OUT OF SIGHT, OUT OF MIND:

WHAT EVERY LOCAL GOVERNMENT SHOULD KNOW ABOUT PIPELINE SAFETY

by

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I. INTRODUCTION

Local governments have rarely concerned themselves about the safety and environmental hazards posed by pipelines running under their streets or waterways and through their neighborhoods. The prevention of pipeline accidents, like airline crashes or train wrecks, has generally been viewed as a federal responsibility. But this “hands-off” attitude of local governments is changing. An increasing number of localities, devastated by transmission pipeline accidents that appear to occur almost randomly but whose local impacts can be catastrophic, have become impatient with a federal regulatory system that has failed to correct long-recognized safety hazards and to penalize violators of federal safety laws. State and local governments are beginning to join together in demanding a greater voice in pipeline regulation and pushing for fundamental reforms in the federal approach to pipeline safety.

This paper discusses the emerging trend toward greater local involvement in pipeline safety issues. It describes the increasing safety and the environment risks posed by pipeline accidents, primarily due to population growth and intense development within close proximity of transmission pipelines that are no longer located in remote, rural areas. It outlines the existing regulatory framework for pipeline safety and why it has prompted local concerns. It surveys federal case law and explains how preemption has largely restricted state and local governments from adopting their own regulations or taking a tougher enforcement posture toward pipeline operators. It highlights the experience of three local governments that have suffered catastrophic pipeline accidents and that, as a result, have launched their own pipeline initiatives. Finally, the author suggests specific recommendations for local governments potentially impacted by major pipeline accidents.

II. THE PROBLEM OF PIPELINE SAFETY

The summer of 1996 has not been a good season for pipeline accidents. Tragedy has struck twice, first in South Carolina and then again in Texas. Shortly before midnight on June 26, an interstate oil pipeline ruptured along the Reedy River near Greenville, South Carolina, spilling almost a million gallons of diesel fuel into the river. For hours, fuel poured into the river, killing an estimated 34,000 fish and other wildlife and threatening public water supplies before an emergency crew of 500 workers could stanch the flow. By the time the leak was stopped the next day, the pipeline’s owner, Colonial Pipeline Company, and the state of South Carolina had each experienced their largest
spills in history. The state Department of Natural Resources later catalogued 23 fish species that had been decimated, including catfish, largemouth bass, suckers, shad, carp, bullhead, and warmouth, as well as turtles, muskrat, snakes, crawfish, and wood ducks.¹

On August 24, disaster struck again, this time in the small town of Kemp, Texas, about 50 miles southeast of Dallas. A transmission pipeline carrying liquid butane ruptured, creating a massive cloud of foul-smelling gas. Two teenagers, Jason Stone, 17, and Danielle Smalley, 18, jumped into their pickup truck to warn others. Sparks from the engine ignited the highly flammable gas, causing an explosion that sent a fireball into the air visible from 40 miles away. Both teenagers were killed.²

Unfortunately, these are not isolated incidents. In 1994 alone, there were 465 oil and gas pipeline accidents reported in the United States, an average of more than one a day. These accidents resulted in 22 deaths and 1,968 injuries. A conservative estimate of property losses from these accidents was $154 million, not including damages, fines, or cleanup costs. Nor was 1994 atypical. Over a ten-year period from 1985 to 1994, there was an average of 448 accidents, resulting in 24 deaths and 310 injuries, each year from pipeline accidents (See Figures 1 and 2).³

The effects of these accidents on localities can be devastating. For example:

(1) **San Bernardino, California** - In May 1989, a Southern Pacific train derailed in this city, plowing through a residential neighborhood and killing four people. The train landed on top of a pipeline operated by Calnev Pipeline Company, an interstate carrier that transports petroleum from California to Nevada. Thirteen days after the train derailment and train service had been restored, the pipeline exploded in the same location. The flames rose 500 feet in the air, two people were killed, 10 homes destroyed, and dozens of people injured.⁴


³OFFICE OF PIPELINE SAFETY, DOT, ANNUAL REPORTS.

(2) **Fredericksburg, Virginia** - In 1980 and again in 1989, this city of 20,000 lost its public water supply for a week due to oil spills in the Rappahannock River. Both emergencies were caused by the failure of an interstate oil pipeline operated by Colonial Pipeline Company. The first accident resulted in 92,000 gallons of fuel oil spilling into a tributary of the river, the City’s sole water source. Nine years later, it happened again, with 212,000 gallons of kerosene flowing into the river. Both accidents took place 20 miles upstream of the city’s water intake. Each time, fish and wildlife were killed, businesses were forced to close, and the city had to haul water from neighboring jurisdictions.

(3) **Houston, Texas** - On October 20, 1994, Houston’s San Jacinto River, swollen by heavy rains and flooding, gouged a new channel through the floodplain and exposed 17 underground pipelines. Four of them broke. Gasoline from Colonial’s 40-inch line ignited, sending flames down the river and destroying houses, trees, and barges. “It was like hell had opened up and swallowed the whole river,” said Mike Norman, 34, who witnessed the explosion.\(^5\)

(4) **Mounds View, Minnesota** - At 4 o’clock in the morning on July 8, 1986, a gasoline pipeline owned by Williams Pipeline Company ruptured, sending vaporized and liquid gasoline into the streets of a residential neighborhood in this suburb of Minneapolis. Twenty minutes later, an automobile passed by, causing the gasoline to ignite. Two people were burned to death while fleeing their home. When the City of Mounds View attempted to delay the pipeline from resuming operation until local safety concerns had been met, company officials went to court and secured a permanent injunction blocking the city from taking any action that might restrict their operations.\(^6\)

Given the vast system of pipelines crisscrossing this country, such accidents are hardly surprising. Roughly 1,800,000 miles of gas and liquid pipelines\(^7\) carry

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\(^5\) *It was Like Hell Opened Up.* Houston Chronicle, October 21, 1994, at 1; *Texas Pipeliners Assessing Flood Damage*, Oil and Gas Journal, October 31, 1994, at 22.

\(^6\) National Transportation Safety Board, PIPELINE ACCIDENT REPORT: WILLIAMS PIPE LINE COMPANY LIQUID PIPELINE RUPTURE AND FIRE, MOUNDS VIEW, MINNESOTA, JULY 8, 1986 (NTSB/PAR-87/02), at v.

