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**TESTIMONY OF**

**THE PIPELINE SAFETY TRUST**

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**Presented by**

**Rick Kessler, Member of the Board of Directors**

**BEFORE THE**

**SUBCOMMITTEE ON ENERGY AND AIR QUALITY  
COMMITTEE ON ENERGY AND COMMERCE  
U.S. HOUSE OF REPRESENTATIVES**

**HEARING ON**

**The Pipeline Inspection, Protection, Enforcement, and Safety Act of  
2006: Implementation Review and Discussion of Safety Reassessment  
Intervals for Natural Gas Pipelines**

**MARCH 12, 2007, 10 a.m.  
2322 Rayburn House Office Building**

Mr. Chairman and Members of the Committee:

Good morning, and 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 as a member of the Board of Directors of the Pipeline Safety Trust. As many of you know, I have years of legislative experience involving pipeline safety issues as a staff member for this committee. Pipeline Safety Trust staff are members of the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Technical Hazardous Liquid Pipeline Safety Standards Committee, chair of the Governor-appointed Washington State Citizens Committee on Pipeline Safety, and on the steering committee for PHMSA's Pipeline and Informed Planning Alliance. This testimony was prepared by the Executive Director of the Pipeline Safety Trust Carl Weimer, me, and one of the Pipeline Safety Trust's technical consultants, Lois Epstein, P.E., who previously served on the Technical Hazardous Liquid Pipeline Safety Standards Committee representing the public.

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 U.S. 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.

The Pipeline Safety Trust is the only non-profit organization in the country that strives to provide a voice for those affected by pipelines that normally have no voice at proceedings like this. With that in mind, we are here to speak today for those who have been tragically affected by pipeline incidents since the Pipeline Inspection, Protection, and Enforcement Act of 2006 (PIPES) passed. We are speaking for the relatives of Maddie and Naquandra Mitchel who died in the November 2007 Dixie Pipeline propane explosion in Mississippi, which also destroyed many homes and scorched 150 acres of forest. We are speaking for the family of Corbin Fawcett who was killed driving down an interstate highway in Louisiana when the Columbia Gas Transmission pipeline under that highway exploded in December 2007. We also are speaking for the six members of the general public who were killed in distribution pipeline explosions in 2007, and for all those affected by the more than \$110 million in property damage caused by pipeline incidents in 2007, not to mention the millions of dollars in uncalculated costs from fuel price increases when these pipelines are temporarily shut down because of failures. Last, we are speaking on behalf of the land and water and wildlife that has been contaminated or otherwise impacted as a result of oil pipeline releases since passage of the law.

The Pipeline Safety Trust's staff and volunteers have testified before Congress nine times since the Bellingham tragedy. We have brought forward and worked with others on many initiatives that have been put into law through the Pipeline Safety Improvement Act of 2002 and PIPES. In the past seven years, we have developed valuable working relationships with many key staff members of PHMSA, the pipeline industry, local government, and citizens nationwide.

## **Review of the Implementation of the Pipeline Inspection, Protection, Enforcement and Safety**

### **Act of 2006**

It has been a little over fourteen months since Congress enacted PIPES, so we appreciate this committee holding this hearing to review the successes and failures of PHMSA's efforts to implement many of the important safety improvements contained in the act. The Pipeline Safety Trust has been actively involved with many of these initiatives, and we are pleased to provide you with the following overview of our perspective on how implementation has gone.

In several instances noted below, PHMSA has missed deadlines contained in PIPES. Congress and the public deserve an explanation of why deadlines are missed. The Trust has supported every deadline that Congress has imposed and we encourage deadlines as a way to force safety improvements to move forward, but we also recognize that it is sometimes better to do things right instead of doing them fast.

### **Reassessment Intervals for Natural Gas Transmission Pipelines**

Ever since the passage of the Pipeline Safety Improvement Act of 2002, the natural gas pipeline industry has argued that the reassessment interval for gas transmission pipelines was not based on well-considered engineering and scientific data. Industry argues that each pipeline has its own unique properties and, as such, each pipeline should have reassessment intervals based on its own particular engineering and data. While we agree that the initial interval was not based on any exhaustive study or data, it also is clear that the data needed to make such a determination were not yet available. The integrity management process in the 2002 act was the needed, comprehensive start to collect such specific data from specific pipelines. Congress gave the industry ten years to complete the initial baseline integrity management survey, and we have only recently passed the date where the industry was to have completed 50% of that baseline task.

