

**Testimony of Michael N. Mears
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On Behalf of the Association Oil Pipe Lines
And the American Petroleum Institute
Before the U.S. House Subcommittee on Highways, Transit and Pipelines
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Introduction

I am Mike Mears, Vice President, Transportation, Magellan Midstream Partners, L.P. and Chairman of the Association of Oil Pipe Lines (AOPL). I am here to speak on behalf of AOPL and the pipeline members of the American Petroleum Institute (API). I appreciate this opportunity to appear before the Subcommittee today on behalf of the AOPL and API.

AOPL is an unincorporated trade association representing 48 interstate common carrier oil pipeline companies. Our membership is predominately domestic, but we also represent oil pipeline companies affiliated with Canadian pipeline companies. AOPL members carry nearly 85% of the crude oil and refined petroleum products moved by pipeline in the United States. API represents over 400 companies involved in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining and marketing. Together, these two organizations represent the vast majority of the U.S. pipeline transporters of petroleum products.

Magellan Midstream Partners, L.P. is a publicly traded master limited partnership formed to own, operate and acquire a diversified portfolio of energy assets. Magellan Midstream Partners, L.P. assets consist of an 8,500-mile refined petroleum products pipeline system including 45 terminals; seven marine terminal facilities; 29 inland terminals; and a 1,100-mile ammonia pipeline system. Our petroleum products system is a common carrier pipeline that provides transportation, storage and distribution services for refined petroleum products and liquefied petroleum gases in 13 Midwestern states. Our marine and inland terminals store and distribute petroleum products such as gasoline, diesel, crude and jet fuel throughout 11 states. Our ammonia pipeline and terminals system delivers ammonia from production facilities in Texas and Oklahoma to various points in the Midwest for use as an agricultural fertilizer.

Summary

It has been over three years since the enactment of the Pipeline Safety Improvement Act of 2002 (Public Law 107-355, the "PSIA"). On behalf of the members of AOPL and API, I wish to thank the Members of this Subcommittee for their leadership in passing that comprehensive and very important legislation.

As the Committee reviews the current state of pipeline safety and the progress that has been made since the PSIA 2002 became effective, there are a few points that we would like to emphasize.

- The PSIA, actions by DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) and initiatives taken by industry on its own have combined to produce significant improvement in pipeline safety, and this improvement is demonstrated by the record.
- Substantial changes at DOT and in the industry are under way as a result of greater safety oversight and strengthening in safety requirements. Under the PSIA, industry and its regulators are driving towards even stronger safety programs that will result in further improvements in performance in the future.
- The oil pipeline industry is making the investments that are required to produce this improved performance.
- Since the hurricanes in 2005, a new awareness of the vital importance of a robust, reliable and secure pipeline system has developed in government, industry and the public.
- There is no urgent need for significant changes in the pipeline safety statutes at this time. What is needed is vigorous implementation of the 2002 Act, and that is happening.
- It is important that Congress send a signal before adjournment in 2006 affirming the general direction of the PSIA by reauthorizing the pipeline safety program for at least 5 more years with increases in funding levels to match projected inflation.

The Role of Pipelines in Petroleum Supply

About 40 percent of total U.S. energy supply comes from petroleum, but transportation in the U.S. depends on petroleum for 96 percent of its energy. Very few of the elements of the nation's transportation system – the core of this Committee's jurisdiction – could operate without petroleum. Fully two-thirds of the ton-miles of domestic petroleum transportation are provided by pipeline. The total amount delivered by both crude oil and refined petroleum products pipelines (13.4 billion barrels in 2004) is nearly twice the number of barrels of petroleum consumed annually in the United States.

The major alternatives to pipelines for delivery of petroleum are tank ship and barge, which require that the source and user be located adjacent to navigable water. Trucks and rail also carry petroleum, but are limited in very practical ways in the volume they can transport. In fact, pipelines are the only reasonable way to supply large quantities of petroleum to most of the nation's consuming regions. Pipelines do so efficiently and cost-effectively – typically at 2-3 cents per gallon for the pipeline transportation cost charged to deliver petroleum to any part of the United States.

Oil pipelines are common carriers whose rates are controlled by the Federal Energy Regulatory Commission. Pipelines only provide transportation, and our owners do not profit from the sale of the fuels they transport.

Oil pipeline income is not related to the price of the products that are transported. In fact, high oil prices can have negative impacts on oil pipelines by raising power costs and reducing the demand for petroleum.

Oil pipelines move 17% of interstate ton-miles at only 2% of the cost of interstate freight transportation, a bargain that American consumers have enjoyed for decades.

The oil pipeline infrastructure is crucial to American energy supply. The care and stewardship of this critical national asset is an appropriate public policy concern and an important joint responsibility of the industry I represent, the Department of Transportation and Congress through this Subcommittee.

