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**TESTIMONY OF**

**THE PIPELINE SAFETY TRUST**

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**Presented by**

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**BEFORE THE**

**UNITED STATES SENATE**

**COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION**

**HEARING ON**

**REAUTHORIZATION OF THE PIPELINE SAFETY PROGRAM**

**NOVEMBER 16, 2006, 10 a.m.**

Mr. Chairman and Members of the Committee:

Good morning, and 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 Office of Pipeline Safety's Technical Hazardous Liquid Pipeline Safety Standard Committee, as well as the chairman of the Governor appointed Washington State Citizens Committee on Pipeline Safety. I also bring a local government perspective to these discussions as an elected County Commissioner in Washington State.

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 to our region. After investigating this tragedy, the U.S. Justice Department recognized the need for an independent organization that would provide informed comment and advice to both pipeline companies and government regulators; and, would provide the public with an independent clearinghouse of pipeline safety information. The federal trial court agreed with the Justice Department's recommendation and awarded the Pipeline Safety Trust \$4 million which was used as an initial endowment for the long-term continuation of the Trust's mission.

The vision of the Pipeline Safety Trust is simple. We believe that communities should feel safe when pipelines run through them, and trust that their government is proactively working to prevent pipeline hazards. We believe that the local communities who have the most to lose if a pipeline fails should be included in discussions of how better to prevent pipeline failures. And we believe that only when trusted partnerships between pipeline companies, government, communities, and safety advocates are formed, will pipelines truly be safer.

The Pipeline Safety Trust is the only non-profit organization in the country that strives to provide a voice for those affected by pipelines that normally have no voice at proceedings like this. With that in mind, I am here to speak today for the families who lost their husbands and fathers in the 2004 Walnut Creek California pipeline explosion caused when the pipeline company incorrectly marked the location of their pipeline. I am speaking today on behalf of the people living along the Kentucky and Ohio Rivers who in 2005 awoke to find 290,000 gallons of crude oil had been dumped by a pipeline into those rivers. And I am here to speak today on behalf of the

people who were affected by the more than 846 million dollars of property damage that pipelines are responsible for in the past five years.

The Pipeline Safety Trust has already provided testimony this year to both the House Transportation and Infrastructure Committee and the House Energy and Commerce Committee. As the reauthorization process has proceeded many different ideas have been incorporated into the different bill versions, so I would like to start this morning by providing our opinion on which of these ideas will do the most to make pipelines safer.

### **Best provisions in the different bills**

**Low-Stress Pipelines** – We **support** the provisions in Senate Bill 3961, and appreciate the addition in Section 3(3) that clarifies that certain exemptions do not apply to incident reporting and the national pipeline mapping system.

The 200,000 gallon crude oil leak on the North Slope of Alaska last winter, the additional leak found this past summer followed by a partial shut-down of the Prudhoe Bay Oil Field, and the ensuing fiasco concerning BP's previously inadequate pipeline maintenance and testing have made it clear that all such low-stress pipelines should fall under the same minimum federal standards as other transmission pipelines. Likewise, those sections of pipeline, which could affect Unusually Sensitive Areas, should be required to meet the same integrity management provisions as other transmission pipelines.

The Pipeline and Hazardous Material Safety Administration (PHMSA) is currently engaged in a rulemaking on these low-stress pipelines that has as a starting point a proposal that is much weaker, and more confusing, than what is included in Senate Bill 3961, and the version of the bill coming forward from the House Energy and Commerce Committee. We hope that Congress will pass these provisions soon so that PHMSA understands the importance Congress has put on ensuring these pipelines are maintained in a way that protects the environment and the economy.

**Senior Executive Signature on Integrity Management Reports** – We **support** this inclusion in Senate Bill 3961, and believe it is an excellent method to ensure that the senior management that makes decisions regarding maintenance, testing, and budget decisions affecting pipeline safety are also aware of the current integrity of their federally-regulated pipelines.

**Distribution Integrity Management Program & Deadline** - The majority of deaths and injuries from pipelines occur from incidents on the distribution pipeline systems that bring gas to our towns, businesses, and homes. From the period 2001 through 2005 sixty-one people died along these pipelines, and two hundred and thirty seven were injured. PHMSA, states, industry, and private organizations have undertaken an aggressive work plan to come up with an integrity management program for distribution pipelines. The Phase 1 report on this plan was released earlier this year, and all involved deserve our thanks for their efforts.