\(^7\) Biancardi, *An Introduction to Federal Pipeline Safety Regulations*, OIL AND NATURAL GAS PIPELINES: WELLHEAD TO ENDUSER INSTITUTE, ROCKY MOUNTAIN MINERAL LAW FOUNDATION,
hazardous products, including crude oil, refined petroleum, liquified natural gas, carbon dioxide, and anhydrous ammonia, to urban areas and through environmentally sensitive regions across the country. As development moves closer and closer to these pipelines, most of which were built at least 30 or 40 years ago, the environmental costs and safety concerns continue to mount. Although federal legislation and agencies such as EPA have focused much attention and resources on oil spill response efforts, far less government scrutiny has been devoted to pipeline accident prevention.

**FIGURE I**

Gas and Liquid Pipeline Accidents, 1985 - 1994

<table>
<thead>
<tr>
<th>Year</th>
<th>Reportable Gas Accidents</th>
<th>Reportable Liquid Accidents</th>
<th>Total Accidents Per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>334</td>
<td>183</td>
<td>517</td>
</tr>
<tr>
<td>1986</td>
<td>225</td>
<td>209</td>
<td>434</td>
</tr>
<tr>
<td>1987</td>
<td>234</td>
<td>237</td>
<td>471</td>
</tr>
<tr>
<td>1988</td>
<td>290</td>
<td>193</td>
<td>483</td>
</tr>
<tr>
<td>1989</td>
<td>280</td>
<td>163</td>
<td>443</td>
</tr>
<tr>
<td>1990</td>
<td>199</td>
<td>180</td>
<td>379</td>
</tr>
<tr>
<td>1991</td>
<td>234</td>
<td>216</td>
<td>450</td>
</tr>
<tr>
<td>1992</td>
<td>177</td>
<td>212</td>
<td>389</td>
</tr>
<tr>
<td>1993</td>
<td>217</td>
<td>230</td>
<td>447</td>
</tr>
<tr>
<td>1994</td>
<td>221</td>
<td>244</td>
<td>465</td>
</tr>
<tr>
<td>TOTALS</td>
<td>2,411</td>
<td>2,067</td>
<td>4,478</td>
</tr>
<tr>
<td>Average Per Year</td>
<td>241</td>
<td>207</td>
<td>448</td>
</tr>
</tbody>
</table>

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Denver, Colorado (January 26, 1995, revised March 1, 1995), at 5-1.

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⁸ OFFICE OF PIPELINE SAFETY, DOT, supra.
Although gas and hazardous liquid pipelines have similar construction and safety standards, the size and pressure of these pipelines vary considerably, as do their risks. The nation's natural gas pipeline system is roughly eight times larger than its liquid one, extending to almost every street in every city. In fact, many municipalities operate their own gas systems. When gas transmission lines break, the product tends to burn out of control until its source can be extinguished. The initial explosion often kills or injures people in the vicinity and causes extensive property damage. Since the product is gaseous, it dissipates quickly and poses few environmental risks.

Liquid transmission pipelines, on the other hand, have generally been built in more remote areas to transport crude oil from the wellhead to the refinery or to move refined petroleum from Texas or offshore terminals to major urban centers. When these lines break, oil and other hazardous liquids flow into nearby streams and rivers, contaminating public water supplies or groundwater. Sometimes, when the product being transported is highly flammable, such as liquefied natural gas or gasoline, the risks are both safety-related and environmental.

What is the safety record of the pipeline industry? This is difficult to assess for several reasons. As for the gas pipeline industry, no ready means of comparison exists since all natural gas is transported via pipeline. As for the oil pipeline industry, pipelines have an accident history that ranks better than rail or motor carriers, but worse than barges and other water carriers. For example, from 1982 to 1992, oil pipelines spilled a total of 109.7 million gallons of petroleum products, 240 percent more than was spilled by tankships and barges.9

The author is unaware of any comprehensive studies that have quantified the cumulative environmental effects of oil pipeline spills, but a 1990 report by the Wilderness Society draws a comparison between recent pipeline accidents and the highly publicized Exxon Valdez tanker accident:

[Pipeline accidents in the 12 months since the Valdez accident have] occurred every single day of the year. They occurred in every state of the union. They occurred at every stage of the industrial process. No one has final figures, but experts estimate that there have been roughly 10,000 spills since the Exxon Valdez tore open. Including the Valdez disaster, these accidents have polluted America's land and water with 15 to 20 million

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gallons of oil.\textsuperscript{10}

\begin{figure}
\centering
\begin{tabular}{|c|cc|cc|cc|}
\hline
Year & \textbf{Gas Accidents} & & \textbf{Liquid Accidents} & & \textbf{Total Casualties} \\
& Deaths & Injuries & Deaths & Injuries & Deaths & Injuries \\
\hline
1985 & 28 & 108 & 5 & 18 & 33 & 126 \\
1986 & 35 & 124 & 4 & 32 & 39 & 156 \\
1987 & 11 & 130 & 3 & 20 & 14 & 150 \\
1988 & 25 & 125 & 2 & 19 & 27 & 144 \\
1989 & 42 & 119 & 3 & 38 & 45 & 157 \\
1990 & 6 & 69 & 3 & 7 & 9 & 76 \\
1991 & 14 & 89 & 0 & 9 & 14 & 98 \\
1992 & 10 & 80 & 5 & 38 & 15 & 118 \\
1993 & 17 & 102 & 0 & 10 & 17 & 112 \\
1994 & 21 & 110 & 1 & 1,858 & 22 & 1,968 \\
\hline
\textbf{TOTALS} & 209 & 1,056 & 26 & 2,049 & 235 & 3,105 \\
\hline
\end{tabular}
\caption{Gas and Liquid Pipeline Accident Casualties, 1985 - 1994\textsuperscript{11}}
\end{figure}

The report noted, however, that reliable data documenting the environmental impact of these accidents is scarce:

The impact on our environment is enormous. The Valdez accident is believed to have led to the death of hundreds of thousands of birds, more than 1,000 sea otters, and untold numbers of other species. But no one will ever know the true death toll. After most spills, no effort is even made to gauge the cumulative impact on wildlife, drinking water, vegetation, and

\textsuperscript{10} THE WILDERNESS SOCIETY, 100 SPILLS, 1,000 EXCUSES (March 1990), at 1.

\textsuperscript{11} OFFICE OF PIPELINE SAFETY, DOT, \textit{supra}.
the rest of the environment.\textsuperscript{12}

The simple fact is that pipeline accidents do not attract widespread media or government attention because their effects are generally local, the pipelines themselves are “out of sight, out of mind,” and their impacts do not produce as sensational television footage as the blackened beaches and oil-soaked birds that accompany tanker accidents. But for affected communities such as Greenville, Fredericksburg, Houston, and Mounds View, their pipeline accidents will long be remembered, not only for their effect but also for how they are likely to happen again.