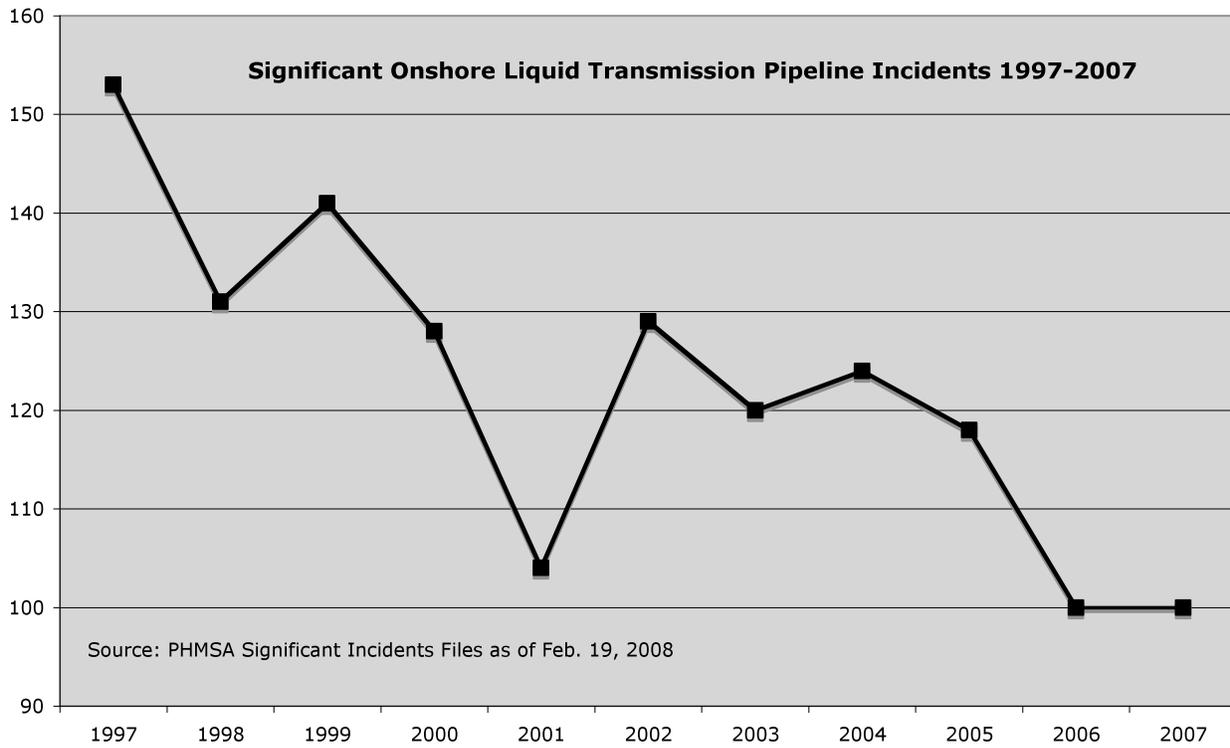
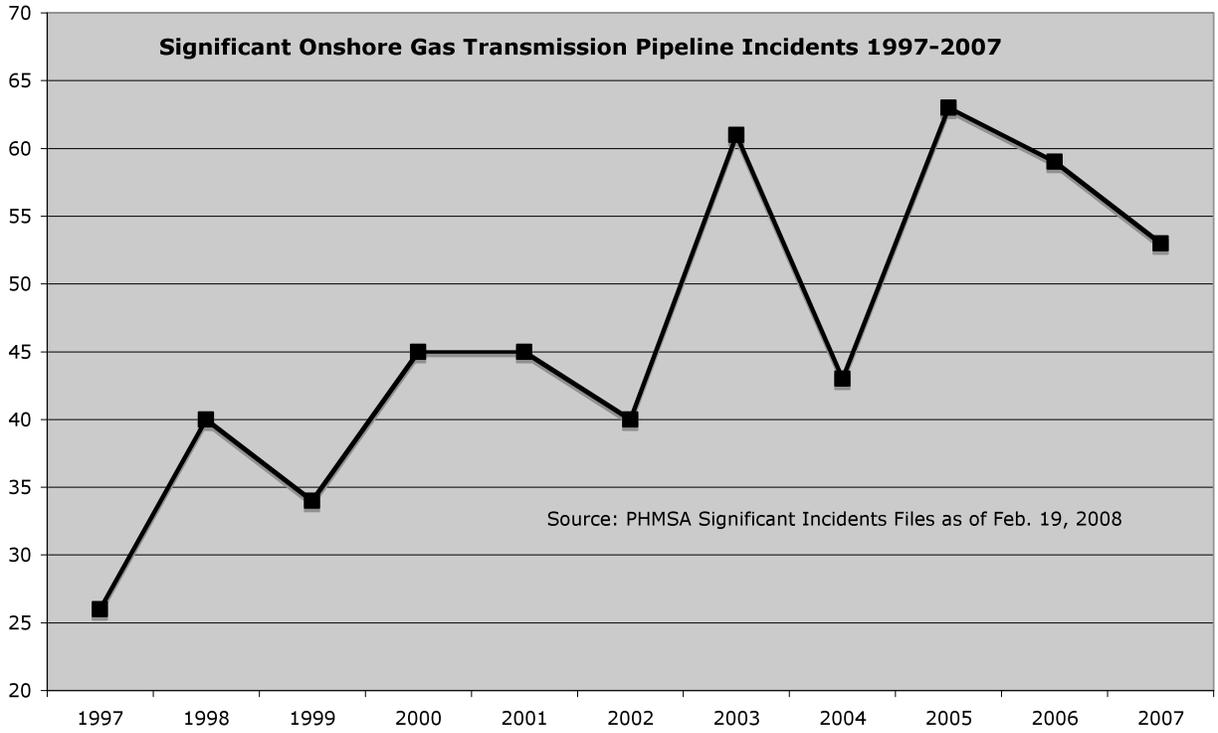
PHMSA and the industry have begun a process to provide companies that have successfully completed the initial baseline assessments for segments of their pipelines a way to apply for waivers from the current Congressionally-mandated reassessment interval. The Trust's review of this process by our technical consultants has concluded that the process is reasonable, technically-sound and well thought-out, albeit resource-intensive on the part of PHMSA. The proposed process provides significant safety protections, including an analysis by PHMSA that the public can comment on. We ask Congress to maintain the Congressionally mandated reassessment interval to ensure a thorough review by PHMSA of waiver requests and knowledge by the public of pipeline-specific deviances from the mandated reassessment interval.

