas plants have been required to submit Safety Program data to PHMSA (49 CFR Parts 191.22 and 195.64). Data is submitted for each safety program applicable to the pipeline system type. When safety program data changes, operators are required to notify PHMSA of the change.

**Federal Inspection and Enforcement Actions**

PHMSA also provides information about federal inspections and any resulting enforcement actions via its Operator Information and Enforcement webpages.

Operator Information includes by-operator details on pipeline miles, incidents, federal inspections, and federal enforcement.

<http://primis.phmsa.dot.gov/comm/reports/operator/Operatorlist.html?nocache=1041>

Enforcement includes details about federal enforcement actions, including access to key documents from each case.

<http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html?nocache=6507>

#### **State Pipeline Safety Partners**

State Pages provide access to inspection and enforcement data submitted by our State Pipeline Safety Partners. <http://primis.phmsa.dot.gov/comm/states.htm?nocache=9721>.

#### **National Pipeline Mapping System**

PHMSA's National Pipeline Mapping System allows the public to view and obtain maps of pipelines in their communities on a county-by-county basis. Other users, including Federal, state and local officials and pipeline operators, can request and be granted a password that will allow access to information limited to their particular jurisdiction. Federal officials may obtain pipeline mapping information for the entire U.S., while state/local government officials may access information for their appropriate state or county. Mapping information for pipeline operators is restricted to their specific operator identification numbers.

#### **A. Are In-Line Inspection reports available in the PHMSA Public Database, including anomaly reports, corrective action requirements, and confirmation that anomalies are addressed?**

**RESPONSE:** No, PHMSA does not require pipeline operators to submit their internal inspection results to the agency following their completion, however, corrective action orders are made public and are available on PHMSA's website.

#### **B. Are any additional steps taken to ensure the information is easily accessible and understandable such as a summary?**

**RESPONSE:** PHMSA routinely conducts inspections of pipeline operators to determine an operator's compliance with Federal pipeline safety regulations. Each year, PHMSA evaluates many thousands of operator records and procedures involved in the construction, operation, testing, and maintenance of pipelines, including in-line inspection results. PHMSA evaluates the adequacy of these items at operator facilities, within operator control rooms, or areas in the field. PHMSA does not usually take possession of detailed and complex internal inspection records. PHMSA takes possession, or makes copies, of documents that indicate probable violation of

safety requirements or safety concerns and may be referenced as part of an enforcement record.

While we review these records extensively during our inspections, PHMSA does not require pipeline operators to submit their internal inspection results to the agency following their completion. PHMSA does, however, maintain on file the final inspection reports our inspectors prepare that will discuss any issues observed by PHMSA during the period of inspection, including possible issues of operator non-compliance, and will provide details regarding these issues and any enforcement actions taken against an operator.

**C. Can you provide statistics on the use of this database or a sense of the ease of accessing this repository?**

**RESPONSE:** Pipeline operators are not required to submit their internal inspection results to PHMSA following their completion and thus the agency does not maintain a pipeline operator internal inspection results database. PHMSA can and will provide access to any of its own inspection reports evaluating operator compliance to fulfill Freedom of Information Act requests received from the public.

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
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March 22, 2016

Mr. Carl Weimer  
Executive Director  
Pipeline Safety Trust  
300 North Commercial Street, Suite B  
Bellingham, WA 98225

Dear Mr. Weimer:

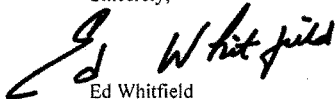
Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, March 1, 2016, to testify at the hearing entitled "Legislative Hearing to Examine Pipeline Safety Reauthorization."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on April 5, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Will.Batson@mail.house.gov](mailto:Will.Batson@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

cc: The Honorable Bobby Rush, Ranking Member, Subcommittee on Energy and Power

Attachment



#### **Additional Questions for the Record**

##### **From The Honorable Lois Capps**

The following questions from Representative Capps all relate to underground gas storage issues, many of them quite technical. We appreciate these important questions, but the Pipeline Safety Trust has not previously been involved in the underground aspects of gas storage and lacks experience and expertise in these issues. To assist us we reached out to experts in gas storage at the Environmental Defense Fund (EDF) to help formulate the answers to these questions.

#### **1. In your opinion, what federal regulations of gas storage facilities are needed?**

Gas storage regulation in the United States has historically been undertaken by states as part of their oil and gas regulatory programs. Often, states' general well construction regulations apply to gas storage wells, along with state provisions for underground injection control (though in many states, gas storage wells receive special exemptions from underground injection control requirements). Though gas storage has been within the jurisdictional authority of the Pipeline and Hazardous Materials Safety Administration (PHMSA) for decades, the agency has declined to act, on grounds that industry guidelines and state regulations were sufficient.

