



Protecting Alaska's Cook Inlet watershed and the life it sustains

**Testimony of Lois N. Epstein, P.E.**

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Committee on Transportation and Infrastructure**

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Good morning. My name is Lois Epstein and I am a licensed engineer and an oil and gas industry specialist with Cook Inlet Keeper in Anchorage, Alaska. Cook Inlet Keeper is a nonprofit, membership organization dedicated to protecting Alaska's 47,000 square mile Cook Inlet watershed, and a member of the Waterkeeper Alliance of 130+ organizations headed by Bobby Kennedy, Jr. My background in pipeline safety includes membership since 1995 on the U.S. Department of Transportation's Technical Hazardous Liquid Pipeline Safety Standards Committee which oversees the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) oil pipeline activities and rule development, testifying before Congress in 1999, 2002, and 2004 on pipeline safety, and researching and analyzing the performance of Cook Inlet's 1000+ miles of pipeline infrastructure by pipeline operator and type.<sup>1</sup> I have worked on environmental issues for over 20 years for two private consultants, the U.S. Environmental Protection Agency, Environmental Defense, and Cook Inlet Keeper. I also am a part-time consultant to the Pipeline Safety Trust, located in Bellingham, Washington.

My work on pipelines in Alaska allows me to see how well the policies developed in DC operate in the real-world. The Cook Inlet watershed, which includes Anchorage and encompasses an area approximately the size of Virginia, is where oil and gas first was developed commercially in Alaska beginning in the late 1950s. Cook Inlet is an extraordinarily scenic and fisheries- and wildlife-rich, region, so ensuring that fisheries and the environment remain in a near-pristine state is an important Alaskan value.

## **Background**

The Pipeline Safety Improvement Act of 2002 was passed by Congress on November 15, 2002 following two particularly tragic pipeline accidents: in Bellingham, Washington in June 1999 and near Carlsbad, New Mexico in August 2000. The 2002 law contains some needed improvements but, like many acts of Congress, it represents a compromise among competing interests. As a result, safety will be improved, but not necessarily by as much or as fast as the public would like.

To put my presentation into context, the graphs below display the performance of the pipeline industry over time based on reported incidents and incidents/mile (the latter multiplied by appropriate factors for graphical display purposes). As you can see from the hazardous liquid pipeline data on Figure 1, reported hazardous liquid pipeline incidents dropped after 1994. 1994 is two years after Congress imposed mandatory requirements on the Office of Pipeline Safety (OPS) – now part of PHMSA – to prevent releases that impacted the environment (as opposed to releases which solely affect safety). From Figure 1, it appears that natural gas distribution pipeline incidents are trending slightly upward, while natural gas transmission pipeline incidents clearly are increasing.

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<sup>1</sup> See *Lurking Below: Oil and Gas Pipeline Problems in the Cook Inlet Watershed*, 28 pp. plus appendices, 2002, and follow-up reports in 2003 and 2005. [www.inletkeeper.org/pipelines.htm](http://www.inletkeeper.org/pipelines.htm)

