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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 POWER
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON
DISCUSSION DRAFT OF H.R. ____, THE "PIPELINE
INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF 2011**

JULY 15, 2011

Good morning, Chairman Whitfield, Ranking Member Rush and members of the Subcommittee. Thank you for inviting me to speak today on the important subject of pipeline safety. My name is Carl Weimer and I am testifying today as the Executive Director of the Pipeline Safety Trust. I am also a member of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee, as well as a member of the steering committee for PHMSA's Pipelines and Informed Planning Alliance. I also serve on the Governor-appointed Washington State Citizens Committee on Pipeline Safety, and bring a local government perspective to these discussions as an elected member of the Whatcom County Council in Washington State.

We are pleased to see this committee moving forward with a bill to address reauthorization of the national pipeline safety program. Even since I was here less than a month ago another incident has dumped somewhere in the order of 42,000 gallons of crude oil into the Yellowstone River in Montana, once again causing the American public to lose trust in pipeline safety. Clearly trust in pipeline safety has now been lost in Montana, so add that state to Michigan, California, and Pennsylvania where people now question whether the industry, regulators and legislators are really doing all they can to keep people and the environment safe. Moving forward a strong bill to address the tragedies of the past year, and close gaps in pipeline safety that have been identified, will help restore that trust.

Today I would like to focus my comments on the following sections of the draft bill, and a couple of areas that seem to have been omitted from the current bill and should be included:

- Section 2 – Civil Penalties
- Section 4 – Gas and Hazardous Liquid Gathering Lines
- Section 5 – Automatic and Remote-Controlled Shut-Off Valves
- Section 7 – Integrity Management
- Section 8 – Public Education and Awareness
- Section 9 – Cast Iron Gas Pipelines
- Section 10 – Leak Detection
- Section 11 – Incident Notification
- Section 13 – Pipeline Infrastructure Data Collection
- Section 15 – Transportation-Related Oil Flow Lines
- Section 17 – Cost recovery for Design Reviews
- Section 25 – Maintenance of Effort
- Section 26 – Administrative Enforcement Process
- Section 27 – Authorization of Appropriations
- Maximum Allowable Operating Pressure verification and Reporting
- Implementing the Pipelines and Informed Planning Alliance (PIPA) recommendations

Section 2 – Civil Penalties

We support the increase in potential civil penalties, although we think potential penalties should be available for any violation, so we do not think it is necessary to create a whole new category for Major Consequence Violations. PHMSA has ample discretion in their enforcement authority to use a wide range of fines, so it is not necessary to limit them in statute as to when these larger fines can be used.

If it is decided to create such a new and unnecessary category of civil violations, then the addition of the words “knowingly and willfully” in this section makes the burden of proof for these violations the same as for criminal violations. This burden of proof is very high, and in practice, would render this new section useless. In the entire history of the federal government’s regulation of pipeline safety there has been only one criminal prosecution, for the Bellingham incident. But there have been many civil penalties assessed, for example, in Carlsbad, New Mexico where twelve persons were killed. Moreover, the effect of this amendment would be to make it impossible for PHMSA to enforce against an operator who violated a regulation negligently. Given that pipelines carry massive amounts of explosive, flammable and toxic materials, operators should be subject to penalties for any violation of the regulations, without regard to what they knew or what they intended. The potential consequences of pipeline incidents justify placing the burden on the operator to assure that their facilities operate in compliance with the regulations at all times.

For those reason we think the “knowingly and willfully” should be removed.

There are also some situations where because of a lesser violation it may become apparent that a company has been seriously misinterpreting the regulations or misapplying risk-based management leaving other parts of their system ripe for significant failures. PHMSA should be able to use these larger fines to help correct those types of findings. To allow this, after Section 2 (c) (3) (C) insert new section (D) that states:

(D) a clear recognition by the Secretary that the company has significant problems with their pipeline safety program that could lead to other Major Consequence Violations in the near term.

Section 4 – Gas and Hazardous Liquid Gathering Lines

PHMSA has already told their technical advisory committees that they have found problems with the current regulations regarding gathering lines¹. There is no reason to delay by asking for them to report on this yet again, instead they should be required to move to develop new regulations as soon as possible with some minimum inclusions. Here is some proposed language.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall release an advanced notice of proposed rulemaking (ANPRM) to solicit comments on the adequacy of current regulations, and the safety of all exemptions, for gas and hazardous liquid gathering lines. The ANPRM shall at a minimum announce intentions to clarify the definition of gathering lines, require reporting of incidents on all gathering lines, and require all gathering lines to come under the same regulations as transmission pipelines.

If the above suggestion is not taken, then at a minimum the following change should be made.

Line 4, Page 7 – change to read “all *existing regulations and* exemptions ...

