Pipeline Safety TRUST

Credible. Independent. In the public interest.

TESTIMONY OF
THE PIPELINE SAFETY TRUST

1155 North State Street, Suite 609
Bellingham, WA 98225
(360) 543-5686
http://www.pipelinesafetytrust.org

Presented by:

Rick Kessler, Vice President

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY
OF THE
COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
UNITED STATES SENATE

HEARING ON
PIPELINE SAFETY SINCE SAN BRUNO AND OTHER RECENT INCIDENTS

OCTOBER 18, 2011

Good afternoon, Chairman Lautenberg, Ranking Member Wicker, Senator Boxer and Members of the Subcommittee. My name is Rick Kessler and I am testifying today in my purely voluntary role as the Vice President of the Board of Directors of the Pipeline Safety Trust. My involvement and experience with pipeline safety stems from my years as one of the primary staff members on such issues in the House of Representatives and my subsequent work with the Pipeline Safety Trust.

Thank you for inviting the Pipeline Safety Trust back again to speak on the important subject of pipeline safety, focusing on pending legislation and the recent NTSB recommendations following the PG&E transmission line explosion in San Bruno, California. The Pipeline Safety Trust came into being after the 1999 Olympic Pipe Line tragedy in Bellingham, Washington that left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption.

According to PHMSA's own statistics for the past 10 years, pipeline accidents kill or hospitalize at least one person in the US every 8.7 days on average and cause more than $407 million in property damage per year. Given the tragedies in Montana, Michigan, Pennsylvania, and California, people now question whether the industry and federal and state governments are really doing all they can to keep people, property and the environment safe. They are right to do so, especially in light of the rapid aging and apparent deterioration of our pipeline system, particularly when even industry sources refer to transmission pipelines over 20 years old as "middle aged" stating that "even the best designed and maintained pipeline will become defective as it progresses through its design life." However, moving forward a strong bill to address the tragedies of the past year, and close gaps in pipeline safety that have been identified --particularly in the National Transportation Safety Board's (NTSB) recent report on the San Bruno tragedy-- will help reduce the potential for more tragedies restore the public's trust.

Pipeline Safety Program Reauthorization and Reform

Since I last testified before the Committee, you have unanimously reported legislation to reauthorize and improve the federal pipeline safety program. That legislation has stalled due to objections raised by Senator Paul of Kentucky that the bill fails to address some of the key NTSB recommendations arising out of the San Bruno tragedy including requiring retrofitting of existing pipeline segments with remote shutoff valves and to accommodate internal inspection devices, as well as deleting the grandfather clause and require that all gas transmission pipelines constructed before 1970 be subjected to a hydrostatic pressure test that incorporates a spike test. We agree with Senator Paul that this Congress should include such provisions in any legislation sent to the President for signature and stand ready to work with Senator Paul, this Committee and industry to craft language that would accomplish those goals in a manner that maximizes safety while minimizing costs to consumers and shareholders.

Now, while S. 275, as reported, does not incorporate all the improvements we believe are necessary to truly reform the program, we continue to support the bill and thank Chairman Lautenberg, Senator Thune, Senator Boxer and others for crafting balanced legislation that is worthy of enactment. We hope that as the process moves forward, there will be an opportunity incorporate the key NTSB recommendations into S. 275 as well as perfect some of the bill's language to ensure adequate oversight of grants to states and extensions of statutory re-inspection periods.

Likewise, we strongly support H.R. 2937, legislation based upon and substantially similar to S. 275 crafted by House Energy and Commerce Chairman Upton and former Chairman Dingell. Their legislation includes significant refinements and additions to the language of S. 275 to provide enhanced benefits for public safety and industry, such as a revised provision on CO2 gas pipelines requested by industry and consensus language addressing problems identified in the wake of the Exxon pipeline spill into the Yellowstone River in Montana similar to that included in legislation introduced by Senators Tester and Baucus. Not surprisingly, H.R. 2937 was recently reported by an overwhelming full committee vote of 51-0 that included some of the most conservative Republican members of the Tea Party Caucus and some of the most liberal Democratic members of the Progressive Caucus. Like S. 275, the Upton-Dingell legislation

enjoys the support of all the major industry stakeholders, environmental groups, the Pipeline Safety Trust and other public safety advocates.