Since no rule for the waiver process has been drafted for review, the Trust wants to provide PHMSA and Congress with a list of the things we believe need to be clearly spelled out in the proposed waiver process:

- Waivers should not be processed if PHMSA does not have the resources to do so without undermining its existing pipeline safety programs. If these waivers are a priority of the industry, then Congress should consider implementing fees for waiver applications to provide PHMSA with the resources to get the job done.
- Waivers should only be considered for pipeline segments that have fully completed their initial baseline assessment, and cannot be considered for those operators using Direct Assessment.
- Waivers should only be considered for pipeline segments where operators have provided PHMSA with sufficient information to show that the baseline assessment was adequate, and that they have identified the pertinent threats and have a plan in place to correctly monitor and address those threats.

- Waivers should not be considered for pipeline segments where failures have occurred within the past ten years from causes within operators' primary responsibility (corrosion, material failures, incorrect operation, etc.).
- Waivers should not be considered for pipeline segments that include bare steel pipe, ineffective pipe coating, or ineffective cathodic protection.
- Waivers should not be considered for pipeline segments where identified threats (such as selective seam corrosion) include issues where time-to-failure calculations are unreliable.
- Waivers should be revoked if failures occur from causes within operators' primary responsibility (corrosion, material failures, incorrect operation, etc.).
- Waiver applications, supplemental information, correspondence, and final waivers should all be included in an easy-to-locate, publicly-accessible, web-based docket.
- All National Environmental Policy Act requirements must be fulfilled in development of PHMSA's waiver process.

