



**Testimony of Andrew J. Black,
President & CEO, Association of Oil Pipe Lines (AOPL)
to the U.S. House Committee on Energy & Commerce Subcommittee on Energy
Hearing on “Legislative Solutions to Make Our Nation’s Pipelines Safer”
June 19, 2019**

Thank you, Mr. Chairman, Ranking Member Upton. My name is Andy Black and I am President and CEO of the Association of Oil Pipe Lines. AOPL represents liquids pipeline owners and operators transporting crude oil, petroleum products like gasoline, diesel, jet fuel, and home heating oil, and industrial products like propane and ethane. We have over 50 member companies which deliver over 21 billion barrels annually over a 215,000-mile network of pipelines.

Pipeline safety reauthorization legislation offers us an opportunity to continue improvements in pipeline safety. We all seek safer pipelines, as the Subcommittee’s Discussion Draft title calls for. Pipeline safety reauthorization legislation should be a place where we can collaborate, where we can work on proposals that bring stakeholders together, where can we protect each other from harm. Unfortunately, the Discussion Draft before us today misses some opportunities for a shared path of collaboration and eliminates other opportunities for collaboration in the law today.

Instead, the liquid pipeline industry asks that we move forward with positive solutions to: 1) harness the benefits of innovation and technology to improve pipeline safety, 2) bring stakeholders together to improve PHMSA programs and regulations, and 3) protect the public from harm.

Harness the Benefits of Technology & Innovation

Pipelines are getting safer. Over the last 5 years, pipeline operators have reduced the number of liquids pipeline incidents impacting people or the environment by 20 percent. This is government data publicly available from PHMSA. PHMSA data also shows pipeline incidents caused by incorrect operation impacting people or the environment are down 38 percent over the last 5 years, and pipeline incidents caused by corrosion, cracking or weld failures impacting

people or the environment are down 35 percent over that period. A barrel of crude oil or refined products delivered by pipeline reaches its destination safely greater than 99.999% of the time.

A 99.999% success rate means we have tackled the easy problems. All the low hanging pipeline safety fruit has been picked. Traditional regulatory approaches have taken us this far. The current regulatory program of proactive inspections and preventive maintenance is a good approach that finds and fixes most all potential issues before an incident occurs. We are seeing however that remaining pipeline safety issues happen only rarely, when multiple low probability events happen to coincide in previously unpredicted ways to produce an incident.

We believe technology and innovation offer opportunities to close the remaining gap in pipeline safety. Technology will allow us to find the smallest of issues much earlier than before. New best practices will provide the analytical tools and modeling to predict issues farther in the future and allow more time for maintenance to keep pipelines operating safely. Pipeline operators want to put these new technologies and practices to work to the benefit of pipeline safety, but PHMSA regulations are holding us back.

Pilot Program for New Pipeline Safety Technologies and Best Practices

PHMSA's 'Integrity Management' regulations (how and when operators inspect and performance maintenance on pipelines, a.k.a. "repair criteria") were first written nearly 20 years ago. Technology for inspecting pipelines or detecting leaks has advanced greatly since then, but this new technology is not incorporated into PHMSA regulations. PHMSA repair criteria are gap-filled, lacking key requirements for addressing cracking in pipelines, accounting for how pipeline problems grow over time, or benefitting from custom engineering assessments of specific pipe sections. PHMSA has been working to update pipeline repair criteria for over 10 years, but has hit road blocks on where to set new technical requirements based on technology and analytic method capabilities. This has delayed PHMSA completing new regulations.

PHMSA is eager to see new technologies and practices prove their worth and demonstrate they can be harnessed to improve pipeline safety. On May 1, PHMSA Administrator Skip Elliott when asked while testifying before this Subcommittee whether he supported a new pilot program to demonstrate technology responded: "Absolutely".

AOPL supports inclusion of a technology pilot program similar to that proposed in the administration's draft pipeline safety bill. A pilot program can provide PHMSA the data it needs

to modernize and fill gaps in its pipeline safety regulations. A pilot program will help PHMSA speed up the time it takes to complete regulations by getting it the data it needs to set technical requirements.

