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Testimony of
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Presented by

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BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
TRANSPORTATION AND INFRASTRUCTURE COMMITEE
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

Pipeline Safety Public Awareness and Education

July 21, 2010

Good morning, Chairwoman Brown, Ranking Member Shuster and Members of the Subcommittee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Rick Kessler and I am testifying today in my purely voluntary, uncompensated role as the Vice President of the Pipeline Safety Trust. My involvement and experience with pipeline safety stems from my years as one of the primary staff members on such issues in the House of Representatives and my subsequent work with the Pipeline Safety Trust.

The Pipeline Safety Trust came into being after the 1999 Olympic Pipe Line 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. After investigating this tragedy, the US Department of Justice (DOJ) 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 DOJ'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 local communities who have the most to lose if a pipeline fails should be included in discussions of how best 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.

We also believe that trust in pipeline safety increases in proportion to the amount of verifiable scientific information that is readily available for all concerned to review. Such information must form the basis for any and all legitimate public awareness and education programs about pipeline safety. For the most part, outside review and involvement increases the confidence in pipeline safety as those with concerns learn that pipelines truly are a safe way to transport fuels. In those instances when safety has lapsed, such review will help to more quickly correct

the situation and create a push for even greater levels of safety. Consequently, one of the Trust's highest priorities is to make available as much relevant and accurate information as possible for independent review. In sum, we believe the public has a right to know about the safety of pipelines that affect their communities.

In my testimony this morning I will cover the following areas that are still in need of improvement:

- **Educating Local Government through the Pipelines and Informed Planning Alliance (PIPA)**
- **Increasing Awareness and Education by Continuing Implementation and Funding of Technical Assistance Grants to Communities**
- **Making Public Awareness Programs Meaningful and Measurable**
- **Ensuring that PHMSA's "CATS" Program Stays Well Focused**
- **Developing Incentives for State Pipeline Safety Advisory Committees to Better Involve the Public**
- **Continuing Important Damage Prevention Effort**
- **Continuing to Make More Pipeline Safety Information Publicly Available**

<u>Educating Local Government through the Pipelines and Informed Planning Alliance (PIPA)</u>

Across the country encroachment of new development near pipelines (as seen below) has created increasing conflicts. Local government is the entity with zoning and permitting authority to help solve these problems.

Section 11 of the Pipeline Safety Improvement Act of 2002 included a requirement that PHMSA and FERC provide a study of population encroachment on and near pipeline rights-of-way. That requirement led to the Transportation Research Board's (TRB) October 2004 report Transmission Pipelines and Land Use[1], which recommended that PHMSA "develop risk-informed land use guidance for application by stakeholders." PHMSA formed the Pipelines and Informed Planning Alliance (PIPA) in late 2007 with the intent of drafting a report that would include specific recommended practices that local governments, land developers, and others could use to increase safety when development was to occur near transmission pipelines.

After more than two years of work by more than 150 representatives of a wide range of stakeholders, the draft report and the associated 46 recommendations are finally due to be released sometime this summer. This will be the first time information of this nature has been made widely available to local planners, planning commissions, and elected officials when considering the approval of land uses near transmission pipelines. We fully agree with the sentiment of Congress in the Pipeline Safety Improvement Act of 2002 that,

> ***"The Secretary shall encourage Federal agencies and State and local governments to adopt and implement appropriate practices, laws, and ordinances, as identified in the report, to address the risks and hazards associated with encroachment upon pipeline rights-of-way…"***

Some communities that were involved in the drafting of the PIPA report have already moved forward on implementing some of the recommendations. For example, Fort Worth Texas has implemented a new mapping effort based on the PIPA recommendations so their planners and public works people have a clearer idea of the location of pipelines in their community. The Association of Washington Cities has undertaken an effort to help educate all the planners in Washington State about how to do better planning near pipelines. One piece of their effort was the creation of an entire website[2] devoted to planning near pipelines. And Brookings County, South Dakota recently adopted a Transmission Pipeline Risk Reduction Overlay District based on the PIPA recommendations. That effort was recently highlighted in an article in County News from the National Association of Counties, which we have attached at the end of this testimony.