III. THE REGULATORY FRAMEWORK

In 1968, Congress adopted the first comprehensive federal pipeline safety statute, the Natural Gas Pipeline Safety Act (“NGPSA”), in response to a tremendous increase in the nation’s use of natural gas, a concurrent growth in population, and several well-publicized gas pipeline accidents.\textsuperscript{13} Eleven years later, in 1979, Congress adopted a parallel regulatory program for hazardous liquid pipelines with passage of the Hazardous Liquid Pipeline Safety Act of 1979 (“HLPSA”).\textsuperscript{14}

Under both statutes (“the Acts”), the U. S. Department of Transportation (“DOT”) was granted primary regulatory authority to establish reporting and record-keeping requirements for the industries, to set technical standards for the design, construction, testing, and maintenance of pipeline facilities, and to enforce safety standards. This authority was delegated, in turn, to the Office of Pipeline Safety (“OPS”) in the Research and Special Programs Administration. By 1970, OPS had adopted core requirements for the gas pipeline industry,\textsuperscript{15} with regulations for liquified natural gas following in 1980,\textsuperscript{16} interstate hazardous liquid in 1981, and intrastate hazardous liquid in 1985.\textsuperscript{17}

\textsuperscript{12} THE WILDERNESS SOCIETY, supra, at 2.

\textsuperscript{13} Biancardi and Bogardus, From 'Command and Control' to Risk Management: The Evolution of the Natural Gas Pipeline Safety Program, 16 ENERGY LAW JOURNAL 461 (1995), at 463.

\textsuperscript{14} Both the NGPSA and the HLPSA are now jointly codified as 49 U.S.C. §60601, et seq.

\textsuperscript{15} 49 CFR Parts 191 and 192.

\textsuperscript{16} 49 CFR Part 193.

\textsuperscript{17} 49 CFR Part 195.
Although the Acts envisioned pipeline safety as primarily a federal responsibility, they encouraged a federal-state partnership in which the federal government would set and enforce national safety standards for interstate pipelines but states would have the freedom to assume day-to-day inspection and administrative duties, and could even adopt more stringent safety standards for, intrastate pipelines. Specifically, the Acts provided that OPS could “certify” states to assume federal jurisdiction over intrastate pipelines if they had adopted the federal standards and did not impose more stringent standards that were “incompatible” with federal standards. Certified states could also assume enforcement authority over intrastate operators.

In addition, certified states could become “agents” of OPS to administer the interstate program, except that all interstate enforcement authority would remain with OPS. States were encouraged to take over both programs through a cost-reimbursement formula that enabled states to recover up to fifty percent (50%) of their costs from the federal government.  

This bifurcated federal-state system for gas and liquid pipelines has led to a cumbersome and confusing regulatory network. As of today, 48 states are certified to implement the intrastate gas program, 12 serve as agents to administer the interstate gas program, 2 are permitted to inspect intrastate gas or liquid facilities but not to enforce federal standards, 12 are certified to implement the intrastate liquid program, and 4 serve as agents to administer the interstate liquid program. It is a system that only OPS and the pipeline industry can figure out.

The Acts give OPS broad enforcement power to impose civil money penalties of up to $25,000 per day per violation, to obtain injunctive relief and punitive damages against operators, and to seek criminal penalties for willful violations. The agency can also utilize a special statutory remedy called a “hazardous facility order,” which allows OPS to find that a pipeline or other facility is either

(1) hazardous to life, property, or the environment; or

(2) constructed or operated, or a component of the facility is

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18 Although the Acts authorize up to 50% reimbursement, Congress has rarely, if ever, fully funded the state reimbursement program.

19 OFFICE OF PIPELINE SAFETY, DOT, supra.

constructed or operated, with equipment, material, or a
technique the Secretary [of Transportation] decides is
hazardous to life, property or the environment."

The only major aspect of on-shore pipeline safety regulation\(^{22}\) that has not been
assigned to OPS has been the siting of new pipelines.\(^{23}\) The Natural Gas Act provides that
the Federal Energy Regulatory Commission ("FERC") has jurisdiction over the siting of
new interstate gas pipelines\(^{24}\) and new liquid pipelines are governed by applicable state
and local laws.

Despite its primary jurisdiction over pipeline safety and its broad powers to
develop a strong safety program, the Office of Pipeline Safety has generally failed to live
up to its Congressional mandate. Since its inception in 1970, the agency has been
underfunded, understaffed, and largely beholden to the industry it is supposed to regulate.

For 25 years, OPS has consistently lagged behind Congress and its watchdog
agency, the National Transportation Safety Board ("NTSB"), in pressing for pipeline
safety improvements. For example, NTSB has recommended since 1980 that OPS require
gas pipeline operators to install certain equipment known as "excess flow valves" to
isolate failed pipelines after they break, thus reducing the risk of fire and explosion. In
1992, Congress required the agency to formulate performance standards for such valves
and to determine under what circumstances, if any, they must be installed. Three years
later, in 1995, OPS finally concluded that no such valves should be required.\(^{25}\)

Another example is the agency's lax environmental record. In response to a series
of major oil pipeline accidents, Congress in 1992 made an historic change in the agency's

\(^{21}\) 49 U.S.C. §60112.

\(^{22}\) Jurisdiction over offshore pipelines and facilities is divided between OPS and the Minerals

\(^{23}\) Under the Oil Pollution Act of 1990, Congress directed OPS to administer the requirement that
on-shore oil pipeline operators prepare oil spill response plans. See 49 CFR Part 194. The rationale for
this is questionable, since OPS does not monitor the oil spill response efforts of pipeline operators in the
event of an accident. If OPS has nothing to do with the speed or effectiveness of oil spill cleanups or the
effects of those accidents on the environment, how can the agency be expected to evaluate the quality of
the companies' response plans?

\(^{24}\) See 18 CFR Part 157.

\(^{25}\) Biancardi and Bogardus, supra, at 475.
charter. OPS was ordered to incorporate “protection of the environment” into its regulatory mission and to establish criteria for identifying pipelines located in high-density population areas and in environmentally sensitive areas. In this way, higher safety standards and environmental protection measures could be applied in high-risk areas. The agency was given two years, until October 24, 1994, to complete this task.\textsuperscript{26} As of the date this paper goes to print, two years after the deadline, no final rule on the environmental criteria has been adopted, much less any sites actually selected for greater protection.

