

**U.S. House of Representatives**

**Committee on Energy and Commerce**

**Subcommittee on Energy, Climate and Grid Security**

**Fueling America's Economy: Legislation to Improve Safety and Expand U.S. Pipeline Infrastructure**

**Testimony from the American Petroleum Institute**

**January 18, 2024**

**Introduction**

Chairman Duncan, Chairwoman McMorris Rodgers, Ranking Member DeGette, Ranking Member Pallone and esteemed members of the subcommittee. Thank you for the opportunity to testify this morning. My name is Robin Rorick, and I am the Vice President of Midstream Policy at the American Petroleum Institute (API). On behalf of API<sup>1</sup>, we appreciate the opportunity to submit testimony as part of this important hearing addressing pipeline safety and the reauthorization of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).

Every day, our nation's network of more than 500,000 miles of transmission pipelines transports the energy products we rely on. The oil, natural gas, refined products and low carbon energy transported by pipelines fuel modern life. America has led the world in reducing carbon dioxide (CO<sub>2</sub>) emissions over the past two decades – even as our industry has made the United States the world's leading producer of oil and natural gas. The air Americans breathe is cleaner because of innovative improvements to the way energy is produced, transported, refined and consumed. These improvements have driven significant declines in greenhouse gas (GHG) emissions and criteria air pollutants, including nitrogen dioxide, sulfur dioxide and particulate matter. We are also tackling the methane challenge head on. But we need pragmatic, bipartisan energy policies that support the responsible development of our nation's oil and

---

<sup>1</sup> API represents all segments of America's oil and natural gas industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our nearly 600 members produce, process, and distribute the majority of the nation's energy, and participate in the [API Energy Excellence® program](#), which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental safety, efficiency, and sustainability. Through the [API Climate Action Framework](#) and related initiatives such as [The Environmental Partnership](#), significant efforts are being conducted by the oil and natural gas industry to balance the increasing demand for affordable and reliable energy products with environmental performance and stewardship.

natural gas resources, including policymaking that encourages investment in critical energy infrastructure like pipelines.

Fully harnessing American energy, including bringing the benefits of oil, natural gas and low carbon energy to all parts of the country, depends on new and existing infrastructure. Pipelines – one of the safest, most environmentally responsible ways to transport energy to consumers – are in every U.S. state, totaling nearly three million miles of largely underground gathering, transmission and distribution pipelines. Our industry is committed to achieving an operating standard of zero incidents through comprehensive safety management systems and robust safety programs, including the deployment of advanced inspection and leak detection technologies. Even as barrels delivered and pipeline mileage continue to increase, this strong safety record is improving. Over the last five years, total liquids pipeline incidents have decreased 28 percent while those incidents impacting people and the environment have declined 16 percent. Incidents caused by equipment failure or incorrect operation that impacted people or the environment are down 42 percent and 45 percent, respectively.<sup>2</sup> As our industry continues to work with federal, state and local policymakers and regulators to protect the environment and communities where we live and work, we welcome effective and efficient policymaking to help continuously improve pipeline safety while unleashing the power of America’s oil and natural gas.

### **API Applauds the Pipeline Safety, Modernization, and Expansion Act of 2023**

As Congress considers the reauthorization of PHMSA and pipeline safety programs over the coming year, we encourage policymakers to enact legislation that maximizes our industry’s investments in people and technology to effectively advance pipeline safety. To that end, we applaud this Committee’s efforts to develop a comprehensive approach to PHMSA reauthorization through its draft bill, the Pipeline Safety, Modernization and Expansion Act of 2023.

The draft bill will allow operators to make strides in harnessing state-of-the-art technology to advance pipeline safety by helping to ensure that technology pilot programs function as Congress intended. It will also help improve pipeline safety through the creation of a voluntary information-sharing system operators can use to gather incident data and share lessons learned in a confidential environment. We appreciate the information protections established in the bill, which are critical to encourage operator participation, so the voluntary system can function as Congress intends. The Act also strengthens

---

<sup>2</sup> 2023-2025 Pipeline Excellence Strategic Plan & 2022 Performance Report, 2023, [https://www.api.org/-/media/APIWebsite/oil-and-natural-gas/primers/API\\_Pipeline\\_Report-NRS-Spreads.pdf](https://www.api.org/-/media/APIWebsite/oil-and-natural-gas/primers/API_Pipeline_Report-NRS-Spreads.pdf)

protections for pipeline infrastructure by criminalizing activities that impair the operation or construction of facilities, or cause damage that could result in harm to people, the environment and the pipeline itself, or disrupt critical energy supply. The bill maintains and strengthens PHMSA's critical cost-benefit analysis provision, and it encourages innovation and investment in a cleaner energy future by requiring PHMSA to promulgate a rulemaking within one year of enactment on pipeline transportation of carbon dioxide, which is critical to our energy future. Finally, the bill acknowledges the need to protect consumers' right to choose the best fuel source for their homes. We commend the Committee for taking these critical steps.