It is imperative that this plan now moves to the adoption of rules as soon as possible. We applaud and **support** the one-year requirement in all the present bills for the development of such standards.

One area that bills differ is regarding requirements to include criteria for the installation of excess flow valves. The National Transportation Safety Board (NTSB) has recommended to PHMSA that excess flow valve installation be mandatory in new construction and when existing service pipelines are being replaced or upgraded. The International Association of Fire Chiefs supports this mandatory installation position. The Pipeline Safety Trust commissioned an independent review of the literature and science on excess flow valves, and that review came to the same mandatory installation conclusion.

For these reasons we **support** the language in Senate Bill 3961 that includes the development of criteria for requiring the installation of excess flow valves.

**Enforcement Transparency** – One of the things that PHMSA has been criticized for in the past is the lack of the use of enforcement to deter future accidents. In our own Bellingham tragedy, PHMSA announced with great fanfare a proposed penalty of 3.02 million dollars. Then for nearly five years the regulators and the pipeline company went behind closed doors, and when they emerged the fine had been mysteriously reduced to \$250,000. The only information available to the public regarding why this drastic reduction had occurred was the short phrase in the Settlement Order that said “In order to avoid further litigation or expense, OPS and Olympic resolve this case.” This did not sit well with the people in Bellingham, and certainly does not instill confidence or trust in a regulatory agency.

In 2000 the El Paso Pipe Line in New Mexico blew up killing an entire extended family of twelve. Again PHMSA announced with much fanfare a proposed 2.52 million dollar fine. Now, over six years later, there is no information available about the status of that penalty, and it appears that not one cent of it has been collected.

Most law enforcement in this country takes place in public for good reasons. Public scrutiny enhances credibility, accountability and fairness. Seeing PHMSA expeditiously enforce its regulations would instill confidence that safe pipeline operation is a requirement rather than a guideline. If companies challenge fines because regulations are poorly crafted, the public could demand better rules.

We **support** the language in Senate Bill 3961, which requires PHMSA to electronically post monthly summaries of its enforcement actions. We also **support** the language in the House Energy and Commerce Bill that provides operators the ability to provide response to PHMSA enforcement actions to better illustrate both sides of the enforcement story. This only seems fair, and we hope the Senate Commerce, Science & Transportation Committee will adopt this additional language as well.

**Technical Assistance Grants** - The Pipeline Safety Improvement Act of 2002 included a new program to enhance the understanding and involvement of local communities and state initiatives in pipeline safety issues by making grants of up to \$50,000 available for "technical assistance to local communities and groups of individuals relating to the safety of pipeline facilities in local communities."

These grants were envisioned as a way to keep valuable independent pipeline safety initiatives moving forward, and to ensure that those most directly impacted by pipeline failures have the resources to become legitimate stakeholders in processes to improve pipeline safety. Examples of groups that could benefit from such grants include the Washington City and County Pipeline Safety Consortium and the Kentucky Pipeline Safety Advisory Committee. Both of these groups formed after major pipeline failures and involve a broad spectrum of stakeholders looking for solutions to keep their communities safe and avoid further pipeline accidents. These grants would be a small price to pay to help foster such outstanding examples of independent pipeline safety initiatives, and pipeline safety involvement. Such local involvement is critical as PHMSA moves forward in the areas of pipeline damage prevention and encroachment. Another potential use of the grants is to pay for increased public and local government involvement in industry standards development and to assist in public comments on technical regulations.

To date none of these grants have been awarded, and to our knowledge PHMSA has not even begun the process to develop procedures to award such grants. We **support** the language in Senate Bill 3961, which would

reauthorize these grants, and provide PHMSA an incentive to move demonstrations of this program forward sooner rather than later.

**State pipeline damage prevention programs** – For years now PHMSA has partnered with the Common Ground Alliance and one call centers to provide a nationwide structure to educate contractors, utilities, local government, and the public on the need to be aware of the underground pipeline infrastructure, develop best management practices, and use one-call locator services. These have been valuable programs, and have laid the start of a national network to improve pipeline damage prevention.

