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300 N. Commercial St., Suite B, Bellingham, WA 98225 Phone 360-543-5686 Fax 360-543-0978 <http://pipelinesafetytrust.org>

## **POSITION PAPER**

of the  
**PIPELINE SAFETY TRUST**

on

**“Pipeline Safety: Safety of Gas Gathering Pipelines,”**

**RIN 2137-AF38**

**Docket # PHMSA-2011-0023**

Notice of Proposed Rulemaking Published by the PHMSA

U.S. DEPARTMENT OF TRANSPORTATION,

81 Fed. Reg. 20,722 (Apr. 8, 2016)

Submitted December 18, 2018

The Pipeline Safety Trust appreciates this opportunity to submit comments related to gas gathering lines in response to the recently submitted position paper from the American Petroleum Institute (API) and the GPA Midstream Association (GPA). We would like to dedicate these comments to the memory of Delaney Tercero, a three-year old girl who died as the result of the failure of a 10-inch gathering line this past summer while we all fretted about whether gathering lines should be regulated or not.

Initially, we would like to point out that the comment period for this proposed rule closed in June of 2016, and the docket page still states:

***“Persons interested in submitting written comments on this NPRM must do so by June 7, 2016.”***

But since API/GPA posted their comments here, and since those comments have since been distributed to GPAC members directly by PHMSA, and since PHMSA has allowed various industry associations to submit over 400 pages of comments more than a year after the supposed comment deadline without any notice to the general public that the comment period was re-opened, we thought we might as well post our comment here as well. We also posted them in docket PHMSA–2016–0136, which would appear to be the correct docket to use to comment to GPAC as the API/GPA comments were meant to do.

In the proposed rule for the Safety of Gas Gathering Lines PHMSA proposed to do three things:

- Change the definitions to make it clearer where gathering lines start and stop
- Extend some of the safety regulations to rural gathering lines 8 inches or larger
- Require operators to submit reports so government officials will know where and how many miles of gathering lines of various sizes and materials exist, how many reportable incidents they have, and how often other safety related issues are occurring on these lines.

The Pipeline Safety Trust supports all three of these needed rule improvements, and thinks a strong case can be made that even these initiatives do not go far enough. Unfortunately, in their recent position paper, API/GPA oppose a majority of all of these improvements. We would like to explain why we believe each of these three improvements is needed, contrary to API/GPA’s arguments.

### **Extending some of the safety regulations to rural gathering lines 8 inches or larger**

In PHMSA’s 2016 Notice of Proposed Rulemaking the agency proposed to treat all rural (class 1) gathering lines 8 inches or larger the same as currently regulated Type B gathering lines. This would require these currently unregulated lines to start doing the following:

- (1) If a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection, and initial testing must be in accordance with requirements of part 192 applicable to transmission lines;
- (2) If the pipeline is metallic, control corrosion according to requirements of subpart I of part 192 applicable to transmission lines;
- (3) Carry out a damage prevention program under §192.614;

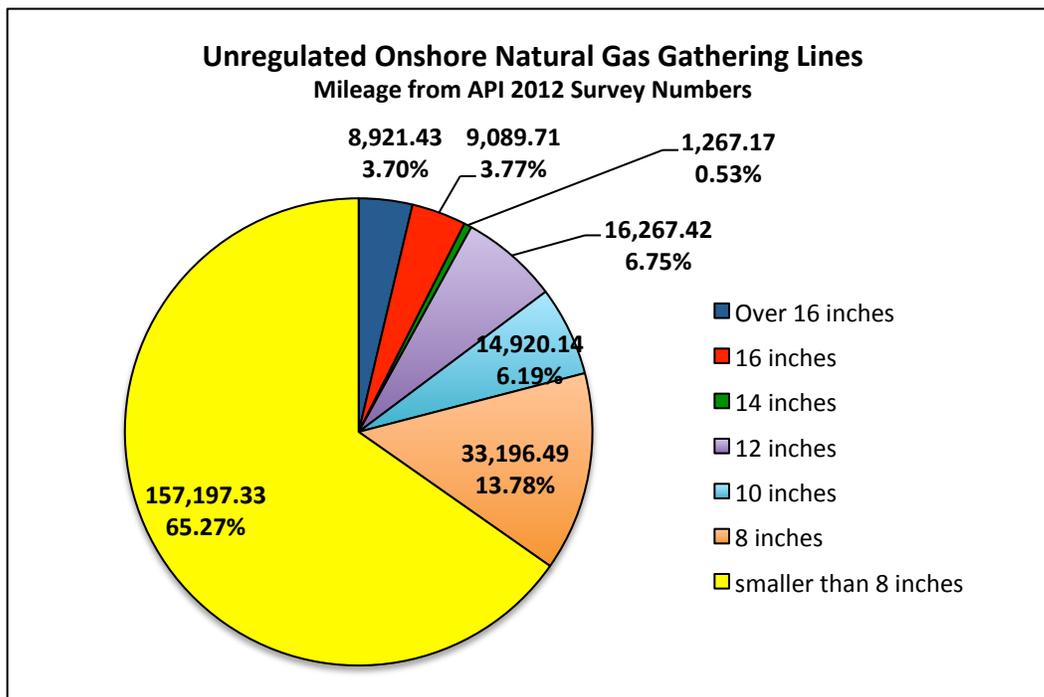
- (4) Establish a public education program under §192.616;
- (5) Establish the MAOP of the line under §192.619;
- (6) Install and maintain line markers according to the requirements for transmission lines in §192.707;
- (7) Conduct leakage surveys in accordance with § 192.706 using leak detection equipment and promptly repair hazardous leaks that are discovered in accordance with § 192.703(c); and
- (8) For Type A, Area 2 regulated onshore gathering lines only, develop procedures, training, notifications, emergency plans and implement as described in § 192.615.