The Pipeline Safety, Modernization and Expansion Act of 2023 does more than just reauthorize and improve existing pipeline safety programs. This Committee has recognized the link between pipeline safety and the need for a functional permitting system in this country to allow operators to effectively invest in maintaining and expanding critical pipeline infrastructure. To maximize the power of American energy, support consumers, promote energy security and protect the environment, permitting reform is critical. Any legislative remedy should be based on key elements of transparency, predictability, timeliness, efficiency and judicial durability. For decades, permitting challenges have stymied investment in critical infrastructure by creating continuous delays and, in some instances, cancelling projects altogether. Permitting reform is a complex issue, which cuts across multiple statutes, federal and state agencies and committees of jurisdiction in Congress, but now is the time to build on the momentum created with the permitting reforms contained in the Fiscal Responsibility Act (FRA).

This Committee has recognized that our current permitting system is broken, stunting energy development across sectors and limiting our nation's ability to fully develop all our energy resources. API appreciates that the Committee acknowledges permitting issues are not only confined to large scale, new energy infrastructure development. As rightly noted by the Committee, issues with permitting for modification, expansion, inspection, repair or maintenance of pipeline facilities are often overlooked but are no less critical to our energy supply chain than new facilities.

The Committee's proposal also reflects an important opportunity to modernize the permitting system by making it easier for operators to expand their infrastructure by co-locating resources in existing rights-of-way. API members have been doing this successfully for years – placing new pipelines or related infrastructure like compressor stations in the same rights-of-way used for existing pipelines. This allows operators to expand our capacity to transport energy products while also minimizing our impact on

nearby communities and the environment. We are grateful the Committee recognizes the value in modernizing permits for such projects. This proposal would place additional pressure on federal agencies to meet their statutory deadlines for approving permits and could bring valuable accountability to the system.

The Act also improves the risk assessment provision in the Pipeline Safety Act by clarifying that the costs and benefits considered during the rulemaking process should be limited to those within the United States. Performing a reasoned cost-benefit analysis before making significant regulatory changes must continue to be a part of the regulatory process. This provision has long ensured that regulations are effective and efficient in achieving their Congressional directives without placing undue or debilitating burdens on complying industries. This important requirement ensures that the benefits of a regulation justify its costs and is consistent with the principles established in longstanding Executive Orders that apply to the rulemaking process.

PHMSA's cost-benefit analyses also provide valuable input to the public comment and advisory committee review processes. Since there are usually multiple practical alternatives to achieve any pipeline safety objective, the cost-benefit analysis helps PHMSA and stakeholders compare and contrast the alternatives to identify the best option.<sup>3</sup> This requirement makes for more effective rulemakings that target specific pipeline safety needs, rather than overly broad or restrictive ones. This good government provision was first enacted by a Democratic Congress at the direction of a Democratic President. Congress has placed similar requirements on the Occupational Safety and Health Administration (OSHA), Mine Safety Health Administration and Environmental Protection Agency (EPA), recognizing the value in requiring agencies to review both costs and benefits as part of the rulemaking process. The Committee's revisions strengthen this critical provision by imposing a more rigorous standard that limits

---

<sup>3</sup> A recent decision from the U.S. Court of Appeals for the District of Columbia Circuit highlights the continued importance of the risk assessment requirements that Congress added to the Pipeline Safety Act. *GPA Midstream Ass'n v. United States Dep't of Transp.*, 67 F.4th 1188 (D.C. Cir. 2023). In concluding that PHMSA failed to comply with these requirements in issuing a final rule that would have required the installation of rupture-mitigation valves on gathering lines, the Court explained that PHMSA "said nothing about the practicability or the costs and benefits of regulating the gathering sector of the pipeline industry" in its preliminary risk assessment, and issued the final rule without allowing the public or the Gas Pipeline Advisory Committee to review and provide comment on that information. *Id.* at 1197. The Court concluded that in so doing, PHMSA "flouted the pipeline safety laws and a cardinal rule of administrative law." *Id.* at 1198. The Court also found that PHMSA did not engage in reasoned decision making in issuing the final rule because the final risk assessment did not demonstrate that the benefits of the regulations for gathering lines justified their costs. The Court explained that PHMSA did not consider relevant differences between gathering and transmission lines in preparing that assessment, failed to quantify any of the benefits, and relied on a technical study that did not address the installation of rupture mitigation valves on gathering lines. In short, the Court found that in issuing the regulations for gathering lines PHMSA "cut corners to the prejudice of the petitioners, the administrative process, and thus the public." *Id.* at 1202.

environmental, safety, and economic benefits to those that flow to the United States to ensure regulations appropriately serve the American people.