Section 5 – Automatic and Remote-Controlled Shut-Off Valves

This section should not only apply to pipelines “constructed or entirely replaced” after a rule is passed. At a minimum, a new rule should mandate the installation of automated valves on all pipelines in High Consequence Areas (HCAs). Maximum allowable distance between such valves in HCAs should also be defined.

Many existing pipelines, like the one that failed in San Bruno, are at least as much of a concern as new pipelines. There are already hundreds of thousands of miles of transmission pipelines in existence and only a very small percentage of mileage is added to that total each year. As written, this section provides no protection for people living near existing transmission pipelines (as in San Bruno) and only incremental protection for a tiny number of persons.

For liquid pipelines in 1992, 1996, 2002, and 2006, Congress required OPS to “survey and assess

¹ PHMSA, Briefing Papers, Onshore Gas Gathering Lines & Hazardous Liquid Gathering Lines, March 24, 2011

the effectiveness of emergency flow restricting devices...to detect and locate hazardous liquid pipeline ruptures and minimize product releases”² with the first such requirement having a deadline in 1994 (17 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.”³

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule⁴, OPS rejected the comments of the NTSB, the US Environmental Protection Agency, the Lower Colorado River Authority, the City of Austin, and the Environmental Defense Fund 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

Section 7 – Integrity Management

Expansion of integrity management is one of the most important things that can be done to help prevent future major incidents, and major pipeline industry groups such as the Interstate Natural Gas Association of America have supported such expansion. While we support the evaluation in this draft bill, we prefer the language in the bill from the Senate Commerce Committee, which includes both a review of the need to expand integrity management and whether that expansion would allow for the elimination of class locations for gas pipelines. The Senate bill requires review and rulemaking for both ideas, whereas the bill this committee is drafting only requires study of the important idea of expansion of integrity management, but mandates class locations be eliminated. Class location rules currently protect the densest population areas in the nation. Class location rules should not be eliminated unless and until industry has demonstrated to PHMSA’s satisfaction that integrity management principles are in place and at least as protective.

² See 49 USC 60102(j)(1)

³ See 49 USC 60102(j)(2)

⁴ See 49 CFR 195.452(i)(4)

Section 8 – Public Education and Awareness

There are a number of important things that are missing in this section that were included in the Senate bill. They include:

- maintain a current copy of any industry-developed or professional organization pipeline safety standards that have been incorporated by reference into regulations, to the extent consistent with fair use.
- maintain a comprehensive list, to be updated annually, and individual copy of each hazardous liquid pipeline operator's facility response plan pursuant to section 311(j)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)), excluding any proprietary or security-sensitive information that may be contained in an operator's plan

We ask that these items be added to the bill being considered today.

Section 9 - Cast Iron Gas Pipelines

This section does nothing to solve the problem around cast iron pipelines. All it does is continue to have PHMSA do a survey so PHMSA knows how bad the problem is. Congress should request a study to determine which type of cast iron pipe is most at risk, and based on already successful replacement programs what a realistic, but expedient, replacement date would be for all the cast iron pipelines most at risk. Based on those findings PHMSA should be required to implement regulations to require states and pipeline companies to implement such a replacement program.

Section 10 – Leak Detection

This section does little to address the current leak detection shortcomings. Leak detection is already required for pipelines in High Consequence Areas⁵ but as we have seen in the past year on the Chevron spill in Salt Lake City, the Enbridge spill in Michigan, and the TransCanada spill in North Dakota the leak detection systems in place did little good. What is needed is a clear standard for what the minimum leak detection capabilities required under various circumstances are. That standard needs to define the size of leak the system is required to be capable of

⁵ 49 CFR 195.452 (i) (3)

detecting, and the time required for the system to issue an alarm in the event that a leak of that size should occur.

Section 11 – Incident Notification

The key for incident notification is that it happens as soon as possible and that the NRC has enough information to notify the correct entities. The use of general volume phrases for the initial call – such as “small, medium and large” may be adequate for this purpose, but the range of those phrases needs to be defined before this change takes place, not two years later as this section is currently drafted.

We also think that the operator needs to be required (not “allowed”) to provide more accurate numerical estimates as soon as is practicable, and in no case longer than 24 hours after becoming aware of more accurate information. These more accurate numerical estimates are essential to allow agencies to gauge the adequacy of the responses provided based on the initial report.

Section 13 – Pipeline Infrastructure Data Collection

We support the language in the Senate bill that removes the words “and gathering lines” from Section 60132 (a). With the dramatic increase in the mileage of gathering lines in populated areas, many of them the same size and pressure as transmission pipelines, it is critical that regulators and state and local government at a minimum know where they are. The removal of this phrase will allow this to happen.

