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**TESTIMONY OF
THE PIPELINE SAFETY TRUST**

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Presented by:

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**BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON

PIPELINE SAFETY OVERSIGHT**

JUNE 16, 2011

Good morning, Chairman Whitfield, Ranking Member Rush and members of the Subcommittee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Carl Weimer and I am testifying today as the Executive Director of the Pipeline Safety Trust. I am also a member of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee, as well as a member of the steering committee for PHMSA's Pipelines and Informed Planning Alliance. I also serve on the Governor-appointed Washington State Citizens Committee on Pipeline Safety, and bring a local government perspective to these discussions as an elected member of the Whatcom County Council in Washington State.

The Pipeline Safety Trust came into being after a pipeline disaster that occurred twelve years ago last Friday. The 1999 Olympic Pipeline tragedy in Bellingham, Washington left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption. While prosecuting that incident the U.S. Justice Department was so aghast at the way the pipeline company had operated and maintained their pipeline, and equally aghast at the lack of oversight from federal regulators, that they asked the federal courts to set aside money from the settlement of that case to create the Pipeline Safety Trust as an independent national watchdog organization over both the industry and the regulators. We have been trying to fulfill that vision ever since, but the spate of recent disasters makes us question whether our message is being heard.

Born from a tragedy in Bellingham, but also riding on the emotion and facts of other tragedies in places like Edison, New Jersey; Carlsbad, New Mexico; Walnut Creek, California and Carmichael, Mississippi we have testified to Congress for years about the improvements needed in federal regulations to help prevent more such tragedies. For years we have talked about the need for more miles of pipelines to be inspected by smart pigs. We have pleaded for clear standards for leak detection, requirements for the placement of automated shut off valves, closing the loopholes that allow some pipelines to remain unregulated, and for better information to be available so innocent people will know if they live near a large pipeline and whether that pipeline is maintained and inspected in a way to ensure their safety.

So here we are again after the most recent tragedies in Marshall, Michigan, San Bruno, California and Allentown, Pennsylvania asking for the same things we have asked for in

previous hearings following previous tragedies. We are pleased to see some of our recommendations included as part of legislation recently passed unanimously by the Senate Committee on Commerce, Science and Transportation, and we hope this body will build on that legislation to provide an even stronger more comprehensive bill. It is our sincere desire not to be back here again in the future saying the same things after yet another tragedy.

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 among pipeline companies, government, communities, and safety advocates are formed, will pipelines truly be safer.

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

- **Expanding the miles of pipelines that fall under the Integrity Management rules**
- **Requiring automated shut off valves for gas and liquid transmission pipelines**
- **Developing and implementing enhanced standards and requirements for leak detection on hazardous liquid lines**
- **Regulating gas gathering pipelines**
- **Regulating unregulated liquid pipelines**
- **Correcting the pipeline siting vs. safety disconnect, and ensuring PHMSA's ability to provide inspections when pipelines are being constructed**
- **Continuing to push state agencies on damage prevention**
- **Implementing the Pipelines and Informed Planning Alliance (PIPA) recommendations**
- **Continuing implementation and funding of Technical Assistance Grants to Communities**
- **Continuing to make more pipeline safety information publicly available**
- **Making public awareness programs meaningful and measurable**
- **Implementing expansion of Excess Flow Valve requirements**
- **Concerns with industry developed standards being incorporated into federal regulations**

Expanding the miles of pipelines that fall under the Integrity Management rules

In response to horrific pipeline tragedies, Congress required integrity management in High Consequence Areas (HCAs) as a way to protect the people who live, work and play near pipelines, as well to protect sensitive environmental areas and this nation's critical energy infrastructure. Before integrity management, a pipeline company could install a pipeline transporting huge quantities of often explosive fuel and leave it uninspected indefinitely – even for 50, 60, or 70 years. Even today only 7% of natural gas transmission pipelines and 44% of hazardous liquid pipelines fall under these important inspection programs.

Since these rules began to be implemented in 2001, over 75% of all the deaths caused by these types of pipelines have occurred in areas that fall outside of the current integrity management requirements, and more than 34,000 anomalies found in High Consequence Areas have been repaired based on integrity management requirements. Yet these requirements do not apply to the vast majority of pipelines in rural areas, and people who live, work or play near pipelines in these rural areas interpret this to mean that Congress and PHMSA have decided their lives are not worth protecting with these important integrity management rules.