But perhaps most disheartening of all is the agency’s enforcement record. During a period when other federal environmental and safety agencies have levied increasingly tough penalties against violators, OPS has rarely imposed any penalties at all. During the period from 1987 to 1989, for example, at a time when over 33 million gallons of petroleum were spilled in 580 separate accidents, OPS collected fines of only $188,000. This adds up to less than five cents per gallon spilled.\textsuperscript{27}

\section*{IV. SURVEY OF FEDERAL CASE LAW}

There have been fewer than a dozen reported court decisions under the Acts in the 28 years since the NGPSA was first adopted. The reason for this paucity of cases is twofold. First, it reflects OPS’ overall philosophy of avoiding the promulgation of regulations opposed by the pipeline industry, of settling most enforcement actions, and of maintaining a cordial working relationship with the operators.\textsuperscript{28} Second, most of the reported cases have arisen out of efforts by states and localities to impose tougher safety standards on pipeline operators. When these efforts generally proved unsuccessful and OPS discouraged greater state involvement, state and local governments largely abandoned seeking relief through litigation.

The general rule emerging from these few cases is that state and local governments

\textsuperscript{26} 49 U.S.C. § 60109.

\textsuperscript{27} Doyle, CRUDE AWAKENING, THE OIL MESS IN AMERICA: WASTING ENERGY, JOBS AND THE ENVIRONMENT, Friends of the Earth (1994), at 86.

\textsuperscript{28} The only significant exceptions have been two cases challenging the agency’s authority to impose user fees in order to finance the federal safety program. In both cases, the court upheld the agency’s right to impose such fees under authority specifically delegated by Congress, \textit{Skinner v. Mid-America Pipeline Co.}, 490 U.S. 212 (1989); \textit{Five Flags Pipe Line Co. v. DOT}, 854 F. 2d 1438 (D.C.D.C. 1992).
are preempted from imposing any safety regulations on interstate pipeline operators, but that they may be able to impose other requirements, such as user fees, local franchise-type restrictions, and environmental safeguards, so long as they do not conflict with OPS' own safety regulations. The Acts contain an express safety preemption regarding interstate facilities:

A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.\textsuperscript{29}

But the Acts also carve out a special role for the states in regulating \textit{intrastate} facilities:

A State authority that has [been certified to administer the intrastate gas or liquid programs] may adopt additional or more stringent safety standards for intrastate pipeline facilities or intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter.\textsuperscript{30}

This Congressionally mandated regulatory scheme attempts to prevent state and local governments from imposing their own safety standards on intrastate pipelines that could conflict with various federal requirements or constitute a burden on interstate commerce. On the other hand, states are encouraged to adopt their own standards for intrastate facilities, so long as they do not conflict with minimum federal standards.

The difficulty for the courts has been in trying to decipher what constitutes a "safety" standard, whether states and localities may adopt any standards affecting interstate facilities (even if they are identical to the federal ones), and whether preemption totally prevents localities from exercising their traditional police powers and controlling the use of city-owned property.

The first major attempt by a municipality to exert control over transmission pipelines arose soon after passage of the NGPSA in 1968, with the adoption of an ordinance in 1970 by Terrebonne Parish, Louisiana, regarding construction standards for new pipelines. The ordinance provided that no new pipeline could be built across public property without a permit and that any such pipeline crossing a ditch, bayou, or canal had to be covered by at least six feet of dirt. United Gas Pipeline Company sought to construct a short segment of new gas pipeline connecting to an interstate line and contended that it

\textsuperscript{29} 49 U.S.C. §60104(e).

\textsuperscript{30} Id.
did not need any type of permit from the parish.

The district court held that Terrebonne Parish could not enact a local ordinance that regulated the construction, installation, or operation of gas or liquid pipelines. Even if the parish adopted standards that were identical to the federal ones, it could not enforce them. In short, the court stated, "Congress has left nothing to the states with respect to regulation and control" of interstate pipelines.  

This general rule has been reaffirmed by other courts insofar as it applies to interstate gas lines. A 1987 Eighth Circuit case involved an Iowa statute authorizing its State Commerce Commission to supervise gas and liquid pipelines and to act as agent for OPS in administering the interstate gas program. The Commerce Commission adopted a rule that required pipeline operators to provide the Commission with notice of any proposed construction, that advertised and set public hearings prior to the issuance of pipeline permits, and that allowed the Commission to impose safety conditions on a permittee. In addition, the statute provided for the resolution of damage claims relating to pipeline construction and required proof of a company's financial capacity to pay potential claims. When ANR Pipeline Company failed to secure a permit in a timely manner, the Commission assessed a fine and the company sought declaratory judgment.

The court struck down the entire Iowa permitting process, with the exception of user fees levied by the Commission to finance the state's delegated interstate gas safety program. Despite the fact that Iowa had adopted the federal safety standards and merely
sought notice from the company prior to construction so that it could carry out its inspection responsibilities under the federal program, the court rejected the state’s position. The court held that the state permit program was "designed to address the same subject matter and activity as is regulated by the federal statute."34 The court's reasoning was that by retaining the right to deny or impose conditions in the permit, the Commission had inherently limited the federal government's ability to control new pipeline construction under The Natural Gas Act.

State efforts to affect the siting of new interstate gas lines have also been struck down. As noted earlier, The Natural Gas Act gives FERC jurisdiction over all applications to construct new interstate gas pipelines. New York, however, attempted to require an interstate applicant to obtain a state “certificate of environmental compatibility and public need” from the New York Public Service Commission. The state admitted that FERC had preemptive authority over the bulk of the siting process, but contended that New York could fill in the interstices of the federal permitting process by conducting site-specific environmental assessments. The court rejected this approach, stating

Congress placed authority regarding the location of interstate pipelines - in the present case affecting citizens of four states in addition to New York - in the FERC, a federal body that can make choices in the interests of energy consumers nationally, with intervention afforded as of right to relevant state commissions......Allowing all the sites and all the specifics to be regulated by agencies with only local constituencies would delay or prevent construction that has won approval after federal consideration of environmental factors and interstate need, with the increased costs or lack of gas to be borne by utility consumers in other states.35

32(...continued)

ruled that “severability” was a state law question and that in this particular case, Iowa law did not allow severability. See also, Tenneco, Inc. v. Public Service Commission of West Virginia, 489 F.2d 334, 337 (4th Cir. 1973). In upholding West Virginia’s right to impose user fees on interstate pipeline operators, Judge Butzner used a more studied and realistic approach toward untangling preemption. “Preemption of all phases of interstate gas pipeline safety,” he wrote, “cannot be inferred from the fact that Congress has occupied a part of the field.” This approach of carefully scrutinizing each state regulation to determine whether it fits into the overall intent of the Acts could potentially be used to validate other state regulations affecting pipelines. For example, a state law requiring certain minimum right-of-way widths for new pipeline construction might be upheld under the Tenneco analysis.