Unfortunately, a third bill that was reported by the House Transportation and Infrastructure Committee, H.R. 2845, diverges sharply from the successful legislative recipe created by this Committee and adopted by the Energy and Commerce Committee. That bill fails to address in any meaningful way any of the issues raised by any of the all too numerous pipeline disasters of the past 18 months. We strongly oppose H.R. 2845 in its current form, and hope that Chairman Mica and Ranking Member Rahall will give serious consideration to adopting the formula that has proved so successful in both the Senate and House Commerce Committees.

NTSB's Report on the San Bruno Disaster

As you review the state of pipeline safety since the San Bruno explosion, the horrific Allentown disaster and other pipeline tragedies, perhaps the best place to start is the recent NTSB report on San Bruno and, particularly, its numerous, critical findings and safety recommendations. The NTSB report certainly provides us all another significant opportunity to review the DOT pipeline safety program and pending legislation and augment them to resolve some of the shortcomings identified by the Board.

As you know, the NTSB found that the leak that caused the San Bruno explosion resulted from "a fracture that originated in the partially welded longitudinal seam of one of six short pipe sections" installed in 1956. The welding, oversight and installation were done so poorly that they wouldn't have even met 1956 standards --which NTSB stated were probably "either overlooked or ignored." According to NTSB, PG&E took more than 1.5 hours to stop gas from flowing to the rupture and this unacceptably slow response time "contributed to the extent and severity of property damage and increased the life-threatening risks to the residents and emergency responders." The use of either automatic shutoff valves or remote control valves would have reduced the amount of time taken to stop the flow of gas. The Board also found that PG&E didn't have a detailed, comprehensive response plan for large-scale emergencies and

labeled "deficient and ineffective" PG&E's pipeline integrity management program.

While blame for the San Bruno disaster falls squarely on the shoulders of PG&E, the utility was certainly not the only entity implicated in this deadly failure. NTSB also found that the California Public Utilities Commission (CPUC) "failed to detect the inadequacies in PG&E's integrity management program." Our characterization of the CPUC's role in this catastrophe is less charitable: it appears that there was little to no oversight or regulation of pipeline safety by the CPUC for at least a decade before the San Bruno explosion. At a minimum, we've learned that we can't assume anything about state oversight of pipeline safety: we don't know what we don't know and what we don't know could be deadly.

Of course, one of the reasons we didn't know how bad a job the CPUC was doing of running its program is because PHMSA appears to have handed off responsibility to the state, while possibly never having done any meaningful oversight of California or PG&E's program. NTSB's report is particularly critical of PHMSA's integrity management inspection protocols and cites the agency for "not having incorporated the use of effective and meaningful metrics as part of its guidance for performance-based management pipeline safety programs." In the case of PG&E's program NTSB determined that the program:

- Was based on incomplete and inaccurate pipeline information
- Did not consider the design and materials contribution to the risk of a pipeline failure
- Failed to consider the presence of previously identified welded seam cracks as part of its risk assessment
- Resulted in the selection of an examination method that could not detect welded seam defects
- Led to internal assessments of the program that were superficial and resulted in no improvements

This begs the question as to why these shortcomings had to be uncovered by NTSB after an explosion, rather than by the agency that is supposed to overseeing industry integrity

management programs before the terrible loss of life and destruction of property occurred. While this sounds bad on its own, this criticism is particularly disheartening in light of the fact that the integrity management program represents the best of what PHMSA has to offer in terms of managing pipeline safety.