State regulations on gas storage have lagged other oil and gas regulatory spheres like production wells and underground injection control – often, gas storage-specific regulations have only been revisited in a state following a disaster. This pattern is born out in California, which is engaged in a series of rulemakings to update its gas storage regulations following the Aliso Canyon incident.

Clearly, gas storage regulations around the country need to be revisited and in many, perhaps most cases, considerably improved. To that end, the Interstate Oil and Gas Compact Commission and the Ground Water Protection Council (two leading state oil and gas regulatory associations) are preparing guidance for states on gas storage regulations, which should be ready within the year.

Federal regulation could play a role in ensuring a uniform minimum standard for safety and environmental protection at gas storage facilities. States remain the locus of expertise and experience on gas storage, particularly the subsurface aspects. Local variation in geology and other factors means that appropriate regulation for gas storage will vary state to state. But federal



regulation could provide key principles that ensure that state regulations are responsive to the full range of gas storage issues.

It is particularly important that any federal regulations act as a floor and not a ceiling on state regulation of gas storage facilities – both intrastate and interstate, which tend to have the same environmental and safety considerations. In particular, state regulations should apply to both intrastate and interstate facilities when it is possible to comply with both state and federal standards.

Further, as PHMSA considers a regulatory response, in addition to reviewing consensus industry standards, it is imperative that the agency conduct its own independent analysis of regulatory needs in consultation with other federal agencies and the states.

**2. In regard to the Aliso Canyon Facility, were there sufficient state and federal regulations in place?**

California's gas storage regulations were outdated and insufficient, and their enforcement was lax. Few, if any, federal regulations applied, and certainly none pertaining to the subsurface aspects of Aliso Canyon, where the problem was located. California is currently overhauling its regulatory framework to respond to the Aliso Canyon incident and to modernize its approach to both gas storage and the closely related practice of underground injection control.

**A. What more could the federal government have done to provide adequate oversight and regulation for the Aliso Canyon Facility?**

As discussed above, PHMSA can consider minimum uniform standards addressing safety and the environment, after conducting an independent examination of regulatory needs in consultation with other federal agencies and the states. Any PHMSA regulatory framework should act as a floor that states are encouraged to exceed as they customize rules to be relevant to the states' geologies and other particularities.

**3. Are there safety measures that could be put in place to improve safety of storage facilities and can you provide any examples of what these would be?**

In order to ensure well integrity (i.e. that wells do not leak) proper regulation of gas storage must cover well permitting construction, testing, maintenance, repair, and ultimately decommissioning at the end of a well's useful life. The details for each of these phases are technical and complex, with multiple possible approaches to achieve good outcomes.

Any gas storage regulatory framework should address, at a minimum, the following dozen issues:

*Permitting*

1. Area of Review around gas storage wells and facilities to ensure that gas storage zones are adequately confined and no conduits will allow gas to migrate to protected water or the surface
2. Maintenance, safety, and emergency planning protocols developed by operators and approved by regulators

*Well Construction*

3. Basic well construction rules in place (including drilling, casing, cementing, completion, and evaluation)
4. Tubing and packer requirement – wells should be equipped with tubing and packer, which provides an additional layer of isolation and allows for more robust leak monitoring
5. Wellhead design – wellheads should be designed with appropriate redundancies and ability to perform maintenance activities under pressure
6. Safety devices – all wells should be equipped with automatic fail safe shut-off systems appropriate for the well's geology, condition, and operating parameters

*Maintenance/Testing*

7. Internal/External Mechanical Integrity Testing – wells should be regularly tested for ability to hold pressure and for cement integrity, both of which are critical to preventing leaks inside and adjacent to the well
8. Continuous annular pressure monitoring – this is a critical early warning system for leaks
9. Corrosion testing – this allows operators to discover potential leak sites before leaks occur
10. Surface equipment testing – this makes sure that the wellhead is functioning properly and not leaking
11. Leak detection – in addition to monitoring the subsurface aspects of the well for leaks, regular surface leak detection using best available technology

*Plugging and abandonment*

12. Timelines and standards for plugging wells when they do not meet safety or environmental standards, after a certain period of being idle, or at the end of their useful lives

**4. What would be the effect of requiring the installation of subsurface safety valves for all wells, vintage wells, and/or wells whose depth is longer than a pre-determined threshold?**

All gas storage wells should be equipped with automatic fail-safe shut off valves. However, the safety valve solution appropriate to any particular well will depend on the well's characteristics, the operating parameters and the surrounding geology. Operators should work with regulators to determine the appropriate safety valve solution for each well in a gas storage project. In any case the safety valves should be regularly calibrated and tested per the manufacturers' recommended practices.