Ms. Epstein, Cook Inlet Keeper

1. In your testimony, you discuss the need for "preventive enforcement actions to deter potential violators". Could you please provide us with a few examples of how this might work? What type of violations would be appropriate to address with preventive enforcement actions? Do other regulatory agencies regularly use preventive enforcement?

Response: There are several sections of the pipeline safety regulations that Office of Pipeline Safety (OPS) enforcement personnel should pay particular attention to in order to prevent releases. Enforcement of these “preventive” regulations would supplement OPS’ non-preventive enforcement actions, which are enforcement actions that take place after releases have occurred.

In addition to OPS’ current enforcement emphasis on proper implementation of its integrity management programs for both hazardous liquid and natural gas transmission pipelines, OPS preventive enforcement actions should address the following specific regulatory violations:

- Inadequate external and internal corrosion prevention (49 CFR 192, Subpart I; 49 CFR 195, Subpart H). Corrosion caused 24.5% of the natural gas transmission pipeline releases and 24.4% of the hazardous liquid transmission pipeline releases in 2003.
- Inadequate internal inspection testing and/or analysis of test results.
- Improper performance of direct assessment. Because direct assessment allows great operator flexibility and is a lower-cost and less-proven alternative to smart-pigging, OPS must ensure that operators perform direct assessments properly for them to have value in preventing releases.
- Poorly-done repairs.

My point is not that OPS never pursues enforcement actions related to these types of violations – it does on occasion, but practically no one except the violator knows that it has done so. OPS needs to pursue several enforcement actions in each of these regulatory categories, imposing relatively high penalties for non-compliance and with high media exposure. By doing so, all pipeline operators would realize they are at risk of receiving similar high penalties for similar violations.

As an example of another agency pursuing preventive enforcement for oil releases, I refer the reader to the U.S. Environmental Protection Agency’s (EPA’s) Underground Storage Tank 1998 Deadline Enforcement Strategy at
Attachment A). Underground storage tank (UST) system releases derive from both tanks and their associated piping, so there is a strong correspondence with OPS’ pipeline regulations. The UST enforcement strategy states that “sub-standard UST systems should not operate after December 22, 1998. Those who delay [compliance] can be subject to monetary penalties of up to $11,000 per day for each violation throughout their period of non-compliance” (p. 1). The strategy also states that “In pursuit of its goal, EPA will use all the enforcement tools available for dealing with UST violations, including administrative and judicial enforcement actions. Judicial enforcement actions are particularly appropriate in situations involving recalcitrant parties” (p. 3). A clearly articulated preventive enforcement strategy – available to both pipeline operators and the public on OPS’ website – like the UST enforcement strategy, would be very beneficial to prevent pipeline releases.

2. Can you discuss the difference between OPS’s enforcement approach and the EPA’s, which I believe you are familiar with? Do you believe that OPS’s enforcement strategy is less effective than EPA’s in influencing industry’s behavior?

Response: There are two major differences between EPA’s enforcement strategies and OPS’ enforcement strategies: 1. EPA pursues costly (to the operator), publicly-visible, and more-certain enforcement actions against the regulated community, which OPS does not do, and 2. EPA delegates enforcement to states if states are qualified to run their own enforcement programs, which OPS does not do for interstate pipelines because of an existing statutory prohibition.1 For both these reasons, OPS’ enforcement strategy is less effective than EPA’s in improving industry’s performance. These items are discussed below.

1. Costly, visible, and certain enforcement – The U.S. Government Accountability Office (GAO) recently issued a report on OPS’ enforcement program that analyzed the size of the civil penalties levied by OPS. According to GAO, “the average civil penalty that OPS assessed from 2000 through 2003 was about $29,000”2 Such penalties are far less than Congress envisioned when it raised the limits for OPS penalties in the Pipeline Safety Improvement Act of 2002 from $25,000 per daily violation with a $500,000 maximum to $100,000 per daily violation with a $1,000,000 maximum.

While I do not have data on the average civil penalty from EPA – and I encourage Congress or OPS to pursue that information – I can provide examples of pipeline releases that resulted in far higher (more than 100 times higher) penalties from EPA than from OPS for similar pipeline problems. These examples are shown in the following table, with more details provided in Attachment B:

1 49 USC § 60104(c).

Recent EPA Civil Penalties/Settlements for Pipeline Releases

<table>
<thead>
<tr>
<th>Company</th>
<th>Date</th>
<th>Penalty</th>
<th>Summary of Violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobil E &amp; P</td>
<td>8/04</td>
<td>$5.5 mill.</td>
<td>Oil and produced water releases, inadequate prevention and control, failure to notify EPA of releases</td>
</tr>
<tr>
<td>Olympic Pipeline/Shell</td>
<td>1/03</td>
<td>&gt;$5 mill. - Olympic/ &gt;$10 mill. - Shell</td>
<td>&gt; 230,000 gal. of gasoline released, 3 human deaths, over 100,000 fish killed</td>
</tr>
<tr>
<td>Colonial Pipeline</td>
<td>4/03</td>
<td>$34 mill.</td>
<td>1.45 mill. gal. of oil released in 5 states from 7 spills (from corrosion, mechanical damage, and operator error)</td>
</tr>
<tr>
<td>ExxonMobil</td>
<td>9/02</td>
<td>$4.7 mill.</td>
<td>Approx. 75,000 gal. of crude oil released, fouling a river and nearby areas</td>
</tr>
<tr>
<td>Koch Industries, Inc.</td>
<td>1/00</td>
<td>&gt;$35 mill.</td>
<td>Approx. 3 mill. gal. of oil released in 6 states (from corrosion of pipelines in rural areas)</td>
</tr>
</tbody>
</table>

EPA penalties also are far more visible to the public, which make them more effective. First, EPA distributes press releases for its large penalties, which OPS has begun to do, and second, any EPA penalties greater than $100,000 must be reported to the Securities and Exchange Commission under 17 CFR 229.103. The latter requirement means that company investors are aware of the violations and the penalty, which can provide a strong deterrent effect against additional violations.3

Last, EPA’s numerous civil penalty policies posted on the Internet at http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/ help ensure uniform and thus more certain enforcement against violators.