Expanding the miles of pipelines that fall under the Integrity Management rules and improving PHMSA's oversight

The Pipeline Safety Trust agrees with NTSB's criticisms of PHMSA's integrity management program and its recommendation that the Secretary of Transportation carry out an audit assessing the effectiveness of PHMSA's oversight of performance based safety programs, including the integrity management programs. Such an audit could be carried out simultaneously with PHMSA's study of mechanisms to expand the application of the integrity management programs, assuring that PHMSA's future oversight of the expanded performance based programs is effective and based on meaningful metrics backed up by complete and accurate data. If the Secretary is unwilling to take up this recommendation on his own, then we urge Congress to add language directing the Secretary or other another appropriate, objective entity to immediately undertake such an audit and make public its findings.

Despite the foregoing criticism, we do, however, continue to support expansion of integrity management to cover more areas. Congress required integrity management in High Consequence Areas (HCAs) as a way to protect the people who live, work and play near pipelines, as well to protect sensitive environmental areas and this nation's critical energy infrastructure. Since these rules began to be implemented, over 75% of all the deaths caused by these types of pipelines have occurred in areas that fall outside of the current integrity management requirements, and more than 34,000 anomalies found in High Consequence Areas have been repaired based on integrity management requirements.

Yet these requirements do not apply to the vast majority of pipelines and today only about 7% of natural gas transmission pipelines and 44% of hazardous liquid pipelines fall under these

important inspection programs. What this means is that outside of HCA's, a pipeline company can install a pipeline transporting huge quantities of often explosive fuel and leave it uninspected indefinitely – even for 50, 60, or 70 years.

It's important to note, too, that regardless of where a pipeline fails there will be a significant economic impact on the downstream markets --adversely affecting both our economic and energy security. For instance, when the El Paso natural gas pipeline failed in 2000 in a non-High Consequence Area, the staff of the Federal Energy Regulatory Commission estimated that the restriction in gas supply cost the people of California hundreds of millions of dollars. Every time a major liquid pipeline serving a refinery goes down the price of gasoline in the region skyrockets until the pipeline can be repaired and supplies returned to normal. When it comes to consumer's pocketbooks, and the welfare of the economy, every mile of pipeline is of high consequence, so every mile should be inspected so that the American people have reliable and safe pipeline infrastructure.

Many progressive pipeline operators already apply integrity management rules to significantly more miles of their pipelines than required by federal regulations. These companies do this because they think it is good business, and we couldn't agree more. Unfortunately not all companies voluntarily provide these needed safety precautions, and even those that do are not required to respond to the problems found, as they would be if these areas were covered by the integrity management rules.

Elimination of the Exemption of pre-1970 Pipelines from Hydrostatic Pressure Tests

As previously stated, we strongly support NTSB's recommendation to delete the grandfather clause and require that all gas transmission pipelines constructed before 1970 be subjected to a hydrostatic pressure test that incorporates a spike test. As Senator Paul noted, the lack of language addressing this recommendation is a serious shortcoming shared by both House and Senate Commerce Committee bills. Further, we agree that pipeline safety regulations should be revised so that manufacturing- and construction-related defects can only be considered stable if a

gas pipeline has been subjected to a post-construction hydrostatic pressure test of at least 1.25 times the maximum allowable operating pressure.

Requiring automated shut off valves for gas and liquid transmission pipelines

Seventeen years ago, Congress was debating a requirement for remote or automatic shutoff valves on natural gas pipelines in the wake of the Edison, NJ accident and the two and a half hours it took to shut off the flow of gas that fed the fireball due to the lack of a remotely controlled shut off valve. In fact, Chairman Lautenberg's own legislation introduced in 1994 would have required the installation of automatic or remote shutoff valves on existing natural gas pipelines where technically and economically feasible and yet here we sit discussing it again. It is both puzzling and sad that we still have to debate the benefits of requiring remote or automatic shut off valves after another tragedy, this time in San Bruno, California.