It has become apparent over the past few years that for these efforts to be truly effective there needs to be enforceable laws, and adequate local enforcement of those laws, to provide the incentive for all who dig to pay attention to how and where they dig. Progressive states such as Virginia and Minnesota have proven that with good education programs coupled with data collection and adequate and fair enforcement, the number of incidents of damage to pipelines decreases considerably.

The only way that state and local enforcement will increase is if Congress provides increased funding to the state's pipeline programs, and allows PHMSA to distribute that funding in such a way that it is an incentive for states to increase their capacity for enforcement. We **support** the language in Senate Bill 3961, which provides for greater funding of state damage prevention programs, and provides clarity of what such programs should include. We also believe that at this point in time it is important that this money is available to help states develop such programs, so we also **support** the language that was included in the House Energy and Commerce Bill that amends 60105 (b) (4) to make it clear that a state that is "encouraging and promoting the establishment of a program" can receive the grant funding even if the program is not yet fully in place.

**Safety Orders** – We fully **support** the language in Senate Bill 3961, which allows PHMSA to waive notice and a hearing in an emergency. We **oppose** the language in the Senate Bill, which requires the new rules be in place before a safety order can be issued. We hope that these rules will be promulgated swiftly, and **support** the "within one year" provision in the House Energy and Commerce Bill, but we do not believe issuance of such important orders should be put on hold until these new rules are promulgated.

**Permit Streamlining** – We supported the language in Section 16 of the Pipeline Safety Improvement Act of 2002 that gave PHMSA authority to help expedite and coordinate the repair of existing pipelines to help ensure timely

safety repairs without preempting any federal, state, or local environmental laws. We have not seen any documented need for permit streamlining for the construction and expansion of pipelines. Until such documented need is proven we **oppose** the language in Section 13 of Senate Bill 3961. Additionally, this section does not contain critical language prohibiting preemption of federal, state, or local environmental laws.

**One-Call Civil Enforcement** – We **support** the language in Senate Bill 3961. We agree that PHMSA’s authority should not be limited in any state, and that calling 911 to report damage should not be the only method included. We also **support** the language that includes operators who fail to respond to location requests in a timely manner, or who mark pipelines incorrectly.

**Gas Pipeline Integrity Reassessment Interval** - The first cycle of integrity management assessment for gas pipelines has not even been completed yet, so we **support** the Senate Bill’s authors who chose not to address the reassessment interval at this early date.

**Human Factor Risk Management Rulemaking** - We **support** the 18 month requirement for development of these standards, and also **support** the specific language in Senate Bill 3961 that requires these standards to address work hours and schedules.

**Leak Detection Technology Report** - We **support** the language in Senate Bill 3961 which requires a report from PHMSA within one year on the effectiveness of current leak detection technology.

Although Senate Bill 3961 and the associated House Bills contain many important improvements to pipeline safety, we feel that there are still some significant omissions from all of these bills. We ask that you amend Senate Bill 3961 to include the following provisions.

## **Needed improvements Missing at this Time**

### **The need for more publicly available information**

One of the Pipeline Safety Trust’s highest priorities is to ensure that there is enough accurate information easily available to local governments and the public to allow them to independently gauge the safety of the pipelines that run through their communities. PHMSA has made a good deal of progress in this area, but some of the most important information pieces are still missing. We ask that you help make this information available.

**Maps** – Maps that allow local government emergency responders, planners, and zoning officials to know where pipelines are in relation to housing developments and a variety of infrastructure are critical to prevent pipeline damage and increase pipeline safety. Maps that allow the public to see what pipelines run through their neighborhoods are also the best way to capture the public’s attention regarding pipeline safety, increase their awareness of pipeline damage issues, and enlist them to be the eyes to help prevent pipeline damage. Maps also allow homebuyers to decide their own comfort level with living near pipelines.

The 2002 Pipeline Safety Improvement Act required that pipeline companies provide PHMSA with data for the National Pipeline Mapping System (NPMS) so such maps could be available for the above purposes. Unfortunately after the September 11<sup>th</sup>, 2001 terrorist attacks the NPMS system was removed from easy access and became a password-protected system that approved users have to agree not to share with anyone else. This new NPMS security removes the maps from the public altogether, and makes the system mainly useless for local government since the map information can not be added to local GIS systems or planning maps because of the required non-disclosure.

