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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 ENVIRONMENT  
COMMITTEE ON ENERGY AND COMMERCE  
US HOUSE OF REPRESENTATIVES**

**HEARING ON**

**HR 6008, The CLEAN Act  
and  
"THE STRENGTHENING PIPELINE SAFETY AND ENFORCEMENT ACT" DRAFT**

**September 23, 2010**

Good afternoon, Chairman Markey, Ranking Member Upton and Members of the Subcommittee. 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 in my purely voluntary, uncompensated role as the Vice President of the Pipeline Safety Trust. My involvement and experience with pipeline safety stems from my years as staff for this committee on such issues; starting in 1994 after a natural gas explosion in Edison, New Jersey—all too similar to what just occurred in San Bruno, California—destroyed a whole apartment complex and left 1 person dead and many, many people homeless.

The events of the last two months—the environmental catastrophe near Kalamazoo in Marshall caused by Enbridge Pipelines Inc. that made houses uninhabitable and, more recently, the devastation and tragedy brought about by the PG&E pipeline explosion in San Bruno—drive home the need for significant, comprehensive changes to our pipeline safety laws as part of any reauthorization. To paraphrase Santayana, “Those who fail to learn from history are doomed to repeat it” and if we don’t learn the right lessons from these recent, devastating failures, then we will unfortunately live to see the grieving families of more victims and the despoiling of even more of our land and water.

The Trust also is concerned that there have been a number of other, significant pipeline and pipeline-related releases this year including:

- The spill by Alyeska Pipeline in Alaska in May;
- The spill by Chevron Pipe Line Company near Salt Lake City in June; and
- The spill by Enbridge Pipelines Inc. near Romeo, IL in September.

We hope that the Congress, the Pipeline and Hazardous Materials Safety Administration, and the National Transportation Safety Board (NTSB), which is investigating the Michigan and San Bruno accidents can ascertain if there’s a systemic problem resulting in these multiple releases or if they are independent events.

### **About The Pipeline Safety Trust**

The Pipeline Safety Trust came into being after 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. The vision of the Pipeline Safety Trust is simple: 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.

We also believe that trust in pipeline safety increases in proportion to the amount of verifiable scientific information that is readily available for all concerned to review. Such information must form the basis for any and all legitimate public awareness and education programs about pipeline safety. For the most part, outside review and involvement increases the confidence in

pipeline safety as those with concerns learn that pipelines truly are a safe way to transport fuels. In those instances when safety has lapsed, such review will help to more quickly correct the situation and create a push for even greater levels of safety. Consequently, one of the Trust's highest priorities is to make available as much relevant and accurate information as possible for independent review. In sum, we believe the public has a right to know about the safety of pipelines that affect their communities.

## **Overview**

The availability of natural gas, oil and other fuels are vital to our economic well being and transporting those fuels through pipelines is without a doubt the safest way to move these highly dangerous substances. So the question isn't whether pipelines are a safe mode of transportation compared to other ways to move fuel, the real question is whether they are as safe as they could and should be and the secondary question is whether they are being regulated in the most efficient, effective and protective manner they could or should be.

Unfortunately, the answer to both questions is: no.

You have asked me, on the Trust's behalf, to comment on two legislative proposals currently before the committee: H.R. 6008, The Corporate Liability and Emergency Notification Act (CLEAN), sponsored by Rep. Mark Schauer of Michigan and the reauthorization proposal released last week by the Obama Administration.

## **H.R. 6008**

It is our understanding that the CLEAN Act was introduced by Mr. Schauer, Mr. Upton and others in response to the Enbridge pipeline accident in Marshall, Michigan. The bill has three major provisions with the main one requiring pipeline owners and operators to notify the Secretary of Transportation and the National Response Center within one hour of discovering a hazardous liquid or natural gas leak. It would not expand the category of leak required to be reported; rather, it mandates that releases required to be reported today, be reported more quickly in the future –no more than an hour from when they are discovered by the pipeline operator. While the NTSB continues to investigate both the cause and the circumstances surrounding the Enbridge spill, that provision appears to address a significant concern raised about the company's response or lack of response to the leak wherein the leak may not have been reported for as long as 24 hours after it was first detected. This is clearly unacceptable and highlights a small but extremely significant gap in the law that would be fixed by the CLEAN Act.