We also would like to point out that while the trend for the number of significant pipeline incidents in the past ten years for onshore liquid pipelines is declining, the trend for significant incidents for onshore natural gas transmission pipelines is increasing. The following graphs illustrate these trends.



Liquid pipelines, with nearly 130,000 less miles nationwide than gas pipelines, have nearly twice as many significant incidents but their incident trend is downward. The apparent increase in the number of significant incidents for natural gas transmission pipelines is notable because it illustrates that there are still significant safety problems to address with respect to natural gas transmission pipelines.

The discussion today has been on possibly increasing the reassessment interval for gas pipelines, but we shouldn't lose sight of the fact that the integrity management rules that require any such assessment only apply to pipelines within "high consequence areas." According to PHMSA less than 10% of natural gas transmission pipeline mileage is within those high consequence areas, so people living, working, traveling, or recreating along the other 90%+ of this nation's natural gas pipelines are not guaranteed the same protections. Mr. Corbin Fawcett who I mentioned earlier as being killed while driving along an interstate highway in Louisiana was one of those people outside of a high consequence area who paid the ultimate price for not being in an area with these added protections.

We would like Congress and PHMSA to consider a phased expansion of the pipeline mileage to be included within the definition of High Consequence Areas (HCA). This definition, to a large extent, is what determines which transmission pipeline segments are required to be inspected under the integrity management rules. At this time, HCA's mainly include populated areas, areas where people congregate, and for liquid pipelines drinking water sources and certain biologically significant areas, plus navigable waterways. This was a good starting place for integrity management since it represented the most crucial areas and a significant undertaking for the industry.

As the first phase of the baseline integrity management testing is now nearing completion we believe operator and regulator experience, along with the increases in industry infrastructure needed to undertake these inspections, makes it possible to expand the definition of HCA to include important areas that were left out of the initial definition. These left out areas would include things like important

historical sites, national parks and wildlife refuges, heavily traveled highways, and in the case of liquid pipelines swimmable and fishable waters. While we are not opposed to the pipeline industry saving time and money through the waiver process being discussed here today, we think some of that time and money should be reinvested to ensure that more people like Corbin Fawcett don't lose their lives because they happened to be on the wrong side of some risk assessment line.

### **Community Technical Assistance Grants**

The Pipeline Safety Trust has long pushed for Community Technical Assistance Grants to allow local communities that are most at risk from the potential hazards of pipelines in their midst to take a more active role in determining those risks, and to allow the public to play a meaningful role in the various processes that lead to pipeline safety standards and regulations. These grants will promote better technical and policy decisions, and will increase communication between diverse members of the public, governmental decision-makers, and members of the pipeline industry. The grants will allow members of the public to hire independent experts to explain, analyze, and interpret technical data.

Technical assistance grants were first included in the Pipeline Safety Improvement Act of 2002.

PIPES pushed for the implementation of these grants even harder by requiring PHMSA to set up a competitive process for these grants before PHMSA would be allowed to award any grants under section 60114 for Technology Development Grants for damage prevention.

It has been over five years since Congress called for these community grants, but to our knowledge PHMSA has yet to set up a competitive process, and certainly none of these grants have been awarded. During that period, the "local communities and groups of individuals" as defined in the USC 60130 who are in need of technical assistance for "engineering or other scientific analysis of pipeline safety issues" or for "promotion of public participation in official proceedings" have been left to their own

devices in the face of processes and proceedings that are overwhelmingly steered by the pipeline industry and its comparatively limitless dollars.

One of the Pipeline Safety Trust's core beliefs is that pipeline safety is a three-legged stool: one leg represents pipeline regulators, one leg represents the pipeline industry, and the last leg represents the local communities that are positively and negatively affected by pipelines. Take away any one leg and the stool becomes dangerously unstable. Local governments and community organizations generally do not have the resources to be a meaningful leg in this stool, which is why these grants are so important for pipeline safety.