The current concept of requiring integrity management programs only for pipelines in High Consequence Areas is also not sufficiently protective of America's economy. Regardless of where a pipeline fails, there will be a significant economic impact on the downstream markets. For instance, when the El Paso natural gas pipeline failed in 2000 in a non-High Consequence Area, the staff of the Federal Energy Regulatory Commission estimated that the restriction in gas supply cost the people of California hundreds of millions of dollars. Every time a major liquid pipeline serving a refinery goes down the price of gasoline in the region skyrockets until the pipeline can be repaired and supplies returned to normal. Congress experienced this not too long ago when a BP pipeline in Alaska failed from corrosion and the American people paid millions of dollars in higher gas prices. When it comes to consumer's pocketbooks, and the welfare of the economy, every mile of pipeline is of high consequence, so every mile should be inspected so that the American people have reliable and safe pipeline infrastructure.

Many progressive pipeline operators already apply integrity management rules to significantly more miles of their pipelines than required by federal regulations. These companies do this because they think it is good business, and we couldn't agree more. Unfortunately not all

companies voluntarily provide these needed safety precautions, and even those that do are not required to respond to the problems found, as they would be if these areas were covered by the integrity management rules. Recently the Interstate Natural Gas Association of America (INGAA) released a new set of “Guiding Principles”¹ one of which commits them to “applying integrity management principles on a system-wide basis.” We are thrilled with INGAA’s agreement with us on the need to expand integrity management to entire pipeline systems, and now we all need to work to define what that means.

For these reasons the Trust asks that you direct PHMSA to initiate a rulemaking by a date certain to implement a similar Integrity Management program on all transmission pipelines that fall outside of current HCAs.

Concerns with possible changes to Integrity Management

Since nearly the time integrity management was passed for natural gas transmission pipelines as part of the Pipeline Safety Improvement Act of 2002 some within the natural gas industry have lobbied for a relaxation of the seven year re-inspection interval that Congress set. The Pipeline Safety Trust opposes any relaxation of this re-inspection interval for the following reasons:

1. The baseline inspection period has not even been reached yet, and we believe that it is necessary to go through two or three re-inspections to determine whether the system is actually working and if it makes sense to change the re-inspection interval. Some companies have not even completed one round of inspections yet. During the first round many anomalies with the pipelines were identified and repaired. Subsequent rounds of inspections should tell us how quickly new anomalies appear and at what rates they are growing. Without that information from ongoing re-inspections it is too early to propose changing the re-inspection interval.
2. The industry also argues that instead of a standard re-inspection interval that would allow all companies’ results to be compared, each company, based on its own internal findings, should be allowed to design its own re-inspection program for each individual segment of its pipelines. This engineered, risk-based approach may be feasible, but it places much of the authority to draft the requirements with each company, and we question whether PHMSA and state regulators have the extensive resources necessary to

¹ <http://www.ingaa.org/cms/6211/11460.aspx>

review each program to ensure it is no less protective than the current seven-year re-inspection intervals. This proposed system also includes no way for the public to review and comment on the proposed engineered risk-based re-inspection proposals.

3. There is also increasing mileage of large high-pressure natural gas pipelines in areas with very high-density populations. The consequences if one of these pipelines should fail in such an area would be catastrophic. Before there is any consideration to changes in the re-inspection interval for these types of natural gas pipelines, PHMSA should reassess the safety protocols in place to ensure that it is impossible for a pipeline to fail in such an area from any cause that is within the operator's controls (corrosion, materials, operation, maintenance, inspections, etc). Clearly the San Bruno disaster shows this is currently not the case.

For these reasons, we continue to oppose any change to the seven-year re-inspection interval for natural gas transmission pipelines.

Requiring automated shut off valves for gas and liquid transmission pipelines

Sixteen years ago Congress was debating a requirement for remote or automatic shutoff valves on natural gas pipelines in the wake of the Edison, NJ accident and the two and a half hours it took to shut off the flow of gas that fed the fireball due to the lack of a remotely controlled shut off valve. It is both puzzling and sad that we have to again debate the benefits of requiring remote or automatic shut off valves after another tragedy, this time in San Bruno, California.