How is it that we shut off our televisions, close our garage doors, and lock our cars by remote control, but somehow we still find it acceptable to shut off a large pipeline spewing fire into a populated neighborhood by finding someone with a key to a locked valve and have that person drive to the valve to shut it off manually? In good weather in San Bruno that method took an hour and a half to shut off the flow of fuel. How long would that method take after an earthquake?

Existing language in S. 275and H.R. 2937 directs PHMSA to develop rules for the installation of valves on new lines in certain circumstances. Language in HR 2937, which we support, goes further in that it calls for a review to determine the viability of replacing valves on existing pipelines. The NTSB recommendation to PHMSA is that automatic or remote controlled valves be required by rule in all HCAs and Class 3 and 4 areas. Again, Senator Paul has rightly highlighted the lack of such a requirement as an important deficiency in pending reauthorization legislation and, again, we agree. The Secretary of Transportation should be directed to immediately begin a study to determine the type, placement, feasibility and phase-in period for installation of automatic or remote controlled valves on existing and new lines, and proceed

expeditiously with a rule-making requiring such installation.

It's important to note, that for liquid pipelines in 1992, 1996, 2002, and 2006, Congress required OPS to “survey and assess the effectiveness of emergency flow restricting devices…to detect and locate hazardous liquid pipeline ruptures and minimize product releases” 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.”

OPS/PHMSA never issued a formal analysis on emergency flow restricting device (EFRD) effectiveness. Instead, in its hazardous liquid pipeline integrity management rule, 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.

Congress needs to reiterate its previous mandates to PHMSA on EFRD use on liquid pipelines and ensure they are followed to mitigate the extent of future pipeline releases.

Require Natural Gas Transmission Pipelines Be Able To Accommodate Smart Pigs

Again, we support NTSB's recommendation that pipelines be configured so as to accommodate in-line inspection tools --known as "smart pigs"-- with priority given to older pipelines. While age is a risk factor in pipelines, just as it is in humans, proper inspection and maintenance can go a long way to lowering that risk. Yet, unless a pipeline is designed to accommodate an internal inspection device, corrosion and other threats that develop with age can't really be detected and evaluated. It is time to end the two decades of hand wringing by PHMSA over the need to replace pipeline segments to ensure the ability to inspect with smart pigs. Congress should

include language ensuring implementation of NTSB's recommendation in any bill sent to the President's desk.

Developing and Implementing Enhanced Standards and Requirements for Leak Detection on Hazardous Liquid and Gas Transmission Lines

In its hazardous liquid transmission pipeline integrity management rule, PHMSA requires that operators have a means to detect leaks, but there are no performance standards for such a system. This is in contrast to the State of Alaska, for example, which requires that *all* crude oil transmission pipelines have a leak detection system capable of promptly detecting a leak of no more than 1% of daily throughput. PHMSA listed in the integrity management rule various criteria for operators to consider when selecting such a device. Again, such an approach is virtually unenforceable and not protective of important environmental assets such as rivers and lakes including those not considered High Consequence Areas.

Last year's Enbridge spill in Michigan and the Chevron pipeline release near Salt Lake City are examples of what can go wrong when a pipeline with a leak detection system has no performance standards for operations. In both those incidents the pipelines had leak detection systems as required by regulations, but neither system was capable of detecting and halting significant spills. We ask that Congress direct PHMSA to issue performance standards for leak detection systems used by hazardous liquid pipeline operators by a date certain to prevent damage from future pipeline releases.

Existing language in both S. 275 and H.R. 2937 directs the Secretary to study leak detection for one year, and implement the findings of the study within another year. Again, H.R. 2937 language goes slightly farther, and includes a requirement for a study and report on leak detection technologies available for gas transmission lines. The language from H.R. 2937 could easily be amended to include language that meets the recommendations of the NTSB with regard to leak detection by providing that the study on leak detection technologies for gas lines be followed by a rulemaking requiring the SCADA systems of gas transmission operators to be equipped with tools to recognize and locate leaks.