Here are some specific examples of how these grants could provide real value for pipeline safety:

- PHMSA is currently undertaking a very valuable effort called the Pipelines and Informed Planning Alliance (PIPA). This effort in part is a result of a provision in the Pipeline Safety Improvement Act of 2002, which required PHMSA to study the concerns with population encroachment along transmission pipeline rights-of-way. The PIPA process has brought together all the stakeholders to develop solutions to the thorny issues involving pipelines intersecting with proposed local developments. One significant barrier to the success of this initiative is the lack of participation by local governments and citizens who actually understand and control the local zoning, permitting, and planning processes; a key impediment to their participation is the cost of participation in terms of travel, costly conference calls, and lack of staffing. Providing a Community Technical Assistance Grants to a group that could ensure basic staff support and cover participation costs by local governments and citizen participants would remove this impediment.
- The Pipeline Safety Trust received numerous calls in the past year from members of local school boards who are looking at locating new schools on property that contains, or is near, a pipeline. These grants could enable a school board to hire an independent consultant to research the existing

information about pipeline risk, and then help educate and inform the school board about the particular risks of their proposed site and ways to mitigate those risks. That information could then be shared with other school districts faced with similar decisions.

- For the past few years, local governments and citizens across the country have been faced with numerous new pipeline proposals. They have serious questions about how pipelines are installed, maintained, and inspected, as well as how possible incidents could affect their safety, drinking water sources, and properties. These grants could provide such communities a source for independent technical information that could help them focus their concerns on the proper threats, and thus become valuable partners in safely siting needed new pipelines. The information that comes out of these grants could then be shared with other local governments.

- The Washington City and County Pipeline Safety Consortium and the Kentucky Pipeline Safety Advisory Committee were formed after major pipeline failures and involved a broad spectrum of stakeholders looking for solutions to keep their states safe and avoid further pipeline accidents. Community Technical Assistance Grants could help fund staff time for these outstanding examples of independent pipeline safety initiatives and pipeline safety involvement by multiple stakeholders. Such local involvement is critical as PHMSA moves forward in the areas of pipeline damage prevention and encroachment.

- Finally, another potentially important use of the grants is to pay for increased public involvement in industry standards development and to assist in public comments on technical regulations and the various waiver processes. For example, in the Midwest a waiver was granted by PHMSA for a very large yet-to-be-built gas pipeline to operate at higher pressure with thinner steel before local governments or affected communities even knew such a pipeline was proposed.

## **Low Stress Pipelines**

The 200,000 gallon BP crude oil pipeline leak on the North Slope of Alaska found during the winter of 2006, the additional leak found in the summer of 2006 followed by a partial shut-down of the Prudhoe Bay Oil Field, and the ensuing fiasco concerning BP's previously inadequate low-stress pipeline maintenance and testing have made it clear that all low-stress oil pipelines should fall under the same minimum federal standards as other transmission pipelines. Likewise, those sections of pipeline, which could affect Unusually Sensitive Areas should be required to meet the same integrity management provisions as higher-stress transmission pipelines.

Section 4 of PIPES remedied the unwarranted low-stress pipeline exemption and required PHMSA to "issue regulations subjecting low-stress hazardous liquid pipelines to *the same standards and regulations as other hazardous liquid pipelines*" (emphasis added) with limited exceptions for pipelines regulated by the U.S. Coast Guard and certain short-length pipelines serving refining, manufacturing, or truck, rail, or vessel terminal facilities. Section 4 of PIPES clear directive to PHMSA has only been partially followed, and PHMSA has missed the mandated December 31, 2007 requirement for issuance of regulations.