It is unacceptable that the only way to shut off a large pipeline spewing fire into a populated neighborhood is to find someone with a key to a locked valve, have him or her drive to the valve and operate it manually. In good weather in San Bruno that method took an hour and a half to shut off the flow of fuel. How long would that method take after an earthquake? We ask that you direct the Secretary of Transportation to immediately begin a study to determine the type, placement, feasibility and phase in period for installation of more up-to-date valves, and that a rule-making for such installation is accomplished by December 31, 2012.

For liquid pipelines in 1992, 1996, 2002, and 2006, Congress required OPS to “survey and assess the effectiveness of emergency flow restricting devices...to detect and locate hazardous liquid

pipeline ruptures and minimize product releases”² with the first such requirement having a deadline in 1994 (17 years ago!). Following this analysis, Congress required OPS to “prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device.”³

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule⁴, OPS rejected the comments of the NTSB, the US Environmental Protection Agency, the Lower Colorado River Authority, the City of Austin, and the Environmental Defense Fund and chose to leave EFRD decisions up to pipeline operators after listing in the rule various criteria for operators to consider. Such an approach to EFRD use does not appear to meet Congressional intent, partly because the approach is essentially unenforceable and not protective of important environmental assets such as rivers and lakes including those not considered High Consequence Areas.

Congress needs to reiterate its previous mandates to PHMSA on EFRD use on liquid pipelines and ensure they are followed to mitigate the extent of future pipeline releases.

Developing and implementing enhanced standards and requirements for leak detection on hazardous liquid lines

In its hazardous liquid transmission pipeline integrity management rule, PHMSA requires that operators have a means to detect leaks, but there are no performance standards for such a system.⁵ This is in contrast to the State of Alaska, for example, which requires that *all* crude oil transmission pipelines have a leak detection system capable of promptly detecting a leak of no more than 1% of daily throughput.⁶ PHMSA listed in the integrity management rule various criteria for operators to consider when selecting such a device. Again, such an approach is virtually unenforceable and not protective of important environmental assets such as rivers and lakes including those not considered High Consequence Areas.

The recent Enbridge spill in Michigan and the Chevron pipeline release near Salt Lake City are examples of what can go wrong when a pipeline with a leak detection system has no

² See 49 USC 60102(j)(1).

³ See 49 USC 60102(j)(2).

⁴ See 49 CFR 195.452(i)(4).

⁵ See 49 CFR 195.452(i)(3).

⁶ See 18 AAC 75.055(a)(1).

performance standards for operations. In both those incidents the pipelines had leak detection systems as required by regulations, but neither system was capable of detecting and halting significant spills.

We ask that Congress direct PHMSA to issue performance standards for leak detection systems used by hazardous liquid pipeline operators by a date certain to prevent damage from future pipeline releases.

Regulating gas gathering pipelines

Significant drilling for natural gas has led to a large expansion of gathering and production pipelines in highly populated urban areas. For instance, in Fort Worth, Texas there are already 1,000 producing gas wells within the city limits and at least that many more planned.

Development of advanced shale gas drilling methods has led to thousands of new wells being drilled and proposed in more populated areas of Texas, Arkansas, Louisiana, Pennsylvania and New York. Pipelines will connect all these wells, and the regulatory oversight of these pipelines in these areas is less than clear and in some cases non-existent. According to a recent briefing paper from PHMSA⁷ they only regulate 20,150 miles of onshore gathering lines, but they estimate that there are 230,000 miles of such lines. Many of these lines are the same size and pressure as transmission pipelines, but they are regulated far less, if at all.

To make matters worse, the standard (API RP 80) for determining what is and isn't a gathering line was written by the American Petroleum Institute and adopted into federal regulations. What the API standard actually requires provides too much wiggle room for gas producers to design their systems to avoid regulations. PHMSA's recent briefing paper also recognizes this problem saying "enforcement of the current regulations has been hampered by the uncertainties that exist in applying API RP 80."⁸

We believe it is time to ensure that any gathering or production pipeline with similar size and pressure characteristics to transmission pipelines fall under the same level of minimum federal regulations, including the integrity management requirements for those in high consequence areas. At a minimum we think Congress should require PHMSA to produce a study on the

⁷ PHMSA Briefing Paper, Onshore Gas Gathering, Technical Pipeline Safety Standards Committee Meeting, March 2011

⁸ Ibid.

regulatory issues with onshore gas production and gathering pipelines, and institute a rule making based on the findings by a date certain.