Regulating Gas Gathering Pipelines

Significant drilling for natural gas has led to a large expansion of gathering and production pipelines in highly populated urban areas. For instance, in Fort Worth, Texas there are already 1,000 producing gas wells within the city limits and at least that many more planned. Development of advanced shale gas drilling methods has led to thousands of new wells being drilled and proposed in more populated areas of Texas, Arkansas, Louisiana, Pennsylvania and New York. Pipelines will connect to all of these wells, and the regulatory oversight of these pipelines is less than clear and in some cases non-existent. According to a recent briefing paper from PHMSA they only regulate 20,150 miles of onshore gathering lines, but they estimate that there are 230,000 miles of such lines. Many of these lines are the same size and pressure as transmission pipelines, but they are regulated far less, if at all.

To make matters worse, the standard (API RP 80) for determining what is and isn't a gathering line was written by the American Petroleum Institute and adopted into federal regulations. The API standard provides too much wiggle room for gas producers to design their systems to avoid regulations. PHMSA's recent briefing paper also recognizes this problem saying "enforcement of the current regulations has been hampered by the uncertainties that exist in applying API RP 80."

We believe it is time to ensure that any gathering or production pipeline with similar size and pressure characteristics to transmission pipelines fall under the same level of minimum federal regulations, including the integrity management requirements for those in high consequence areas. The current language in S. 275 and H.R. 2937 requires PHMSA to produce a study on the regulatory issues with onshore gas production and gathering pipelines, and institute a rule making based on the findings. This is language we support and hope to see enacted.

Regulating Unregulated Liquid Pipelines

Onshore oil wells and their associated pipelines have a troubling spill record and a highly inadequate oversight framework, which needs to be addressed by Congress and the Obama Administration. Recently, the Administration and BP agreed to a proposed civil settlement for 2006 pipeline spills on the North Slope of $25 million plus a set of required safety measures on BP's federally unregulated North Slope pipelines. Under the requirements of the settlement, BP's federally-unregulated oil field pipelines, i.e., three-phase flowlines (gas, crude, produced water mixture), produced water lines, and well lines, now will be subject to integrity management requirements largely similar to those that must be met by transmission pipelines in 49 CFR 195. While this settlement certainly is a welcome step for BP's lines and an important precedent, Congress in its pipeline safety act reauthorization and PHMSA need to move forward expeditiously on requiring such measures for lines operated by other companies in Alaska and the Lower 48.

BP's March 2006 spill of over 200,000 gallons was the largest crude oil spill to occur in the North Slope oil fields and it brought national attention to the chronic problem of such spills. Another pipeline spill in August 2006 resulted in shutdown of BP's production in Prudhoe Bay and brought to light major concerns about systemic neglect of key infrastructure. Lack of adequate preventive maintenance was not a new issue, however, as corrosion problems in Prudhoe Bay's and other oil field pipelines have been raised previously by regulators and others, including as early as 1999 by the Alaska Department of Environmental Conservation.

As additional evidence of the problems with upstream infrastructure, the State of Alaska completed a report in November 2010, which reviewed a set of over 6,000 North Slope spills from 1995-2009. This report showed that there were 44 loss-of-integrity spills/year with 4.8 spills greater than 1,000 gallons/year. Of the 640 spills included in the report, a significant proportion, 39%, were from federally unregulated pipelines.

We ask that Congress close the loopholes on these federally unregulated pipelines and direct PHMSA to move forward as fast as is practicable to put in place regulations similar to what was recently agreed to by BP on their unregulated North Slope pipelines.

