

Hearing on Pipeline Safety

Sub-Committee on Energy and Air Quality

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The Testimony of

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Board of Directors, Pipeline Safety Trust

Testimony

Good morning. My name is Breean Beggs and I am a member of the Board of Directors for the Pipeline Safety Trust. The Pipeline Safety Trust is a non-profit corporation formed by victims of the 1999 Bellingham Pipeline tragedy to protect communities throughout the United States from unsafe pipelines and unsafe management of those pipelines.

Five years ago last month, the Olympic Pipeline burst into a salmon stream running through Bellingham's most pristine park and exploded. In a flash, three youngsters were killed, a salmon stream that runs through the heart of Bellingham was dead, and our community was sent into a deep sense of loss and mourning. The horrendous death and damage was caused by negligence, poor management, poor agency oversight and almost nonexistent regulations. Out of that sadness came a community wide awareness of pipeline safety inadequacies, and a commitment to improving pipeline safety nationwide. Because of our community's commitment local, state, and national pipeline safety laws have been passed, and the Office of Pipeline Safety has significantly increased their rulemaking efforts.

The Pipeline Safety Trust came into being a little over a year ago because of Bellingham's efforts, and as part of the court settlement with Equilon Pipe Line Company over the 1999 Olympic Pipeline explosion. After investigating this tragedy the U.S. Justice Department recognized the need for an independent organization, that would provide informed comment and advice to both pipeline companies and government regulators; and, would provide the public with an independent clearinghouse of pipeline safety information. The federal trial court agreed with the Justice Department's recommendation and awarded the Pipeline Safety Trust \$4 million which was used as an initial endowment for the long-term continuation of the Trust's mission.

The vision of the Pipeline Safety Trust is simple. We believe that communities should feel safe when pipelines run through them, and trust that their government is proactively working to prevent pipeline hazards. We believe that the communities who have the most to lose if a pipeline fails should be included in discussions of how better to prevent pipeline failures. And we believe that only when trusted partnerships between pipeline companies, government, communities, and safety advocates are formed, will pipelines truly be safer.

In my testimony this morning I will cover:

- The consequences of unsafe pipelines
- The need to address shortcomings of the Pipeline Safety Act of 2002
- Further pipeline safety issues that still need to be addressed.

Consequences of unsafe pipelines

In Bellingham we learned first hand the worst consequences of not properly maintaining, testing and regulating pipelines. Three of our young people died. Human death and injury is often the driving force behind pipeline safety improvements. This makes sense when you consider that according to the Office of Pipeline Safety in the past 20 years 397 people have died and 1850 people have been injured in pipeline accidents nationwide. But death and injury is only one measure of the adequacy of our pipeline safety system.

During the same twenty year period the Office of Pipeline Safety (OPS) reports more than \$1.5 billion in property loss from pipeline accidents, and many believe that this number is significantly under-reported. OPS also reports nearly 76 million gallons of liquid petroleum products were lost into the environment during this same period. This figure is also under-reported since spills of less than 2100 gallons did not even need to be reported until the passage of the 2002 Pipeline Safety Act. These spills represent potentially catastrophic damages to private and public water systems, wetlands and other surface and ground waters. The total costs of these damages are unknown, but clearly substantial.

In recent years the economic costs of pipeline distribution disruptions have also been recognized. In Washington State, ARCO estimated that the cost of alternative transportation for fuel during the Olympic Pipe Line shutdown was an additional \$500 million. In Arizona, California, and Michigan, which have all had

recent distribution problems due to pipeline failures, the cost of gasoline often rose by more than \$1/gallon. Multiply these temporary increases by the number of drivers forced to pay these higher prices and you find another hidden cost of the lack of pipeline safety in the hundreds of millions of dollars. After the El Paso Pipeline explosion that killed an entire family of twelve near Carlsbad, New Mexico, the Federal Energy Regulatory Commission stated that the Carlsbad accident “contributed significantly” to the California energy crisis and OPS estimated that impact at \$17.5 million a day. Since that pipeline was shut down for nearly a year this amounts to an additional \$6 billion in damages due to the failure of a single pipeline.

So while death and injury may still be the most powerful reason to care about the safety of our nations pipelines, we also need to recognize that billions of dollars of economic disruptions and increased fuel prices are being passed on to consumers by pipeline companies that have failed to ensure the integrity of their pipelines. If even a small portion of this money had been spent to test and repair these pipelines before they failed, these economic consequences would not have occurred, and people would still be alive and uninjured.