Regulating unregulated liquid pipelines

Onshore oil wells and their associated pipelines have a troubling spill record and a highly inadequate oversight framework, which needs to be addressed by Congress and the Obama Administration. Recently, the Administration and BP agreed to a proposed civil settlement for 2006 pipeline spills on the North Slope of \$25 million plus a set of required safety measures on BP's federally unregulated North Slope pipelines.⁹ Under the requirements of the settlement, BP's federally-unregulated oil field pipelines, i.e., three-phase flowlines (gas, crude, produced water mixture), produced water lines, and well lines, now will be subject to integrity management requirements largely similar to those that must be met by transmission pipelines in 49 CFR 195. While this settlement certainly is a welcome step for BP's lines and an important precedent, Congress in its pipeline safety act reauthorization and PHMSA need to move forward expeditiously on requiring such measures for lines operated by other companies in Alaska and the Lower 48.

BP's March 2006 spill of over 200,000 gallons was the largest crude oil spill to occur in the North Slope oil fields and it brought national attention to the chronic problem of such spills. Another pipeline spill in August 2006 resulted in shutdown of BP's production in Prudhoe Bay and brought to light major concerns about systemic neglect of key infrastructure. Lack of adequate preventive maintenance was not a new issue, however, as corrosion problems in Prudhoe Bay's and other oil field pipelines have been raised previously by regulators and others, including as early as 1999 by the Alaska Department of Environmental Conservation.¹⁰

As additional evidence of the problems with upstream infrastructure, the State of Alaska completed a report¹¹ in November 2010, which reviewed a set of over 6,000 North Slope spills

⁹ Proposed settlement posted at http://media.adn.com/smedia/2011/05/03/10/29-1%20consent%20decree.112830.source.prod_affiliate.7.pdf (downloaded May 8, 2011).

¹⁰ Charter for the Development of the Alaskan North Slope, December 2, 1999, (BP ARCO Merger Agreement), <http://www.dec.state.ak.us/spar/ipp/docs/Charter%20Agreement.pdf>.

¹¹ *North Slope Spills Analysis: Final Report on North Slope Spills Analysis and Expert Panel Recommendations on Mitigation Measures*, Nuka Research & Planning Group, LLC for the Alaska Department of Environmental Conservation, November 2010, 244 pp., <http://www.dec.state.ak.us/spar/ipp/ara/documents/101123NSSAReporvSCREEN.pdf>.

from 1995-2009. This report showed that there were 44 loss-of-integrity spills/year¹² with 4.8 spills greater than 1,000 gallons/year.¹³ Of the 640 spills included in the report, a significant proportion, 39%, were from federally unregulated pipelines.¹⁴

We ask that Congress close the loopholes on these federally unregulated pipelines and direct PHMSA to move forward as fast as is practicable to put in place regulations similar to what was recently agreed to by BP on their unregulated North Slope pipelines.

Correcting the pipeline siting vs. safety disconnect, and ensuring PHMSA's ability to provide inspections when pipelines are being constructed

With thousands of new miles of pipelines in the works, the disconnect between the agencies that site new pipelines and PHMSA, the agency that is responsible for the safety of the pipelines once they are in service, has become quite apparent. While siting agencies go through supposedly comprehensive environmental review processes, these processes are functionally separate from the special permits or response plans or high consequence area analyses that are overseen by PHMSA. Many of the PHMSA determinations go through very limited public process (special permits), or processes that take place after the pipeline siting approval is granted (emergency response plans), and some are totally kept from the public (high consequence areas). How can local governments, citizens, or even other federal agencies assess the real potential impact of a pipeline if the environmental review and the safety review processes are so disconnected?

A perfect example of this disconnect is currently taking place regarding the Presidential Permit that the U.S. State Department is considering for the Keystone XL pipeline. For months now national organizations have been asking specific pipeline safety questions related to the corrosiveness and abrasiveness of the product the Keystone XL will transport, and just last week the U.S. EPA questioned the State Department's SDEIS because not enough information was included regarding the proposed products to allow for an analysis of the effects if a spill should occur. While the State Department is in charge of granting the permit to allow the pipeline to be sited, PHMSA is the agency in charge of both pipeline safety and spill planning for the pipeline, yet it has been silent on these issues. As Senator Johanns from Nebraska said during a pipeline safety hearing last year "Of all the expertise relative to pipelines in the federal government I

¹² *Ibid.*, p. 21.