Progress Report on Pipeline Safety Integrity Management

Companies represented by AOPL and API operate 85 percent of the nation's oil pipeline infrastructure. Since March 2001 (for large operators) and February 2002 (for small operators), these oil pipeline operators have been subject to a mandatory federal pipeline safety integrity management rule (Title 49, section 195.452) administered by the DOT's Pipeline and Hazardous Material Safety Administration (PHMSA). The oil pipeline industry's experience with pipeline integrity management preceded the enactment of the PSIA. Our members who are large operators completed the required 50 percent of their baseline testing of the highest risk segments prior to the September 30, 2004 midpoint deadline set by the integrity management regulations. PHMSA has inspected the performance of each of these operators under these regulations at least three times – an initial “quick hit” inspection and two subsequent full inspections. Regular inspections are a permanent part of our future. Oil pipelines have experience with the PHMSA integrity management program that will be instructive to the Subcommittee in its review.

Improvement in spill record

The oil pipeline spill record has improved dramatically in the last five years as exhibit 1 and 2 show. The data for these exhibits comes from a voluntary industry program that since 1999 has collected data on oil pipeline performance. This program is the Pipeline Performance Tracking System sponsored by the American Petroleum Institute and the Association of Oil Pipe Lines. (For more on PPTS, see <http://api-ep.api.org/industry/index.cfm?bitmask=002007003001000000>). The PPTS spill database is more detailed than any other similar database in existence, including data maintained by PHMSA. Exhibit 1 shows PPTS data for line pipe releases for the 1999-2004 period. Line pipe releases are those that occur outside the company's facilities. They are the releases that have the most direct potential effect on the public and the environment. For each cause category, the trend is down. The number of total releases dropped 51 percent between 1999 and 2004. Releases due to corrosion dropped 67

percent. Releases due to third party damage dropped 37 percent. Releases due to operator error dropped by 63 percent. During this period, the volume released in incidents on line pipe dropped 40 percent.

Pipeline inspection and repair

In 2000, OPS estimated that under its proposed pipeline integrity management program approximately 22 percent of the pipeline segments in the national oil pipeline network would be assessed and provided enhanced protection. In fact, when oil pipeline operators carried out their analyses of how many of their segments could affect high consequence areas under the terms of the regulation, it turned out that almost twice as many segments, 43 percent of the pipeline network nationally, were covered. But in fact, the actual benefits realized have been even larger. The predominant method of testing oil pipelines utilizes internal inspection devices. The ports at which these devices are inserted into and removed from a pipeline are fixed in the system. As the internal inspection devices travel between ports they generate information about all the pipeline segments between those ports, which can be 35 to 50 miles apart. As a result, as shown in OPS inspections of operators' plans, it is estimated that integrity testing will cover approximately 82 percent of the nations' oil pipeline infrastructure. Thus the actual pipeline mileage protected by the program as implemented will be almost four times the original OPS estimate.

Operators are finding and repairing conditions in need of repair and less serious conditions that are found in the course of investigating defects. Operators are fixing what they find, often going beyond the requirements of the law. The largest cost to the operator is in the scheduling and renting of the internal inspection device, obtaining the permits and carrying out the excavation, so once the pipeline is uncovered, operators fix many conditions that might never have failed in the lifetime of the pipeline. This provides an additional benefit to pipeline safety that will reduce the risk of pipelines to the public far into the future.

Cost

Although benefits from the integrity management rule are much greater than originally estimated, so is the cost. Costs per operator are often in the low tens of millions of dollars per year, far more than originally anticipated. We estimate that the cost of inspection and repair for the industry has averaged nearly \$8,000 per mile. Operators have nevertheless moved aggressively to provide the resources needed to implement integrity management.

The pipeline cost benchmarking survey conducted by the oil pipeline industry provides a snapshot for 2004 of the cost of integrity management activities of 19 oil pipeline companies. These companies operated 71,000 miles of pipeline (approximately 42% of the U.S. total of 167,000 miles of oil pipelines under DOT jurisdiction), about half of which was identified as segments that could affect a high consequence area. The total cost of the integrity management programs of these 19 companies in 2004 was \$215 million. These operators inspected some 27,500 miles of pipeline in 2004 using inline

inspection or hydrostatic pressure testing (some segments are tested with more than one technique), at a total cost of \$7,820 per mile.

PHMSA's performance

The members of AOPL and API appreciate the leadership of this Subcommittee and the full Committee in the establishment of DOT's Pipeline and Hazardous Materials Safety Administration. Our members have seen positive results from elevating pipeline safety to the modal level within the DOT. In our view, PHMSA has been very aggressive in seeking to implement the provisions of the PSIA, has shown enhanced ability to work effectively with other federal agencies whose activities impact pipeline safety and has joined with the pipeline industry and interested stakeholders to achieve important results for pipeline safety and reliability.