Shortcomings of the Pipeline Safety Act of 2002

The Pipeline Safety Act of 2002 provided many clear enhancements to pipeline safety regulations, including increased fines, operator training requirements, whistleblower protections, and increased funding for the OPS. To

build on this progress the following provisions of the 2002 Act need to be re-examined.

Integrity Management of Gas Transmission Lines - One of the most important rules issued as a result of the 2002 Act, was the natural gas transmission pipeline integrity management rule published in December of 2003. This rule was a good first step, but in our opinion does not go far enough, or fast enough, to ensure the integrity of a majority of the gas transmission lines in the system. Because the Act only requires integrity assessments in High Density Population Areas, and because OPS's definition of such areas only includes an estimated 7% of the total mileage of gas transmission lines, only a small percentage of pipelines will ever be tested. To illustrate, pipeline inspection will not be required under OPS's definition of High Consequence Areas where the Carlsbad, New Mexico pipeline ruptured, killed twelve people and ultimately cost consumers \$17.5 million dollars a day. This lack of requirement for assessment amounts to an endorsement of the integrity management technique of finding problems by waiting for leaks and explosions, and seems to promote a policy choice that ambushes consumers and businesses with unexpected costs rather than incorporating the cost of inspected, dependable pipelines into the rate structure.

To make matters worse the Act gives companies up to 10 years to test only seven percent of their pipelines. We hope that you will take a look at this serious flaw in the 2002 Act and move forward in requiring testing of all pipelines.

Another concern in the integrity management section of the 2002 Pipeline Safety Act was the inclusion of the unproven and undefined method of “direct assessment,” as an alternative to the well documented assessment methods of internal inspection and pressure testing. We hope that Congress will continue to provide oversight of the development and efficacy of “direct assessment.”

Strict liability – The 2002 Act did increase fines for pipeline accidents, but those fines were left to the discretion of the Office of Pipeline Safety. Often times the fine amounts announced by the OPS are never collected or negotiated down significantly. If Congress implemented a strict liability formula for penalties based on the volume spilled, companies would have a greater incentive to avoid spills and neither OPS or the company would have to spend resources arguing over the amount of the fine.

Community Right To Know – Many of the early versions of the 2002 Act included sections to help ensure that local communities and citizens would have easy access to information to allow them to judge for themselves the safety of the pipelines that run through their communities. This information would include things like spill and accident records, integrity management plans, frequency of testing, descriptions of what the testing found, descriptions of what was done about problems found, whether operators had been trained, whether emergency response plans were in place for local communities, etc. Unfortunately, these sections were removed after the 9/11 tragedy for fear of providing terrorists information about

the country's pipeline infrastructure. We hope that Congress will now move forward and include such Community Right To Know information into pipeline safety laws, since the above information would be of no use to terrorists, but would be of significant use to communities trying to assess their own safety and shine the light of day on any problems with the overall system of pipeline safety.

Technical Assistance Grants - Section 9 of the 2002 Act provided for technical assistance grants to communities for "engineering and other scientific analysis of pipeline safety issues, including the promotion of public participation in official proceedings conducted under this chapter." Unfortunately to date the OPS has not developed the competitive procedures required to award these grants, and Congress has therefore not provided the appropriations to fund them. We hope that Congress will require the OPS to develop the needed procedures to award these grants by a date certain, and then provide the funding to allow communities around the country to better understand some of the pipeline problems in their midst.

Further pipeline safety issues that still need to be addressed

Integrity Management of Liquid Transmission Lines – Many of the same problems already stated above for natural gas transmission lines also apply to the rules for liquid pipelines. Only those sections of pipelines in High Consequence Areas are required to be assessed, and by some estimates this amounts to less than 10% of the total mileage. According to testimony by the Inspector General of the

Department of Transportation given in June, with only 16% of the required mileage tested over 1200 “integrity threats” requiring immediate repair were found. Extrapolating this to the rest of the liquid transmission pipeline mileage indicates that there may be more than 7500 “integrity threats” needing immediate repair. Because of the narrow definition of High Consequence Areas, many of them will not be found in a planned methodical fashion by inspection and repair. Instead, they will be discovered the hard way—by endangering communities with pipeline failures and abruptly depriving downstream communities of their energy supplies. Congress needs to address why there is no urgent requirement to find and remedy these immediate threats as soon as possible.