¹³ *Ibid.*, p. 23.

¹⁴ Certain types of spills were not included. See p. 14 of the *North Slope Spills Analysis* report.

can't imagine it would be at the State Department.”¹⁵ Unfortunately the State Department seems to be getting precious little help from the agency in charge of pipeline safety –PHMSA. This disconnect between siting and safety needs to be corrected.

Two years ago, PHMSA held a special workshop to go over the numerous problems they found during just 35 inspections of pipelines under construction. These inspections found significant problems with the pipe coating, the pipe itself, the welding, the excavation methods, the testing, etc. PHMSA's findings, and stories we have heard from people across the country, call into question the current system of inspections for the construction of new pipelines. This construction phase is critical for the ongoing safety of these pipelines for years to come. Since PHMSA has authority over the safety of pipelines once they are put into service, it makes sense to us that during construction they also are conducting field inspections and sufficiently reviewing records to ensure these pipelines are being constructed properly. Unfortunately, there is a built-in disincentive for PHMSA to spend the necessary time to ensure proper construction. Under current rules PHMSA receives no revenue from these companies until product begins to flow through the pipelines, so any staff time spent on these pre-operational inspections has to be paid for from money collected for other purposes from already operational pipelines.

For these reasons, the Pipeline Safety Trust asks that Congress pass new Cost Recovery fees, similar to those included in Section 17 of the PIPES act for LNG facility reviews, to allow PHMSA to recoup their costs related to providing safety information during the review process for all new pipelines and legitimate inspections during the construction phase without taking resources away from other existing activities. Hopefully this additional revenue will help PHMSA ensure that pipeline siting agencies adequately assess pipeline safety issues.

Continuing to push state agencies on damage prevention

Property owners, contractors, and utility companies digging in the vicinity of pipelines are still one of the major causes of pipeline incidents, and for distribution pipelines over the past five years excavation damage is the leading cause of deaths and injuries. Unfortunately, not all states have implemented needed changes to their utility damage prevention rules and programs to help counter this significant threat to pipelines.

¹⁵ U.S. Senate Commerce, Science & Transportation Committee Hearing, Ensuring The Safety Of Our Nations Pipelines, June 24, 2010, 44 minutes into the tape.

In the PIPES Act of 2006 Congress made clear its desire that states move forward with damage prevention programs by defining the nine elements that are required to have an effective state damage prevention program. The Trust is pleased that PHMSA has recently announced its intent to adopt rules to incorporate these nine elements, and its intent to evaluate the states progress in complying with them. We also support PHMSA's plan to exert its own authority to enforce damage prevention laws in states that won't adopt effective damage prevention laws. We hope Congress will encourage PHMSA to move forward with this proposed rulemaking in a timely manner, and make it clear to the states that federal money for pipeline safety programs depends upon significant progress in implementing better damage prevention programs.

It may also be necessary for Congress to clarify important parts of good damage prevention programs. Many states have exemptions to their damage prevention "one call" rules for a variety of stakeholders including municipalities, state transportation departments, railroads, farmers, and property owners. We believe such exemptions, except in cases of emergencies, are unwarranted for municipalities, state transportations departments and the railroads, and urge both Congress and PHMSA to make it clear that these types of exemptions are not acceptable in an effective damage prevention program. While we are skeptical regarding exemptions of any type, limited exemptions for the farm community and homeowners in specific circumstances may be necessary to make the programs efficient, affordable and enforceable.

Although PHMSA likes to call itself a data-driven agency, there is a serious lack of data to determine the extent, causes, or perpetrators of excavation damage to pipelines. For example, because of the limited reporting requirements, the PHMSA incident database only includes about 70 total pipeline incidents nationwide in 2008 caused by excavation damage. Yet the Common Ground Alliance's 2008 DIRT database reports well over 60,000 excavation events that affected the operation of natural gas systems alone.