The second major provision of the bill would raise the cap on civil penalties PHMSA could assess against an owner or operator under the Pipeline Safety Acts. We applaud this increase, but caution that it is not a panacea. While PHMSA has shown improvement over the past decade in its efforts to enforce the law and –with a great deal of bipartisan help from this committee in the form of the PIPES Act—make its enforcement efforts more transparent, we remain mindful of PHMSA's lax enforcement of the law in the not too distant past. No matter how high the cap on penalties may go, they are useless as punishment or deterrent without a regulator who is willing to use them and use them in a fair and consistent manner.

The CLEAN Act's third major provision would require the Secretary to quickly establish a database of all reportable incidents. While PHMSA already makes incident data of this sort available for download, we think this provision would be a step forward if the intent is that PHMSA make such information available in a user-friendly format on their website sortable by a variety of factors such as pipeline company, location, cause, etc. This appears to be a helpful codification of PHMSA's existing incident database.

The CLEAN Act is not intended to be a vehicle for a full scale reauthorization of the Pipeline Safety Act; it is a narrowly targeted, but useful step forward to address a number of issues raised by the Enbridge spill near Marshall, Michigan as well as other recent accidents in Illinois and Utah, and we support it as such. It is our understanding that the bill may be amended to include a requirement for enhanced leak detection on pipelines and we would wholeheartedly urge the committee to include such a reasonable provision in the bill. The Pipeline Safety Trust raised the issue of leak detection in our last appearance before the Subcommittee two and a half years ago, and we still have yet to see any real effort on PHMSA's part to set standards for leak detection and require the best achievable technology in that area. However, it's clear from these many, recent incidents that we are long past due for addressing this matter, so we urge the committee to require adoption of a tough, but achievable leak detection standard along the line of Alaska's performance standard as it considers this bill or when it moves on a full reauthorization package.

### **The Strengthening Pipeline Safety and Enforcement Act of 2010**

Last week, the Obama Administration released a draft proposal for reauthorization of the pipeline safety laws. Had this 12-page bill been released a year ago, it might have been a nice first step on the long road to reauthorization. However, coming as it has after major, catastrophic accidents in California and Michigan, and with only a short time left to reauthorize the Act, the only way to characterize it is: too little, too late.

Certainly, there are positive provisions in the bill, including increased staffing and funding for PHMSA and increasing fines. The bill also takes some baby steps toward the important issue of regulating gathering lines by removing the provision in law that prohibits PHMSA from regulating in this area; however, even this is severely flawed because it requires no further regulatory action. While the bill would study the expansion of integrity management in high consequence areas, it takes no real action to expand inspections beyond the mere 7 percent of natural gas transmission pipelines covered by the 2002 Act nor does it address the quality of those inspections and the repairs made in their wake.

Another provision in the bill that is, on balance, a positive development are the Administration's proposed changes to the overly broad waiver provisions of Section 60118(c) of the existing law. The last time I appeared here, I stated the Trust's support for the sensible use of waivers under the following circumstances that still apply:

- 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 must not 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.

While it keeps intact overall the sweeping waiver authority contained in the Act and does not address the low burden of proof required for the Secretary to grant waivers, Section 10 of the Obama Administration proposal would nonetheless address a number of our concerns. Among those problems mitigated by the proposal are higher standards for waiver applicants, time limiting the duration of a waiver, an explicit requirement for PHMSA to recover the costs of processing from industry –costs that can significantly eat into the agency's safety budget under today's laws-- , and explicit authority for the Secretary to revoke a waiver for cause.