Utilizing pilot programs is not new for Congress and DOT. A similar program passed by Congress in the TEA-21 highway law provides DOT authority to conduct pilot programs at the Federal Motor Carriers Safety Administration. Congress recently used pilot programs in the FAST Act to require FMCSA to conduct a commercial driver pilot. PHMSA could use the pilot for multiple top priorities, including leak detection technology. A technology pilot program at PHMSA received considerable attention during the subcommittee's hearing, and we urge its adoption.

Regular PHMSA & Public Stakeholder Review of Pipeline Safety R&D Advances

Another way PHMSA can harness technology is regular review of the latest pipeline safety research and development advances. PHMSA, private consortiums, universities and pipeline operators all fund and undertake pipeline safety technology R&D, but collaborative discussions of pipeline safety R&D advances are infrequent. PHMSA's main public forum for discussing new technology occurs only once every two years. The current public advisory committees for liquids and natural gas pipelines, which include government, pipeline operator and public stakeholders, meet regularly to discuss pipeline safety policy issues. Congress should require the current, standing pipeline safety public advisory committees to review regularly PHMSA and outside, collaborative pipeline safety R&D activities.

Incorporate Latest Best Practices

Another source of pipeline safety improvement advice is expert-developed best practices. Pipeline operators develop industry-wide best practices in an open and multi-stakeholder collaborative process certified by the American National Standards Institute. These best practices are technical documents developed by engineers. PHMSA has already incorporated several into their regulations. Prime examples include updated best practices to inspect and maintain pipelines and storage tanks. However, PHMSA is often slow to review or incorporate the latest best practices, which deprives pipeline operators from using the latest innovations and methods to improve safety. AOPL appreciates the administration's proposal for timely incorporation by reference. AOPL recommends the Subcommittee adopt a provision like this.

Automatic Shut-Off Valve Mandate

The Discussion Draft Section 5 provision to require automatic shut-off valves on liquids pipelines would actually hurt pipeline safety by quickly forcing closed pipeline valves in an uncontrolled way, leading to a pressure surge and possible pipeline rupture. Natural gas pipelines do not experience this phenomenon because of the compressible nature of the gas, leading some to propose automatic shut-off valves after the San Bruno pipeline incident. Requiring this for liquid pipelines is contrary to safe practices.

To determine whether shut-off valves are appropriate for liquid pipelines, GAO at the direction of Congress studied automatic and remotely controlled shutoff valves after the 2011 pipeline reauthorization law. GAO concluded remotely controlled and automatic shutoff valves can reduce the size of a pipeline release. However, GAO found automatic shutoff valves for liquids pipelines “can cause an incident, when a valve closes and the subsequent pressure buildup causes the pipeline to rupture.” GAO confirmed this risk by citing the documented nine pipeline incidents from conditions similar to an automatic valve closure, one resulting in a 4,000-barrel release. Given differences in site-specific conditions, GAO recommended decisions on shutoff valves be made on a case-by-case basis. The Discussion Draft proposal to mandate shut-off valves is contrary to GAO’s findings and we believe would threaten pipeline safety. We urge the Subcommittee to not impose a shut-off valve mandate.

Direct Assessments

Discussion Draft Section 5 would also take away an innovative pipeline safety tool. Direct assessments provide operators an analytical method for determining the condition of a pipe in hard to reach areas that cannot accommodate an internal smart pig inspection tool. While this issue most often impacts local distribution systems with smaller diameter lines, transmission pipeline operators also need direct assessment to assess facility piping, such as at pump stations. Properly conducted direct assessments benefit pipeline safety. We urge the Subcommittee to not eliminate direct assessments.