For these reasons, the Trust asks that Congress direct PHMSA to correct this substantial data gap by ensuring more accurate reporting and a database for excavation damage to ensure that the effort and money being spent is well targeted and effective. Because most states have taken on the responsibility of operating state-based damage prevention programs it may well be easiest to just have PHMSA require states to adopt reporting requirements as part of their damage prevention programs.

Implementing the Pipelines and Informed Planning Alliance (PIPA) recommendations

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

Most large pipelines were placed in rural areas years ago, but as the populated areas around our cities expand it has led to a growing encroachment of residential and commercial development near large high-pressure pipelines. This increases the risk to the pipelines from related construction activities, as well as to the people who ultimately live and work nearby if something should go wrong with the pipeline.

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

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

A recent statewide survey of local government planning directors conducted by the Pipeline Safety Trust¹⁶ showed that to successfully implement these needed "practices, laws, and ordinances" it will take a good deal of well targeted education and promotion by a wide range of stakeholders outside of the pipeline industry and PHMSA. In order to make this effort successful, the Trust asks that this year Congress authorize, just as was authorized in PIPES for the successful promotion of the 811 "One Call" number, \$500,000/year to promote, disseminate, and provide technical assistance regarding the PIPA recommendations.

¹⁶ <http://www.pstrust.org/TagGrant1.htm>

Continuing the implementation and funding of Technical Assistance Grants to Communities

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

In the first two round of grants, PHMSA funded 46 projects in 22 states from California to Florida. Local governments gained assistance so they could better consider risks when residential and commercial developments are planned near existing pipelines. Neighborhood associations gained the ability to hire experts so they could better understand the “real” versus the imagined issues with pipelines in their neighborhoods. And farm groups learned first-hand about the impacts of already-built pipelines on other farming communities so they could be better informed as they participate in the processes involving the proposed routing of a pipeline through the lands where they have lived and labored for generations. Overall, we viewed the implementation of this new grant program as a huge success.

Ongoing funding for these grants is not clear, so the Trust asks that you ensure the reauthorization of these grants to continue to help involve those most at risk if something goes wrong with a pipeline. We further ask that you do whatever is necessary to ensure that the authorized funds are actually appropriated.

Continuing to make more pipeline safety information publicly available

Over the past two reauthorization cycles, PHMSA has done a good job of providing increased transparency for many aspects of pipeline safety. In the Trust’s opinion, one of the true successes of PIPES has been the rapid implementation by PHMSA of the enforcement transparency section of the act. It is now possible for affected communities to log onto the PHMSA website and review specific enforcement and inspection actions regarding local transmission pipelines. This transparency for the most part should increase the public’s trust that our system of enforcement and inspection of pipelines is working adequately or in some instances may provide the information necessary for the public to push for improvements from specific companies.

PHMSA has also significantly upgraded their incident data availability and accuracy, and continues to improve their already excellent “stakeholder communication” website.

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

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

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

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

It is always our belief that greater transparency in all aspects of pipeline safety will lead to increased involvement, review and ultimately safety. There are many organizations, local and state government agencies, and academic institutions that have expertise and an interest in preventing the release of fuels to the environment. Greater transparency would help involve these entities and provide ideas from outside of the industry. The State of Washington has passed rules¹⁷ that when complete spill plans are submitted for approval the plans are

¹⁷ See Washington Administrative Code 173-182-630

required to be made publicly available, interested parties are notified, and there is a 30 day period for interested parties to comment on the contents of the proposed plan. We urge Congress to require PHMSA to develop similar requirements for the adoption of spill response plans across the country, and that such plans for new pipelines be integrated into the environmental reviews required as part of the pipeline siting process.

- **State Agency Partners.** States are provided with millions of dollars of operating funds each year by the federal government to help in the oversight of our nation’s pipelines. While there is no doubt that such involvement from the states increases pipeline safety, different states have different authority, and states put different emphasis in different program areas. After the San Bruno tragedy an independent review panel was formed to review problems with the pipeline safety system in California. One of their recent conclusions regarding the California Public Utility Commission was that *“it would be difficult for the gas safety staff to offer assurances on the quality of prevailing integrity management efforts they audit.”*¹⁸ Why was it that such stunning conclusions about one of the largest pipeline safety programs in the nation were not understood before eight people were killed? Each year PHMSA audits each participating state program, yet the results of those program audits are not easily available. We believe that these yearly audits should be available on PHMSA’s website and that some basic comparable metrics for states should be developed. It is not only the performance of pipeline companies that needs to be inspected.