Since passage of PIPES, PHMSA issued a proposed rule on May 18, 2007 covering "Protecting Unusually Sensitive Areas from Rural Low-Stress Hazardous Liquid Pipelines." Though several members on the Technical Hazardous Liquid Pipeline Safety Standards Committee objected, PHMSA decided to pursue a two-phase approach to meet the Section 4 mandate, with Phase One covering rural low-stress pipelines affecting Unusually Sensitive Areas and Phase Two covering all other rural low-stress pipelines. The Trust and others commented on several inadequate provisions of the Phase One proposed rule which, contrary to Section 4, does not apply "the same standards and regulations" to

low-stress hazardous liquid pipelines that higher-stress pipelines must meet. In contrast to higher-stress pipelines, the proposed rule contains a uniform distance approach to determining those pipelines that “could affect” an Unusually Sensitive Area (ironically, the same type of one-size-fits-all approach that industry objects to for the natural gas transmission pipeline reassessment interval). PHMSA’s approach is both non-scientific and different from the requirements applying to higher-stress pipelines, thus making it contrary to the requirements of PIPES. As for Phase Two, PHMSA is pursuing data collection prior to rulemaking, and we do not know when that rule – which Congress required to be completed by the end of last year – even will be proposed.

### **Distribution Integrity Management Program Rulemaking Deadline**

Congress also gave PHMSA a deadline of December 31, 2007 in PIPES to prescribe minimum standards for integrity management of natural gas distribution pipelines. While it is clear that PHMSA has been working on integrity management standards for distribution pipelines, it is also clear that they have missed this deadline.

One of our particular interests with distribution pipelines is the use of Excess Flow Valves (EFVs). PIPES requires the use of EFVs for most new and replaced service lines in single family residential housing after June 1, 2008. We hope that PHMSA makes every effort to meet this important deadline. The National Transportation Safety Board (NTSB) has studied and recommended the use of EFVs for years, firefighters nationwide promote their use, there are millions of EFVs in successful use nationwide, and Congress has mandated their use. We hope that Congress will keep a close eye on this upcoming deadline to make sure we have finally moved past the study-it-to-death stalling tactics from past years so there are no further delays in the nationwide use of these important safety devices.

## **Enforcement Transparency and Other Forms of Public Information**

In our 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 pipelines in those communities. 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.

Transparency in enforcement documentation represents just one of the relatively new efforts by PHMSA to provide valuable information for public review. PHMSA's Stakeholder Communications website represents a huge improvement in transparency in the last few years, and we also appreciate PHMSA's efforts in getting the National Pipeline Mapping System available again to the public.

The 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 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.

## **State Damage Prevention Programs**

We strongly support the section in PIPES that encourages states to increase their efforts surrounding damage prevention. Outside force damage remains one of the top causes of significant pipeline incidents, and is also one of the hardest causes to address by regulation. There is strong evidence of success with state damage prevention programs that include elements of stakeholder education,

collaboration, and participation, as well as the use of dispute resolution, enforcement of damage prevention laws, best technologies, and constant evaluation and improvement.

PHMSA appears to be emphasizing these elements in its current communications and programs, but we hope that Congress will keep a close eye on whether PHMSA is providing clear guidance to states in these areas, as well as whether the increased funding included in PIPES actually flows to the states. Without increased funding, it is unlikely that many states will have the ability to increase the effectiveness of their damage prevention programs. The authorization and appropriation of increased funds for these efforts are the responsibility of Congress.

### **Public Education and Awareness for the New 811 One Call number**

We are happy to see the implementation of the new nationwide 811 One Call number, which will make it easier for people across the country to know where to call before they undertake activities that could cause harm to pipelines. While getting the number functioning was a huge undertaking, an even bigger task is to make sure that homeowners, excavators, utility workers, and many others know about and use the 811 number. We hope that Congress will continue to support the 811 effort through ongoing appropriation of funds. The Common Ground Alliance has done a good job of kicking off this effort and using federal funding to leverage private investments, but there is still much work to do.

### **Leak Detection Technology Study**

Following a number of high profile liquid pipeline failures where leak detection systems were unable to identify ruptures or ongoing small leaks (including the 200,000 gallon BP North Slope pipeline failure in winter of 2006), PIPES required PHMSA to produce a report by December 31, 2007 to report on these inadequacies and ways to improve leak detection technologies. PHMSA has missed the deadline for this much-needed leak detection technologies report.

