



**Credible.
Independent.
In the public interest.**

300 N. Commercial Street, Suite B, Bellingham, WA 98225 Phone 360-543-5686 Fax 360-543-0978 <http://pipelinesafetytrust.org>

**Comments of the Pipeline Safety Trust
on the
Montana Oil Pipeline Safety Review Council's Report to the Governor**

The State of Montana should be commended for taking prompt action to identify shortcomings in the current system of pipeline safety, and to make recommendations for how that system can be improved following the rupture of Exxon-Mobil's Silvertip pipeline in the Yellowstone River. Having reviewed the report of the Oil Pipeline Safety Review Council, the Pipeline Safety Trust submits the following comments:

Background

Thirteen years ago this month, the Olympic pipeline, a 16 inch fuel pipeline, ruptured, spilled nearly 250,000 gallons of gasoline, and exploded in Whatcom Falls Park in the middle of Bellingham, Washington, killing three boys, wiping out two miles of a salmon stream, severely damaging the city's water treatment plant, and destroying the city's sense of security.

The Pipeline Safety Trust came into being based on the efforts and recommendations of the families of the children who were killed in the 1999 explosion and SAFE Bellingham. SAFE Bellingham - a grassroots watchdog group concerned with pipeline safety - and the families fought for better pipeline oversight and accident prevention measures. These Bellingham residents made it their number one priority to organize a perpetually funded oversight organization to ensure safer pipelines nationwide. On June 18, 2003, U.S. District Judge Barbara Rothstein ordered that four million dollars of the criminal fines imposed as a result of the Bellingham tragedy be awarded as an endowment to fund the Pipeline Safety Trust. Since then, the Trust has worked to improve pipeline safety at the state and federal levels, lobbying for stronger federal laws and encouraging states to assume as much authority as they can under the federal pipeline laws to supplement the work of the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Before a year had passed after the Bellingham explosion, the Washington Legislature had adopted the Washington Pipeline Safety Act, allowing the Washington State Utilities and Transportation Commission to inspect 2500 miles of interstate pipelines and oversee the state's entire pipeline safety program. The state had been inspecting intrastate natural gas pipelines since 1955, and intrastate liquid lines since 1996. The state's program is funded in part by PHMSA, and in part by a per-barrel user fee, also enacted following the Bellingham explosion, paid by the operators and earmarked for the state pipeline safety program.

The Legislature also established the Citizens Committee on Pipeline Safety (CCOPS) to advise state and federal agencies on pipeline safety, routing, construction, operation and maintenance. The Committee is governor appointed, staffed by the WUTC, and holds an unusual place in federal pipeline safety laws: under the 2002 reauthorization bill for the federal pipeline safety program, Congress provided that "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."

Montana's Opportunities

On the whole, the Trust applauds the recommendations made to the Governor by the Council, and we are particularly pleased that PHMSA and the state cooperated to create a GIS based database of information about pipelines in Montana. We hope that it can become a stepping-stone for a nationwide upgrade to the National Pipeline Mapping System, so that not only agency staff, but members of the public can access more information about the pipelines near them, whether they are near a river crossing or not.

There are a couple of areas where the report's conclusions and recommendations fall short, and miss opportunities for the state to strengthen pipeline safety efforts in Montana, and to reduce the consequences of any subsequent failure.

Recommendation 1 suggests that DEQ should continue its information sharing agreement with PHMSA, and we agree. However, PHMSA is not sufficiently staffed to maintain the level of effort it has exerted in Montana in the past year, and as its effort level decreases, the information it holds and shares with DEQ will become out of date and decreasingly useful. It is important for Montana to put itself in a position to obtain, maintain, and update the type of information that PHMSA has gathered on the large stream crossings in the state, and reduce reliance on PHMSA to do that for you.

Recommendation 2-6 are fine as far as they go, but they appear to be based on the conclusions put forth in that part of the report at "**B. Regulatory Framework**," some of which are erroneous. The report suggests that other than the intrastate gas line authority of the state PSC, "[a]ll other safety-related authority rests with PHMSA and preempts state regulation of safety factors." In fact, the State of Montana is not preempted by PHMSA's authority from assuming inspection and enforcement authority over intrastate liquid lines. As PHMSA describes on its website, the state has the ability under the federal pipeline safety laws to assume:

"all or part of the *intrastate* regulatory and enforcement responsibility through annual certifications and agreements. Most states have supported the concept of common stewardship in pipeline safety. This cooperative, collaborative relationship between the federal and state government--the Federal/State Partnership--forms the cornerstone of the pipeline safety program.

Federal grant funds are used as an incentive to improve state program performance and to encourage states to take on more responsibility for pipeline. OPS is authorized to reimburse a state agency up to 80 percent of the actual cost for carrying out the state's pipeline safety program, including the cost of personnel and equipment. Federal funding is determined through an allocation formula based on factors such as the extent to which the state asserts safety jurisdiction, whether the state has adopted all federal requirements, and the number and qualifications of the inspectors."

<http://www.phmsa.dot.gov/pipeline/initiatives/partners>

The report also indicates that PHMSA conducts all the safety inspections, not just in Montana, but in almost all states. To the contrary, as of 2011, 15 states have been certified by PHMSA to

regulate intrastate hazardous liquid pipelines. Once a state is certified by PHMSA to undertake regulation of intrastate liquid lines, it may also choose to adopt additional or more stringent standards for those lines, so long as they are compatible with the federal requirements. Montana could choose to undertake regulation of intrastate liquid lines as it has intrastate gas lines, and a percentage of its costs for doing so will be reimbursed by PHMSA. Further, once a state program is certified, it can enter into an agreement with PHMSA to participate in inspection of *interstate* pipelines, further bolstering the admittedly understaffed efforts of PHMSA inspectors.

Beyond undertaking the regulatory role for additional lines, there are a few additional actions that Montana could take to improve pipeline safety and public awareness of pipelines in Montana.

1) Spill response planning: Under the Oil Pollution Act, an amendment to the Clean Water Act enacted after the Exxon Valdez disaster, states can enact laws governing the requirements for spill response planning by operators in the state, and those requirements, so long as they are at least as stringent as the federal requirements, are explicitly not preempted by federal rules. Montana has the opportunity to undertake spill response planning regulations that can significantly reduce the consequences of any future spill. Washington state's spill response planning rules also involve the public in reviewing the plans before they are approved, and in periodic public workshops.

2) Review the state's pipeline siting statutes to see if additional language providing heightened protection for high-risk stream crossings, or other geographic areas is warranted.

3) Propose legislation creating a Citizen's Advisory Committee appointed by the Governor. The presence of a citizen's committee heightens the awareness of pipeline issues among the public, improves understanding of pipeline concerns and issues among all stakeholders, provides an outlet for collecting citizen input on pipeline safety matters, and gives the state an additional voice when dealing with the federal regulators – one to which PHMSA must at least respond.

4) Propose a user fee to fund the pipeline safety program, so that the necessary revenues not covered by the PHMSA reimbursement formula do not come out of general fund revenues, but instead are financed by the pipeline operators.

Thank you for the opportunity to respond to the draft report. Please feel free to contact us if you would like any more information on our suggestions.

Sincerely,



Carl Weimer
Executive Director