Figure 1

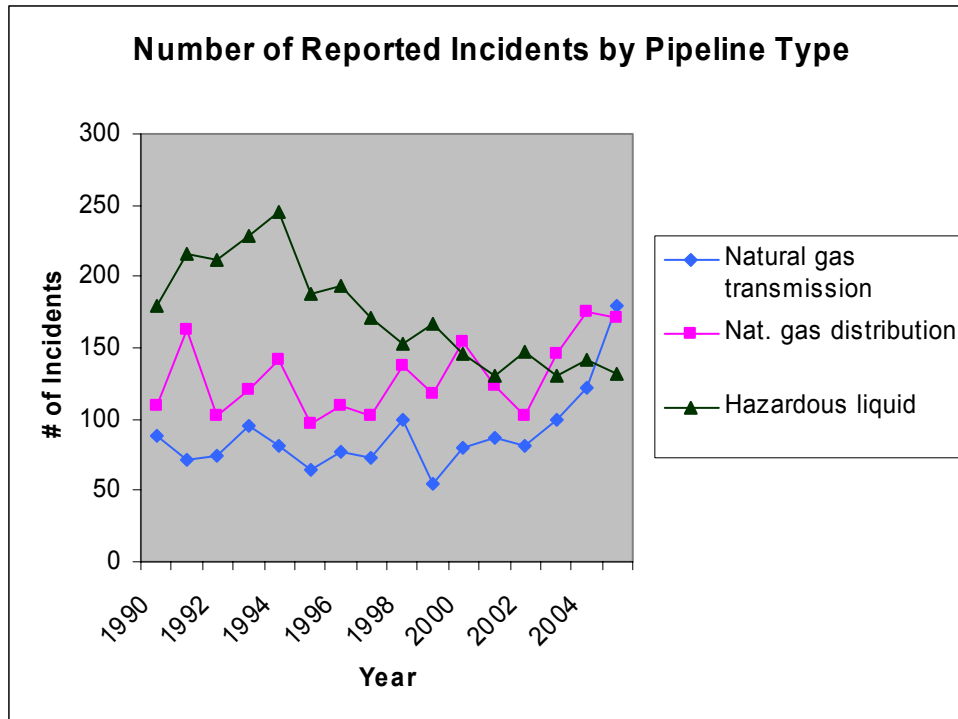


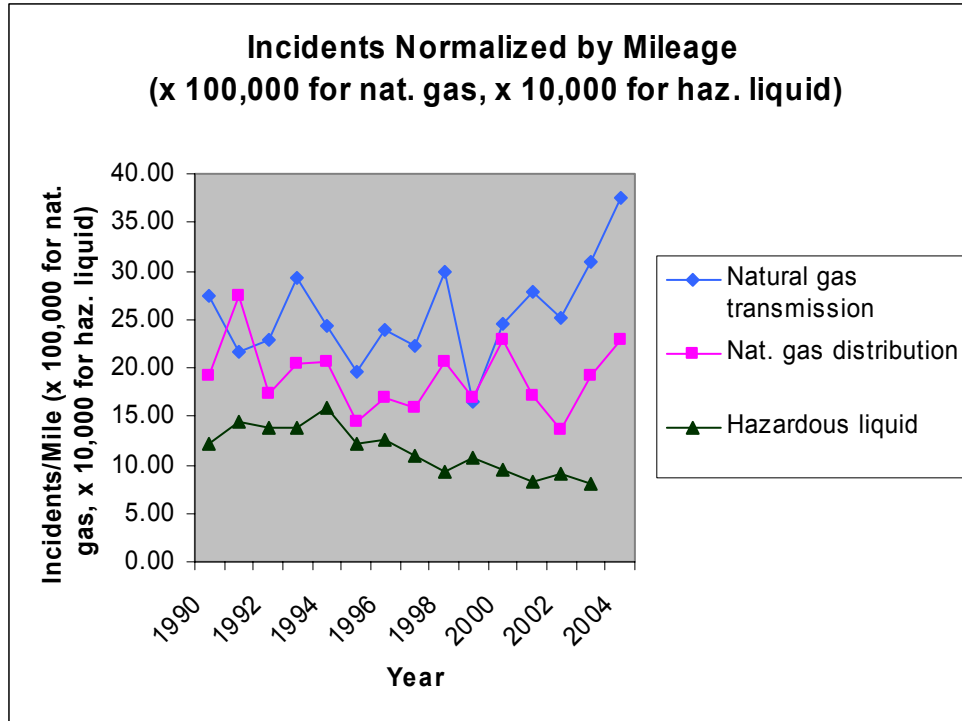
Figure 2 shows incidents divided by, or normalized by, pipeline mileage, which is a better way of measuring performance than the number of incidents alone since it accounts for changes in the number of incidents based on increased or decreased pipeline mileage. What is important to notice in Figure 2 is not the number of incidents per mile, but the trends this graph shows. The graph reinforces the improving performance of hazardous liquid pipelines, with a clear downward trend. Natural gas distribution pipelines do not show an upward or a downward trend in performance. Natural gas transmission pipelines, however, show a clear increase in the number of incidents per mile – a disturbing trend, though not surprising. As I stated in my June 15, 2004 testimony before the Senate Commerce Committee,