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[1] *trb.org/publications/sr/sr281.pdf*

[2] http://www.mrsc.org/Subjects/PubSafe/transpipes.aspx

Our point is that once local government learns about the ways it can help ensure pipeline safety it may well act. Unfortunately there currently is no plan or funding to adequately disseminate the recommendations of PIPA to ensure that local governments across the country have any knowledge about how they can use their zoning and permitting authority to partner in efforts to increase pipeline safety. To move forward with this important effort, the Trust asks that this year Congress authorize --just as was authorized in PIPES for the successful promotion of the 811 "One Call" number-- $500,000/year to promote, disseminate, and provide technical assistance regarding the PIPA recommendations. Only through such a PIPA implementation effort will local government become aware of its abilities to better protect pipelines and the people living near them.

Increasing Awareness and Education by Continuing Implementation and Funding of Technical Assistance Grants to Communities

Over the past year and a half, PHMSA has finally started the implementation of the Community Technical Assistance Grant program authorized as part of the Pipeline Safety Improvement Act of 2002 and clarified in the PIPES Act. Under this program, more than a million dollars of grant money has been awarded to communities across the country that wanted to hire independent technical advisors so they could learn more about the pipelines running through and surrounding them, or be valid participants in various pipeline safety processes.

In the first round of grants, PHMSA funded projects in communities in seventeen states from California to Florida. Local governments gained assistance so they could better consider risks when residential and commercial developments are planned near existing pipelines. Neighborhood associations gained the ability to hire experts so they could better understand the "real" versus the imagined issues with pipelines in their neighborhoods. And farm groups learned first-hand about the impacts of already-built pipelines on other farming communities so they could be better informed as they participate in the processes involving the proposed routing of a pipeline through the lands where they have lived and labored for generations. All of the examples of local government implanting the PIPA recommendation we mentioned earlier

were funded through these technical assistance grants. Overall –despite the unacceptably long delay in implementation-- we view the first round of this new grant program as a huge success.

However, ongoing funding for these grants is not clear, so the Trust asks that you ensure the reauthorization of these grants to continue to help involve those most at risk if something goes wrong with a pipeline. We further ask that you consider raising the cap on the amount of an individual grant, removing the limitation on funding sources for the grants, and –most importantly-- do whatever is necessary to ensure that the authorized funds are actually appropriated.

One area that should be considered with any new grant program is the amount of promotion and time it takes to get the word out about new sources of grant money. The Pipeline Safety Trust worked hard during the first round to promote this program to ensure that local government and citizen groups around the country knew about it and applied. Such targeted promotion, especially for a new grant program, is needed to ensure that PHMSA receives enough strong grant applications to choose from. During the application period for the second round of these grants, promotion was not as well organized and we have since learned from several groups around the country that they did not apply because they had no idea the grants were available again. While this will certainly correct itself as the knowledge of this grant program grows, we hope that PHMSA will improve its promotion and that Congress will take the long-term view of the value of this program while it grows to maturity.

Finally, we urge PHMSA to resist the pressure to spend the money on applications that do not meet the Congressional intent of the program. While the second round of grants have not yet been announced, we have heard from some local governments around the country that municipal gas utilities have tried to apply for these grant funds to undertake pipeline projects that are clearly part of their existing pipeline maintenance and operation requirements. Funding municipal utilities with this community technical assistance grant money is clearly outside of the intent of what Congress approved this program for, and will cause a rush by such utilities that will overwhelm this limited funding. In creating the grant program in 2002, Congress explicitly excluded “for-profit entities” from qualifying for grants to ensure that the

program's monies reached its intended audience of local governments and nonprofit citizen groups, NOT pipeline companies. That some municipally-owned companies may be seeking to exploit a possible loophole in the law to grease their own operations unfairly at the expense of local governments, legitimate citizen groups, and competitor companies who are disqualified from receiving funding under this program is shameful. It is unfortunate that we must ask this Committee and Congress clarify in statute –and continue to drive home in statements-- that this grant program is not to fund --and never was supposed to fund-- the activities of any pipeline operator, public or private, regardless of its status under the tax code.