34 Id., at 471.

35 National Fuel Gas Supply Corporation v. Public Service Commission of New York, 894 F.2d (continued...)
The general rule, first stated in *Terrebonne*, has also been extended to interstate liquid pipelines. Iowa, despite having lost the ANR case, attempted to subject interstate liquid pipelines to the state’s permitting process. Again, the Eighth Circuit struck down the state’s regulatory scheme, stating that Congress’ grant of exclusive authority to OPS “precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards.”

Local efforts have not fared much better. After the Mounds View accident cited above, the Mounds View City Council adopted an ordinance prohibiting the re-start or repair of the pipeline without city approval. The company filed suit, seeking to enjoin the City from interfering with the pipeline’s operations. The City countersued, claiming a public nuisance and seeking relief under the HLPSA citizen suit provisions. Ramsey County also sued to revoke the license under which it had allowed Williams’ predecessor to use public property for locating the line.

The court ruled in favor of Williams on all counts and enjoined Mounds View and Ramsey County from interfering with the operations of an interstate pipeline. In rejecting the common law claims raised by the localities, the court clearly perceived a threat to the nation’s pipeline network:

> Hazardous liquid pipelines run through 21 states, and presumably through small and large plots of land belonging to vast numbers of persons. Were each of these landowners entitled to demand compliance with their own safety standards, the clear Congressional goal of a national standard for hazardous liquid pipeline safety would be thwarted.

Since this decision was decided in 1989, no local government has attempted to impose its own safety standards directly on an interstate pipeline operator.

The *Mounds View* case also demonstrates the obstacles that have confronted pipeline accident victims seeking relief under the Acts’ citizen suit provisions. To the

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35(...continued)
571, 579 (2nd Cir. 1990).

36 *Kinley Corporation v. Iowa Utilities Board*, 999 F.2d 354, 359 (8th Cir. 1993).

author’s knowledge, there has never been a successful citizen’s suit brought under the Acts against a pipeline operator.

The reasons for this are manifest. The Acts provide that a plaintiff may file a private enforcement action against either OPS or an operator only after he has provided OPS and the alleged offender with 60 days’ notice and neither OPS nor the Justice Department “has begun and diligently is pursuing an administrative....[or]....judicial proceeding for the violation.” Mounds View, however, faced the same problem that confronts any private party seeking relief under the Acts. After that city’s accident, OPS launched an investigation and subsequently issued an order requiring Williams to perform hydrostatic testing of the line, to conduct a metallurgical examination of the failed pipe, and to prepare an “operational reliability analysis.” The agency also issued a notice of a proposed civil penalty against Williams. To the court, such actions were sufficient to show that OPS was in fact “diligently” pursuing administrative action.

Most localities and private parties, however, do not have the financial resources or stamina to wait for years before it becomes clear that OPS will not require aggressive corrective action from an operator. The Mounds View action was filed so soon after the accident that OPS could still legitimately characterize its response as “diligent.” But for many other localities, such as Fredericksburg (which has been threatened by a defective pipeline for 16 years), a citizens suit may have greater chance of success. To date, OPS’ pattern of seeking gradual, piecemeal remedies to hazardous conditions has served effectively to shield the companies and the agency from citizens suits.

The only two cases that have upheld a state or local government’s efforts to regulate pipelines have involved intrastate facilities in California. In the first case, the City of Santa Monica granted a franchise in 1941 to a predecessor of Shell Oil Company for the operation of a crude oil intrastate pipeline under the city’s streets. When the company’s franchise expired, Shell sought renewal. The parties were unable to reach agreement, and the company sued, alleging interference with interstate commerce, state constitutional violations, and preemption under the HLPSA.

38 49 U.S.C. §60121. Not only is this citizens suit provision more restricted than those found in other environmental statutes (e.g., “RCRA”), it also contains a provision that allows a court to award attorney’s fees to a pipeline operator if the citizen’s claim is “unreasonable, frivolous, or meritless.” The threat of having to pay a pipeline company’s attorney’s fees is so formidable that this provision could be characterized as having a “freezing”, rather than merely a “chilling”, effect on the right of citizens to seek redress under this provision.

39 Although the issue of whether the pipeline was interstate or intrastate was contested, the court assumed for purposes of summary judgment that the pipeline was intrastate. See Southern Pacific, infra.
The court dismissed the company’s constitutional claims and held that the HLPSA did not, as a matter of law, preempt a municipality from imposing “all” safety standards on an intrastate pipeline. In reaching this conclusion, the court first drew a distinction between *interstate* and *intrastate* pipelines, holding that the HLPSA specifically allowed “any State agency” to impose additional, compatible regulations on intrastate pipelines. Second, the court interpreted the term “State agency” to include municipalities, largely because of language in the HLPSA suggesting that local governments should have a voice in enacting safety legislation and improving local pipeline safety programs.\(^{40}\)

The other case involved an effort by the State of California to impose more stringent testing requirements on intrastate liquid pipelines. Southern Pacific Pipe Lines, Inc., an interstate carrier with lateral delivery lines in California, challenged an OPS regulation defining the term “interstate pipeline.” The court upheld OPS’ characterization of the California lines as intrastate facilities, but for jurisdictional reasons failed to reach the question of whether the state’s testing requirements were a valid exercise of its statutory authority.\(^{41}\)

Taken together, the two California cases and the preemption analysis utilized in *Tenneco* suggest several opportunities for state and local governments to take a more active role in the regulation of gas and liquid pipelines, particularly intrastate facilities. Most importantly, the *Santa Monica* decision confirms the right of municipalities to impose local franchise fees on the operation of pipelines across public property. In addition, the *Southern Pacific* decision further confirms that state and local governments, working through their state’s certified pipeline program, can insist upon a number of additional safety and environmental protections for intrastate pipelines that OPS does not require. Finally, by, using their right to collect franchise fees, municipalities may be able to persuade operators to take additional safety measures that a locality might not otherwise have a right to require.

\(^{40}\) *Shell Oil Company v. City of Santa Monica*, 830 F.2d 1052 (9th Cir. 1987). This small window of opportunity for local governments, opened by the court’s expansive reading of the phrase “any State agency,” was quickly shut in 1992 when Congress amended the Acts to restrict state rulemaking authority to only “a State authority that has submitted a current certification” under the intrastate program. 49 U.S.C. §60104(c).

V. THE EXPERIENCE OF THREE LOCAL GOVERNMENTS

For localities such as Fredericksburg and Mounds View that have experienced pipeline disasters, the lessons have been slow and painful. Nevertheless, their experience has shown that despite the legal barriers imposed by preemption, local governments can still make a contribution to improved pipeline safety. The stories of the following three communities show that each has taken a slightly different tack in response to their accidents but each has helped reduce the risk of future accidents, both in their own localities and nationally.