The most important rule issued as a result of the 2002 law, the natural gas transmission pipeline integrity management rule published on December 15, 2003...will not reduce incidents on those lines for several years and it's unclear how much of a reduction we can expect. This is true for several reasons. First, the law requires baseline integrity assessments to occur within 10 years, with 50% of the assessments occurring within 5 years of the law's enactment; this long timeframe will delay the benefits. Second, because the rule only applies to an estimated 7% of transmission pipelines,<sup>2</sup> by 2007 (i.e., five years after the law's enactment) we may expect only a 3.5% reduction in incidents, though the incidents that do occur should take place in areas of lesser consequences. Third, since the rule allows the use of not-fully-proven methodologies (i.e., "direct

<sup>2</sup> OPS states in the preamble to the rule "that about 22,000 miles of gas transmission pipelines are located in the [High Consequence Areas] in a network of 300,000 miles of gas transmission pipeline." (68 Federal Register 69815, December 15, 2003)

assessment” and “confirmatory direct assessment”), we need to wait several years to see whether OPS’ approach to this rule will result in a meaningful reduction in incidents.

**Figure 2**



Taking into account the different multipliers used, Figure 2 also shows that hazardous liquid transmission pipelines have a higher incident/mile rate than either type of natural gas pipeline.

### Issues to Address During Reauthorization

Based on the data shown in Figures 1 and 2 and focusing my testimony particularly on how pipelines can reduce their impact on the environment, I will discuss legislative and regulatory improvements needed. With respect to legislative changes, I will discuss:

- Enforcement
- High Consequence Areas
- Pipeline Safety Information Grants

I also will discuss the following needed regulatory changes which build on existing statutory language in the following areas and/or known oil pipeline oversight problems:

- Pipeline shut-off valve location and performance standards
- Leak detection system performance standard(s)
- Removal of the “low-stress” pipeline exemption
- Providing searchable, web-based pipeline maps to the public

Enforcement. The public and, presumably, pipeline operators have very little evidence that the increased penalties contained in Section 8 of the 2002 pipeline safety law are being used and collected by PHMSA to send a message to pipeline operators that violations are both unacceptable and costly. This reality along with PHMSA's relative lack of judicial enforcement actions, its minimal use of penalties for "preventive" enforcement, and the current inability of qualified states to pursue pipeline safety enforcement actions, leads to a problematic enforcement environment for pipelines. Cook Inlet Keeper, representing the public interest community concerned about pipeline releases, proposes two modest and one substantive and significant change at the end of this section to the current pipeline safety statute in order to ensure improved enforcement accountability, visibility, and effectiveness.

As evidence of the problems with pipeline safety enforcement, consider that:

- According to the Government Accountability Office, in 2003, PHMSA proposed only 32 civil penalties with an average proposed penalty of \$32,000, but assessed only 19 civil penalties with an average assessed penalty of \$19,000.<sup>3</sup> These figures are nowhere close to the Pipeline Safety Improvement Act of 2002's increased penalties which raised penalty limits from \$25,000 per daily violation with a \$500,000 maximum to \$100,000 per daily violation with a \$1,000,000 maximum.
- As discussed in my response to follow-up questions from Senator Breaux after the June 15, 2004 Senate Commerce Committee hearing (relevant excerpts in the Attachment), PHMSA needs to pursue several, high-profile preventive enforcement actions related to pipeline safety requirements *in instances where there has not been a release*. These include violations of corrosion prevention requirements, improper performance of direct assessment (a less-proven means of integrity assessment than smart pigging, which PHMSA allows natural gas transmission pipelines to use), exposed pipelines, poorly performed repairs, etc. While PHMSA occasionally pursues enforcement actions related to these types of violations, practically no one except the violator knows that it has done so because penalties are low, media attention is limited or non-existent, it is hidden on the PHMSA website if it is visible at all, etc.
- PHMSA can pursue enforcement actions for interstate pipeline violations but not qualified state regulators, though the large number of state regulators can assist in inspection and analysis of violations. In fiscal year 2003, PHMSA employed approximately 75 inspectors<sup>4</sup> who were responsible for oversight of roughly 6,000 miles of interstate transmission pipeline each, a very large number of miles per inspector. Additionally, federal inspectors may not be as aware of certain technical, geographic, and even management issues associated with interstate pipelines as state regulators because of state officials' proximity to the lines.
- The Bellingham, WA proposed penalty in 2000 was \$3.02 million, which was negotiated down to \$250,000 nearly five years later. The Carlsbad, NM proposed penalty in 2001 was \$2.52 million however, to date, no penalty has been collected.