This removal of maps out of fear that terrorists may use them to find targets flies in the face of common sense. The location of pipelines are no secret, in fact 49 CFR 195.410 requires that “Markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.” If terrorists want to find pipelines, they will. All that has been accomplished by removing maps from the public is to increase the growing problem of encroachment near pipelines, and of unintentional damage to pipelines.

This removal of the NPMS from the public has also caused some states, such as Washington, Texas and Louisiana, to spend their limited state dollars to duplicate this mapping system so that local government and the public have access to this valuable information.

For these reasons we ask that you direct PHMSA to reinstate access to the NPMS, so local governments can plan safely and the public can be aware of the pipelines that run through their midst.

**Access to Inspection Findings** – One of the most important functions that PHMSA provides is the ongoing independent inspection of pipeline companies’ operations, maintenance, and training programs. The findings of these inspections form one of the very basic protections to the public. Unfortunately none of these inspection findings are available for local

government or the public to review, leaving them to only guess the condition of pipelines, or even if such inspections are taking place.

The pipeline industry themselves complains about this system. Individual companies do know when they have been inspected, but often have to wait months or years to learn the outcome of the inspections, and most times if no problems were found they hear absolutely nothing. This lengthy, or non-existent, feedback system to pipeline companies is unfair, and does not improve safety the way a timely feedback system would.

Somewhere there must exist, or there should exist, a simple coversheet for each inspection that includes basic information such as pipeline segment included, the date of the inspection, type of inspection, concerns noted, and corrections required. If this basic information, along with associated correspondence between the agency and the pipeline company, were provided on an internet-based docket system that could be searched by state or pipeline company name, we believe it would go a long way toward demonstrating progress, and thus increasing trust in pipeline safety. This inspection transparency would go hand in hand with the enforcement transparency that is already included in Senate Bill 3961.

**Reporting of Over-pressurization Events** – One of the clearest measurements of whether a pipeline company has good control of their pipeline system is the number of times that they allow their pipeline to exceed the maximum allowable operating pressure plus a permitted accumulation pressure for gas pipelines, or 110% of the maximum operating pressure for liquid pipelines. Unfortunately the vast majority of these events are not required to be reported to PHMSA, so neither PHMSA nor the public can use this indicator to determine whether the pipeline company is causing unwarranted stress on their pipeline and therefore needs greater scrutiny.

In the 1980's when it was decided to provide an exemption to reporting most of these important events the reasoning was that the reporting would be extremely time intensive and costly for the industry, and PHMSA (RSPA at that time) had no database that would handle the data in a way that would be valuable for the agency. Fifteen years ago email, the internet, and integrated databases were a vague dream. That has all changed, so the arguments used against the collection of this valuable information no longer apply. Furthermore, with increased capabilities in control room technology, remote communications, and integrity management the number of over-pressurization events should have reduced. Without this reporting requirement we have no way to know.

For these reasons the exemptions from reporting these events contained in

49 CFR 191.23 (b) and 49 CFR 195.55 (b) should be removed.

### **Pipelines and Informed Planning Alliance (PIPA)**

In August of 2004 the Transportation Research Board of the National Academies released a study on the feasibility of developing risk-informed land use guidance near existing and future transmission pipelines for use by state and local governments. This study was an attempt to address the need for local governments to use land use and zoning laws to try to protect citizens and pipelines from encroachment by development near existing pipelines and in the siting of new pipelines.

The vast majority of local planning departments have little expertise or knowledge of pipelines, so developing such guidance is a crucial part in the overall strategy of damage prevention. PHMSA provided a report to Congress on the development of these guidance activities in January of 2005. One of the major pieces of that report was the establishment of the Pipelines and Informed Planning Alliance (PIPA), a multi-stakeholder effort aimed at designing and moving this risk-informed land use guidance forward.

This effort will not be easy because many of these stakeholders have little reason to add concern for pipelines very high up on their already crowded list of priorities, but it is essential that this effort get underway. This is another area where increased funding for state participation, and funding of the Pipeline Safety Information Grants to allow these stakeholder groups to participate as equal partners, will be required for a successful outcome.

The Pipeline Safety Trust was invited to be on the steering committee for the PIPA effort in early 2005. Since that time not one meeting has been held, and progress on this important initiative seems to have stalled. We think that Congress should help move this process forward by setting a date certain for this initiative to get started, and require PHMSA to report to Congress on progress made at regular intervals.

