June 18, 2019

The Honorable Bobby Rush
Chairman
Subcommittee on Energy
U.S. House of Representatives
2188 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy
U.S House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush and Ranking Member Upton,

On behalf of the American Petroleum Institute (API), we appreciate the opportunity to submit comments as part of this important hearing highlighting pipeline safety, specifically the discussion draft "Safer Pipeline Act of 2019" addressing the reauthorization of PHMSA and the Pipeline Safety Act of 2016.

The American Petroleum Institute (API) is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million jobs and 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses and service and supply firms. As Vice President of API Midstream and Industry Operations, I am responsible for all energy infrastructure issues, including those related to the gathering, processing, storage, and transportation of oil and natural gas.

Pipelines remain one of the safest ways to deliver the energy we use every day. However, to maintain this strong safety record and ensure consumer access to clean, abundant, and affordable energy, it is imperative that the regulatory environment and the Pipeline and Hazardous Materials Safety Administration (PHMSA) address current and future safety challenges. We recognize and appreciate PHMSA's efforts to implement past Congressional mandates, but more work needs to be done to institute practical and performance-based regulations. Thus, as the Subcommittee considers the reauthorization of PHMSA and other safety programs, we encourage strong consideration of industry priorities that will maximize our investment in people, technology, and safety culture to effectively advance pipeline safety.

PIPELINE SAFETY REAUTHORIZATION PRIORITIES

As stated earlier, to improve upon our strong safety record and reach our goal of zero pipeline incidents, it is imperative that the regulatory environment and PHMSA be positioned to meet current and future safety challenges. As such, there are three priority areas where PHMSA reauthorization can support the shared objective of industry and the regulating agency in advancing pipeline safety.

RECOGNIZING THE IMPORTANCE OF INNOVATION AND TECHNOLOGY AND RISK BASED APPROACHES TO MANAGING PIPELINE INTEGRITY

Although API and its members appreciate the emphasis PHMSA has placed recently on addressing mandates and National Transportation Safety Board (NTSB) recommendations, we strongly encourage PHMSA to act in a timely manner and not lose sight of the importance of a holistic, performance-based regulatory approach that maximizes the industry's ability to use the latest advances in new technologies and techniques to manage pipeline safety risk.

With this in mind, outdated regulations that only allow for new technologies to be used one rulemaking at a time must be updated. While those regulations reflected the technology and best thinking available at the time of adoption, they have not kept pace with advances in pipeline safety technology and modern engineering practices. We recognize PHMSA's effort over the last two decades to pursue performance-based regulations over prescriptive ones – in other words, an approach that focuses on the desired outcomes (in this case, fewer incidents) rather than prescriptive (i.e. "check-the-box) processes or procedures. This is compliant with direction provided by the Office of Management and Budget (OMB) to give preference to performance-based standards. A performance-based regulatory model allows operators the flexibility to utilize the latest advances (e.g. technologies, processes and procedures) in inspection and detection technologies as soon as it is practicable to focus on the desired outcome of fewer incidents. For instance, PHMSA issued Integrity Management (IM) regulations that provide operators with the ability to use different in-line inspection (ILI) tools that are better at detecting a defect in specific types of pipe.

Retaining Direct Assessment as Agreed by Gas Pipeline Advisory Committee

Keeping in mind the importance of flexibility and fit for purpose requirements, API has concerns with the Subcommittee's recommendation in the 2019 Act to remove an operator's ability to utilize the direct assessment approach. Specifically, it may not be as possible, efficient or effective to hydrotest or assess some shorter segments with ILI. Direct assessment can provide valuable integrity management information if properly applied to the threats present on the segment. Direct assessment has demonstrated success in finding features that warrant evaluation and repair, particularly on pipelines that cannot accommodate in-line inspection. More importantly, during a series of Gas Pipeline Advisory Committee (GPAC) meetings in 2017 and 2018, PHMSA and the GPAC considered restrictions on the use of direct assessment but agreed to retain the method for the reasons discussed above.

Fit for Purpose Automatic Spill Detection and Shutoff Valves Requirement

API recommends using a risk-based approach to determine where such valves are required versus assuming that a one-size fits-all mandate of installing valves as recommended in Section. As written, the draft language indicates each operator of a hazardous liquids pipeline facility that is in a high consequence area (HCA) shall install automatic spill detection and shutoff valves for the pipeline facility. This type of prescriptive requirement does not work across all situations and could result in a greater risk to these systems. The technology is still advancing and a shutdown sequence in some instances could cause a surge in a pipeline that compounds a leak. As such, API supports the approach identified in

49 CFR 195.452 that addresses the use of Emergency Flow Restriction Devices (EFRDs) that allow an operator to determine where valves are needed to protect an HCA. Once again, recommending a risk-based approach as determined by the operator and with the approval of PHMSA that addresses the unique nature of each system is more effective in protecting people and the environment.