Ultimately, as I indicated earlier, the problem with the The Strengthening Pipeline Safety and Enforcement Act of 2010 has little to do with what is in it, but rather with what is not in it. For instance, there is little to nothing in the proposal that would address any of the issues raised by either the San Bruno or Marshall incidents or so many of the other accidents that have occurred during the same period. So, it is disheartening, to say the least, to see this proposal put forward within a week of a tragedy that took the lives of 7 people and less than two months after a catastrophe that drove scores of people from their homes and severely harmed the environment.

However, with significant additions, this proposal could be part of the kind of comprehensive, proactive, bipartisan reauthorization package that emerged from this committee in both 2002 and 2006. Such a package must address:

- **Expanding the miles of pipelines that fall under the Integrity Management rules.**
- **Requiring remote or automatic shut off valves for gas transmission pipelines and emergency flow restricting devices on hazardous liquid pipelines**
- **Enhanced requirements for accommodating internal inspection devices or “smart pigs”**
- **Moving forward to address unregulated pipelines and clarifying regulations of gathering and production pipelines**
- **Developing and implementing enhanced standards and requirements for leak detection on hazardous liquid lines**
- **Making more pipeline safety information publicly available**
- **Continuing implementation and funding of Technical Assistance Grants to Communities and boosting the Pipeline Safety Information Grant Program created by Mr. Boucher and this Subcommittee in 2002**
- **Implementing expansion of Excess Flow Valve requirements**
- **Making public awareness programs meaningful and measurable**
- **Continuing to push state agencies on damage prevention**
- **Ensuring adequate distribution and promotion of the Pipelines and Informed Planning Alliances report on recommended practices that local government can adapt to provide greater safety when development is proposed near transmission pipelines**

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

Implementation of Integrity Management rules have been one of the most important aspects of both the Pipeline Safety Improvement Act of 2002 and the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006. The earlier act focused mainly on transmission pipelines and the PIPES Act extended Integrity Management to the much larger realm of distribution pipelines. All of these efforts represent a significant increase in regulations meant to increase pipeline safety, and we would like to commend both PHMSA and the industry for the initial implementation of these programs.

One of our major concerns is that the Integrity Management rules that require hazardous liquid and gas transmission pipeline operators to more carefully assess their pipelines only apply to limited sections of pipelines that fall in High Consequence Areas (HCAs). These assessments are

most frequently accomplished by internal inspection of the pipelines with smart pigs. Due to these important new pipeline safety regulations, pipeline operators found, excavated and repaired more than 34,000 anomalies on pipelines between 2002 -2008. This represents a significant improvement in the future safety of our nation's important transportation infrastructure.

Currently 44% of hazardous liquid pipelines and only 7% of natural gas transmission pipelines fall under these important integrity management rules, requiring that they ever do these inspections. Yet despite Congressional action, 56% of hazardous liquid pipelines and 93% of natural gas transmission pipelines still are not required to comply with these important regulations.

To illustrate why this is a problem consider that we just passed the ten-year anniversary of the Carlsbad, New Mexico pipeline explosion that killed twelve people. In response, Congress passed the Pipeline Safety Improvement Act of 2002, which required Integrity Management of natural gas transmission pipelines within High Consequence Areas (HCAs). Yet HCAs are defined so narrowly that they don't even include the Carlsbad pipeline area despite the fact that twelve people died there in one pipeline incident. What this means to people who live around these pipelines is that if you live near a pipeline in a more rural area, your life is not worth protecting with these important integrity management rules. As Jim Hall, Chairman of the National Transportation Safety Board at the time of the Carlsbad incident said "No American would want to use any transportation vehicle that would not be properly inspected for 48 years, nor should we have pipelines traveling through any of our communities in this condition." Chairman Hall's words are as true today as they were in 2000. With the recent ten year anniversary of the Carlsbad pipeline incident, and in memory of the twelve men, women and children who died there as the result of an uninspected pipeline, the Trust asks Congress to expand Integrity Management to all pipelines so that their deaths might not have been in vain.