Finally, it is API's position that policymakers should not restrict or ban the use of natural gas in homes and businesses. Bans on natural gas eliminate consumer choice and prevent American families from using a domestically produced, cleaner, affordable and reliable fuel source to heat their homes and cook their food. It is imperative that natural gas remains part of the energy mix and that policymakers and regulators work with the industry to ensure access to reliable and affordable American energy. API appreciates the strong precedent established by the Committee with this provision.

### **Proposals to Further Improve Safety & Fuel Economic Growth**

This legislation is a strong starting point, but we also encourage this Committee to consider additional provisions, which we believe will complement your draft bill and work to improve pipeline safety, including language to allow risk-based tank inspections, require timely review of industry standards incorporated by reference and clarify a regulatory gray area related to in-plant piping.

API encourages this Committee to direct the Secretary of Transportation to allow pipeline operators to establish storage tank inspection frequency on risk-based engineering principles. Current regulations cite outdated practices and industry standards, requiring internal inspections to be conducted more often than may be necessary to maintain them safely. This unnecessarily puts workers in harm's way, generates emissions, requires operators to take tanks out of service, and fails to reflect current industry leading approaches. Directing PHMSA to update its regulations concerning tank inspections will maintain the current level of safety while minimizing safety risks for workers and environmental impacts.

Since 1924, API has been the leader in developing voluntary, consensus-based, internationally recognized standards covering all segments of the oil and natural gas industry. Our standards are the most widely cited petroleum industry standards by state regulators, with 240 API standards cited over 3,800 times in state-based regulations. There are more than 650 references to API standards in federal regulations.<sup>4</sup> These standards are revised and improved every five years at a minimum through API's American National Standards Institute-accredited process, and regulators struggle to keep pace with the

---

<sup>4</sup> OGP Report No. 426, Regulators' Use of Standards, March 2010

advances in pipeline safety technology and modern engineering practices that are regularly incorporated into these standards. Today, approximately 50 percent of the instances where PHMSA cites API standards are out of date and do not reference the most recent edition. Thus, critical regulations do not reflect advances in safety, technology and engineering, and pipeline operators must comply with the often-antiquated practices referenced in federal regulations. As API standards are updated or new ones are developed, this Committee should require that PHMSA execute a more timely and frequent review process to maximize safety and ensure regulations keep pace with advances in engineering and technology.

API also encourages this Committee to consider language clarifying who has jurisdiction over short segments of pipe within gas processing and refining facilities, also known as “in-plant” piping. These pipelines are operated by plant personnel, run between facility buildings and are less than one mile in length. Liquid in-plant piping is regulated by the OSHA through its Process Safety Management program as directed by Congress in statute. However, Congress failed to provide similar clear instructions when it comes to gas in-plant piping. Historically, PHMSA has deferred to OSHA as the primary regulator given its expertise on the liquid side, but the lack of statutory clarity has created a vacuum that certain regional PHMSA offices have tried to exploit to expand their jurisdiction. This regulatory grey area has led to confusion among pipeline operators who need certainty when it comes to what standards apply and what inspection schedule to follow. We recommend the Committee create an exemption for gas processing facilities that mirrors the one for liquid pipelines to provide operators with regulatory certainty and consistency while still ensuring safety.

### **Related Critical Pipeline Safety Issues**

As Congress considers legislation to reauthorize PHMSA, we urge this Committee to conduct diligent oversight of the agency’s efforts to issue new regulations related to leak detection and repair (LDAR). As discussed earlier in our testimony, ensuring PHMSA conducts a thorough analysis of the costs and benefits of its regulations is critical to sound policymaking. While API supports PHMSA’s goal of addressing methane emissions – our industry is constantly innovating and investing in new technologies to prevent leaks and reduce our emissions – we believe the current proposed rule was written such that the benefits in certain instances do not justify the costs. Our industry is actively engaged in the regulatory process to help PHMSA craft a workable final LDAR rule that is more effective and efficient by

considering the latest technology and management systems to reduce emissions. However, as written, there are significant hurdles that must be overcome to reach that result.