Gathering Lines and Shut Off Valves - Congress has previously mandated regulations for gathering lines, and shut off valves for oil and gas lines, but so far OPS has not developed these rules.

One Call Systems – Many states provide no penalties for those who do not use the one call system to have pipelines located before they dig in the area of a pipeline. Horror stories abound of near misses caused by contractors and individuals who are willing to take the chance of digging near pipelines without formally locating them due to time constraints or ignorance. One reason that they take this risk is that they know that there is no penalty unless they hit something. We are not aware of any studies on this issue, but there is some anecdotal evidence that states with penalties for digging before you call for a location have fewer near

misses and pipeline strikes. A definitive study of whether penalties do deter digging without using the one call system is needed. If the findings indicate an adequate decrease in pipeline damage and near misses in states with such penalties, then OPS should encourage or require such penalties nationwide.

Leak Detection – Many leaks, and even some ruptures, in liquid pipelines go undetected for too long. Leak detection performance standards for liquid transmission pipelines need to be developed to ensure that leaks of a particular size are discovered rapidly.

State Pre-emption - Current pipeline safety law prevents states from regulating and enforcing violations on interstate pipelines even if such regulation would improve public safety and/or environmental protection and would not affect interstate commerce. There are numerous areas of oversight and regulation where states might want to exceed federal requirements to enhance pipeline safety, and would not compromise a company's ability to operate its pipelines smoothly and safely. Congress needs to affirmatively act to allow states to use the unique knowledge they have to protect their citizens.

Financial responsibility requirements for pipeline corporations - Large corporations can shield themselves from liability for poor safety practices through certain strategies, such as holding assets that may generate liability (e.g., pipelines) in subsidiaries or as shares of separate corporations. As part of this strategy, the parent corporation drastically undercapitalizes its subsidiary. In the

case of pipelines, this is common. It is not unusual for a pipeline company to be capitalized by virtually 100% debt, lent by the large corporate shareholders. In fact, a similar strategy was used by the owners of Bellingham's Olympic Pipeline. In a major spill like Bellingham, the undercapitalized pipeline company is forced into bankruptcy when the owners decline to provide further financing. In the usual bankruptcy, the shareholders lose the company assets to the debt holders, but in this case, those are the same entities. Bankruptcy presents no meaningful threat to these shareholders but it does allow pipeline companies to avoid financial consequences for inadequate safety measures. Congress should impose financial responsibility requirements for pipelines as it already does for liquefied natural gas facilities.

Enforcement – The Pipeline Safety Trust and other members of the Bellingham community are very concerned that the OPS has been unwilling to date to collect significant fines for violations of OPS regulations from the tragedies in Bellingham and Carlsbad. OPS often touts large proposed fines, but historically they have collected little if any of the money. The public has no evidence that the increased penalties contained in Section 8 of the 2002 Act are being used by OPS to send a message to pipeline operators that violations are both unacceptable and costly.

The U.S. General Accounting Office (GAO) is expected to release a report on OPS' enforcement record. We hope this report will take a look at the large

difference between fines that the OPS proposes versus the actual fines they collect. Preliminary testimony on the GAO report in June seemed to emphasize the difference between assessed fines and collected fines, which for the most part are nearly the same thing. The real mystery lies between the initial proposal of fine amounts and the amount actually collected. Why is this difference so great? Is OPS in error in their initial proposed fines? Are they negotiating fines down because they are understaffed for this task? Are they reducing fines because they fear legal fights with pipeline operators? Or, are they simply not committed to enforcing the law as enacted by this Committee and the Congress. These are the types of questions that we hope the GAO report will address. If it does not, we hope that Congress will ask them to expand their report to do so. We also believe that proposed fines, the company's response to the proposed fines, and information describing how the assessed fine was reached needs to be public throughout the process. OPS currently does not make such information public despite Freedom of Information Act Requests by organizations, like the Pipeline Safety Trust, that share the same mission of pipeline safety.

Current OPS enforcement actions appear to be mostly reactive to pipeline accidents rather than proactively preventing them. The agency needs to adopt an enforcement strategy that would include fines to companies found to be operating pipelines in ways that could result in serious spills or explosions regardless of whether or not they occur. Only through well publicized and rigorous preventative

enforcement will some within the industry begin to spend sufficient money on prevention instead of relying on insurance and bankruptcy to deal with any significant damages caused by a pipeline failure.

Thank you for this opportunity to testify. Please feel free to contact the Pipeline Safety Trust at any time.