Making public awareness programs meaningful and measurable

The Pipeline Safety Improvement Act of 2002 required pipeline operators to provide people living and working near pipelines, emergency responders, and local public officials basic pipeline safety information, and gave PHMSA the authority to set public awareness program standards and design program materials. This public awareness effort represented a huge and important undertaking for the pipeline industry, and as such the effectiveness of it will evolve over time. We were happy that the rules included a clause that set evaluation requirements that require verifiable continuous improvements.

¹⁸ http://www.cpuc.ca.gov/PUC/events/110609_sbpanel.htm - Page 22 of the Executive Summary

Unfortunately, recent incidents such as the San Bruno, California tragedy and the huge oil spill into the Kalamazoo River in Michigan have shown that to date these awareness programs seem to be generally ineffective. In fact, after nearly every major incident in recent history news stories emerge of residents, and often firefighters, stating they had no idea such pipelines existed in their communities. In 2009 the National Transportation Safety Board cited the failure of these programs in the investigation report¹⁹ of a deadly pipeline explosion in Carmichael, Mississippi that killed a girl and her grandmother. NTSB has also focused on the adequacy of these programs as part of their investigation of the San Bruno tragedy.

While the evidence indicates that there is still much more to do to ensure that the millions of dollars of consumer money being spent on these programs is not wasted, there are some indications that the industry wants to move in the wrong direction. API's recent update of the public awareness standard (API RP 1162) removes measuring actual behavior change in the targeted audiences as a measure of effectiveness. If the industry does not believe this outreach should change people's behavior such as - increasing the number of people that call 811 before they dig, or the number of firefighters that sign up for training on responding to pipeline incidents – then the industry is clearly missing the point.

We hope that Congress will keep a close eye on the discussions of this issue over the coming months and be prepared to step in and clarify that the intent of this program is to change the behavior of the intended audiences to make pipelines safer, not to count how many innocuous brochures can be mailed.

Implementing expansion of Excess Flow Valve requirements

One of the Trust's priorities that was well addressed in the PIPES Act was to require the use of Excess Flow Valves (EFVs) on distribution pipelines for most new and replaced service lines in single family residential housing. While this was a huge step forward, the National Transportation Safety Board (NTSB) has continued to push for an expansion of the use of EVFs in multi-family and commercial applications **“when the operating conditions are compatible with readily available valves.”**²⁰

¹⁹ NTSB Report Number: PAR-09-01

²⁰ NTSB Recommendation to PHMSA – #P-01-002

From closely following the deliberations of PHMSA’s Large Excess Flow Valve Team, it is our opinion that there are thousands of potentially compatible structures being constructed or renewed which could be afforded greater safety by the installation of Excess Flow Valves (EFVs). It is clear from the data provided by PHMSA that the service lines serving a majority of these types of structure fall within the size constraints of commercially available EFVs. It is also clear from the data that the vast majority of these gas services are provided at pressures that avoid the concerns regarding low pressure lines.

There are many multi-family residential, small office, and retail structures that for all intents and purposes have the same load profiles as a single family residence. For these types of applications PHMSA and the industry need to move forward with rules to require installation of EFVs for new and renewed gas service.

For these reasons the Pipeline Safety Trust urges Congress to direct PHMSA to undertake a rulemaking—as the National Transportation Safety Board has requested—that would require EFVs be installed on the many types of structures where “**operating conditions are compatible with readily available valves.**”

Concerns with industry developed standards being incorporated into federal regulations

There has been increasing attention because of the Gulf of Mexico tragedy to the practice by federal agencies of incorporating into their regulations standards that outside organizations developed. Like MMS and many others, PHMSA has incorporated by reference into its regulations standards developed by organizations made up in whole or in part of industry representatives. A review of the Code of Federal Regulations under which PHMSA operates finds the following numbers of incorporated standards:

**Standards Incorporated by Reference in 49 CFR Parts 192, 193, 195
(As of 6/9/2010)**

CFR Part	Topic	Standards*
192	Natural and Other Gas	39
193	Liquefied Natural Gas	8
195	Hazardous Liquids	38

Total 85

*Note: Some standards may be incorporated by reference in more than one CFR Part.