Improve PHMSA and Pipeline Safety Programs

Improving how PHMSA performs its pipeline safety mission is also important to liquids pipeline operators. To that end, the pipeline industry joined with PHMSA, state regulators, pipeline safety advocates, environmental advocates and representatives of organized labor to recommend creation of a Voluntary Information Sharing (VIS) program. This collaborative

program modeled after a successful FAA program for the aviation industry would empower pipeline safety stakeholders to jointly solve pipeline safety issues. Pipeline operators spent two years contributing to the public advisory committee studying this issue, collaborating with public and government representatives to craft a recommended program. We appreciate the administration providing a VIS placeholder in its legislative recommendation. We urge authorization of a VIS program as outlined by the public advisory committee report.

Consideration of Technical Advisory Committee Recommendations

Instead of promoting collaboration with pipeline safety stakeholders, Discussion Draft Section 4 would remove the current requirement for PHMSA to consider recommendations from its pipeline technical advisory committee when considering new regulations. In doing so, the Discussion Draft not only deprives PHMSA of expert technical recommendations, it effectively takes away seats at the table for pipeline safety advocates, environmental advocates, labor representatives, state regulators and pipeline industry experts. By closing off input from safety stakeholders, the Discussion Draft makes it harder for PHMSA to solve pipeline safety problems. We urge the Subcommittee to not eliminate the requirement for PHMSA to hear the recommendations of its technical advisory committee on regulatory proposals.

Cost-Benefit Analysis

Discussion Draft Section 4 also deprives PHMSA of expert discussion of the costs and benefits of its proposals. Cost/benefit analysis improves the quality of regulations. Regulations that cannot justify their costs are often overly broad, imposing burdens on low-risk activities, making them wasteful and diverting resources away from higher needs. The Discussion Draft also would eliminate the requirement that PHMSA consider whether its pipeline regulations are reasonable, as currently required by law. I can hardly imagine the subcommittee wants PHMSA to consider only unreasonable proposals, but it does beg the question.

Some try to say cost/benefit analysis is to blame for PHMSA's slow rulemaking. We find this argument a red herring. All major rules at some point undergo a cost benefit analysis. Whether PHMSA rules undergo cost benefit analysis earlier or later in the process does not impact the overall schedule. The major reason PHMSA rulemakings were recently so delayed was the strategic decision by the previous administration to combine many different complex topics in large mega rulemakings that overwhelmed the development and review process. Eliminating cost/benefit analysis would do nothing to address this mistake. We urge the

Subcommittee to retain the current cost/benefit requirement, a common sense principle of safety regulation.

Reckless Criminal Standard

Discussion Draft Section 9 to add a criminal “reckless” standard would chill a core component of pipeline safety requirements and programs. Current pipeline safety law, regulation and operator inspection and maintenance programs encourage operators to assess and rank the risks of their pipeline systems. Operators then perform preventive maintenance based on a prioritization of risk. Comprehensive risk management is at the heart of safety management systems that are being encouraged by the NTSB and PHMSA. Changing the standard to reckless would lead to second guessing technical risk assessment decisions with the use of 20/20 hindsight to make a case that an operator should have known that a risk would cause an incident. By contrast, we agree knowing and willful misconduct should be subject to criminal punishment. Also, pipeline operators may be discouraged from openly sharing information about incidents, a key component of our programs to continuously improve industrywide safety. Applying an ambiguous legal standard of recklessness by criminalizing pipeline risk assessment will not advance pipeline safety. “Knowingly and willfully” are standards found many places in the code. We urge the Subcommittee to not add a “reckless” criminal standard.

Mandamus Citizen Suits

Another good way to hamper PHMSA and slow down its ability to implement safety programs is Discussion Draft Section 7. EPA-style sue-and-settle citizen-suit provisions have a track record of bogging down agencies in time-consuming litigation. If our concern is PHMSA is overwhelmed with Congressional mandates, then overwhelming them with litigation will not improve the situation. The issues individual citizens or local citizen groups chose to sue upon may not represent the highest overall pipeline safety risk. Court-forced action on citizen suits could divert limited PHMSA resources away from the highest priority needs for pipeline safety improvement. Court-forced action would usurp the proper role of Congress setting policy priorities for PHMSA and public safety. Also, court-forced action creates the risk of PHMSA implementing requirements outside of the rulemaking process with public notice and opportunity to comment. We urge the Subcommittee to not include a mandamus citizen suit provision.