Correcting the Pipeline Siting vs. Safety Disconnect, and Ensuring PHMSA's Ability to Provide Inspections When Pipelines Are Being Constructed

With thousands of new miles of pipelines in the works, the disconnect between the agencies that site new pipelines and PHMSA, the agency that is responsible for the safety of the pipelines once they are in service, has become quite apparent. While siting agencies go through supposedly comprehensive environmental review processes, these processes are functionally separate from the special permits or response plans or high consequence area analyses that are overseen by PHMSA. Many of the PHMSA determinations go through very limited public process (special permits), or processes that take place after the pipeline siting approval is granted (emergency response plans), and some are totally kept from the public (high consequence areas). How can local governments, citizens, or even other federal agencies assess the real potential impact of a pipeline if the environmental review and the safety review processes are so disconnected?

A perfect example of this disconnect is currently taking place regarding the Presidential Permit that the U.S. State Department is considering for the Keystone XL pipeline. For months now national organizations have been asking specific pipeline safety questions related to the corrosiveness and abrasiveness of the product the Keystone XL will transport. The U.S. EPA questioned the State Department's SDEIS because not enough information was included regarding the proposed products to allow for an analysis of the effects if a spill should occur. While the State Department is in charge of granting the permit to allow the pipeline to be sited, PHMSA is the agency in charge of both pipeline safety and spill planning for the pipeline, yet it has been silent on these issues. As Senator Johanns from Nebraska said during a pipeline safety hearing last year "Of all the expertise relative to pipelines in the federal government I can't imagine it would be at the State Department." Unfortunately the State Department seems to be getting precious little help from the agency in charge of pipeline safety –PHMSA. This disconnect between siting and safety needs to be corrected.

Two years ago, PHMSA held a special workshop to go over the numerous problems they found

during just 35 inspections of pipelines under construction. These inspections found significant problems with the pipe coating, the pipe itself, the welding, the excavation methods, the testing, etc. PHMSA's findings, and stories we have heard from people across the country, call into question the current system - or lack of one - of inspections for the construction of new pipelines. This construction phase is critical for the ongoing safety of these pipelines for years to come. Since PHMSA has authority over the safety of pipelines once they are put into service, it makes sense to us that during construction they also are conducting field inspections and sufficiently reviewing records to ensure these pipelines are being constructed properly. Unfortunately, there is a built-in disincentive for PHMSA to spend the necessary time to ensure proper construction. Under current rules PHMSA receives no revenue from these companies until product begins to flow through the pipelines, so any staff time spent on these pre-operational inspections has to be paid for from money collected for other purposes from already operational pipelines.

For these reasons, the Pipeline Safety Trust asks that Congress pass new Cost Recovery fees, similar to those included in Section 17 of the PIPES act for LNG facility reviews, to allow PHMSA to recoup their costs related to providing safety information during the review process for all new pipelines and legitimate inspections during the construction phase without taking resources away from other existing activities. Hopefully this additional revenue will help PHMSA ensure that pipeline siting agencies adequately assess pipeline safety issues. The existing language in both House bills and the Senate dramatically limit cost recovery to review of new pipelines with costs exceeding $1 or 3.4 billion dollars. We ask that the language from the Administration's bill be substituted into the Senate bill, allowing cost recovery for review of all lines, regardless of cost or technology used.

Continuing to Push State Agencies on Damage Prevention

Property owners, contractors, and utility companies digging in the vicinity of pipelines are still one of the major causes of pipeline incidents, and for distribution pipelines over the past five years excavation damage is the leading cause of deaths and injuries. Unfortunately, not all states have implemented needed changes to their utility damage prevention rules and programs to help

counter this significant threat to pipelines.

In the PIPES Act of 2006 Congress made clear its desire that states move forward with damage prevention programs by defining the nine elements that are required to have an effective state damage prevention program. The Trust is pleased that PHMSA has recently announced its intent to adopt rules to incorporate these nine elements, and its intent to evaluate the states progress in complying with them. We also support PHMSA's plan to exert its own authority to enforce damage prevention laws in states that won't adopt effective damage prevention laws. We hope Congress will encourage PHMSA to move forward with this proposed rulemaking in a timely manner, and make it clear to the states that federal money for pipeline safety programs depends upon significant progress in implementing better damage prevention programs.