## **Internal Corrosion Control**

Following a number of leaks on pipelines on the North Slope in Alaska, PIPES required PHMSA to review whether current regulations regarding internal corrosion on liquid pipelines were adequate, and to produce a report by December 31, 2007 based on this review followed by regulatory implementation. PHMSA has met once with the Technical Hazardous Liquid Pipeline Safety Standards Committee to discuss internal corrosion issues, but to date PHMSA has not issued a report on the review or started any rulemaking activities. PHMSA has missed the deadline for this much-needed internal corrosion control report and its follow-up activities. Additionally, states and federal entities such as the Minerals Management Service (MMS) and the U.S. Coast Guard that are updating their pipeline regulations now are missing opportunities to include PHMSA's latest internal corrosion control findings in their respective regulatory updates. MMS, in fact, recently closed its public comment period for a comprehensive overhaul of its pipeline safety regulations.

## **The Need to Address Unregulated Pipelines**

Pipelines that are not regulated by PHMSA, like rural low-stress hazardous liquid pipelines prior to PIPES' mandate, can have releases with serious consequences that are not even reported to PHMSA nor, in many instances, to any government entity (depending on state or offshore reporting requirements). 49 CFR 195.1(b), for instance, contains nine exemptions to PHMSA's regulatory framework for hazardous liquid pipelines, including the rural low-stress pipeline exemption that has not yet been removed. As a result, unregulated pipelines – whether by statute or by regulation – only become regulated after significant safety or environmental tragedies occur.

To prevent such tragedies, Congress should require the NTSB to study the likelihood of releases from currently unregulated pipelines using available release data from the National Response Center, state release reporting databases, the media, etc. Such a report should include recommendations to Congress to ensure regulatory coverage of all pipelines that might pose significant safety or

environmental risks. The report should examine such things as whether the current definition of gathering lines inhibits regulatory coverage of such pipelines, and whether produced water lines should have safety requirements under PHMSA just as offshore produced water lines do under MMS regulations.

Finally, the Trust encourages the Committee to determine why the NTSB has not investigated many recent, significant pipeline accidents such as BP's North Slope pipeline incidents in 2006. Such investigations and NTSB's subsequent recommendations provide critical information for Congress, PHMSA, the pipeline industry, and the public to examine during future reauthorization efforts.

We should all celebrate the progress that has been made since the passage of the Pipeline Safety Improvement Act of 2002 and PIPES, while acknowledging that continuous evaluation and improvement can make pipelines considerably safer yet, and can enhance the public's trust in pipelines.

Thank you again for this opportunity to testify today. The Pipeline Safety Trust hopes that you will closely consider the ideas and analysis we have brought forward. If you have any questions now or at anytime in the future, the Trust would be glad to answer them.

## **Summary of Testimony**

Regarding the reassessment interval for gas transmission pipelines we find that PHMSA's proposed waiver process is technically sound. Congress should consider implementing fees for waiver applications to provide PHMSA with the resources to get the job done. We believe it is important to maintain the Congressionally mandated reassessment interval. The trend for significant incidents for onshore natural gas transmission pipelines is increasing, so as the initial baseline assessment is completed it is time to expand the definition of high consequence areas to further reduce incidents.

Regarding Community Technical Assistance Grants, after more than five years PHMSA has yet to set up a competitive process, and none of these grants have been awarded.

Regarding low stress pipelines, section 4 of PIPES clear directive to PHMSA has only been partially followed, and PHMSA has missed the mandated December 31, 2007 requirement for issuance of regulations.

Regarding integrity management for gas distribution pipelines, while it is clear that PHMSA has been working on integrity management standards for distribution pipelines, it is also clear that they have missed the deadline set out in PIPES.

One of the true successes of PIPES has been the rapid implementation by PHMSA of the enforcement transparency section of the act. PHMSA's Stakeholder Communications website represents a huge improvement in transparency in the last few years, and we also appreciate PHMSA's efforts in getting the National Pipeline Mapping System available again to the public. The 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

PIPES held a promise of increased funding to states that implement sound damage prevention programs. Congress should keep a close eye on whether PHMSA is providing clear guidance to states in these areas, as well as whether the increased funding included in PIPES actually flows to the states. Congress should ensure that the money is not only authorized, but also appropriated.

PHMSA has missed the deadline for the much-needed leak detection technologies report, as well as the deadline for this much-needed internal corrosion control report and its follow-up activities