As noted earlier, Fredericksburg suffered its first accident on March 6, 1980, when a 32-inch interstate oil pipeline owned by Colonial Pipeline Company and running from Texas to New York ruptured near the village of Locust Grove, 20 miles west of Fredericksburg. The failure occurred due to a longitudinal crack in the pipe caused by a phenomenon known as "railroad fatigue." When the pipeline was built in 1962-64, certain joints of pipe were improperly loaded and shipped by rail from the manufacturer to the project site, causing the pipe to jostle and develop hairline cracks that went undetected at the time of installation. After years of normal operating pressure cycles, these cracks slowly grew to the point of failure.

Nine years later, on December 18, 1989, during a bitterly cold winter, disaster struck again at Locust Grove. The same 32-inch pipeline failed again due to railroad fatigue, less than five miles from the site of the previous accident. This time, 212,000 gallons of kerosene spilled into the Rapidan and Rappahannock Rivers. Colonial quickly erected two containment dams and over the next 12 days attempted to recover the spilled product. Unfortunately, these efforts were impeded due to the remote location of the spill site and a solid layer of ice that trapped the kerosene. On New Year's Eve, following heavy rains and a rapid thaw, the containment dams broke and kerosene flowed downstream toward Fredericksburg. Again, fish and game were killed, the City's water supply was cut off, and drinking water had to be hauled from Stafford County for seven days.

Three years later, on March 28, 1993, a parallel 36-inch pipeline owned by Colonial line ruptured again in Virginia, this time in Fairfax County near the nation's capital. Roughly 407,700 gallons of diesel fuel flowed into Sugarland Run, a tributary of the Potomac River, in what turned out to be the largest oil spill in Virginia's history. The release caused significant environmental damage and threatened water supplies in parts of Northern Virginia, Maryland, and the District of Columbia.

According to the NTSB, the "probable cause" of the Fairfax accident was
excavation damage that had taken place at some "undetermined time."

The Safety Board found that more than 200 contractors and groups had performed work in the general area of the rupture during the six years since a nearby medical complex had been constructed. With so much construction activity going on, it was impossible to pinpoint any single event or contractor that had damaged the pipe.

As a result of these accidents, Fredericksburg and Fairfax officials began independent efforts to learn the causes of their respective accidents, to educate themselves about pipeline regulations generally, and to seek reforms that would reduce the likelihood of future accidents. They repeatedly sought help from OPS in trying to secure vigorous enforcement action against Colonial and to push for greater local input in pipeline safety matters.

Their experience with OPS was not encouraging. After the 1989 spill, Fredericksburg officials expressed concerns to OPS about the continuing hazards posed by the 32-inch line. Despite these concerns and the City's desire to be kept actively involved in the enforcement process, OPS secretly negotiated a "voluntary testing plan" with Colonial in August 1990. The plan called for Colonial to test the line hydrostatically by the end of 1991, to prepare an "operational reliability assessment" ("ORA") that would attempt to predict the likelihood of future accidents due to railroad fatigue, and to maintain a reduced maximum operating pressure of 445 psi. Upon obtaining a copy of the agreement, the City was dismayed to learn that it allowed the agency to permit Colonial to resume normal operating pressure at any time, without notice to or input from the City. Although Fredericksburg's citizens had suffered as a result of two spills, neither they nor the City had any redress or opportunity to appeal the agency's agreement or any future action.

A month later, in September 1990, OPS released a special internal task force report whose findings were even more alarming. According to the report, Colonial had experienced a series of six accidents on the 32-inch pipeline, with spills in Alabama, South Carolina, Virginia, and New Jersey. The report revealed that railroad fatigue had been a known risk at the time the line had been constructed, that hydrostatic testing was

42 NATIONAL TRANSPORTATION SAFETY BOARD, PIPELINE SPECIAL INVESTIGATION REPORT: EVALUATION OF ACCIDENT DATA AND FEDERAL OVERSIGHT OF PETROLEUM PRODUCT PIPELINES, January 23, 1996 (PR96-917002, NTSB/SIR-96/02), at 4.

43 A rather crude type of test, where the pipeline is filled with water at a higher pressure than is normally used. Any crack that was already on the verge of failure will fail as a result of the test and the pipeline will rupture. Such testing has severe limitations. Not only does it uncover only the most (continued...)
the only available means of detecting fatigue cracking, and that it was impossible to pinpoint where other defective segments of pipe might be. Finally, the report predicted that there would be future failures due to rail fatigue unless "corrective action" was taken.\textsuperscript{44} In other words, the 32-inch line was another accident just waiting to happen.

Soon after the testing plan went into effect, Colonial began hydrostatically testing the line within the City’s watershed, a distance of roughly 20 miles. The good news from these tests was that it ruptured only once as a result of the pressure testing. The bad news was that it ruptured in the \textit{same joint of pipe that had failed in the 1980 accident}. As incredible as it may seem, the company had only replaced that half of the joint that had actually failed in 1980, leaving the other defective half in the ground.\textsuperscript{45}

Over the next three years, Colonial submitted several drafts of the ORA to OPS, but the agency refused to share copies of them with the City, even after a Freedom of Information Act request was filed. Finally, in February 1994, OPS released a draft to Fredericksburg and Fairfax officials and invited their comment. The report only served to confirm the localities' fears about the reliability of the 32-inch line. The report concluded that even though Colonial had hydrostatically tested the line and reduced the pressure cycles on the pipeline by bringing an abandoned pump station back on line, another rail-fatigue failure was likely to occur within the next six years.\textsuperscript{46}

Meanwhile, Fairfax County had hired its own pipeline experts and had become increasingly concerned about some of the most basic design and safety standards for transmission pipelines, including those for natural gas. Among the major concerns identified by the County and its consultants were:

1) The thin-walled high-pressure pipe used by Colonial in its petroleum pipelines might not have sufficient fault tolerance to allow early detection and repair of cracking due to cyclic fatigue. The County

\textsuperscript{43}(...continued) imminent failures, but it actually places additional stress on the pipeline.

\textsuperscript{44} OFFICE OF PIPELINE SAFETY, DOT, TASK FORCE REPORT, COLONIAL PIPELINE FATIGUE FAILURES (September 14, 1990).

\textsuperscript{45} Letter from Rose McMurray, Acting Administrator, Research and Special Programs Administration, DOT, to Rep. Herb Bateman (December 17, 1993).