When Integrity Management was first conceived and implementation began, inspections were limited to High Consequence Areas (HCAs) because this represented a huge undertaking on the more than 90,000 miles of gas transmission and hazardous liquid pipelines that are included within these HCAs. At that time, leaders within Congress and PHMSA stated that in the future these types of inspection requirements would be expanded to additional miles of pipeline outside of the HCAs. The future is now, and we believe the industry now has the experience and equipment necessary to begin similar inspection on the over 365,000 miles of pipelines that currently have no such regulatory requirements. This is extremely important when you consider that of all the deaths caused by these types of pipelines since 2002 over 75% of them have occurred along pipelines that are outside of HCAs, so currently are not required to meet the Integrity Management rules. 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 the pipelines that fall outside of current HCAs.

### **Requiring remote or automatic shut off valves for gas transmission pipelines**

Require remote or automatic shutoff valves – Sixteen years ago, when I first began working with this committee on pipeline safety, we were debating a requirement for remote or automatic shutoff valves on natural gas pipelines in the wake of the Edison, NJ accident and the

hour it took to shut off the flow of gas that fed the fireball due to the lack of a remote 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.

In 2010 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 them 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”<sup>1</sup> with the first such requirement having a deadline in 1994 (16 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>2</sup> (emphasis added)

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule,<sup>3</sup> OPS rejected the comments of the NTSB, the U.S. Environmental Protection Agency, the Lower Colorado River Authority, the City of Austin, and Environmental Defense 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.

### **Enhanced requirements for accommodating internal inspection devices or “smart pigs”**

Internal inspection devices or “smart pigs” are the best available technology for inspecting pipelines. The biggest barrier to using them in many areas is that the pipelines themselves too often are not able to accommodate these devices. Isn’t it finally time to require operators to present the Secretary with plans by a date certain for upgrading, at a minimum, segments of

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

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

<sup>3</sup> See 49 CFR 195.452(i)(4).

their lines in HCAs to be able to accommodate these devices that really provide a legitimate assessment of the pipelines condition?

### **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>4</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>5</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 releases in Michigan and Utah are examples of what can go wrong when a pipeline with a leak detection system has no performance standards for operations.

The Trust's position is that Congress needs to 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.

### **Moving forward to address unregulated pipelines and clarifying regulations of gathering and production pipelines**

After numerous spills from low stress pipelines on Alaska's North Slope, Congress directed PHMSA to move forward with new rules to better regulate them. Section 4 of PIPES 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. This section's clear directive to PHMSA to have these rules adopted by December 31, 2007 has only been partially followed since PHMSA decided to implement this directive in a phased approach and so far has only adopted phase one of those rules and made no announcement about phase two. Congress needs to require clear answers from PHMSA regarding the initiation and implementation of the phase 2 rules.

Meanwhile, 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 improved 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

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<sup>4</sup> See 49 CFR 195.452(i)(3).

<sup>5</sup> See 18 AAC 75.055(a)(1).

pipelines in these d areas is less than clear and in some cases non-existent. The standards for PHMSA's rules to determine which pipelines fall under minimum federal regulations were written by the American Petroleum Institute and incorporated by reference into the regulations. If the public wants to review these standards they have to buy a copy of this part of the federal standards from API for \$126. What the API written standards actually require provides much wiggle room for gas producers to design their systems to avoid regulations.

PHMSA also only regulates a limited amount of these gathering and production pipelines, and leaves the rest of the regulations up to the states if they choose to assert any authority. We believe it is time to ensure that any gathering or production pipeline in a populated area with similar size and pressure characteristics as other currently regulated pipelines fall under the same level of minimum federal regulations. At a minimum we think Congress should require PHMSA or the National Transportation Safety Board to produce a study on the onshore gas production and gathering pipelines that are not covered by current federal standards. This study should explain what pipelines are not covered, what the extent of them is, how many are located in populated areas, the relative risk, and a proposed regulatory regime for inclusion of all these pipelines under minimum federal standards.