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<sup>3</sup> *Pipeline Safety: Management of the Office of Pipeline Safety's Enforcement Program Needs Further Strengthening*, U.S. Government Accountability Office, GAO-04-801, July 2004, p. 26.

<sup>4</sup> GAO, op. cit., p. 12.

- In contrast to PHMSA, the U.S. Environmental Protection Agency (EPA) has issued and collected several multi-million dollar penalties from pipeline companies for their releases (of course, EPA cannot use its capabilities to enforce against natural gas pipeline releases). These EPA penalties are shown in the following table:

<b>Company</b>	<b>Date</b>	<b>Penalty</b>	<b>Summary of Violations</b>
Mobil E & P	8/04	\$5.5 mill.	Oil and produced water releases, inadequate prevention and control, failure to notify EPA of releases
Olympic Pipeline/Shell	1/03	>\$5 mill. - Olympic/ >\$10 mill. - Shell	> 230,000 gal. of gasoline released, 3 human deaths, over 100,000 fish killed
Colonial Pipeline	4/03	\$34 mill.	1.45 mill. gal. of oil released in 5 states from 7 spills (from corrosion, mechanical damage, and operator error)
ExxonMobil	9/02	\$4.7 mill.	Approx. 75,000 gal. of crude oil released, fouling a river and nearby areas
Koch Industries, Inc.	1/00	>\$35 mill.	Approx. 3 mill. gal. of oil released in 6 states (from corrosion of pipelines in rural areas)

While pipelines are nowhere near as deadly or injurious as mining, a recent statement in the New York Times about the Mine Safety and Health Administration is nevertheless applicable to PHMSA’s enforcement efforts, “The agency keeps talking about issuing more fines, but it doesn’t matter much,” said Bruce Dial, a former inspector for the mine safety agency. “The number of citations means nothing when the citations are small, negotiable and most often uncollected.”<sup>5</sup>

As a result of the ongoing problems with PHMSA enforcement, Cook Inlet Keeper recommends that the pipeline safety statute be amended to:

1. require PHMSA to provide web-based data on federal and state pipeline inspection and enforcement activities, including basic information such as pipeline segment inspected, inspection date, type of inspection, concerns noted, and corrections required;
2. require PHMSA to submit an annual report to Congress on civil and criminal pipeline safety enforcement, including penalty issuance, collection, and reasons for significant penalty reductions; and,
3. allow qualified state pipeline safety officials to pursue enforcement actions against interstate pipeline operators. This recommendation, while significant, is necessary to maximize use of state and federal regulatory resources in the service of pipeline safety.

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<sup>5</sup> “U.S. Easing Fines for Mine Owners on Safety Flaws: Penalties Not Collected,” Ian Urbina and Andrew W. Lehren, New York Times, March 2, 2006, p. A21.