It may also be necessary for Congress to clarify important parts of good damage prevention programs. Many states have exemptions to their damage prevention "one call" rules for a variety of stakeholders including municipalities, state transportation departments, railroads, farmers, and property owners. We believe such exemptions, except in cases of emergencies, are unwarranted for municipalities, state transportations departments and the railroads, and urge both Congress and PHMSA to make it clear that these types of exemptions are not acceptable in an effective damage prevention program. While we are skeptical regarding exemptions of any type, limited exemptions for the farm community and homeowners in specific circumstances may be necessary to make the programs efficient, affordable and enforceable.

Although PHMSA likes to call itself a data-driven agency, there is a serious lack of data to determine the extent, causes, or perpetrators of excavation damage to pipelines. For example, because of the limited reporting requirements, the PHMSA incident database only includes about 70 total pipeline incidents nationwide in 2008 caused by excavation damage. Yet the Common Ground Alliance's 2008 DIRT database reports well over 60,000 excavation events that affected the operation of natural gas systems alone.

For these reasons, the Trust asks that Congress direct PHMSA to correct this substantial data gap

by ensuring more accurate reporting and a database for excavation damage to ensure that the effort and money being spent is well targeted and effective. Because most states have taken on the responsibility of operating state-based damage prevention programs it may well be easiest to just have PHMSA require states to adopt reporting requirements as part of their damage prevention programs.

Continuing The implementation and Funding of Technical Assistance Grants to Communities

Over the past two and a half years, PHMSA has started the implementation of the Community Technical Assistance Grant program that was authorized as part of the Pipeline Safety Improvement Act of 2002 and clarified in the PIPES Act. Under this program more than a million dollars of grant money has been awarded to communities across the country that wanted to hire independent technical advisors so they could learn more about the pipelines running through and surrounding them, or be valid participants in various pipeline safety processes.

In the first two rounds of grants, PHMSA funded 46 projects in 22 states from California to Florida. Local governments gained assistance so they could better consider risks when residential and commercial developments are planned near existing pipelines. Neighborhood associations gained the ability to hire experts so they could better understand the “real” versus the imagined issues with pipelines in their neighborhoods. And farm groups learned first-hand about the impacts of already-built pipelines on other farming communities so they could be better informed as they participate in the processes involving the proposed routing of a pipeline through the lands where they have lived and labored for generations. Overall, we viewed the implementation of this new grant program as a huge success.

The Trust appreciates your efforts to ensure the reauthorization of these grants, as provided for in S. 275 to continue to help involve those most at risk if something goes wrong with a pipeline. We further ask that you accept language from H.R. 2937 to allow the use of user fees in funding these grants.

Continuing to Make More Pipeline Safety Information Publicly Available

Over the past two reauthorization cycles, PHMSA has done a good job of providing increased transparency for many aspects of pipeline safety. In the Trust's opinion, one of the true successes of PIPES has been the rapid implementation by PHMSA of the enforcement transparency section of the act. It is now possible for affected communities to log onto the PHMSA website and review specific enforcement and inspection actions regarding local transmission pipelines. This transparency for the most part should increase the public's trust that our system of enforcement and inspection of pipelines is working adequately or in some instances may provide the information necessary for the public to push for improvements from specific companies. PHMSA has also significantly upgraded their incident data availability and accuracy, and continues to improve their already excellent "stakeholder communication" website.

There is also a need to make other information more readily available. This includes information about:

• **High Consequence Areas (HCAs).** These are defined in federal regulations and are used to determine which pipelines fall under more stringent integrity management safety regulations. Unfortunately, this information is not made available to local government and citizens so they know if they are included in such improved safety regimes. Local government and citizens also would have a much better day-to-day grasp of their local areas and be able to point out inaccuracies or changes in HCA designations if this information were publicly available.