Security

In addition, PHMSA has been playing a very important and positive role in assisting the pipeline industry and the Department of Homeland Security in developing a security program to protect critical pipeline infrastructure that complements the risk-based integrity management program that PHMSA administers under the Pipeline Safety Act. PHMSA's September 5, 2002 Pipeline Security Information Circular remains the principal federal guidance for pipeline industry security programs. The DHS's Transportation Security Administration has joined PHMSA in conducting inspections of pipeline facilities based on the provisions of this circular.

PHMSA currently has the mission of regulating security with respect to non-pipeline hazardous materials transportation in coordination with DHS. We believe Congress should consider assigning PHMSA a parallel role in the security of pipeline transportation. PHMSA has an experienced inspection force and by far the greatest expertise in pipeline operations of any of the federal agencies. Therefore, it makes sense to leverage those resources and expertise in developing an effective federal pipeline security program. PHMSA is familiar with the use of risk management and cost benefit techniques that are critical to developing security measures that work in the real world of limited resources.

Oil pipeline operators will continue to cooperate with PHMSA, TSA and DHS to meet the government's pipeline security expectations pending clarification by Congress of the federal agency oversight responsibilities for pipeline security.

Pipeline Personnel Qualification

The PSIA required pipeline operators to develop programs to qualify pipeline personnel for tasks performed on the pipeline. These programs must require training where appropriate and periodic reevaluation of the qualifications of all pipeline personnel. Pipeline operators have responded with comprehensive programs that provide added assurance that only qualified personnel work on our pipelines. An important recent

development is a joint pipeline industry association letter to PHMSA recommending a modification to PHMSA's pipeline personnel qualification rules to indicate specifically when training of personnel may be appropriate and to provide for intervals for the periodic re-evaluation of the qualifications of individual personnel. Our letter is attached. Ensuring the ability of PHMSA to enforce appropriate training and evaluation requirements has been a long-standing interest of the National Transportation Safety Board. It is our understanding that PHMSA is considering modifications to its rules that will fully address the NTSB interest. The purpose of our letter is to indicate the joint industry's support for such a modification.

Areas for improvement in the federal pipeline safety program

The pipeline industry's first priority is a clear Congressional reaffirmation -- before the 2006 adjournment -- of the direction charted by Congress for DOT and the industry in the Pipeline Safety Improvement Act of 2002. Accordingly, we urge that the Subcommittee at a minimum pass a bill in this Congressional Session that extends PHMSA funding authority for at least 5 years. If in addition Congress decides that improvements to the pipeline safety statutes are appropriate and can be enacted in this Session, we would be prepared to participate and put forward our own recommendations consistent with the thrust of the 2002 Act. If the opportunity to include substantive legislation arises, we would recommend consensus legislative provisions addressing excavation damage prevention, streamlining transmission pipeline integrity management and enhancing the efficiency and effectiveness of PHMSA. Below we discuss several areas where improvement in the federal pipeline safety program is warranted, although in many cases this improvement may be able to be achieved without new legislation.

Damage prevention

An area where new legislation may be appropriate is underground damage prevention. Damage to buried pipelines during excavation is a persistent, preventable and significant cause of pipeline releases. Releases caused by excavation damage tend to be more traumatic, larger and more likely to threaten the public and the environment in comparison to releases from other causes. Damage prevention programs are almost totally controlled by the laws of the several states, and the federal interest in promoting damage prevention must be expressed in partnership with the states in most instances. Enforcement of damage prevention laws varies among the states across the entire spectrum of effectiveness. The affected interests in damage prevention are typically beyond the reach of any single regulatory authority, so often the most feasible approach is a cooperative one that brings affected interests together in a voluntary commitment to improvement. The Common Ground Alliance is an organization that Congress helped start that brings the key interests in damage prevention together to work cooperatively to improve safety. We understand that a promising approach to improving state damage prevention programs has recently been developed under the auspices of CGA and the Distribution Integrity Management Team. We would urge the Subcommittee to take this approach seriously and, if appropriate for purposes of reauthorization in 2006, include the necessary legislative provisions in your reauthorization bill.

Public Information, including the National Pipeline Mapping System

Prior to the terrorist attacks of September 11, 2001 PHMSA developed the National Pipeline Mapping System (NPMS). Pipeline maps and basic information about the pipeline were made available to public through the internet. After 9/11 access to information on the NPMS was restricted. The public could only obtain pipeline operator contact information within a specified geographic location and could no longer view the maps. PHMSA then developed the Pipeline Integrity Management Mapping Application (PIMMA) for use by pipeline operators and federal, state, and local government officials. The application contains sensitive pipeline critical infrastructure information. PIMMA is intended to be used solely by the person who is given access by PHMSA and is not available to the public.