\textsuperscript{46} Kiefner and Maxey, \textit{Updated Report on Operational Reliability Assessment of Colonial Pipeline Company's 32-Inch Line 4 to Colonial Pipeline Company}, January 31, 1994 (draft).
questioned whether OPS’ design standards were adequate to protect public safety and the environment.

2) Colonial’s excavation of defective portions of the 36-inch pipeline in Fairfax had revealed, in 40 out of 88 digs, that damage had been caused by bedrock or rock in the backfill. The County feared that such defects might indicate poor construction practices.

3) OPS had never instituted requirements for periodic testing of liquid pipelines. This was of particular concern to the County, given the aging condition of many pipelines.

4) The County’s rapid population growth and development near pipelines presented an increasing threat of third-party damage and a heightened risk of injuries or deaths. The County was particularly concerned that if the 1993 accident had occurred just two hours later, the pipeline would have contained highly flammable gasoline.\(^{47}\)

The County, in a series of high-level contacts with Secretary of Transportation Federico Pena, identified these concerns and lobbied successfully to get DOT to prevent Colonial from resuming normal operating pressure until some of these questions had been resolved. As of today, normal operating pressure has not resumed on either the 32- or the 36-inch pipeline within Fredericksburg’s watershed or in Fairfax County.\(^{48}\)

In the aftermath of these three major spills, Fredericksburg and Fairfax officials took the following steps:

1) **Public participation** - In 1992, Fredericksburg secured passage of an amendment to the Acts allowing greater public participation in OPS

\(^{47}\) Neuhard, Michael, Fairfax County Battalion Fire Chief, *A Pipeline Perspective*, National Pipeline Safety Summit, Newark, New Jersey (June 20, 1994).

\(^{48}\) The efforts of Fredericksburg and Fairfax paved the way for OPS’ eventual imposition of safety restrictions on the 32-inch pipeline over its entire length from Texas to New York. A consent order between OPS and Colonial, issued August 14, 1995, places certain restrictions and requires testing and repairs on the 32-inch line from North Carolina to Maryland. On July 31, 1996, following the June accident in Greenville, South Carolina, OPS declared the rest of the 32-inch line a hazardous facility and required extensive “pigging” of the line over the next five years.
enforcement proceedings.\textsuperscript{49} OPS is now required to share draft consent orders negotiated between the agency and pipeline operators with affected state and local governments. This ensures that localities and states which have suffered major pipeline accidents will at least have notice and an opportunity to comment on certain proposed OPS enforcement actions.

2) **State certification** - Fredericksburg, with the support of Fairfax County and Virginia’s State Corporation Commission ("SCC"), persuaded the General Assembly in 1994 to enact Virginia's own Hazardous Liquid Pipeline Safety Act.\textsuperscript{50} This legislation authorized the state’s public utilities commission to assume federal regulatory and inspection jurisdiction over intrastate and interstate liquid pipelines in Virginia. This will achieve two important objectives. First, it will enable the SCC to impose its own user fees and hire an adequate number of inspectors. Second, it will give the state and its political subdivisions greater control over the regulatory process and more influence with OPS.

3) **Local land use** - Over a two-year period following the 1993 spill, Fairfax County undertook a comprehensive review of its land use regulations to see what local steps could be taken to reduce the risk of future accidents. In June 1995, the County amended its comprehensive plan, zoning, and subdivision ordinances in order to:

- strictly limit allowable land uses within gas and liquid pipeline rights-of-way;

- prohibit the use of pipeline rights-of-way in calculating minimum lot sizes, thus encouraging the placement of buildings farther away from pipelines;

- require developers to identify the location of pipelines and pipeline rights-of-way on all major site plans, generalized development plans, and commercial building permit applications; and

- require developers to forward copies of their proposed site and

\textsuperscript{49} 49 U.S.C. §60112(c).

\textsuperscript{50} Virginia Code §56-553, et seq.
subdivision plans to affected pipeline operators for their review and comment.\textsuperscript{51}

Aside from any specific initiatives, the most important accomplishment of Fredericksburg and Fairfax has been a "sea change" in the way they have incorporated pipeline safety awareness into their entire organizations, from HAZMAT training to building codes, from land use controls to environmental protection. This new awareness has also prompted them to establish an ongoing dialogue with state and federal pipeline regulators and operators. Finally, it has prompted them to continue to push for fundamental reforms in the way pipelines are regulated on a national level.

A third local case study involves Edison, New Jersey. At midnight on March 23 1994, a 36-inch interstate gas transmission line owned and operated by Texas Eastern Transmission Corporation ruptured in Edison, causing a buried pipe to explode and form a crater 140 feet long and 65 feet wide. Within minutes, an unknown source ignited the gas. Although eight nearby apartment buildings were totally destroyed and 1,500 residents evacuated, only 112 people were injured and no one was killed.\textsuperscript{52}

An NTSB investigation revealed that the accident was caused by undetermined excavation damage at some unknown time within the past eight years. Most likely, the damage was the result of construction equipment, such as a backhoe, cracking the surface of the pipe. Over time, normal pressure cycles caused the crack to grow to a critical size through metal fatigue.\textsuperscript{53}

The accident occurred within the confines of an industrial asphalt plant. In 1960, roughly 13 years after the pipeline had been built, the 8-acre site was bought by Edison Asphalt Corporation. Since that time, the company had continuously operated the plant. Despite the fact that the pipeline company’s easement prohibited the asphalt plant from grading within the easement area, the site was re-graded frequently and a pond located directly over the pipeline was re-located and dredged repeatedly. The company had no pipeline markers on the asphalt plant property and several employees testified that they were unaware of the pipeline’s existence.

\textsuperscript{51} Fairfax County Ordinance No. 95-275, adopted June 26, 1995.

\textsuperscript{52} NATIONAL TRANSPORTATION SAFETY BOARD, PIPELINE ACCIDENT REPORT: TEXAS EASTERN TRANSMISSION CORPORATION NATURAL GAS PIPELINE EXPLOSION AND FIRE, EDISON, NEW JERSEY, MARCH 23, 1994 (PB 95-916501, NTSB/PAR-95/01), at 1.

\textsuperscript{53} Id., p. 74.
But the asphalt plant was not only nonchalant about the presence of the pipeline, it also tolerated illegal dumping. Investigators even unearthed a crushed Ford Ranger pickup truck on site that had been reported stolen in 1990. Under such circumstances, it is no wonder that an accident would eventually happen.

The NTSB report provided a virtual "laundry list" of mistakes and neglect on the part of Texas Eastern, the asphalt company, OPS, and other government officials. The agency made 25 recommendations, including several aimed directly at local government organizations, but stopped short of recommending that an industrial facility such as an asphalt plant not be permitted to operate in such close proximity to a high-pressure transmission pipeline.