High Consequence Areas. Those portions of transmission pipelines which could affect High Consequence Areas (HCAs) are subject to the greatest regulatory oversight, i.e., the hazardous liquid (or oil) and natural gas transmission pipeline integrity management rules. Currently, HCAs for hazardous liquid transmission pipelines cover commercially navigable waterways, high population areas, and drinking water and ecological resources. HCAs for natural gas transmission pipelines cover high-density and other frequently-populated areas. According to industry-submitted data, approximately 40% of hazardous liquid transmission lines could affect HCAs, but over 80% of hazardous liquid transmission pipelines likely will be smart-pigged or pressure-tested for pipeline integrity.<sup>6</sup> If, in fact, over 80% of the hazardous liquid transmission lines meet the standards of the integrity management rule (including post-pigging repairs), that is an excellent step toward improved pipeline safety.

There are portions of hazardous liquid transmission pipelines that do not fall within the 40% of the lines that could affect HCAs which nevertheless should have the protection afforded by the integrity management rule. Congress needs to direct PHMSA to expand the definition of HCAs to include the following areas – parks and refuges, and fishable and swimmable waters.<sup>7</sup> For reasons that are obvious to most anyone, parks and refuges and fishable and swimmable waters are areas of unusually high environmental sensitivity. At the time of HCA rule development, OPS took a narrow view of HCAs, partly for resource reasons and partly because of the need to issue the rule in a timely fashion. At this point in time, PHMSA is better able to expand the HCA rule to cover parks and refuges and fishable and swimmable waters.

Additionally, in mandating identification of HCAs in the 1992 statute, Congress did not include language about HCAs covering culturally and historically significant resources. This is a clear gap in the current statute, which Congress now needs to address.

Pipeline Safety Information Grants. Section 9 of the 2002 law states that:

The Secretary of Transportation may make grants for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipeline facilities in local communities...The amount of any grant under this section may not exceed \$50,000 for a single grant recipient. The Secretary shall establish appropriate procedures to ensure the proper use of funds provided under this section. (§ 60130(a)(1))

To date, OPS has not established any such procedures, nor has it had any success obtaining appropriated funds for this purpose. As time goes on, there are missed opportunities for use of these funds, e.g., such funds might have helped community organizations understand the technical and regulatory issues associated with the Tucson gasoline pipeline accident in July 2003, as well as state-wide organizations working on the substantial Kentucky and Ohio River crude oil pipeline spill of January 2005. Likewise, such grants are needed to assist public

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<sup>6</sup> PHMSA Pipeline Integrity Workshop, Houston, Texas, May 17-18, 2005.

<sup>7</sup> The federal Clean Water Act goals are fishable, swimmable, and drinkable waters. HCAs currently ensure only drinkable waters.

interest groups in commenting on technical regulations and to participate in technical standards development.

Cook Inlet Keeper and other public interest groups urge Congress to ensure that this section of the 2002 law is carried out as intended.

Pipeline shut-off valve location and performance standards. In 1992, 1996, and 2002, 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>8</sup> 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 (emphasis added).”<sup>9</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>10</sup> OPS rejected the comments of the National Transportation Safety Board, 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). It is unlikely such an approach to EFRD use meets Congressional intent, partly because such an approach is virtually unenforceable and not protective of important environmental assets such as rivers and lakes. At this time, Congress needs to reiterate its previous mandate to PHMSA on EFRD use.

Leak detection system performance standard(s). In its hazardous liquid transmission pipeline integrity management rule, OPS requires that operators have a means to detect leaks, but there are no performance standards for such a system. Similar to the situation for EFRD use, OPS listed in the rule various criteria for operators to consider when selecting such a device.<sup>11</sup> Again, such an approach is virtually unenforceable and not protective of important environmental assets such as rivers and lakes. Thus, Congress needs to direct PHMSA to issue a performance standard(s) for leak detection systems used by hazardous liquid pipeline operators to prevent damage to HCAs.

As one model, the state of Alaska has a flow-based performance standard for crude oil transmission pipelines. This regulation requires that a crude oil transmission pipeline have a leak detection system which would detect a loss of 1% of daily throughput.<sup>12</sup> While the percentage may not be the one PHMSA would choose (lower would be better), a flow-based performance standard would be enforceable and would better protect environmental assets than PHMSA’s current regulation.