There is good reason to extend these safety requirements to the hundreds of thousands of miles of currently unregulated gathering lines. Below are pictures of what a 10-inch gathering line did to a home near Midland, Texas earlier this year and a picture of the three-year-old girl who died in that pipeline failure. The exact cause of that failure is still unknown but clearly a 10-inch pipeline about 20 feet from this home posed a risk. While we support a much broader inclusion of most all of Part 192 that applies to transmission pipelines, these common sense rules that PHMSA has included in their proposal like corrosion control, damage prevention, public awareness, and leak surveys may prevent another tragedy.

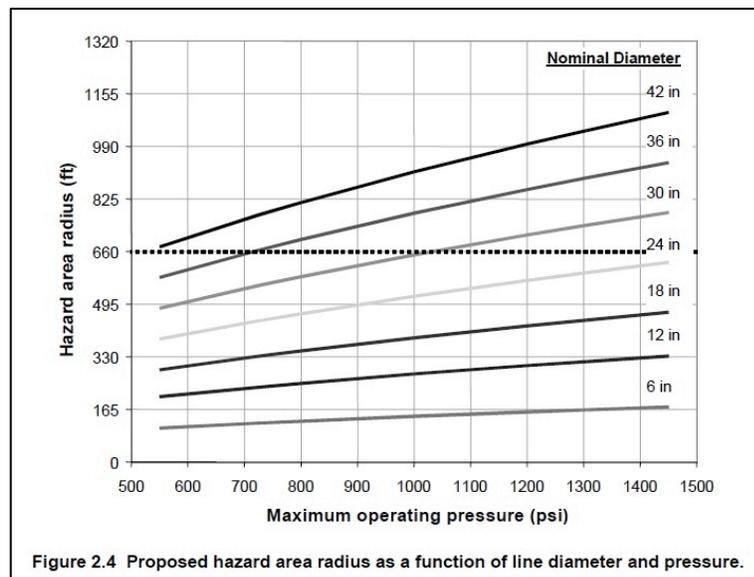


Under the recent API/GPA proposal, tragedies like this one could occur again because the new rules would be limited to pipelines over 16 inches in size. Clearly this size limit cutoff is not based on risk, but is based on drastically limiting the miles of pipeline that would be covered by these new requirements, which limits the gathering pipeline industry's expenses.

Below is a graph that shows, using API's own numbers, that the PHMSA proposal would include about a third of the more than 200,000 miles of unregulated gathering lines, but the API/GPA proposal would reduce that to less than 4% of the total. From an industry that continually talks to the public about the goal of zero incidents, the need for risk-based initiatives, and its commitment to safety culture and continuous improvement this is quite disappointing, especially when so many gathering companies say they are already voluntarily doing almost everything being discussed.



In their position Paper API/GPA talks a lot about the **“need to establish a risk-based recommended practice for these large diameter rural gathering lines.”** But nowhere do they provide any analysis of how creating an artificial cutoff for these proposed rules of lines greater than 16-inches is risk-based. Instead, they seem focused on protecting older, conventional gathering lines from regulation. As the pictures above demonstrate, regardless of whether the lines are associated with conventional or unconventional development, there is clearly a risk from 10-inch lines. Even the report developed by C-FER Technologies for the industry and now used in the PHMSA regulations to help identify the Potential Impact Radius for High Consequence Areas for transmission pipelines shows clearly that there is a risk to people living too near even an 8-inch line. Here is the graph from that C-FER report demonstrating the risk:



There is plenty of evidence that many gathering lines are being placed within 100 feet of people’s homes, so these homes are within the hazard radius of even a small pipeline.