Tailor PHMSA Requirements to Operating Status

A way Congress can make PHMSA operations more efficient is to provide PHMSA authority to regulate pipeline inspection and maintenance consistent with a pipeline's operational status. Market conditions can cause an operator to idle a pipeline for an extended period of time. In those cases, with no product going through the line, the most appropriate safety action is for the operator to purge the line and provide baseline safety protections. However, PHMSA does not have an appropriate set of safety regulations to apply to pipelines idled in today's market conditions. The result is a wasteful application of inspection resources on pipelines with no real safety risk. Pipeline operators are developing an industry-wide best practice for the proper inspection and maintenance of idled pipelines. AOPL recommends adding a regulatory status for inactive pipe based on engineering principles that includes safeguards for the idling and resumption of safe operations.

Incident Reporting Threshold

Another area where PHMSA regulations have failed to stay current is the dollar threshold for reporting incidents. PHMSA requires operators 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 updated it for inflation since. Each year, this threshold becomes more out of line with the original Congressional intent for this value. The low threshold risks deployment of resource for minor incidents which only qualify because of clean-up costs, diverting attention and resources from higher priority issues.

Some express a concern that changing this threshold would reduce their ability to use PHMSA's "significant" incident metric to gauge pipeline safety performance. We find this a hollow argument for the very reason that it is based on an arbitrary numerical dollar value with no inherent connection to safety. Indeed, a past NTSB recommendation to PHMSA was to develop more meaningful pipeline safety metrics. In response, PHMSA, industry and pipeline safety advocates jointly developed a new metric tracking incidents impacting the public or environment (IPE). The pipeline industry supports this IPE metric because it addresses the highest priority of the pipeline safety program: protecting the public and the environment. We appreciate the administration proposing a mechanism to update the current incident reporting threshold and urge those gauging pipeline safety performance to examine the IPE metric. Changing the incident reporting threshold as the Administration proposed would not affect pipeline safety statistics using the IPE metric.

Pipeline Segment Reports

AOPL is concerned Discussion Draft Section 6 requiring detailed segment reporting usurps the proper role of federal and state pipeline safety regulators. Current law, as with many regulatory programs and industry sectors, requires public reporting of basic information on infrastructure locations and violations of safety regulations. Federal regulation requires pipeline operators to make available their detailed inspection and maintenance plans to regulators. Federal law also authorizes PHMSA to conduct inspections of facilities and audits of safety programs.

However, the Discussion Draft goes far beyond current federal reporting and inspection programs to require detailed public reporting of massive amounts of information. In one way, this proposal would deputize the public to replace PHMSA as a reviewer of detailed and technical pipeline safety information, even though the expertise and authority is at PHMSA. This proposal would also be extremely wasteful by requiring mountains of information that no one would have the time to read or analyze, except perhaps those who may wish to mischaracterize information in a bid to stop future pipelines. We have PHMSA for a reason, and that is to be the technical experts designated to inspect and audit pipeline operators. Expanding this role beyond PHMSA is inappropriate and wasteful. We urge the Subcommittee to not adopt the segment reporting requirement.

Direct Hire Authority for PHMSA

AOPL does support providing more tools to PHMSA to hire and retain pipeline safety personnel. Pipeline safety and the proper enforcement of federal pipeline safety regulations are enhanced by expert and experienced pipeline safety inspectors. However, pipeline inspectors are coming to PHMSA relatively inexperienced and departing PHMSA after gaining expertise to pursue more lucrative opportunities in the private sector. The ability to compensate pipeline inspectors at market rates would enhance PHMSA's ability to attract and retain expert pipeline inspectors. The Discussion Draft Section 11 language for direct hire authority would help achieve this goal.

