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**TESTIMONY OF  
THE PIPELINE SAFETY TRUST**

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**FOR THE  
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS  
OF THE  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON  
PIPELINE SAFETY OVERSIGHT**

**JULY 14, 2011**

We thank the Subcommittee for asking for our testimony for the record on this important hearing on Pipeline Safety Oversight related to the recent ExxonMobil spill into the Yellowstone River.

My name is Carl Weimer and I am 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 month - the 1999 Olympic Pipeline 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. 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 in response to such tragedies 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 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 very recent dumping of oil into the Yellowstone River and a bad year of 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 tentatively 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 a much 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 between pipeline companies, government, communities, and safety advocates are formed, will pipelines truly be safer.

Clearly trust in pipeline safety has now been lost in Montana, so add that state to Michigan, California, and Pennsylvania where people now question whether the industry, regulators and legislators are really doing all they can to keep people and the environment safe.

Our testimony focuses on areas that may be pertinent to the spill into the Yellowstone River, but please don't forget or stall on issues that pertain to the other rash of major incidents that have happened over the past year. These are the issues we think may be pertinent:

- **Evaluating the adequacy of current depth of burial requirements for major river crossings**
  - **Requiring emergency flow restricting devices for liquid transmission pipelines**
  - **Developing and implementing enhanced standards and requirements for leak detection on hazardous liquid lines**
  - **Making facility response planning more inclusive and the plans publicly available**
- **State authority opportunities**

## **Evaluating the adequacy of current depth of burial requirements for major river crossings**

Current regulations only require that hazardous liquid pipelines crossing rivers such as the Yellowstone be four feet deep under the river and thirty inches deep past the high water mark.<sup>1</sup> Major rivers such as the Yellowstone can move and scalp major amounts of sediments from banks and river bottoms in major flood events. While the cause of this spill is still unknown, the required four feet of depth seems inadequate to protect pipelines from these extreme river forces, so we think PHMSA should be directed to undertake a study to determine if the regulations need to be changed.

Clearly the regulations regarding High Consequence Areas put the responsibility on the pipeline operator to consider threats to their pipelines even if the regulations do not clearly spell out such things as a safe burial depth. PHMSA has already in their Corrective Action Order to ExxonMobil ordered them to directionally drill the pipeline at a much deeper depth under the river before it restarts, so clearly PHMSA believes the current depth the pipeline was at is inadequate. We should use this tragic experience to learn from and create new standards that make it clear for future pipeline crossing what a safe minimum depth for such crossings is.

## **Requiring emergency flow restricting devices for liquid transmission pipelines**

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”<sup>2</sup> 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.”<sup>3</sup>

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule<sup>4</sup>, OPS rejected

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<sup>1</sup> See 49 CFR 195.248(a)

<sup>2</sup> See 49 USC 60102(j)(1).

<sup>3</sup> See 49 USC 60102(j)(2).

<sup>4</sup> See 49 CFR 195.452(i)(4).

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.<sup>5</sup> 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.<sup>6</sup> 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 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. From initial reports it appears that ExxonMobil's leak detection system did identify the problem quickly, but this is certainly an area in need of improvement in the regulations to protect important water bodies and the public.

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<sup>5</sup> See 49 CFR 195.452(i)(3).

<sup>6</sup> See 18 AAC 75.055(a)(1).

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. Such standards need to clearly determine the size of leak the system is capable of detecting, and the time required for the system to issue an alarm in the event that a leak of that size should occur

### **Making facility response planning more inclusive and the plans publicly available**

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

The review and adoption of such response plans 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 rules<sup>7</sup> that when complete spill plans are submitted for approval, the plans are required to be made publicly available, interested parties are notified, and there is a 30 day period for interested parties to comment on the contents of the proposed plan. We urge Congress to require PHMSA to develop similar requirements for the adoption of spill response plans across

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<sup>7</sup> See Washington Administrative Code 173-182-630

the country, and that such plans for new pipelines be integrated into the environmental reviews required as part of the pipeline siting process.

### **State authority opportunities**

The State of Montana has voiced outrage that this was allowed to happen and at the cleanup process that has proceeded so far. To date Montana has not used their ability to have any real authority to be either part of the inspection of liquid pipelines or require state level spill response planning for pipelines. We believe that states that step up to provide an additional layer of pipeline inspections by requesting such authority from PHMSA help provide a significant increase in pipeline safety in their states. The same holds true for those states that take on spill response planning for hazardous liquid pipelines. We hope Montana will use this terrible wake up call to consider becoming a more active player in keeping the pipelines that traverse that beautiful state safe.

Thank you again for this opportunity to provide this testimony. 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.