Institutionalizing a Pilot Program is Key to Advancing Safety

API is supportive of the US Department of Transportation's (USDOT) and PHMSA's legislative proposal to institute a pilot program founded on the elements of similar programs within other modes within USDOT. We also appreciate that the Administration's proposal recognizes the importance of leading industry standards and provides for the pilot program to be informed by standards or practices developed under a program accredited by the American National Standards Institute. PHMSA should be commended for considering a pilot which can serve as a vehicle for testing updated integrity management repair criteria. As industry seeks to harness the benefits of inspection technology advances and programmatic improvements contained in the recently updated API Recommended Practice 1160, Managing System Integrity for Hazardous Liquid Pipelines, we welcome this potential opportunity to demonstrate the importance of innovation and technology, and improving safety through a pilot or special permit process. We are hopeful we can establish a process that can serve as a framework for member companies to use in their individual requests and allow PHMSA to collect the necessary data. Through reauthorization this would serve to support rulemaking and incorporation by reference RP 1160.

Importance of More Timely Incorporation by Reference

There are more than 700 API standards referenced in Federal regulation. As these standards are amended or recertified through the American National Standards Institute (ANSI)-accredited process at a minimum of every 5 years, Federal regulations often are unable to be updated in a timely manner to reflect these important leading practices within the industry. Currently, approximately 50 percent of the instances where PHMSA cites API standards are not referencing the most recent version of those standards. As API standards are updated or as new ones are developed, PHMSA should execute a more timely and frequent review process that can use the existing rulemaking processes to incorporate by reference the latest edition or the first edition of appropriate standards. We applaud PHMSA for including a provision in their legislative proposal on timely incorporation by reference, as API strives to ensure that all pipeline standards are truly consensus-based. We feel that PHMSA's continued participation and full involvement can help to speed the incorporation-by-reference process.

MODERNIZING PHMSA AND REGULATIONS

As PHMSA and the energy industry together continue to drive toward our shared goal of zero pipeline incidents, a modernized regulator with the necessary tools, well-trained staff, and streamlined programs can bring needed certainty and consistency into the regulatory and oversight process. While the oil and natural gas industry continues to work proactively, through our standards development process and collaboration with regulators and other stakeholders, to achieve our goal of zero incidents, there are additional regulatory reforms that we believe will help to further enhance pipeline safety.

Continuing to Recognize the Importance of a Cost Benefit Analysis

Performing a reasoned cost benefit analysis before making significant regulatory changes must continue to be a part of the regulatory process and encourage the Committee to strongly reconsider removal of the cost benefit requirement as proposed in Section 4 of the 2019 Act.

Despite taking some time for PHMSA to prepare the cost-benefit analysis during the rulemaking process, it is an important step in the comprehensive rulemaking process. PHMSA's cost-benefit analyses provides valuable input to the public comment and advisory committee review processes. Since there are usually multiple practical alternatives to achieve any safety objective, the cost-benefit analysis helps PHMSA and stakeholders compare and contrast the alternatives and identify the best option.

A statutory requirement to consider costs and benefits in health, safety, and environmental regulations is not unique to PHMSA as Congress has, as a part of various acts and in certain jurisdictional areas, required the Occupational Health Safety Administration (OHSA), Mine Safety Health Administration (MSHA), and Environmental Protection Agency (EPA) to analyze costs and benefits during rulemaking. An example of the important role cost-benefit plays in the regulatory process is PHMSA consideration of class location changes through rulemaking. With today's processes and technologies, pipeline safety can be managed effectively and at an equivalent level of safety through data-driven inspection and maintenance, instead of costly unnecessary and arbitrary pipe replacements required by the current class location change regulations.

To that end, API and its members strongly support the collaborative approach to review and finalize regulations through the GPAC process. The GPAC process is a transparent and balanced forum that has demonstrated the ability to build consensus around complex regulatory issues, as witnessed with the pending gas and liquid transmission pipeline safety regulations.

Instituting Risk Based Gathering Lines Regulations is Critical

As the largest trade association representing all facets of the oil and gas industry, API is strongly opposed to the proposed amendments in Section 3 of the Subcommittees recent draft legislation. The amendments would alter longstanding procedural protections that limit PHMSA's jurisdiction over rural gathering lines, override a multi-year effort by PHMSA and other interested stakeholders to establish new, risk-based regulations for rural gathering lines, and impose billions of dollars in unnecessary compliance costs on the gathering industry—costs that would be disproportionately born by small companies that operate some of the lowest risk pipelines in the United States. Accordingly, API is respectfully requesting that Section 3 be eliminated from the Safer Pipelines Act of 2019 in its entirety.

