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TESTIMONY OF

THE PIPELINE SAFETY TRUST

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Presented by

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BEFORE THE

**UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON ENERGY AND AIR QUALITY**

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 around pipeline safety issues as a staff member for this committee. Staff from the Pipeline Safety Trust are members of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Safety's Technical Hazardous Liquid Pipeline Safety Standard Committee, chairman of the Governor appointed Washington State Citizens Committee on Pipeline Safety, and on the steering committee for PHMSA's Pipeline and Informed Planning Alliance.

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 to our region. After investigating this tragedy, the U.S. Justice Department 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 Justice Department'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 the local communities who have the most to lose if a pipeline fails should be included in discussions of how better 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, I am here to speak today for those who have been tragically affected by pipeline incidents since the Pipeline Inspection, Protection, and Enforcement Act of 2006 passed. I am 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. I am 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 of 2007. I am also speaking today 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.

The Pipeline Safety Trust's staff and volunteers have testified to 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 the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006.

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. blah,blah,blah ...

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 the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 so we appreciate that this committee is 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, so we would like to provide a quick overview of our view of how implementation has gone.

State Damage Prevention Programs

We strongly support the section in the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, which 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 in regulations. 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 their 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 increased funding as proposed in the 2006 Act actually flows to the states. Without increased funding, as promised in the Act, 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 nation-wide 811 One Call number. This single number 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 functional 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 this effort through ongoing appropriation of funds. The Common Ground Alliance has done a good job of kicking off this effort, and using the federal funding to leverage private investments, but there is still much work to do.

Low Stress Pipelines

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[This is old language from a past testimony as a place holder]

The 200,000 gallon crude oil leak on the North Slope of Alaska last winter, the additional leak found this past summer followed by a partial shut-down of the Prudhoe Bay Oil Field, and the ensuing fiasco concerning BP's previously inadequate pipeline maintenance and testing have made it clear that all such low-stress 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 other transmission pipelines.

The Pipeline and Hazardous Material Safety Administration (PHMSA) is currently engaged in a rulemaking on these low-stress pipelines that has as a starting point a proposal that is much weaker, and more confusing, than what is included in Senate Bill 3961, and the version of the bill coming forward from the House Energy and Commerce Committee. We hope that Congress will pass these provisions soon so that PHMSA understands the importance Congress has put on ensuring these pipelines are maintained in a way that protects the environment and the economy.

Community Technical Assistance Grants

The Pipeline Safety Trust has long pushed for these grants which would 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 being part of the various processes that lead to pipeline safety standards and regulations. These grants were first included in the Pipeline Safety Improvement Act of 2002. The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 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 is 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 whom 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 their comparatively limitless dollars.

One of the Pipeline Safety Trust's core beliefs is that real pipeline safety is like 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 government and community organizations do not have the resources to be a legitimate leg in this stool, which is why these grants are so important for pipeline safety.

Let me provide some specific examples of where these grants could provide real value for pipeline safety by involving local governments and communities better.

- 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 requirement in the

Pipeline Safety Improvement Act of 2002, which required PHMSA to study the concerns with population encroachment along transmission pipeline rights-of-way. PIPA has brought together all the stakeholders to try to develop some solutions to the thorny issues around where pipelines intersect with proposed local development. One significant barrier to the success of this initiative is lack of participation by local government and citizens who actually understand and control the local zoning, permitting, and planning processes. One barrier to their participation is the actual cost of participation in terms of travel, costly conference calls, and lack of staffing. One of these Community Technical Assistance Grants to a group that could provide basic staff support and participation costs to local government and citizen participants would remove this barrier.

- The Pipeline Safety Trust received numerous calls in the past year from members of local school boards who are looking at locating a new school 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 that are faced with similar decisions.
- For the past few years local government 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 property. 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 a valuable partner in safely siting needed new pipelines. The information that comes out of these grants could then be shared with other local governments as a source of trusted independent guidance.

Enforcement Transparency

In our opinion one of the true successes of the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 has been the rapid implementation by PHMSA of the enforcement transparency section of the Act. It is now possible for affected communities to log into 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 either 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.

This 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 their 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 their state partners have inspected a particular pipeline, what was found, and how any concerns have been rectified. This inspection transparency should again increase the public's trust in the checks and balances in place to make pipelines safe.