Section 15 – Transportation-Related Oil Flow Lines

We support the collection of this data on these oil flow lines to help PHMSA analyze the full extent of these pipeline systems. We do not support adding to the statute language that precludes PHMSA from developing standards for these types of pipelines. There is ample evidence in production states such as Alaska that spills from these types of lines cause significant damage⁶, and recently after significant spills BP entered a settlement agreement with PHMSA and EPA

⁶ *North Slope Spills Analysis: Final Report on North Slope Spills Analysis and Expert Panel Recommendations on Mitigation Measures*, Nuka Research & Planning Group, LLC for the Alaska Department of Environmental Conservation, November 2010, 244 pp., <http://www.dec.state.ak.us/spar/ipp/ara/documents/101123NSSARreportvSCREEN.pdf>

that requires an integrity management program on these types of flow lines.⁷ Precluding PHMSA from potentially developing regulations runs counter to pipeline safety and protection of the environment, so the limitation in this new subsection should be removed.

Section 17 - Cost Recovery for Design Reviews

In the draft bill the final sentence in 60117 (n) (1) (A) is drafted incorrectly and precludes collection of design review fees altogether. It should be changed to say:

“The Secretary shall not collect design safety review fees under this chapter and section 60301 for the same design safety review.”

We also think the limitation placed on such design review fees for projects that only “total at least \$4,000,000,000” is too high and negates the benefits of this section. We suggest changing the limitation to \$250,000,000.

Section 25 – Maintenance of Effort

We oppose the addition of the language that requires the Secretary to grant a state a waiver if they cannot fund their pipeline safety program “due to economic hardship.” States have the ability to fund their programs through user fees on the pipelines that run through them, so budget hardships within states should have little or no impact on a state’s ability to fund pipeline safety programs. Also, the Secretary already has the ability to waive the funding requirement for states, and during the recent economic downturn did exactly that to ensure the maintenance of adequate state program.

Section 26 - Administrative Enforcement Process

Requiring a hearing within 20 days is too onerous and will in some cases cause a delay in needed action by the Secretary, thereby putting the public at risk. For those reasons we think the exact timeline for a hearing should be left up to the Secretary to determine as part of this required rulemaking.

⁷ <http://www.epa.gov/compliance/resources/cases/civil/cwa/bpnorthslope.html>

Section 27 – Authorization of Appropriations

We completely support the changes to Section (e). These Community Pipeline Safety Information Grants are one of the few ways that local government and community associations can obtain a relatively small amount of money to hire independent experts to answer pipeline safety questions in their areas. This is the only program within PHMSA that contains a restriction on the use of user fees, and such a restriction makes it much more difficult to obtain actual appropriations for this needed grant program. For those reasons we think this change is excellent. We also note that from the 2010 authorized appropriations in the PIPES act of 2006 and the 2011 authorized appropriations proposed in this bill there is a decrease of over nine million dollars for the general operating budget of the pipeline safety program. Considering this bill asks PHMSA to hire more personnel, and move forward on a range of needed programs, we wonder if reducing their budget makes sense. Perhaps this makes total sense, but from just this high level view of the authorized money we just want to ensure this is considered.

Needed changes not addressed at all in the draft bill

Maximum Allowable Operating Pressure verification and Reporting

The Senate bill includes an important section to address one of the apparent problems that came out after the San Bruno tragedy. Clearly PG&E did not have records that could verify the type of pipeline they had in the ground so they were operating and inspecting that pipeline in inappropriate ways. How widespread this problem is in other companies is unclear, but the Senate bill would provide a means to determine this and prevent the companies from using a loophole in the current regulations to not report over pressure events. For these reason we ask that you include the Senate language in this bill as well.

Implementing the Pipelines and Informed Planning Alliance (PIPA) recommendations

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 Use⁸, 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 expanded it has led to 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 PIPA report and the associated 46 recommendations were released late last year.⁹ This is 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.

In the Pipeline Safety Improvement Act of 2002, Congress required 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...”

Although a report has now been prepared, PHMSA has done little or nothing to “encourage” State and local governments to adopt and implement “appropriate practices, laws and ordinances.” A recent statewide survey of local government planning directors conducted by the Pipeline Safety Trust¹⁰ showed that to successfully implement these needed “practices, laws, and ordinances” it will take a good deal of well targeted education and promotion by a wide range of stakeholders outside of the pipeline industry and PHMSA.

⁸ <http://pubsindex.trb.org/view.aspx?id=749178>

⁹ <http://primis.phmsa.dot.gov/comm/pipa/LandUsePlanning.htm?nocache=371>

¹⁰ <http://www.pstrust.org/TagGrant1.htm>

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.

Thank you again for this opportunity to testify today. The Pipeline Safety Trust hopes that you will closely consider the concerns we have raised and the requests we have made. If you have any questions now or at anytime in the future, the Trust would be pleased to answer them.