Making public awareness programs meaningful and measurable

The Pipeline Safety Improvement Act of 2002 required pipeline operators to provide people living and working near pipelines basic pipeline safety information, and gave PHMSA the authority to set public awareness program standards and design program materials. In response to this Congressional mandate, PHMSA set rules that incorporated by reference the American Petroleum Institute's (API) recommended practice (RP) 1162 as the standard for these public awareness programs. According to RP 1162's *Foreword* (page iii) of API recommended practice, the intended audiences were not represented in the development of RP 1162, though they were allowed to provide "feedback." The omission of representatives from these audiences from the voting committee reduces the depth of understanding the RP could have had regarding the basic messages, barriers and incentives for such programs, and undercuts the credibility of the recommended actions. **Even the limited "feedback" that the affected community is allowed is further limited by the requirement that to review the recommended practice (now part of federal regulations) a community member would have to purchase it from API for $93!**

For an example of how this one-sided process may have changed the effective outcome, consider how public awareness guidelines that are created by the pipeline industry will develop basic messages that are very different in tone than equally accurate messages developed by the affected community. If the real goal is to get the potentially affected public to read all the information, then the basic lead-in message is very important to ensure the rest of the information is ever read. Below on the left is an example of the basic lead-in message found in

all of the mass mailed public awareness materials we have seen that came out of this industry controlled process. On the right is an equally accurate message. Which message is more apt to get people to read the rest of the awareness materials about how to protect themselves?

"According to National Transportation Safety Board statistics, pipelines are the safest method for transporting natural gas and petroleum products. Pipelines have a safety record unparalleled by any other mode of transporting energy products"	OR	**Every day and a half in this country there is a significant pipeline incident, and every 5 or 6 days a person is killed or injured because of such a pipeline incident. Do you know where pipelines are in your area and what to do if something goes wrong?**

The public awareness program regulations--49 CFR § 192.616 and 49 CRF § 195.440—mandate that operators comply with API RP 1162. In essence, this amounts to the drafting of federal regulations regarding public awareness without the equal participation of the public stakeholders the regulations are meant to involve. With non-technical subject matter, such as this recommended practice deals with, it is difficult to justify excluding the intended audiences from the process and allowing the regulated industries to write their own guidelines. With the above example in mind, consider how different a public awareness program might look if the affected public was in charge of its design instead of an industry with conflicting motives.

The public awareness requirements represented a huge and important undertaking for the pipeline industry, and as such the effectiveness of it will evolve over time. We were happy that the rules included a clause that set evaluation requirements that require verifiable continuous improvements. While we understand that the initial years of this program have been difficult, we have been disappointed in some of these efforts as they were clearly farmed out to contractors to meet the letter of the requirement instead of the intent of the requirement. Recently, the National Transportation Safety Board cited the failure of these programs in the investigation report[3] of a deadly pipeline explosion in Mississippi that killed a girl and her grandmother.

[3] http://www.ntsb.gov/publictn/2009/PAR0901.htm

An evaluation of the first five years of this program is due this year, and API has been working on an update of this recommended practice for some time now. One of the draft proposals from API is to remove the requirement to measure whether the programs have led to actual changes in behavior. PHMSA recently held a workshop on these public awareness programs, and ways to incorporate an effectiveness review into pipeline inspections. We hope that Congress will keep a close eye on the discussions of this issue over the coming months and be prepared to step in and clarify that the intent of this program is to change the behavior of the intended audiences to make pipelines safer, not to count how many innocuous brochures can be mailed.