Adding a Mandamus Clause Will Further Delay PHMSA

API does not believe a Mandamus clause as included in Section 7 of the 2019 Act will improve safety. For example, past experiences with citizen-suit provisions, such as the Clean Air Act, have resulted in expensive and time-consuming legal actions with little to no benefit. If the concern of the Committee is PHMSA delays in addressing Congressional mandates, then overwhelming them with litigation will not

improve the situation. Court forced action on citizen suits could divert limited PHMSA resources away from the highest priority needs for pipeline safety improvement.

Normalizing Incident Reporting Threshold Maximizes Resource Allocation

There are other areas where outdated regulations also drive inefficiencies and resource allocation to less impactful safety priorities. For example, in current regulations, pipeline operators are required to report pipeline incidents if they meet certain conditions, including a clean-up cost of $50,000 or higher. However, PHMSA set this threshold in 1984 and has not indexed it for inflation since. As such, if incident reporting were indexed to this 1984 cost, it would allow pipeline operators to better utilize and allocate resources toward more significant incidents. Congress should require PHMSA to index its incident reporting dollar threshold and appreciate PHMSA including a provision in their recent legislative proposal.

Retain Maximum Allowable Operating Pressure (MAOP) Requirement Recommendations as Agreed by GPAC

The Subcommittee's proposal in Section 10 of the 2019 Act to require all-natural gas transmission pipelines to undergo a spike hydrostatic pressure test has no engineering basis and contradicts the GPAC's recommendations. Spike testing was designed as an integrity assessment technique with a very specific purpose: to expose significant time-dependent linear defects on pipelines, including environmental cracking. While spike testing is an important pipeline safety tool where time-dependent cracking is a threat, it is not relevant to confirming MAOP. Such a broad application of spike testing would be destructive to our nation's natural gas pipeline infrastructure. Spike testing is an aggressive technique that imparts significant stresses on the pipeline, its components, and the testing equipment. This can increase the risk of failures of piping and components that would otherwise pose no threat during the service life of the pipeline. Such failures would require repairs and cause other adverse effects, such as further customer service disruptions.

Enhancing Research and Development Collaboration

Our industry continues to place a great deal of emphasis and resources on research and development. Specifically, improvements to pipeline integrity inspection capabilities are a strategic objective that have driven our industry to invest in furthering in-line inspection tool detection, ultimately preventing incidents from occurring. As such, industry stands willing to explore opportunities to further strengthen collaboration with PHMSA on research and development, collectively shaping a longer-term strategy that drives innovation, informs regulations, and ultimately improves pipeline safety performance.

Providing Flexible Hiring Authority for PHMSA

The oil and natural gas industry strive to have well trained and qualified PHMSA pipeline inspectors to help bring certainty and consistency to the inspection and enforcement of federal pipeline safety regulations. However, pipeline inspectors frequently come into PHMSA with limited pipeline safety experience and for those with experience, turnover is a concern. As such, similar to other agency hiring authority for specialty positions, the ability to compensate pipeline inspectors at market rates through PHMSA's use of Schedule A employees with streamlined hiring and flexible pay levels would enhance

PHMSA's ability to attract and retain expert pipeline inspectors, effectively increasing their efficacy and the overall safety of the industry as a result We agree with the Subcommittees proposal in Section 11 of the 2019 Act in supporting PHMSA by providing that hiring authority flexibility.

PROTECTING PIPELINES, PEOPLE AND ENVIRONMENT

Pipelines are one of the safest ways to deliver the energy American families and consumers use every day. However, recent attacks on oil and natural gas infrastructure have pointed out the need for increased awareness of pipeline infrastructure, the impacts of damage to it, and the importance of enforcement against perpetrators of such attacks. Disruptions to critical infrastructure can have impacts on local populations, the environment and the economy. While we respect the Constitutional right to free speech and peaceful protest, we believe that an individual that criminally trespasses onto private property who then endangers their own life, the lives of others and the environment is conducting an illegal act.

Fit for Purpose Public Awareness and Information Sharing

API supports the general premise of Section 6 of the 2019 Act to enhance the public and first-responder's ability to get necessary information that will better enable them to make decisions about their safety and the safety of the public in the event of a release. API recommends that RP 1162 third edition, that is scheduled to be published in 2020, be the framework for how best to facilitate the transfer and types of information. This is in contract with proposed bill language. API encourages RP 1162 third edition to be incorporated by reference when it is published and reinforce PHMSA's authority to review and request information regarding operator's public awareness programs, to occur every 4 years, the most recent of which occurred in 2018.