Protect the Public from Harm

Criminal Penalties for Attacking Pipeline Infrastructure

Finally, the pipeline industry believes it is important to protect the surrounding public and the environment from attacks on pipelines. There are loopholes to close in current federal

law that prevent enforcement against dangerous valve-turning activity condemned by pipeline safety advocates as well as the pipeline industry.

In October 2016, anti-pipeline activists staged simultaneous attacks on 5 crude oil pipelines in 4 states along the U.S. – Canada border. Assailants targeted valve stations maintained by pipeline operators to stop the flow of product through the pipeline when necessary to conduct maintenance or isolate a pipeline segment during an emergency.

After breaking the chains and locks on perimeter fencing, assailants entered the facility grounds and turned valves shutting off the flow of pipelines that together had a delivery capacity of 2.8 million barrels of crude oil a day, or around 15 percent of daily U.S. consumption. In some cases, the assailants by telephone notified the pipeline operators of their actions, who shut down the pipeline flow from their control centers as a safety precaution.

In 2017, assailants again targeted for attack the same pipeline facility attacked in 2016 in Washington State. In 2019, assailants attacked another pipeline in northern Minnesota. Other assailants admitted using acetylene torches to pierce holes in a major pipeline under construction in Iowa and South Dakota, threatening a release if the pipeline went into service without repairs.

After the 2016 attacks, Carl Weimer of the Pipeline Safety Trust (PST) said on the PST blog:

“[w]hile we certainly understand the activists concerns with the lack of speed to address climate change we think that illegally closing valves is a dangerous stunt that really does little to address these people’s concerns. The Pipeline Safety Trust was founded in part because a valve closed unexpectedly causing a pressure surge that ruptured a pipeline killing three young men. Closing valves on major pipelines can have unexpected consequences endangering people and the environment. We do not support this type of action, and think it is dangerous.”

Public safety is threatened during attacks on pipelines, even if only closing a pipeline valve, because improper closure of pipeline valves can cause a pressure surge from the mass and momentum of the liquid traveling through the pipeline, potentially resulting in a rupture and release. While no releases resulted from the 2016, 2017 or 2019 pipeline valve attacks, the U.S. Government Accountability Office confirmed the risk of rupture from improper valve operation in a Congressionally mandated 2013 report. Pipeline operators have documented 9 pipeline incidents from conditions similar to an improper valve closure, one resulting in an

1,100 barrel diesel fuel release and another resulting in a nearly 4,000 barrel natural gas liquids release. A crude oil pipeline release of this magnitude could cause serious harm to the assailants, harm members and property of the surrounding public and harm the environment.

Current Federal statute at 49 USC §60123 prohibiting damaging or destroying interstate pipeline infrastructure does not address changing tactics that are nonetheless dangerous to the assailants, public safety and the environment. Under §60123, the guilty conduct making the action illegal must include “damaging” or “destroying” the interstate pipeline facility. These terms are commonly defined respectively as causing physical harm to something in such a way as to impair its value, usefulness, or normal function and damaging something so badly that it cannot be repaired.

Several of the recent attacks against interstate pipelines neither damaged nor destroyed the facilities. The valve turnings, while a dangerous threat to the assailants, public and environment, did not damage or destroy the valves. Several more recent attacks, which did cause physical damage to pipelines, occurred at locations where the pipeline was still under construction and not yet operating as an interstate pipeline. State legislatures are acting to close gaps in their statutes protecting pipelines and infrastructure. States are extending criminal penalties to tampering with, impeding or inhibiting the operation of pipeline infrastructure.

Congress should plug the same loopholes in federal law. AOPL understands and supports the need to protect First Amendment rights and the ability to protest. AOPL supports a narrowly targeted approach that preserves free speech and protest rights will deterring violent activities that endanger the surrounding public or the environment. We appreciate the administration proposing language to close these loopholes and strongly urge the Subcommittee to enact some version of this proposal.

I hope we can come together around these proposals for greater use of new technologies and innovation, ways to improve PHMSA programs and protect the public from harm. Thank you and I look forward to your questions.

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