2. Federal vs. state enforcement – A simple description of EPA-based environmental enforcement is that qualified states are delegated primary enforcement responsibilities for environmental laws even as EPA retains the right to pursue enforcement actions. In contrast, OPS alone can pursue enforcement actions for interstate pipeline violations, although certain states assist in inspection and analysis of violations. While the EPA system is not perfect and is similar to OPS’ relationship with states with delegated responsibilities to oversee and enforce violations for intrastate pipelines, it is far superior to the current federal/state division of responsibilities for interstate pipelines.

According to the new GAO report, the states have approximately 400 pipeline safety inspectors and OPS has approximately 75 inspectors.4 Natural gas and hazardous liquid

3 Note that GAO did not consider this deterrent effect in its analysis of the effectiveness of OPS penalties.

4 GAO, op. cit., p. 12.
transmission pipelines (327,000 miles and 161,000 miles, respectively) primarily are interstate. As a result, the typical federal inspector is responsible for oversight of approximately 6,500 miles of transmission pipeline. Additionally, federal inspectors frequently are not as aware of certain technical, geographic, and even management issues associated with interstate pipelines as state pipeline safety officials are because of their proximity to the lines. As a result of limited federal oversight resources and the federal lack of familiarity with certain interstate pipeline concerns, it would be beneficial to change current law and allow qualified state pipeline safety officials to pursue enforcement actions against interstate pipeline operators.

A final problem with the current federal/state interstate pipeline enforcement relationship is that the states’ inability to pursue enforcement actions against interstate pipeline operators leads to frustrated state pipeline safety and elected officials. GAO spoke with one state pipeline safety official who stated that after his agency “alerted OPS to noncompliant activity at one company, it found the same violation 2 years later during the next scheduled inspection cycle.”

3. Can you discuss the need for oversight of flow and gathering lines? Do you think OPS and the states are doing enough to ensure the safety of these types of pipelines?

Response: During my past three years of work in Alaska, I have become very familiar with the environmental and safety issues associated with oil and gas production fields from releases of crude oil, natural gas, and produced water. The rural nature of these lines has meant that, until recently, few have paid attention to their hazards. There currently is a pressing need for strengthened regulation of these lines.

Because Alaska has a very low threshold for reporting releases, I was able to ascertain what proportion of the oil pipeline releases in the Cook Inlet watershed came from flow and gathering lines. Of the 311 miles of oil pipelines in the watershed, 60 miles (19%) are flow and gathering lines. From 1997-2001, 41% of the reported oil pipeline releases in the watershed came from lines. From 1997-2001, 41% of the reported oil pipeline releases in the watershed came from flow and gathering lines, including 7 of the 8 largest releases (ranging from 1,134 to 228,648 gallons). For the year following, 50% of the reported oil pipeline releases in the watershed came from these lines.

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5 Ibid., p.53.

6 “Produced water” is any water that comes to the surface during oil and gas production, including water containing oil from the geologic formation, injection water, and drilling additives. Produced water, which generally is briny, typically contains pollutants such as oil and grease, acids, ammonia, benzene, naphthalene, metals (e.g., chromium, copper, lead, zinc), and sometimes radionuclides, following separation from crude oil and natural gas.

7 Releases from “unregulated” pipelines need not be reported to OPS.
Given the clear environmental and safety problems flow and gathering lines pose in the Cook Inlet watershed and the apparent problem they cause in other areas in the country (see Cook Inlet Keeper’s comments to the OPS docket which are included as Attachment C and the August 3, 2004 Mobil example in Attachment B), I recommend that OPS:

1. Research the frequency and extent of releases from these pipelines on the North Slope of Alaska and in other oil and gas production states with appropriately low reporting thresholds; and,
2. Expeditiously begin a rulemaking on this issue.

Should OPS fail to address the environmental and safety issues associated with flow and gathering lines, Congress should ensure that it does so through appropriate oversight and/or legislation.

4. You mention that the current federal preemption policy that prevents states from regulating and enforcing violations on interstate pipelines is overly restrictive. How would you change this to allow a greater state role? What type of activities could states engage in that would increase pipeline safety, yet not unduly impact interstate commerce?

Given that states have particular pipeline safety concerns which OPS might not be sufficiently familiar with and thus might not address (e.g., earthquakes, subsidence, uniquely aggressive corrosion), and the fact that many if not all state-specific issues can be addressed without adversely impacting interstate commerce, I recommend that OPS and/or Congress:

1. Query state pipeline safety officials on how states have exceeded federal requirements for intrastate pipelines and on which of these requirements they think are needed for interstate pipelines; and,
2. Develop legislative language for the next pipeline safety law reauthorization that allows states to exceed federal requirements to address state-specific conditions or needs in a manner which does not unduly impact interstate commerce.

As I stated in my testimony, 49 USC § 60104(c) presents “an unnecessary intrusion on states’ rights with serious adverse consequences since national regulations might not protect states sufficiently from pipeline hazards, e.g., from earthquakes, difficult cleanup terrain, etc.” Other areas where states might want to exceed federal requirements include internal assessment requirements, right-of-way management, and definitions of high consequence areas. Simply put, requirements that are appropriate in one part of the country may not be adequate in another part of the country; if implementing such requirements would not unduly impact interstate commerce, states should be allowed to do so.