API also supports first responders and wants them to be prepared in the event of a spill. However, we do not believe that the availability of integrity management information to local responders facilitates and reinforces this preparedness goal. API's RP 1162 third edition, to be published in 2020, defines this audience and the information that facilitates this preparedness goal, and we encourage incorporation by reference when it is published to address the types of information that should be distributed.

In keeping with our position of information given to first responders, API does not support the dissemination of unredacted reports to the general public, as this could potentially be a grave security threat to sensitive and critical infrastructure. The safe operation of our pipelines is our utmost priority and implementing laws to make this information publicly available would greatly increase the ability of those who wish to do harm to critical energy infrastructure to pinpoint targets with the maximum potential of disruption and/or loss of life. API supports providing PHMSA with access to this documentation, as is currently required.

Criminal Penalty to Protect Communities

For the safety of the people and the environment, Congress should do more to prevent threats to critical infrastructure like oil and natural gas pipelines by strengthening the breadth of protections around pipelines and facilities and expanding the scope of actions under criminal provision. As such API supports PHMSA and the industry proposals that ensure facility security by deterring those who hope to interrupt America's flow of energy and create a significant safety risk to surrounding communities, first responders, and the environment by increasing criminal penalties for these actions.

Our members recognize that the industry is a target for both criminals and nation states who are working to steal intellectual property, disrupt operations and undermine our economy. They take these threats very seriously and continue to prioritize the protection of their assets from both physical and cyber-attacks. Companies in the oil and natural gas industry have made and continue to make considerable investments in defending their networks, bolstering their cyber security defenses, and participating in organizations and partnerships where they can share and receive threat information. Specifically, governing boards are making important investments in time, people and resources to defend themselves, so they can continue to deliver the products Americans rely on every day. While threats continue to evolve, so do industry's defenses, by working with government partners, including TSA, DHS, FBI, DOE and others to understand the threat. We believe the industry's record of delivering products safely and efficiently is indicative of the actions our members take to protect themselves in the face of very real and serious threats.

Current Criminal Liability Standard for Pipeline Operators is Sufficient.

API recognizes intentional violations should not be condoned but applying the legal standard of recklessness to pipeline regulation could potentially hurt pipeline safety. Current pipeline safety law, regulation and operator inspection and maintenance programs encourage operators to assess the risks of their pipeline systems. Operators then perform preventive maintenance based on a prioritization of risk. A system that makes operators potentially criminally liable for knowing the risks of their pipeline systems would discourage pipeline risk assessment and diminish preventive maintenance based on risk, both resulting in decreases to pipeline safety. As such API does not feel it is necessary to raise civil penalties as proposed in Section 8 of the 2019 Act.

Civil Penalty Limits in the Pipeline Safety Act are Appropriate

Pipeline operators are committed to zero accidents which means going above and beyond regulation through incorporation of leading practices when rules cannot evolve with changing circumstances or technology and be cost justified in dealing with the increasingly familiar low probability, high consequence accident. Pipeline operators are aware that a pipeline release or incident not only poses a potential health/safety risk to the public and the environment, but that it can also significantly disrupt vital energy supplies that so many Americans depend on in their daily lives. As such, pipeline and terminal operators are self-motivated to provide safe and regulatory compliant operations, delivering petroleum products and transportation services in a manner that protects and preserves the environment around our assets.

Civil penalties are designed to deter intentional non-compliance and, while an important part of a safety regulators tool set, are not the driving force. High civil penalties can encourage fear of disclosure in advance of litigation phases of these lawsuits. This works in opposition to sharing of "lessons learned" information to help other operators avoid similar events. Lessons learned and lessons shared are valued components of industry trade associations. Monetary penalties from litigation, loss of service, contractual failings, etc., nearly always extract a higher penalty than the civil penalty assessed.

Additionally, PHMSA is assessing corrective action orders that legally compel an operator to quickly determine an accident's root cause, and systematically look beyond the accident site to determine whether the threat has been eliminated from the operator's pipeline system. More importantly in addressing safety conditions arising from an accident these orders are providing immediate benefit to stakeholders along the pipeline. Civil penalty costs incurred by a pipeline operator go solely into the general treasury and are not applied in any way toward improving pipeline safety.

In conclusion, safety of the public and the environment is our industry's top priority, and collaboration with PHMSA, DHS, and other government agencies only strengthens our ability to transport our products across America with the fewest possible number of incidents. We are committed to promoting safety in all of our operations, helping to ensure that American families and businesses can efficiently access affordable and reliable energy. Thank you for the opportunity to submit comments and we look forward continuing our engagement with the committee to address pipeline safety.

Sincerely,

Robin Rorick
Vice President, Midstream & Industry Operations
American Petroleum Institute