An unintended, but clearly foreseeable consequence of the arbitrarily limited proposal by API/GPA is that it will encourage some operators to use 16 inch and smaller pipes at higher pressures to continue avoiding all regulation. This could potentially increase the risk in rural areas instead of decreasing it as PHMSA proposes.

It should also be remembered that PHMSA's state partners, the state regulators, have been asking PHMSA for much stronger regulations on rural gathering lines since 2010. In Resolution 2010-2-AC2 NAPSRS asked for all gathering lines in Class 1 areas be regulated with more stringent requirements, than what PHMSA has proposed, and much stronger than the even weaker API/GPA proposal. NAPSRS asked that all Class 1 gathering lines:

***“Operating above 20% SMYS to be regulated as Type A gathering lines”***

This would more significantly reduce risk by treating these gathering lines like transmission lines, minus the Integrity Management requirements. This clear, risk-reducing proposal from NAPSRS aligns with our belief that all higher pressure gathering lines in class 1 areas should be treated like the transmission lines that have the same risk profile. The state regulators represent the public's interest in the field, are the closest to these rural gathering lines, and will most likely be the ones to inspect the majority of any regulated gathering lines. For those reasons we trust the state regulators' judgment on the risk of these rural lines and how best to regulate them, and hope that PHMSA will move more toward their state partners' view of gathering line regulations, than toward the industry's view which is clearly conflicted between their own financial interests and their stated commitments to safety improvements.

In their recent Position Paper API/GPA says:

*“API, GPA, and other interested stakeholders have been working for the past year to develop a recommended practice that complements PHMSA's current regulations and desire to establish new safety standards for Class 1 gas gathering lines. In response to input provided throughout that process, API recently decided to limit the scope of the new recommended practice to pipelines that are greater than 16 inches in nominal outside diameter. API determined that there is a consensus on the need to establish a risk-based recommended practice for these large diameter rural gathering lines. A consensus does not exist on the need or approach that should be used in establishing a more uniform set of safety practices for smaller diameter gas gathering lines in rural areas.”*

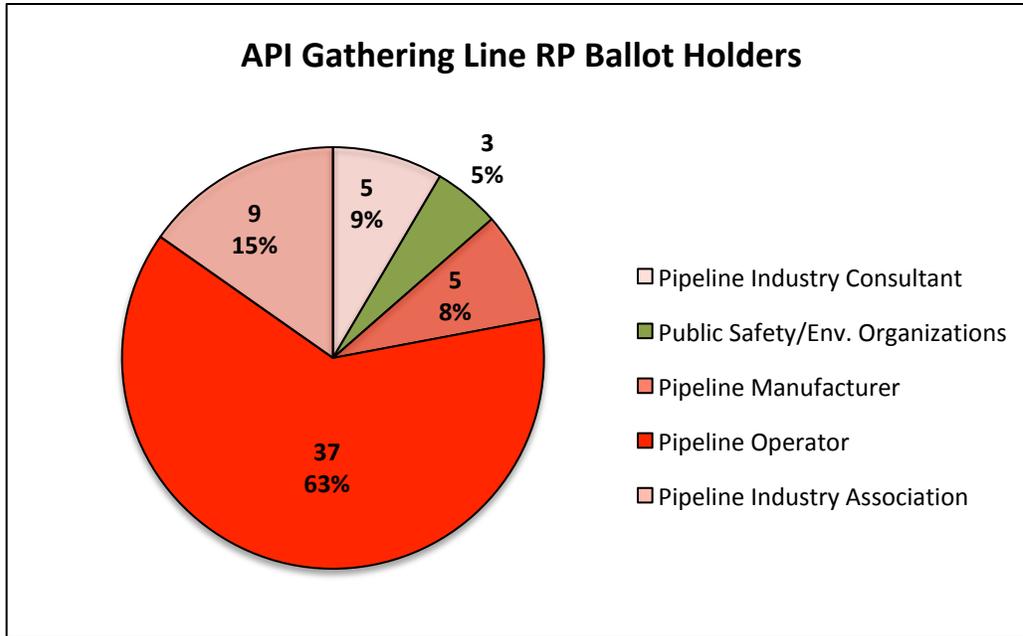
The Pipeline Safety Trust was part of that effort, but our view of the consensus referred to is very different than what is described. From the beginning the API effort to develop a recommended practice for gathering lines was designed and controlled by the pipeline industry, contrary to API's and ANSI's own standard development procedures. API's procedures state:

*“API strives for balanced representation (for example, targeting one-third representation for the traditional model of the three interest categories of operator-user, manufacturer-service supplier, and general interest) in an effort to avoid a majority of any one interest category. The criteria for balance are that no single interest category constitutes more than one-third of the membership of a consensus body dealing with safety-related standards.*

*In the event that there are insufficient consensus body members identified, or the requisite interest categories are not adequately represented to achieve balance, API staff shall make efforts to contact*

*organizations or individuals deemed appropriate for consensus body membership, or shall conduct outreach to under-represented interest categories, and document those efforts.”*

Neither the Task Group that drafted the proposed Recommended Practice, nor the group that was allowed to vote on the first version of the practice, came anywhere near to meeting API’s own “balanced representation” requirements, and there was little or no effort to reach out to others to help achieve such balance. Below is a pie chart of the people who were allowed to vote on the first draft of this recommended practice. Look balanced? These are the people who API/GPA now claim forms a “consensus” of what to do. So let’s be clear: this is a proposal by a consensus of the pipeline gathering industry recommending that any new rules require them to do as little as is possible.



You might note that in the above graph there are no regulators included. While normally PHMSA and the State Regulators participate in the meetings developing these recommended practices, they often do not vote on the proposals. In this particular case the State Regulators (NAPSR) actually withdrew from the effort earlier citing concerns with the process. Here, in part, is what NAPSR said in its withdrawal letter:

*“There are multiple reasons for withdrawal; however the primary reason is that NAPSR declines to endorse or to give any appearance of endorsement of the API Onshore Gas Gathering Line RP. ... In addition, it appears that efforts to produce the RP draft had begun, without any notifications to the industry, the public, or to State or Federal regulators, some time before NAPSR and other outside stakeholders were invited to participate. These efforts infringe upon the process for fair and unbiased development of standards or other practice documents that are produced for industry and sometimes regulatory guidance.”*

We agree with NAPSR that the process undertaken by the industry was flawed, and hope that neither PHMSA nor GPAC will now accept arguments supposedly from a “consensus” of a flawed process, that has yet to be even approved by that process.

**Regulatory Variance** - Additionally API/GPA ask that any pipeline operator be able to opt out of these proposed regulations by creating their own variance, which would be reviewed by a subject matter expert of the operator’s own choosing that it would pay for. This proposal is based on a variance

procedure for underground gas storage facilities that arose in an entirely different regulatory context: RP provisions that were originally drafted as non-mandatory. Here, the gathering industry would like to draft and approve its own exceptions to core pipeline safety requirements that apply to other regulated pipelines. While we support the idea of waivers and variances for new technology and better, more stringent safety protocols, any variance must require upfront approval by PHMSA, after public notice and compliance with NEPA.

**Emergency Response Loophole** - In addition to wanting to reduce the mileage of covered gathering lines for these common sense rules by 74,000 miles, API/GPA also want to reduce some of the emergency response requirements. Under their proposal, operators of large-diameter gathering lines would be required to:

*Implement an emergency plan in accordance with § 192.615, **except for the requirements in § 192.615(a)(3).***

The section -192.615(a)(3) - of the emergency plans they propose to exclude reads:

*(a) Each operator shall establish written procedures to minimize the hazard resulting from a gas pipeline emergency. At a minimum, the procedures must provide for the following:*

*(3) Prompt and effective response to a notice of each type of emergency, including the following:*

*(i) Gas detected inside or near a building.*

*(ii) Fire located near or directly involving a pipeline facility.*

*(iii) Explosion occurring near or directly involving a pipeline facility.*

*(iv) Natural disaster.*

So what API/GPA proposes is that fewer than 4% of gathering line operators be required to have Emergency Plans, and that even that small percentage of high pressure, large diameter pipelines that clearly require the best response, while they would be required to have a plan they would not be required to be prepared for a “*prompt and effective response*” to that emergency. We are confident that very few, if any, of the thousands of people living near the quarter million miles of unregulated gathering lines would feel safe with this exclusion.