Ensuring that PHMSA's "CATS" Program Stays Well Focused

PHMSA's Community Assistance and Technical Services (CATS) representatives serve as the frontline to provide information and education to a wide variety of stakeholders including the general public. Currently there are eleven CATS representatives around the country who serve as the first point of contact for the public and local government who have questions about the pipelines in their area. Clearly the best and most effective form of education is when a person can have their specific concerns addressed by someone who can answer them in a professional non-biased way. That is the important service that CATS provides, and The Pipeline Safety Trust has been a huge supporter of this program ever since it was created to fill the "local" void in this federal agency.

Our main concern with this program is whether is has the resources and focus necessary. Just as it is important that there are adequate numbers of inspectors to ensure compliance with regulations it is also important that there are adequate numbers of CATS representatives to ensure positive communication with the various affected communities. It would appear to us that many times the CATS are called upon to fill work assignments that fall outside of their mission of "facilitating clear communications among all pipeline stakeholders." If Congress shares our vision of increasing pipeline safety through better information availability, and clear communication of that information, then we recommend that you ensure that PHMSA provides this valuable program with adequate resources and personnel, and doesn't continually divert them to other priorities.

Developing Incentives for State Pipeline Safety Advisory Committees to Better Involve the Public

In the Pipeline Safety Improvement Act of 2002, Congress providing one incentive for states to more actively raise awareness, educate and involve the public. Section 24 of the Act stated:

> *"Within 90 days after receiving recommendations for improvements to pipeline safety from an advisory committee appointed by the Governor of any State, the Secretary of Transportation shall respond in writing to the committee setting forth what action, if any, the Secretary will take on those recommendations and the Secretary's reasons for acting or not acting upon any of the recommendations."*

This simple paragraph provided the states with an option to not only create an advisory body to better educate and involve the public, but also a route to get timely answers from the Secretary of Transportation to pipeline safety concerns that such an advisory body may have. This ability to get answers from DOT within 90 days provides more timely feedback on concerns than most state regulatory agencies report available for their own requests.

This little known option of creating Governor-appointed pipeline safety advisory committees to increase public awareness and education has not been promoted by PHMSA at all. In fact, in at least one case we are aware of, PHMSA penalized a state that did create such a committee by refusing to allow federal pipeline safety grant funds to that state to be used to cover the small costs of staffing such a public pipeline safety advisory committee.

If Congress believes that the public should be better educated and involved regarding pipeline safety issues then we recommend that Congress direct PHMSA to actively promote the creation of such Governor-appointed pipeline safety advisory committees[4], and provide the added incentive that for any state that does create such a committee an additional $25,000 in federal grant money will be available for the coordination and staffing of such a committee.

Continuing Important Damage Prevention Efforts

Damage to pipelines from people digging is still one of the leading causes of pipeline incidents. Damage prevention is one of the areas where increased awareness and education of a variety of public stakeholders (contractors, excavators, public works officials, equipment rental

[4] An example of one such Governor-appointed committee can be found at: http://www.wutc.wa.gov/pipeline/ccops

operators, etc) can have a direct impact on reducing the number of pipeline incidents. During the past two reauthorization cycles Congress has provided significant resources to help get the national Common Ground Alliance up and functioning as well as for promotion of the national 811 – Call Before You Dig number. These efforts need to continue and Congress should ensure they have the resources needed to do the job they have been charged with.

It also is important to ensure that these public awareness efforts are spending the money in well-targeted and effective ways. Since many of these efforts are controlled by the involved industries, it is all too easy to target messages in ways that direct the concerns and blame away from themselves. Message targeting can only be done effectively if there is adequate data on who is damaging pipelines so the awareness efforts can be directed at the correct audience. It makes little sense to direct hundreds of thousands of dollars of damage prevention messages at children and home owners if in reality it is other utility contractors (telephone, cable, water, sewer, electric) who are actually doing most of the damage. The Common Ground Alliance and a few states have started to collect the data necessary to make better targeting decisions, but there is still a long way to go.

If Congress wants to ensure that money provided for these damage prevention efforts is being well spent, we suggest that you direct GAO or another appropriate agency to audit the effectiveness of current damage data collection, and report on what that data reveal regarding the cause of these types of incidents.