• **Emergency Spill Response Plans.** As has been learned in the Gulf of Mexico tragedy, it is crucial that spill response plans are well designed, adequately meet worst-case scenarios, and use the most up-to-date technologies. While 49 CFR §194 requires onshore oil pipeline operators to prepare spill response plans, including worst case scenarios, those plans are difficult for the public to access. To our knowledge the plans are not public documents, and

they certainly are not easily available documents.

The review and adoption of such response plans is also a process that does not include the public. In fact PHMSA has argued that they are not required to follow any public processes, such as NEPA, for the review of these plans. If the Gulf tragedy has taught us nothing else it should have taught us that the industry and agencies could use all the help they can get to ensure such response plans will work in the case of a real emergency.

It is always our belief that greater transparency in all aspects of pipeline safety will lead to increased involvement, review and ultimately safety. There are many organizations, local and state government agencies, and academic institutions that have expertise and an interest in preventing the release of fuels to the environment. Greater transparency would help involve these entities and provide ideas from outside of the industry. The State of Washington has passed rules that when complete spill plans are submitted for approval the plans are required to be made publicly available, interested parties are notified, and there is a 30 day period for interested parties to comment on the contents of the proposed plan. We urge Congress to require PHMSA to develop similar requirements for the adoption of spill response plans across the country, and that such plans for new pipelines be integrated into the environmental reviews required as part of the pipeline siting process.

• **State Agency Partners.** States are provided with millions of dollars of operating funds each year by the federal government to help in the oversight of our nation's pipelines. While there is no doubt that such involvement from the states increases pipeline safety, different states have different authority, and states put different emphasis in different program areas. After the San Bruno tragedy an independent review panel was formed to review problems with the pipeline safety system in California. One of their recent conclusions regarding the California Public Utility Commission was that *"**it would be difficult for the gas safety staff to offer assurances on the quality of prevailing integrity management efforts they audit**."* Why was it that such stunning conclusions about one of the largest pipeline safety programs in the nation were not understood before eight people were killed? Each year PHMSA audits

each participating state program, yet the results of those program audits are not easily available. We believe that these yearly audits should be available on PHMSA's website and that some basic comparable metrics for states should be developed. It is not only the performance of pipeline companies that needs to be inspected.

Implementing Expansion of Excess Flow Valve Requirements

One of the Trust's priorities that was well-addressed in the PIPES Act was to require the use of Excess Flow Valves (EFVs) on distribution pipelines for most new and replaced service lines in single family residential housing. While this was a huge step forward, the National Transportation Safety Board (NTSB) has continued to push for an expansion of the use of EVFs in multi-family and commercial applications **"when the operating conditions are compatible with readily available valves."**

From closely following the deliberations of PHMSA's Large Excess Flow Valve Team, it is our opinion that there are thousands of potentially compatible structures being constructed or renewed which could be afforded greater safety by the installation of Excess Flow Valves (EFVs). It is clear from the data provided by PHMSA that the service lines serving a majority of these types of structure fall within the size constraints of commercially available EFVs. It is also clear from the data that the vast majority of these gas services are provided at pressures that avoid the concerns regarding low pressure lines.

There are many multi-family residential, small office, and retail structures that for all intents and purposes have the same load profiles as a single family residence. For these types of applications PHMSA and the industry need to move forward with rules to require installation of EFVs for new and renewed gas service.

For these reasons the Pipeline Safety Trust urges Congress to direct PHMSA to undertake a rulemaking—as the National Transportation Safety Board has requested—that would require EFVs be installed on the many types of structures where "**operating conditions are compatible**

with readily available valves."

Conclusion

Thank you again for this opportunity to testify today. At the end of the day, we note that many of the most important changes to the federal pipeline safety program we have requested could be instituted without legislation and have been recommended by safety experts over and again throughout the past decade or more. All we need is a President, a Secretary and an agency that has the will to get the job done. The Pipeline Safety Trust hopes that both that Congress and the Administration will seriously consider the concerns we have raised and the requests we have made. If you have any questions now or at any time in the future, the Trust would be pleased to answer them.