Distribution Integrity Management Program Rulemaking Deadline

In the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 Congress gave PHMSA a deadline of December 31, 2007 to prescribe minimum standards for integrity management of distribution pipelines. While it is clear that PHMSA has been working on these standards, it is also clear that they have missed this deadline. Congress and the public deserve an explanation of why deadlines are missed. We have supported every deadline that Congress has imposed and encourage deadlines as a way to force safety improvements to move forward, but we also recognized that it is sometimes better to do things right instead of doing them fast.

One of our particular interests with distribution pipelines is the use of Excess Flow Valves (EFVs). The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 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. We have recently heard from manufacturers of EFVs that the gas industry may be sponsoring a new study of the effectiveness of EFVs. The National Transportation Safety Board has studied and recommended the use of EFVs for years, there are millions of EFVs in successful use nationwide, and Congress has mandated their use. We hope that this possible new study is not an attempt to further delay the implementation of the use of these important safety devices.

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 The Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 required PHMSA to produce a report by December 31, 2007 to report on these inadequacies and ways to improve such leak detection technologies. PHMSA has missed this deadline.

Corrosion Control Regulations

Following a number of leaks on pipelines on the North Slope in Alaska, the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 required PHMSA to review whether the current regulations regarding internal corrosion on liquid pipelines were adequate, and to produce a report by December 31, 2007 on this review. PHMSA has met once with the Technical Hazardous Liquid Pipeline Safety Standards Committee to discuss these internal corrosion issues, but to date PHMSA has not issued a report on the review or started any rule making activities. PHMSA has missed this deadline.

Review of reassessment intervals for gas transmission pipelines

Ever since the passage of the Pipeline Safety Improvement Act of 2002 the natural gas pipeline industry has argued the reassessment interval for gas transmission pipelines