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<sup>8</sup> 49 USC 60102(j)(1).

<sup>9</sup> 49 USC 60102(j)(2).

<sup>10</sup> 49 CFR 195.452(i)(4).

<sup>11</sup> 49 CFR 195.452(i)(3).

<sup>12</sup> 18 AAC 75.055(a).



Removal of the “low-stress” pipeline exemption. Two weeks ago on March 2, 2006, the largest oil spill to date on the North Slope of Alaska of 200,000 gallons or more was discovered at a caribou crossing. This spill came from a BP crude oil transmission pipeline which was exempt from PHMSA regulations because it was a “low-stress” hazardous liquid pipeline that met the following criteria: it did not transport a highly volatile liquid (HVL), it was located in a rural area, and it was outside a waterway currently used for commercial navigation.<sup>13</sup> Moreover, according to BP spokesperson Daren Beaudou, the pipeline “had known interior and exterior corrosion damage. Because of this, BP had downgraded the maximum pressure allowed within the line...”<sup>14</sup> Figure 3 shows the extensive cleanup operation now ongoing at this site.

**Figure 3**



**Oil recovery efforts, March 6, 2006, Unified Command photo.**

It’s clear from Figure 3 that “low-stress” hazardous liquid transmission pipelines, regardless of their location, can cause significant damage when there is a release. Congress recognized this fact and included the following provision in the pipeline safety law:

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<sup>13</sup> 49 CFR 195.1(a)(3).

<sup>14</sup> “Workers respond to Prudhoe spill: Leak may be one of largest in 29 years of production,” Wesley Loy, Anchorage Daily News, March 4, 2006.

**Prohibition against low internal stress exception.** The Secretary may not provide an exception to this chapter for a hazardous liquid pipeline facility only because the facility operates at low internal stress.<sup>15</sup>

To provide necessary protection of the environment, Congress now needs to direct PHMSA to remove the “low-stress” hazardous liquid pipeline exemption from the regulations, perhaps retaining only the “low-stress” exemption for HVL lines.

Providing searchable, web-based pipeline maps to the public. Pipelines do not require periodic renewals of operating permits so the public (and the media) has almost no knowledge of nearby pipelines except during a siting process or following a release. Providing maps to the public on the web, at whatever scale is detailed enough to make them useful to local communities but not so detailed that they provide security-relevant information, is an essential first step to promote public knowledge about pipelines. Since pipelines already have right-of-way markers, posting pipeline locations on the web does not provide information which cannot be obtained in another manner. Additionally, doing so will enable the public to help regulators identify HCAs locally – I have been told that parts of the Cook Inlet watershed are considered HCAs by some pipeline operators and not by other operators, however as a member of the public I cannot view the maps to weigh-in on this question.

## Summary

In conclusion, Congress should pursue the following items during the 2006 reauthorization of the pipeline safety statute:

1. Provide web-based data on federal and state pipeline inspection and enforcement activities and an annual report to Congress on civil and criminal enforcement including penalty issuance and collection, and allow state regulators to pursue enforcement on interstate pipelines
2. Expand High Consequence Areas so they include cultural and historic sites (requires legislation), and parks and refuges and fishable and swimmable waters (requires regulatory changes)
3. Reauthorize and ensure that Congress appropriates money for Pipeline Safety Information Grants

Additionally, Congress needs to ensure that PHMSA makes the following regulatory and programmatic changes:

1. Requiring pipeline shut-off valve location and performance standards
2. Issuing leak detection system performance standard(s)
3. Removing the “low-stress” pipeline exemption (for non-HVL liquids)
4. Providing searchable, web-based pipeline maps to the public

Thank you very much for your interest in pipeline safety. Please feel free to contact me at any time with your questions or comments.

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<sup>15</sup> 49 USC 60102(k).