Following the accident, Edison Township took a series of steps to protect its citizens against future accidents:

(1) The Township adopted ordinances establishing a 75-foot building and land-disturbance setback from all distribution, gathering, and transmission pipelines, requiring a 125-foot setback for construction of high-risk buildings near pipelines, and mandating that all site development plans submitted to the township include information about pipeline location, type, size, and operating pressure, both on the subject property and within 75 feet of its boundaries.

(2) The Township encouraged Texas Eastern to undertake a pilot project for the installation of remotely operated shut-off valves along the pipeline route, so that in the event of future accidents, the flow of gas could be shut off more quickly.

(3) Edison joined with other New Jersey localities in securing passage of a new state statute converting the state’s voluntary one-call “Miss Utility” system into a mandatory program. Mayor Spadaro testified before Congress and got the Township’s Congressional delegation to sponsor a federal one-call bill. The legislation, however, failed to pass and still awaits Congressional action.

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54 The NTSB recommended that the American Public Works Association, the American Society of Civil Engineers, the International City/County Management Association, and the American Planning Association cooperate on developing model programs and statutes to enhance public safety near high-pressure pipelines. Id., pp. 77-79.
VI. RECOMMENDATIONS

The failure of DOT to exercise effective leadership on pipeline safety issues and the increasing risk of pipeline accidents in urbanized and environmentally sensitive areas has created a need for state and local governments to take a more pro-active role in protecting their citizens from pipeline accidents. The first step for any locality should be to determine whether it is potentially threatened by either gas or hazardous liquid transmission pipeline accidents. As Fredericksburg’s experience demonstrates, it is not only those communities through which a pipeline actually passes that may be vulnerable. If a locality draws its public water supply from a river, reservoir, or aquifer located downstream from or under an existing or proposed liquid transmission pipeline, it should take precautions. If a municipality operates its own gas distribution system, it should be even more aggressive on pipeline safety.

If a locality is potentially affected, it should then educate itself and undertake a comprehensive review of all local ordinances and policies that could be revised to help reduce the risk of accidents. Fairfax County could serve as a model in this regard. The County formed an interagency management team that over a two-year period produced and secured implementation of many valuable recommendations on pipeline safety.

An educational effort should also be conducted on a national level. The National League of Cities, the National Association of Counties, the International Municipal Lawyers Association, the International City/County Management Association, and similar organizations should sponsor workshops in cooperation with the Office of Pipeline Safety and the pipeline industry to highlight pipeline safety issues for local officials and to draw local government leaders into the national pipeline safety debate.

This educational effort should be followed by the formation of a national task force to formulate model local ordinances and reforms in the federal regulatory scheme. Specifically, local government officials, pipeline safety experts, and industry representatives should work together to develop standard building and excavation setbacks and right-of-way standards for all transmission pipelines, taking into accounts various products, operating pressures, line sizes, and fire safety standards.  

55 An excellent foundation has already been laid for such an effort. In 1988, in response to a request from the NTSB, the Transportation Research Board of the National Research Council published Special Report 219, Pipelines and Public Safety, on public and private policies to improve public safety near transmission pipelines. This report remains the best single source for local governments interested (continued...)

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To date, most localities affected by pipeline accidents have not adopted pipeline setbacks, as Edison did, due to the perceived difficulty of establishing a single distance that would be appropriate to all pipelines across-the-board and to fears of inverse condemnation. Such reluctance is unfounded. While a single setback may not be appropriate in all situations, they can be adjusted to fit the level of risk posed by a particular pipeline. The “ takings” issue is also manageable. Localities routinely rely on setbacks to achieve various public policy goals and pipeline safety is no different. If such limits are reasonably drawn, with adequate procedural safeguards and variances, courts are not likely to find them arbitrary or confiscatory.

Local governments should also get their state governments to assume greater responsibility for pipeline safety. If a state has a significant number of interstate gas or liquid pipelines, it should seek to take over administration of the interstate safety programs. If a state does not already have a strong “Miss Utility” program, it should adopt one.

State and local governments should also push for major reforms in the federal pipeline safety laws, in OPS regulations, and in the administration of the Office of Pipeline Safety. OPS needs to be “re-invented” from top-to-bottom, not with the goal of reducing government oversight under the guise of “risk management” but with an emphasis on tougher enforcement of existing laws, greater independence from the pipeline industry, and pro-active leadership and innovation. Congress should adopt a national “Miss Utility” bill, set permanent user fees that will pay the full cost of administering the federal program and 50 percent of the state programs, and reform the Acts to ensure greater public participation.  

\[55\] (...continued)

in pipeline safety.

\[56\] For example, current law only requires OPS to provide state and local governments with notice and an opportunity to comment on proposed consent orders. The Acts should be amended to require public notice and comment on all proposed non-emergency enforcement actions and testing plans and to mandate the notification of all localities affected by emergency orders. It is shocking that OPS recently found the continued operation of Colonial’s interstate pipeline to be “hazardous to life, property and environment” yet made no effort to communicate its finding to, or seek input from, any of the localities along the pipeline route. See Binkley, U. S. Agency Says Pipeline Is Hazardous, WALL STREET JOURNAL (Southeast Edition), September 25, 1996, at S1.
VII. CONCLUSION

An average of 448 pipeline accidents occur every year in this country. These accidents result in hundreds of casualties and untold environmental damage. Despite the devastating impacts of many of these accidents, few local governments and no national organizations representing local elected officials have focused attention on the problem.

The primary responsibility for pipeline regulation in the United States rests with the U. S. Department of Transportation. Unfortunately, the Department has never taken an aggressive stance on accident prevention, but, rather, has consistently deferred to the pipeline industry. There is little reason to suspect that this will change in the near future without pressure from state and local governments.

A survey of federal case law reveals that most litigation brought under the Acts has consisted of unsuccessful efforts by state and local governments to fill the void created by OPS' lack of initiative. Despite the preemption enjoyed by federal agencies in this field, there may be room for municipalities to seek franchises from pipeline operators, so long as these do not impose local safety standards.

The experience of Fredericksburg, Fairfax County, and Edison has shown that local governments can make significant contributions to pipeline safety on a local, state and federal level. Localities potentially affected by pipeline accidents should educate themselves about the actual risks they face, review their local ordinances, and adopt local land use measures to protect their citizens. Local government organizations should heed the call of the National Transportation Safety Board and work together to develop national safety standards and ordinances that can be adopted on a local level and to press for national reform of the federal pipeline safety program. By the combination of these efforts, local governments can significantly reduce the risk of pipeline accidents for their citizens and the environment.