### **Greater Citizen Involvement – State Pipeline Advisory Committees**

The Pipeline Safety Improvement Act of 2002 provided a vehicle for greater public involvement in pipeline safety issues for pipeline advisory committees appointed by state governors. The states of Washington and Kentucky have both taken advantage of this opportunity to involve a broader range of stakeholders in pipeline safety discussions. The creation of state advisory committees is essential for greater public involvement, especially as PHMSA moves forward on efforts to involve local communities on issues regarding pipelines, encroachment and smart local planning. In Washington State the Citizen Committee on Pipeline Safety has become an integral part of

rulemaking and public involvement, as well as a valuable sounding board for concerned citizens, local government, industry, and the state legislature.

We believe that greater public involvement, leads to greater trust and understanding, which leads to smarter, more comprehensive pipeline safety initiatives. For this reason we hope that Congress will encourage the creation of more state pipeline advisory committees. This could be accomplished by having PHMSA promote such advisory committees, while tying a small percentage of the state pipeline safety program grant to the appointment and ongoing meeting of such a Governor appointed committee.

### **Financial responsibility requirements for pipeline corporations**

Large corporations can shield themselves from liability for poor safety practices through certain strategies, such as holding assets that may generate liability (e.g., pipelines) in subsidiaries or as shares of separate corporations. As part of this strategy, the parent corporation drastically undercapitalizes its subsidiary. In the case of pipelines, this is common. It is not unusual for a pipeline company to be capitalized by virtually 100% debt, lent by the large corporate shareholders.

In fact, the owners of the Olympic Pipeline used a similar strategy. In a major spill like Bellingham, the undercapitalized pipeline company is forced into bankruptcy when the owners decline to provide further financing. In the usual bankruptcy, the shareholders lose the company assets to the debt holders, but in this case, those are the same entities. Bankruptcy presents no meaningful threat to these shareholders but it does allow pipeline companies to avoid financial consequences for inadequate safety measures.

Congress should consider imposing financial responsibility requirements for pipelines as it already does for other companies under the Resources Conservation and Recovery Act (RCRA) and the Oil Pollution Act (OPA). To get this process started we urge Congress to ask for a study from either GAO or CRS, to describe how this works in other regulatory realms, and how it could best be adapted for pipelines.

### **Expansion of High Consequence Areas (HCA)**

Finally, we would like Congress to consider a phased expansion of what is included within the definition of High Consequence Areas (HCA). This definition, to a large extent, is what determines which transmission pipelines are required to be inspected under the integrity management rules. At this time HCA's mainly include populated areas, areas where people congregate, and for liquid pipelines drinking water sources, and navigable waterways. This was a good starting place for integrity management since it represented the most crucial areas and a significant undertaking for the industry.

As the first phase of integrity management testing is accomplished we believe operator and regulator experience, along with the increases in industry infrastructure needed to undertake these inspections, makes it possible to expand the definition of HCA to include important areas that were left out of the initial definition. These left out areas would include things like important historical sites, national parks and wildlife refuges, and in the case of liquid pipelines swimmable and fishable waters.

Before I finish I would like to comment on the progress that PHMSA has made under its current leadership. In the past seven and a half years, since the Bellingham pipeline tragedy, due to strong efforts from citizens, members of Congress, PHMSA, and the industry itself, progress has been made to prevent further tragedies like those that have occurred in Edison NJ, Walnut Creek CA, Blenheim NY, Mounds View MN, Lively TX, San Bernardino CA, Bellingham WA, Carlsbad NM, and elsewhere.

For the first time parts of gas and liquid transmission pipelines now have to be internally inspected, and rulemaking is proceeding to include integrity management requirements for gas distribution pipelines where the majority of deaths and injuries occur. Pipeline operators now have clear requirements for communicating to the public and local government, and OPS has unveiled new additions to their own website and communication programs. Perhaps just as significant, many progressive thinking pipeline companies have taken pipeline safety seriously enough that they are now leading by example by operating and maintaining their pipelines in ways that go beyond the minimum federal standards.

We should all celebrate this progress, while acknowledging that continuous evaluation and improvement can make pipelines considerably safer yet, and thereby restore the public's trust in pipelines.

Thank you again for this opportunity to testify today. We hope that you will consider the ideas we have brought forward today, which we believe can take pipeline safety up another significant notch. If you have any questions now, or at anytime in the future, I would be glad to try to answer them.