### **Continuing to Make More Pipeline Safety Information Publicly Available**

Perhaps the key issue regarding increasing public awareness and education is to ensure that the information in which the public already has an interest is easily 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 (<http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html>) and review enforcement actions regarding local pipelines. 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. PHMSA has also significantly upgraded its incident data availability and accuracy, and continues to improve its already excellent "stakeholder communication" website.

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 types of inspections were performed, 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. Just as Congress required PHMSA to institute Enforcement Transparency in the PIPES Act of 2006, The Trust hopes you will require similar Inspection Transparency this year.

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 what 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.

- **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. 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.

- **Emergency Response Plans.** 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 also misses a great opportunity to educate and increase awareness among the public. Currently the process is closed to 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 awareness, involvement, review and ultimately safety. That is why we believe Congress should make citizen right to know provisions a priority for inclusion in this pipeline reauthorization. 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 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 the country, and that such plans for new pipelines be integrated into the environmental reviews required as part of the pipeline siting process.

**Increasing Awareness and Education by Continuing Implementation and Funding of Technical Assistance Grants to Communities**

Over the past year and a half, PHMSA has finally started the implementation of the Community Technical Assistance Grant program 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 round of grants, PHMSA funded projects in communities in seventeen 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. All of the examples of local government implanting the PIPA recommendation we mentioned earlier were funded through these technical assistance grants. Overall –despite the unacceptably long delay in implementation-- we view the first round of this new grant program as a huge success.

However, 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 consider raising the cap on the amount of an individual grant, removing the limitation on funding sources for the grants, and –most importantly-- do whatever is necessary to ensure that the authorized funds are actually appropriated.

One area that should be considered with any new grant program is the amount of promotion and time it takes to get the word out about new sources of grant money. The Pipeline Safety Trust worked hard during the first round to promote this program to ensure that local government and citizen groups around the country knew about it and applied. Such targeted promotion, especially for a new grant program, is needed to ensure that PHMSA receives enough strong grant applications to choose from. During the application period for the second round of these grants, promotion was not as well organized and we have since learned from several groups around the country that they did not apply because they had no idea the grants were available again. While this will certainly correct itself as the knowledge of this grant program grows, we hope that PHMSA will improve its promotion and that Congress will take the long-term view of the value of this program while it grows to maturity.

### **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.**” After attending PHMSA sponsored workshops on this issue, the Trust agrees with the NTSB that the technology exists and the path forward to

define such applications is quite clear. We ask that you set a date certain for PHMSA to move forward on a rulemaking to expand the use of EFVs in these types of applications.

### **Making public awareness programs meaningful and measurable**

Since the San Bruno disaster people in that neighborhood have asked why they had no idea they had such a pipeline in their midst. That is a good question since federal regulations require pipeline operators to have a program that includes “***activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.***” Unfortunately the implementation of these required programs has not been effective.

The Pipeline Safety Improvement Act of 2002 required pipeline operators to provide people living and working near pipelines basic pipeline safety information, and gave PHMSA the authority to set public awareness program standards and design program materials. In response to this Congressional mandate, PHMSA set rules that incorporated by reference the American Petroleum Institute’s (API) recommended practice (RP) 1162 as the standard for these public awareness programs. According to RP 1162’s *Foreword* (page iii) of API recommended practice, the intended audiences were not represented in the development of RP 1162, though they were allowed to provide “feedback.” The omission of representatives from these audiences from the voting committee reduces the depth of understanding the RP could have had regarding the barriers and incentives for such programs, and undercuts the credibility of the recommended actions. The public awareness program regulations--49 CFR § 192.616 and 49 CRF § 195.440—mandate that operators comply with RP 1162. In essence, this amounts to the drafting of federal regulations without the equal participation of the stakeholders the regulations are meant to involve. With non-technical subject matter, such as this recommended practice deals with, it is difficult to justify excluding the intended audiences from the process and allowing the regulated industries to write their own rules.