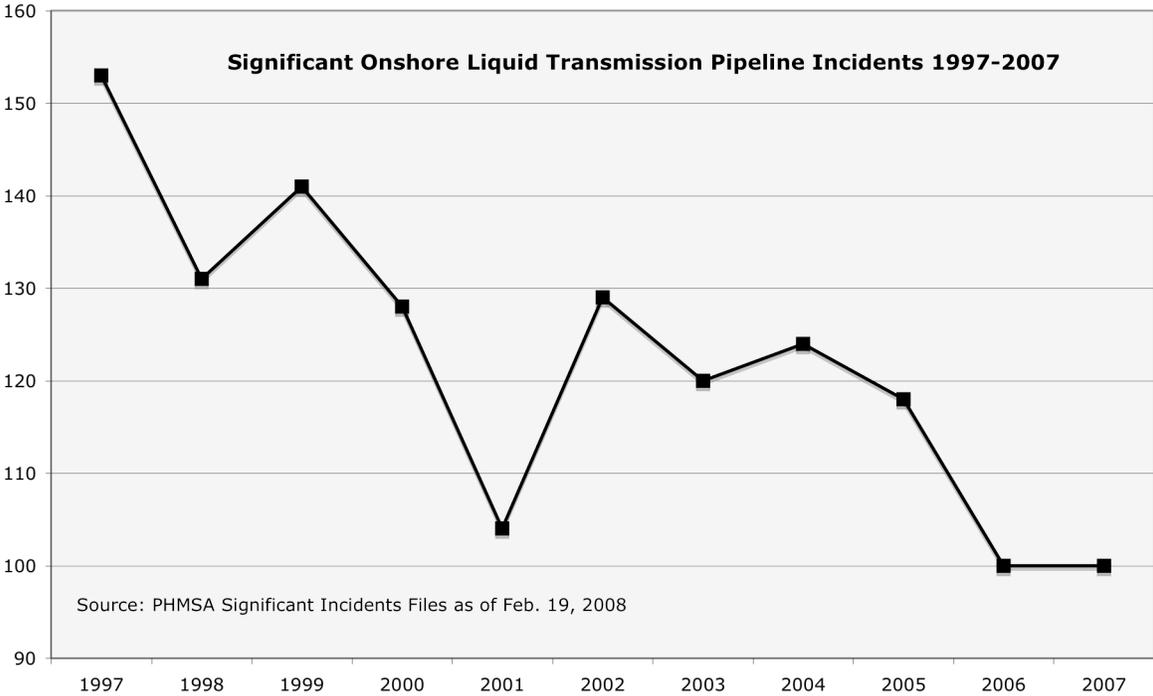
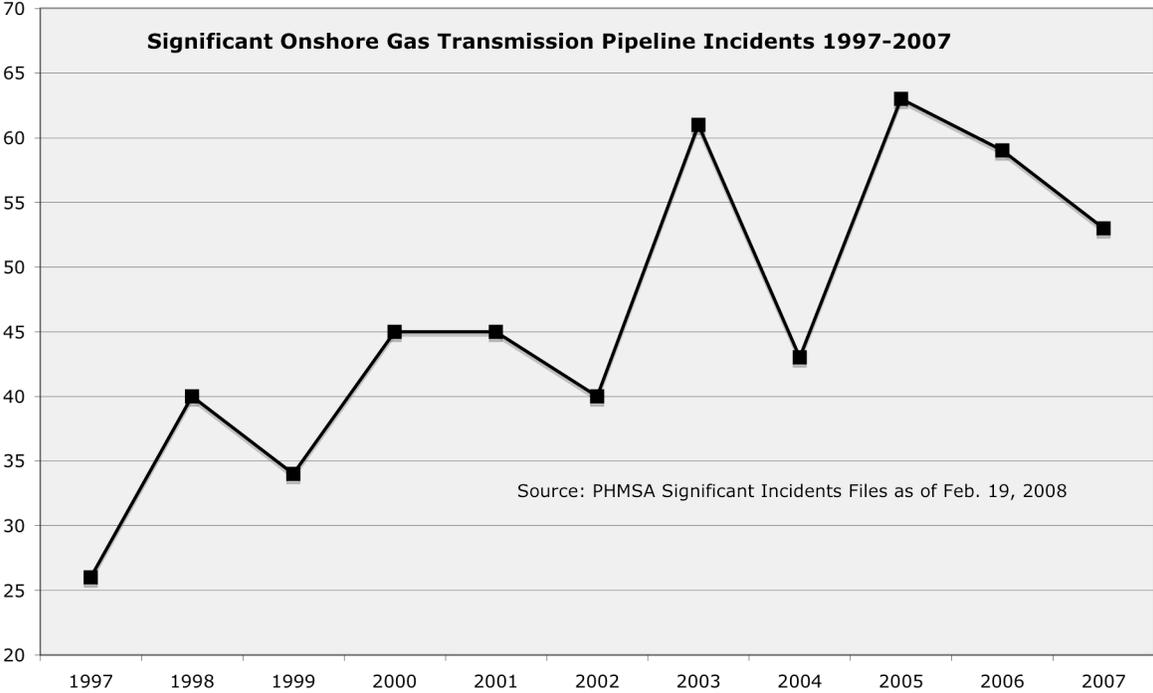
was not based on well considered engineering and scientific data. They argue that each pipeline has its own unique properties and as such each pipeline should have reassessment intervals based on its particular engineering and data. While we agree that the initial interval was not based on any exhaustive study or data, it also is clear that the data needed to make such a determination was not 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 by which to provide companies who have successfully completed the initial baseline assessment of segments of their pipelines a way to apply for a waiver from the current Congressionally mandated reassessment intervals. Our review of this process has concluded that it is reasonable and well thought out, but since no clear rule has been drafted for review we want to provide the things we believe need to be clearly spelled out in this proposed waiver process.

- Waivers should not be processed if PHMSA does not have the resources to do so without undermining their existing pipeline safety programs. If these waivers are a priority of the industry then Congress should consider implementing waiver fees to provide PHMSA the resources to get the job done.
- Waivers should only be considered for pipeline segments that have fully completed the initial baseline assessment.
- Waivers should only be considered for pipeline segments where operators have provided PHMSA with sufficient information to show 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 the operator's 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, etc) include issues where time to failure calculations are unreliable.
- Waivers should be revoked if a failure occurs from causes within the operator's primary responsibility (corrosion, material failures, incorrect operation, etc.).
- Waiver application, supplemental information, correspondence, and the final waiver should all be included in an easy to locate publicly accessible web-based docket.

We would also 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 pipelines is increasing. The following graphs illustrate these trends.



Liquid pipelines, with nearly 130,000 miles less mileage nationwide than gas pipelines, still have nearly twice as many significant incidents, but the trend in incidents is in a downward direction.

We bring the facts on the numbers of significant incidents occurring, and the apparent increase in the number of incidents in natural gas pipelines to your attention because it illustrates that there are still significant problems to address. 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 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.

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

Thank you again for this opportunity to testify today. We hope that you will consider the ideas we have brought forward today. If you have any questions now, or at anytime in the future, I would be glad to try to answer them.