This rulemaking is a direct result of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act, a pipeline safety bill Congress passed in 2020. Unfortunately, PHMSA chose to go beyond the scope of what Congress originally intended by extending the application of LDAR requirements to gas gathering lines in Class 1 locations and liquefied natural gas (LNG) facilities, setting the leak detection threshold so low as to risk being triggered by emission sources unrelated to the pipeline system.

PHMSA's attempt to expand their proposed LDAR rule to include gathering lines illustrates the importance of PHMSA conducting accurate cost-benefit analyses. In the rulemaking process, PHMSA relied on a flawed cost-benefit analysis that failed to include significant compliance costs that would be imposed on the industry resulting in a highly inaccurate justification for the proposed rule. If enacted, these regulations would result in limited emissions reductions in comparison to the billions of dollars in compliance costs on the gathering line industry, costs disproportionately borne by small companies that operate some of the lowest risk pipelines in the U.S.

API supports the agency's desire to make gathering lines safer, but PHMSA should be obligated to consider more practical alternatives that would still achieve the stated pipeline safety objectives and would remain true to Congressional intent. Section 113 of the PIPES Act of 2020, which directed PHMSA to issue an LDAR rule, does not apply to Type C gathering lines in Class 1 locations. These gathering lines only recently became subject to the basic leak survey and repair requirements in Part 192. API remains committed to maintaining gathering line safety through a risk-based approach, but we believe the decision to include gathering lines in the LDAR rule was premature and goes beyond the scope of what Congress directed the agency to do in the PIPES Act of 2020. In addition to failing to consider all the rule's costs, PHMSA failed to demonstrate any benefits that could justify some portions of the rule. PHMSA has not offered a legitimate safety or environmental rationale for establishing a highly conservative and overly burdensome leak detection threshold that could potentially be triggered by non-pipeline, human-caused sources of emissions. This dovetails with PHMSA's decision to conflate all leaks with hazardous leaks. The proposed leak detection standards impose a detectability threshold far more

conservative than comparable EPA requirements under the New Sources Performance Standards, prohibit the use of many proven technologies and do not advance safety or environmental protection.<sup>5</sup>

PHMSA's current efforts to promulgate an LDAR rule provide multiple lessons for its authorizing Committees to consider as work continues on a reauthorization bill. It is vital that Congress offers as much clarity as possible for PHMSA when directing them to issue regulations to ensure that the final outcomes are achievable and implementable. In addition, as this Committee has recognized, PHMSA must continue to be held accountable for complying with the cost-benefit requirements included in the risk assessment provision of the Pipeline Safety Act to ensure the agency's rulemakings are implementable and achieve the intended improvements in safety.

### **Conclusion: Safely Maintaining America's Energy Leadership**

The United States is now the largest producer of oil and natural gas, which are critical energy resources here at home as well as for our allies abroad. And we continue to lead the world in reducing emissions. These advances come not from government intervention but through industry innovation and investment. For America to seize upon this moment of energy leadership with its abundant natural resources, Congress must enact pipeline safety policy that is fit-for-purpose and based on sound science and engineering principles. Pipelines are an essential cog in the energy supply chain. They have enabled our country's record-breaking energy production by transporting oil, refined products, low carbon energy sources and natural gas in the safest and most environmentally friendly mode possible. While the industry is proud of its safety record, it remains committed to continual safety improvements as it strives to meet the shared goal of zero incidents.

Pipeline safety is not a partisan issue, and API is eager to partner with legislators and regulators at both the state and federal levels to ensure pipelines are regulated effectively and operated safely. Importantly, though, any regulations must be balanced to ensure that the industry can achieve these objectives while continuing to bring affordable, reliable energy to American families and businesses to meet growing energy demand, support our domestic economy, and provide good-paying jobs. Only with effective legislation like the Pipeline Safety, Modernization and Expansion Act of 2023 can our industry meet the

---

<sup>5</sup> As explained in the comments submitted by API and other industry stakeholders, PHMSA's preliminary risk assessment for the LDAR rule contains many of the same defects that led to the invalidation of the rupture-mitigation valve requirements for gathering lines in *GPA Midstream Ass'n v. United States Dep't of Transp.*, 67 F.4th 1188 (D.C. Cir. 2023).



dual challenge of answering ever-growing energy demand while leading the world in emissions reductions.

Mr. Chairman, Mr. Ranking Member, and distinguished members of the Committee, this concludes my prepared statement. I look forward to the continued bipartisan efforts to address critical issues of pipeline safety that I have outlined today, and I would be happy to answer any questions you may have at this time.