Continuing to Make More Pipeline Safety Information Publicly Available

Perhaps the key issue regarding increasing public awareness and education is to ensure that the information in which the public already has an interest is easily available.

Over the past two reauthorization cycles, PHMSA has done a good job of providing increased transparency for many aspects of pipeline safety. In the Trust's opinion, one of the true successes of PIPES has been the rapid implementation by PHMSA of the enforcement transparency section of the Act. It is now possible for affected communities to log onto the PHMSA website (http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html) and

review enforcement actions regarding local pipelines. This transparency should increase the public's trust that our system of enforcement of pipeline safety regulations is working adequately or will provide the information necessary for the public to push for improvements in that system. PHMSA has also significantly upgraded its incident data availability and accuracy, and continues to improve its already excellent "stakeholder communication" website.

One area where PHMSA could go even further in transparency would be a web-based system that would allow public access to basic inspection information about specific pipelines. An inspection transparency system would allow the affected public to review when PHMSA and its state partners inspected particular pipelines, what types of inspections were performed, what was found, and how any concerns were rectified. Inspection transparency should increase the public's trust in the checks and balances in place to make pipelines safe. Just as Congress required PHMSA to institute Enforcement Transparency in the PIPES Act of 2006, The Trust hopes you will require similar Inspection Transparency this year.

There is also a need to make other information more readily available. This includes information about:

- **High Consequence Areas (HCAs).** These are defined in federal regulations and are used to determine what pipelines fall under more stringent integrity management safety regulations. Unfortunately, this information is not made available to local government and citizens so they know if they are included in such improved safety regimes. Local government and citizens also would have a much better day-to-day grasp of their local areas and be able to point out inaccuracies or changes in HCA designations.

- **State Agency Partners.** States are provided with millions of dollars of operating funds each year by the federal government to help in the oversight of our nation's pipelines. While there is no doubt that such involvement from the states increases pipeline safety, different states have different authority, and states put different emphasis in different program areas. Each year PHMSA audits each participating state program, yet the results of those program audits are not easily available. We believe that these yearly audits should be available on PHMSA's website and that some basic comparable metrics for states should be developed.

• **Emergency Response Plans.** As has been learned in the recent Gulf of Mexico tragedy, it is crucial that these types of spill response plans are well designed, adequately meet worst-case scenarios, and use the most up-to-date technologies. While 49 CFR §194 requires onshore oil pipeline operators to prepare spill response plans, including worst case scenarios, those plans are difficult for the public to access. To our knowledge the plans are not public documents, and they certainly are not easily available documents.

The review and adoption of such response plans also misses a great opportunity to educate and increase awareness among the public. Currently the process is closed to the public. In fact PHMSA has argued that they are not required to follow any public processes, such as NEPA, for the review of these plans. If the Gulf tragedy has taught us nothing else it should have taught us that the industry and agencies could use all the help they can get to ensure such response plans will work in the case of a real emergency.

It is always our belief that greater transparency in all aspects of pipeline safety will lead to increased awareness, involvement, review and ultimately safety. That is why we believe Congress should make citizen right to know provisions a priority for inclusion in this pipeline reauthorization. There are many organizations, local and state government agencies, and academic institutions that have expertise and an interest in preventing the release of fuels to the environment. Greater transparency would help involve these entities and provide ideas from outside of the industry. The State of Washington has passed rules that when complete spill plans are submitted for approval the plans are required to be made publicly available, interested parties are notified, and there is a 30 day period for interested parties to comment on the contents of the proposed plan. We urge Congress to require PHMSA to develop similar requirements for the adoption of spill response plans across the country, and that such plans for new pipelines be integrated into the environmental reviews required as part of the pipeline siting process.

Conclusion

Thank you again for this opportunity to testify today. The Pipeline Safety trust believes that increased public awareness, education and involvement in pipeline safety issues will ultimately

make pipelines even safer. Unfortunately in the past these efforts have not been a high priority for regulatory agencies and certainly not the pipeline industry, and oftentimes these efforts are not well funded, targeted, or promoted. The Pipeline Safety Trust hopes that you will closely consider the ideas and concerns we have raised today for ways to increase awareness and education. If you have any questions now or at anytime in the future, the Trust would be pleased to answer them and, of course, we stand ready to work with you and your colleagues on reauthorizing the pipeline safety laws that our so important to ensuring the well-being of millions of Americans and the environment that is their birthright.