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. While we understand that the initial years of this program have been difficult, we have been disappointed in some of these efforts as they were clearly farmed out to contractors to meet the letter of the requirement instead of the intent of the requirement. Recently, the National Transportation Safety Board cited the failure of these programs in the investigation report of a deadly pipeline explosion in Mississippi that killed a girl and her grandmother.

An evaluation of the first five years of this program is due this year, and API has been working on an update of this recommended practice for some time now. One of the draft proposals from API is to remove the requirement to measure whether the programs have led to actual changes in behavior. 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. After tragedies like the one in San Bruno we should not have people asking why they didn’t know about the pipelines in their neighborhoods.

## **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.

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 their 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, 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.

Why are PHMSA's numbers so low? PHMSA only requires natural gas pipeline operators to file reports when there is a death, hospitalization, or over \$50,000 of property damage measured in 1984 dollars (about \$90,000+ in today's dollars). Industry complaints about reporting requirements may be part of the reason that reporting thresholds are so high, but Section 15 of the PIPES Act also required PHMSA to respond to a GAO report to ensure that "incident data gathered accurately reflects incident trends over time," which is why data is normalized to 1984 dollars. While this makes good sense for tracking property damage, nowhere did GAO or Congress recommend that thousands of incidents related to excavation damage be left out of the database thereby creating another data gap making it impossible to track the larger problem of excavation damage trends over time.

The Common Ground Alliance’s database—while more telling—can not be relied on for complete and valid data for two reasons: (1) reporting is voluntary and consequently of a “hit and miss” nature; and (2) reporting is anonymous, making the data not verifiable. Without valid and complete data it will be impossible to actually measure whether damage prevention programs are well targeted or effective.

For these reasons, the Trust asks that Congress direct PHMSA to correct this substantial data gap by ensuring a more accurate reporting and 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.

One existing example is in Texas where in 2007 Texas adopted regulations requiring both pipeline operators and excavators to report excavation damage to pipelines. These reports are submitted directly to the Texas Railroad Commission’s website, and anyone can search the database for incidents in specific locations, on specific pipelines, by specific excavators, or for the individual damage report forms. This system seems to give Texas regulators and involved stakeholders adequate information to target damage prevention and enforcement activities, and track improvement over time. More information is available at:

<http://www.rrc.state.tx.us/programs/damageprevention/index.php>

This type of state-based reporting system can go hand-in-hand with PHMSA’s recent Advanced Notice of Proposed Rulemaking about better defining adequate damage prevention programs. While some consistency between state reporting requirements may be necessary so state programs can be adequately evaluated and compared, this ultimately may be an easier reporting system to institute than either the expansion of PHMSA’s or refining of CGA’s.

**Ensuring adequate distribution and promotion of the Pipelines and Informed Planning Alliances report on recommended practices that local government can adopt to provide greater safety when development is proposed near transmission pipelines**

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 draft report and the associated 46 recommendations are finally due to be released any minute. This will be 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 Trust showed that to successfully implement these needed “practices, laws, and ordinances” 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.

### Conclusion

Thank you again for this opportunity to testify today. Over the past decade, this committee has proven to be a bipartisan bastion of common sense in the realm of protecting the public and the environment from unsafe pipelines. In both 2002 and 2006, the committee was the engine that drove safety forward through Congress and into law and it did it with an overwhelming consensus from both sides of the aisle. The Pipeline Safety Trust hopes that the committee will resume its leadership role on this issue. We hope you will closely consider the ideas and concerns we have raised today and move a comprehensive pipeline safety reform and reauthorization bill. If you have any questions about our testimony, the Trust would be pleased to answer them and, of course, we stand ready to work with you and your colleagues on reauthorizing the pipeline safety laws that our so important to ensuring the well-being of millions of Americans and the environment that is their birthright.