## ATTACHMENT

### Senator John Breaux Questions for the Pipeline Safety Oversight Hearing Senate Committee on Commerce, Science and Transportation June 15, 2004

(Excerpt)

#### Ms. Epstein, Cook Inlet Keeper

1. In your testimony, you discuss the need for "preventive enforcement actions to deter potential violators". Could you please provide us with a few examples of how this might work? What type of violations would be appropriate to address with preventive enforcement actions? Do other regulatory agencies regularly use preventive enforcement?

Response: There are several sections of the pipeline safety regulations that Office of Pipeline Safety (OPS) enforcement personnel should pay particular attention to in order to prevent releases. Enforcement of these "preventive" regulations would supplement OPS' non-preventive enforcement actions, which are enforcement actions that take place after releases have occurred.

In addition to OPS' current enforcement emphasis on proper implementation of its integrity management programs for both hazardous liquid and natural gas transmission pipelines, OPS preventive enforcement actions should address the following specific regulatory violations:

- Inadequate external and internal corrosion prevention (49 CFR 192, Subpart I; 49 CFR 195, Subpart H). Corrosion caused 24.5% of the natural gas transmission pipeline releases and 24.4% of the hazardous liquid transmission pipeline releases in 2003.
- Inadequate internal inspection testing and/or analysis of test results.
- Improper performance of direct assessment. Because direct assessment allows great operator flexibility and is a lower-cost and less-proven alternative to smart-pigging, OPS must ensure that operators perform direct assessments properly for them to have value in preventing releases.
- Exposed pipelines (49 CFR 192.327 and 49 CFR 195.248).
- Poorly-done repairs.

My point is not that OPS never pursues enforcement actions related to these types of violations – it does on occasion, but practically no one except the violator knows that it has done so. OPS needs to pursue several enforcement actions in each of these regulatory categories, imposing relatively high penalties for non-compliance and with high media exposure. By doing so, all pipeline operators would realize they are at risk of receiving similar high penalties for similar violations.

As an example of another agency pursuing preventive enforcement for oil releases, I refer the reader to the U.S. Environmental Protection Agency's (EPA's) Underground Storage Tank 1998 Deadline Enforcement Strategy at

<http://www.epa.gov/Compliance/resources/policies/civil/rcra/storagetank-mem.pdf> (Attachment A). Underground storage tank (UST) system releases derive from both tanks and their associated piping, so there is a strong correspondence with OPS' pipeline regulations. The UST enforcement strategy states that "sub-standard UST systems should not operate after December 22, 1998. Those who delay [compliance] can be subject to monetary penalties of up to \$11,000 per day for each violation throughout their period of non-compliance" (p. 1). The strategy also states that "In pursuit of its goal, EPA will use all the enforcement tools available for dealing with UST violations, including administrative and judicial enforcement actions. Judicial enforcement actions are particularly appropriate in situations involving recalcitrant parties" (p. 3). A clearly articulated preventive enforcement strategy – available to both pipeline operators and the public on OPS' website – like the UST enforcement strategy, would be very beneficial to prevent pipeline releases.

2. Can you discuss the difference between OPS's enforcement approach and the EPA's, which I believe you are familiar with? Do you believe that OPS's enforcement strategy is less effective than EPA's in influencing industry's behavior?

Response: There are two major differences between EPA's enforcement strategies and OPS' enforcement strategies: 1. EPA pursues costly (to the operator), publicly-visible, and more-certain enforcement actions against the regulated community, which OPS does not do, and 2. EPA delegates enforcement to states if states are qualified to run their own enforcement programs, which OPS does not do for interstate pipelines because of an existing statutory prohibition.<sup>16</sup> For both these reasons, OPS' enforcement strategy is less effective than EPA's in improving industry's performance. These items are discussed below.

1. Costly, visible, and certain enforcement – The U.S. Government Accountability Office (GAO) recently issued a report on OPS' enforcement program that analyzed the size of the civil penalties levied by OPS. According to GAO, "the average civil penalty that OPS assessed from 2000 through 2003 was about \$29,000"<sup>17</sup> Such penalties are far less than Congress envisioned when it raised the limits for OPS penalties in the Pipeline Safety Improvement Act of 2002 from \$25,000 per daily violation with a \$500,000 maximum to \$100,000 per daily violation with a \$1,000,000 maximum.