## **Change the definitions to make it clearer where gathering lines start and stop**

The API/GPA Position Paper suggests that PHMSA should not try to clarify definitions so people know where gathering lines start after production and end downstream. They suggest that PHMSA just continue to use the API-created definitions in API RP 80. While during the comment period on this proposed rule all public commenters and the State Regulators unanimously supported changes to make these definitions clearer and enforceable, API/GPA in their position paper say that such clarity would:

*“impose an undue burden on producers and gatherers,” and*

*“would end the production function at a point much closer to the wellhead than API RP 80.”*

The fact that the proposed definition from PHMSA moves the production function much closer to the wellhead is exactly what that definition ought to do. Currently, under loopholes in API RP 80,

gathering companies can game the regulations by placing certain equipment miles downstream from their wells and thus avoid regulation. The proposed definition from PHMSA would close this loophole by using the “first point of measurement,” providing clarity for regulators and increase safety. If fixing a poorly written industry standard creates an undue burden for the industry, we think that is a burden they have brought upon themselves by trying to incorporate so many loopholes and drafting such poor standards to begin with. The need to clarify the applicability of industry-written standards makes abundantly clear why these standards should be incorporated into regulations only in situations where safety and enforceability are not compromised.

## Reporting Requirements

In their position paper API/GPA ask that the reporting requirements be reduced significantly to a smaller subset of information for regulated operators who file annual reports, and to deaths and hospitalizations for those who are unregulated. We oppose this reduction in reporting requirements. The situation in which we all find ourselves is a direct result of a lack of information about these lines, which is a direct result of the lack of any reporting requirements. The industry has repeatedly said "don't regulate until you have the information needed to know the risk", and now they are asking PHMSA not to collect the information it needs to know the risk. Why should an unregulated line that does thousands of dollars of property damage not be required to report that? Is huge property damage not important information about the risk posed by pipelines? In recent years it has also been clear that better reporting of the amount of gas released needs to occur to be able to know the risk to the atmosphere from those releases. The API/GPA proposal would limit reporting requirements on those releases, further hamstringing PHMSA from developing future regulation for continuing lack of data.

We would suggest even additional requirements for defining a reportable incident including aligning the reporting requirements for all natural gas lines with the more stringent reporting requirements already in place for hazardous liquid lines so smaller amounts released would need to be reported, the value of the gas released would be included, and any failures that result in an explosion or fire are reported also. In addition, we think it reasonable to require gathering lines of the same size and pressure as transmission lines to be required to submit data to the National Pipeline Mapping System so those lines can be mapped to better help understand where they all are.

## A Risk-based Path Forward for Rural Gathering Lines

We have always thought the easiest way to deal with the risk from gathering lines would be to treat all gathering from the first point of measurement that operate at 20% SMYS or over as if they were transmission lines, but we thought the PHMSA proposal of using an 8 inch cutoff size for regulated gathering lines was a workable first step compromise since the risk from lines under 8 inches is much reduced. If even this reasonable step is considered too far for some, then perhaps GPA's suggestion in their recent supplemental comments of allowing companies operating lines at or above 20% SMYS to use a PIR analysis to determine the risk to people can serve as the base for a compromise. The use of a PIR analysis is clearly risk-based, especially if that analysis would add an additional safety factor (say 20%), since the current PIR formula does not really incorporate potential property damage. **We would only support this policy if it applied to all pipelines 8 inches and larger**, since there is no good risk-based explanation for why people living within the PIR of a 12-inch pipeline would not be given the same protection as people living within the PIR of a 20-inch pipeline. The PIR defines where people have a higher likelihood of death from a rupture, and dead is dead whether it is an 8-inch line or a 36-

inch line that fails. We suspect this use of a PIR analysis option would greatly reduce the miles of gathering lines captured by this proposed rule, so it helps alleviate the industry's cost while at the same time it addresses the highest safety issues of protecting the public. If a company, for whatever reason, decides it doesn't want to use a PIR analysis, then it would default to the regulations in PHMSA's proposed rule.

In conclusion, we ask that PHMSA and the GPAC please reject the proposed changes meant to water down the PHMSA gathering line proposal. All three main components of the API/GPA proposal increase risk or make it difficult to determine the risk, thereby reducing the short-term costs to the industry. Please reject the nonsensical claim of 28 billion dollars in costs to the industry. How the industry can claim such high costs when they also claim that the vast majority of operators are already doing most of these requirements should make anyone question the true impact to the industry. A PIR alternative does seem like a good first step compromise since it could focus on protecting people living near these lines. As PHMSA, the industry, and stakeholders deliberate over these rules, we hope you will remember the true cost that Delaney Tercero and her family paid from a 10-inch unregulated gathering line, and the risk that thousands of people living near the quarter million miles of unregulated gathering lines live with. Please help move this country in the direction of increased safety and the so oft stated goal of zero incidents.