Those standards were developed by the following organizations:

American Gas Association (AGA)
American Petroleum Institute (API)
American Society for Testing and Materials (ASTM)
American Society of Civil Engineers (ASCE)
ASME International (ASME)
Gas Technology Institute (GTI)
Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS)
NACE International (NACE)
National Fire Protection Association (NFPA)
Pipeline Research Council International, Inc. (PRCI)
Plastics Pipe Institute, Inc. (PPI)

While the Pipeline Safety Trust has not done an extensive review of these organizations or their standard setting practices, it is of great concern to us—and we believe it should be to Congress as well—whenever an organization whose mission is to represent the regulated industry is—in essence—writing regulations that members of the organization must follow. A very quick review of the mission statements of some of these organizations reveals statements like these below that show, at a minimum, a conflict between the best possible regulations for the entire public and the economic interests of the industry.

API – “We speak for the oil and natural gas industry to the public, Congress and the Executive Branch, state governments and the media. We negotiate with regulatory agencies, represent the industry in legal proceedings, participate in coalitions and work in partnership with other associations to achieve our members’ public policy goals.”

AGA – “Focuses on the advocacy of natural gas issues that are priorities for the membership and that are achievable in a cost-effective way.” “Delivers measurable value to AGA members.”

PPI – “PPI members share a common interest in broadening awareness and creating opportunities that expand market share and extend the use of plastics pipe in all its many applications.” “the mission of The Plastics Pipe Institute is to make plastics the material of choice for all piping applications.”

The pipeline industry has considerable knowledge and expertise that needs to be tapped to draft standards that are technically correct and that can be implemented efficiently. But we also know the industry’s standard setting practices exclude experts and stakeholders who can bring a broader “public good” view to standard setting. We also know that when a regulatory agency needs to adopt industry-developed standards it is a “red flag” that the agency lacks the resources and expertise to develop these standards on its own.

Even once the standards are incorporated by reference into federal regulations the standards remain the property of the standard setting organization and are not provided by PHMSA in their published regulations. If the public, state regulators, or academic institutions want to review the standards they have to purchase a copy from the organization that drafted them. In many cases, this further removes review of the standards from those outside of the industry. The American Petroleum Institute has recently implemented a system that allows the public to freely view their incorporated standards online.²¹ We applaud this move and hope other standard setting organizations follow the API lead. Below are just a handful of examples of the cost to purchase for review the standards that are part of the federal pipeline regulations:

Sample Cost of Pipeline Safety Standards Incorporated by Reference Into Federal Regulations (As of 6/8/2010)

Standard	Organization	Code of Federal Regulations (Incorporated by Reference)	Cost
ASME B31.4 -2002 “Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids”	ASME	49 CFR §195.452	\$129.00
GRI 02/0057 (2002) “Internal Corrosion Direct Assessment of Gas Transmission Pipelines Methodology”	GTI	49 CFR §192.927	\$295.00
NACE Standard RP0502–2002 “Pipeline External Corrosion Direct Assessment Methodology”	NACE	49 CFR §192.923, §192.925, §192.931, §192.935, §192.939, §195.588	\$83.00
A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,”	PRCI	49 CFR §192.933, §192.485, §195.452	\$995.00

The Pipeline Safety Trust asks that Congress carefully review the use of industry developed standards in minimum federal pipeline safety regulations, and direct these important parts of federal regulations to be made easily available to the public.

²¹ <http://publications.api.org/>

Other pending pipeline safety improvements that we support

Senate Bill 275 recently unanimously passed out of committee in the Senate, and it contains many good clauses that we have not discussed here today. We support the following additional sections from that legislation.

- Increasing fines for pipeline safety violations
- Increasing personnel for PHMSA
- Maximum allowable operating pressure verification and overpressure reporting
- Review of current regulations to determine adequacy for transporting Tar Sands crude oil

The Administration has also proposed some changes to the statute. We support the following parts of that proposal that we have not already discussed today.

- Cost recovery fees for the review of special permit applications

Thank you again for this opportunity to testify today. The Pipeline Safety Trust hopes that you will closely consider the concerns we have raised and the requests we have made. If you have any questions now or at anytime in the future, the Trust would be pleased to answer them.