PHMSA also requires pipeline operators to prepare annual reports of their operations, and these annual reports are available to the public upon request. Many pipeline companies also provide general information about their pipelines on the internet and as part of their public awareness programs. Much of the information in NPMS and other locations in PHMSA would help better inform the public and could be made available at some level that would not pose an undue security risk.

We believe it is time that PHMSA and the Transportation Security Administration re-establish public access to the NPMS and determine what non-sensitive information already submitted by pipeline operators to PHMSA may be made available to the public.

Pipeline Repair Permit Streamlining

An important initiative of the PSIA is section 16, "Coordination of Environmental Reviews", which is concerned with expediting the repair of pipeline defects. While progress has been made on implementing this section, more work remains to be done, and the deadlines for agency action under the provision have passed. Since passage of the PSIA, the Council on Environmental Quality has played an important leadership role in implementing section 16. In June 2004, CEQ Chairman James Connaughton testified on before the Senate Committee on Commerce, Science and Transportation. He described an ambitious plan to coordinate pipeline repair information and decision-making among the federal agencies. We were very pleased at the time to hear Chairman Connaughton's plan for implementing section 16. It is unfortunate that that plan has not been carried out, despite its obvious merit under the terms of the PSIA. On December 15, 2005, the joint industry associations wrote to CEQ seeking action on an important provision of the Connaughton/CEQ plan: a pilot test for a set of pre-approved Best Management Practices (BMPs) for pipeline repair site access, use and restoration. A copy of the letter is attached. To date, our letter has not been answered.

Under the Connaughton/CEQ plan, a commitment by an operator to adhere in good faith to the BMPs would result in expedited permission to access repair sites to carry out the repair in order to allow repairs to be completed within the timeframes specified by DOT

regulation. A multi-agency website would be used to coordinate response to requests for permits such that involved agencies operate in parallel or in concert to issue all required permissions to the operator in a timely fashion. To the extent possible the permitting process would be consolidated to limit to one the number of permits required (a consolidated permit) for each project. The process would also ensure that federal agencies are aware of the relationships in permitting pipeline repairs among federal, state and local requirements and can act accordingly to achieve the goal of section 16.

We may need assistance from the Subcommittee to achieve the goals of section 16 while complying with the Endangered Species Act. One way to accomplish this would be through an agreement between the Department of Transportation and the Department of the Interior under which DOT would voluntarily assume the role of default coordinator (or *nexus*) for pipeline repairs in those cases where no other federal agency is available or able to act as the federal nexus for ESA consultation. If legislation is judged to be necessary to facilitate such an agreement and role for DOT, we recommend that the Subcommittee seriously consider it.

Our industry is eager to help carry out the vision Chairman Connaughton has articulated. We urge the CEQ to assign appropriate staff resources to accelerate progress with the plan. Section 16 is Congress's direction to the executive branch agencies under CEQ's leadership to facilitate full compliance with applicable environmental laws in the conduct of pipeline repairs while at the same time meeting the time periods for completion of repairs specified in DOT regulations. We have no intention other than full compliance with the applicable environmental laws, and are eager to assist in any way possible to devise a process that will harmonize objectives of the pipeline safety statutes with compliance with those laws.

Encroachment

Section 11 of the PSIA required DOT to study land use practices, zoning ordinances and preservation of environmental resources in pipeline rights-of-way to determine effective practices to limit encroachment on these rights-of-way. DOT complied with section 11 by contracting with the Transportation Research Board of the National Academies to carry out the study. "Transmission Pipelines and Land Use, a Risk-Informed Approach", is available from the TRB website at <http://www.nap.edu/catalog/11046.html>. The TRB study recommended that DOT convene a multi stakeholder process to develop practices to limit encroachment that could be recommended to state and local government, developers and landowners along pipelines. The TRB favorably noted experience with the Common Ground Alliance in addressing excavation damage issues as a possible model for addressing encroachment issues. The oil pipeline industry is ready to participate enthusiastically, and encouragement of the process from the Subcommittee would be welcomed.

Conclusion

The PSIA 2002 continues to provide valuable guidance that has resulted in significant improvement in the safe operation of hazardous liquid and natural gas pipelines. AOPL and API urge this Subcommittee and Congress to pass legislation in 2006 that will reaffirm the overall direction provided by the PSIA 2002 and extend its provisions for at least an additional 5 years.

Thank you for the opportunity to testify before the Subcommittee on these important matters.