NACo National Association of Counties
CountyNews
The Voice of America's Counties

Grant helps protect local pipelines and communities

By James Davenport
PROGRAM MANAGER, The National Association of Counties
http://www.naco.org/newsroom/countynews/Current%20Issue/July5,2010countynews/Pages/Granthelpsprotectlocalpipelinesandcommunities.aspx

The pipeline system is considered the most efficient and safest way to transport natural gas and petroleum products across the country.

Over the past several decades, most of the pipelines in the transmission system were placed in rural and isolated areas in order to better protect the pipeline and assure minimal impacts to local communities. That's no longer the case in many areas.

Increased development has brought people and pipelines much closer. Though this may pose some safety challenges, county governments have the resources and tools to help them reduce the risk of pipeline explosions or leaks while at the same time reducing the chance of damage to transmission pipelines.

Brookings County, S.D. was awarded a Technical Assistance Grant (TAG) through the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) to assist it in protecting existing natural gas and transmission pipelines in the county, and the residents who live near these pipelines.

PHMSA's TAG program provides grants to local communities and organizations for technical assistance related to pipeline safety issues. Technical assistance means engineering or other scientific analysis of pipeline safety issues. The funding can also be used to help promote public participation in official proceedings.

Through this opportunity, Brookings established two objectives:

- develop a Pipeline Risk Reduction Overlay District, and
- disseminate a safety brochure from Brookings County detailing the procedures to apply for a building permit and the applicable setback requirements from transmission pipelines.

Transmission Pipeline Risk Reduction Overlay District

The purpose of the Transmission Pipeline Risk Reduction Overlay District is to protect public health and safety by reducing the likelihood of pipeline damage and reducing the adverse impact of pipeline failures through risk-based land management decisions.

The overlay district consists of a consultation zone and planning zone designation as recommended by a pipeline technical assistance guidance document.

The purpose of the consultation zone is to identify the need for communication between property developers or owners within Brookings County and pipeline operators when new development is planned within 660+ feet of an existing transmission pipeline.

When a building permit is requested within the boundaries of the Transmission Pipeline Risk Reduction Overlay District, the person requesting a permit will be told that the building is being constructed near a transmission pipeline. A pipeline safety brochure will be provided along with the building permit. The permit office will notify the pipeline operator of the building permit request, the type and size of building. The property developer or owner must then initiate a consultation with the transmission pipeline operator as early as possible in the development planning process.

The purpose of the planning zone is to enforce specific requirements when new development is planned within the planning zone distance of an existing pipeline. This distance depends on certain characteristics (type, size, material) of the pipeline.

When an individual or organization requests a building permit and the location is within the planning zone, then the permit office staff will request a detailed site plan. The building permit requestor will be given a brochure with the contact information for the appropriate gas company's personnel and the recommended land management practices for new development near existing transmission pipelines.

The Transmission Pipeline Risk Reduction Overlay District will be incorporated into Brookings County's Geographic Information Systems mapping and used primarily when issuing zoning and building permits to facilitate discussions among developers, landowners and pipeline operators.

The county chose to develop the overlay zone instead of establishing set back standards designated for each land use classification including lake properties and parks, natural resource areas, commercial districts and agricultural sites. The overlay zone was developed similar to the aquifer protection district already in place in the county.

Safety Brochure

A safety brochure was developed and made available to the public. In addition, the brochure was distributed to specific landowners informing them that their property was near a transmission pipeline along with an invitation to attend a public meeting that discussed procedures to apply for a building permit and the applicable setback requirements.

The brochure was designed as a four-page handout and provides background information behind the requirements of the Pipeline Overlay Zone. It also provides contact information for the two companies that have or will have natural gas pipelines in the county.