While I do not have data on the average civil penalty from EPA – and I encourage Congress or OPS to pursue that information – I can provide examples of pipeline releases that resulted in far higher (*more than 100 times higher*) penalties from EPA than from OPS for similar pipeline problems. These examples are shown in the following table, with more details provided in Attachment B:

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<sup>16</sup> 49 USC § 60104(c).

<sup>17</sup> *Pipeline Safety: Management of the Office of Pipeline Safety's Enforcement Program Needs Further Strengthening*, U.S. Government Accountability Office, GAO-04-801, July 2004, p. 4.

## Recent EPA Civil Penalties/Settlements for Pipeline Releases

Company	Date	Penalty	Summary of Violations
Mobil E & P	8/04	\$5.5 mill.	Oil and produced water releases, inadequate prevention and control, failure to notify EPA of releases
Olympic Pipeline/Shell	1/03	>\$5 mill. - Olympic/ >\$10 mill. – Shell	> 230,000 gal. of gasoline released, 3 human deaths, over 100,000 fish killed
Colonial Pipeline	4/03	\$34 mill.	1.45 mill. gal. of oil released in 5 states from 7 spills (from corrosion, mechanical damage, and operator error)
ExxonMobil	9/02	\$4.7 mill.	Approx. 75,000 gal. of crude oil released, fouling a river and nearby areas
Koch Industries, Inc.	1/00	>\$35 mill.	Approx. 3 mill. gal. of oil released in 6 states (from corrosion of pipelines in rural areas)

EPA penalties also are far more visible to the public, which make them more effective. First, EPA distributes press releases for its large penalties, which OPS has begun to do, and second, any EPA penalties greater than \$100,000 must be reported to the Securities and Exchange Commission under 17 CFR 229.103. The latter requirement means that company investors are aware of the violations and the penalty, which can provide a strong deterrent effect against additional violations.<sup>18</sup>

Last, EPA’s numerous civil penalty policies posted on the Internet at <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/> help ensure uniform and thus more certain enforcement against violators.

2. Federal vs. state enforcement – A simple description of EPA-based environmental enforcement is that qualified states are delegated primary enforcement responsibilities for environmental laws even as EPA retains the right to pursue enforcement actions. In contrast, OPS alone can pursue enforcement actions for interstate pipeline violations, although certain states assist in inspection and analysis of violations. While the EPA system is not perfect and is similar to OPS’ relationship with states with delegated responsibilities to oversee and enforce violations for intrastate pipelines, it is far superior to the current federal/state division of responsibilities for interstate pipelines.

According to the new GAO report, the states have approximately 400 pipeline safety inspectors and OPS has approximately 75 inspectors.<sup>19</sup> Natural gas and hazardous liquid transmission pipelines (327,000 miles and 161,000 miles, respectively) primarily are interstate. As a result, the typical federal inspector is responsible for oversight of approximately 6,500 miles of

<sup>18</sup> Note that GAO did not consider this deterrent effect in its analysis of the effectiveness of OPS penalties.

<sup>19</sup> GAO, op. cit., p. 12.

transmission pipeline. Additionally, federal inspectors frequently are not as aware of certain technical, geographic, and even management issues associated with interstate pipelines as state pipeline safety officials are because of their proximity to the lines. As a result of limited federal oversight resources and the federal lack of familiarity with certain interstate pipeline concerns, it would be beneficial to change current law and allow qualified state pipeline safety officials to pursue enforcement actions against interstate pipeline operators.

A final problem with the current federal/state interstate pipeline enforcement relationship is that the states' inability to pursue enforcement actions against interstate pipeline operators leads to frustrated state pipeline safety and elected officials. GAO spoke with one state pipeline safety official who stated that after his agency "alerted OPS to noncompliant activity at one company, it found the same violation 2 years later during the next scheduled inspection cycle."<sup>20</sup>

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<sup>20</sup> Ibid., p.53.