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Presented by:

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BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

OVERSIGHT OF PIPELINE SAFETY, REGULATORY CERTAINTY, AND JOB CREATION ACT OF 2011 AND RELATED ISSUES

JULY 14, 2015

Good morning, Chairman Whitfield, Ranking Member Rush and members of the Subcommittee. 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 Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Hazardous Liquid Pipeline Safety Standard Committee, as well as a member of the steering committee for PHMSA's Pipelines and Informed Planning Alliance. I also serve on the Governor-appointed Washington State Citizens Committee on Pipeline Safety, and bring a local government perspective to these discussions as an elected member of the Whatcom County Council in Washington State.

The Pipeline Safety Trust came into being after a pipeline disaster that occurred sixteen years ago - the 1999 Olympic Pipeline 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. While prosecuting that incident the U.S. Justice Department was so aghast at the way the pipeline company had operated and maintained their pipeline, and equally aghast at the lack of oversight from federal regulators, that they asked the federal courts to set aside money from the settlement of that case to create the Pipeline Safety Trust as an independent national watchdog organization over both the industry and the regulators. We have been trying to fulfill that vision ever since, but the spate of recent disasters makes us sometimes question whether our message is being heard.

Reviewing the implementation of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 is somewhat difficult because so many of the required reports and changes to the regulations have yet to be produced. The slowness of the reporting and rulemaking process seems at odds with the public proclamations of concern and action from the administration. While this slowness is frustrating to groups such as ours, it is also difficult to know exactly where to lay the blame. While PHMSA is certainly the easiest target since they have been slow to produce the required reports and regulations, they have also been clear with Congress for a number of years now that they lack the financial and personnel resources needed to complete their mission in a timely manner. We also have noted that many times PHMSA or personnel within the Secretary's Office have completed draft regulations and reports, but those efforts seem to get significantly delayed by the Secretary's Office itself or perhaps by the White House *Office* of Information and *Regulatory* Affairs. While PHMSA clearly needs to be held accountable, it would appear there is plenty of blame to be shared for the

slowness in implementing many important pipeline safety initiatives.

Even with this slowness and delay, over the past few years progress has been made as evidenced by the reduction in the number of incidents that involve injuries or death to all-time low levels most likely due to greater attention to safety in areas of high consequence. Unfortunately, at the same time that the number of incidents that injure people has been decreasing, the number of significant incidents that dump products into the environment and damage property is increasing as dramatically evidenced by the recent spill of crude oil into the ocean near Santa Barbara, and the second spill in just a few years of crude oil into the Yellowstone River. This increase in the overall significant incident rate shows that there is still a good deal of work to do to ensure adequate pipeline safety.

The pipeline industry, regulators, and public interest groups such as the Pipeline Safety Trust have come together with the publicly stated common goal of zero incidents, a goal that will continually drive all the involved stakeholders to do even better. This goal of zero incidents has also led most of the major industry groups to agree with our call for an expansion of the use of a system similar to the integrity management programs already required in high consequence areas to ensure greater safety for the environment and people living in more rural areas.

So while below we may criticize the implementation of some of the sections of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 none of us should lose sight of the progress that has been made over the past years, which demonstrates that further progress can yet be made. We believe such progress can continue, toward the ultimate goal of zero incidents, as long as all stakeholders are adequately included in the process to question each other's assumptions and hold each other accountable. With that in mind we would like to focus our testimony today on the following sections of the 2011 Act.

Sec. 2. Civil penalties

Sec. 3. Pipeline damage prevention

Sec. 4. Automatic and remote-controlled shut-off valves

Sec. 5. Integrity management

Sec. 6. Public education and awareness

Sec. 7. Cast iron gas pipelines

Sec. 8. Leak detection

Sec. 16. Study of transportation of diluted bitumen

Sec. 19. Maintenance of effort

Sec. 21. Gas and hazardous liquid gathering lines

Sec. 22. Excess flow valves

Sec. 23. Maximum allowable operating pressure

Sec. 24. Limitation on incorporation of documents by reference

Sec. 28. Cover over buried pipelines

Sec. 31 & 32 Pipeline inspection and enforcement needs & Authorization of appropriations.

Sec. 2. Civil penalties.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress doubled the level of penalties that PHMSA can levy against companies that fail to abide by the laws put in place to keep our communities safe. In the years since the passage of that bill PHMSA has used this new authority to significantly increase the monetary amount of proposed penalties. We applaud the increase in this penalty amount and PHMSA's use of these higher penalty limits. We believe that compared to the economic size of many of the companies being regulated that the size of the potential fines is far below the level necessary to cause a change in behavior, so encourage Congress to consider increasing the penalty limits again in future reauthorizations or removing the cap on the maximum size of fines.

The need to change behavior is apparent when you consider that significant pipeline incidents that are well within a pipeline operator's control have been increasing over the past ten years. During that same period the number of civil cases brought against operators for failing to abide by pipeline safety laws has trended slightly downward. As you can see by figure 1 the gap between the number of significant incidents occurring and the number of penalty cases initiated is increasing. In the future we hope to see both of these trends reverse, with pipeline operators doing more to decrease incidents, and PHMSA using their penalty authority more often when operators fail to keep their pipelines safe.

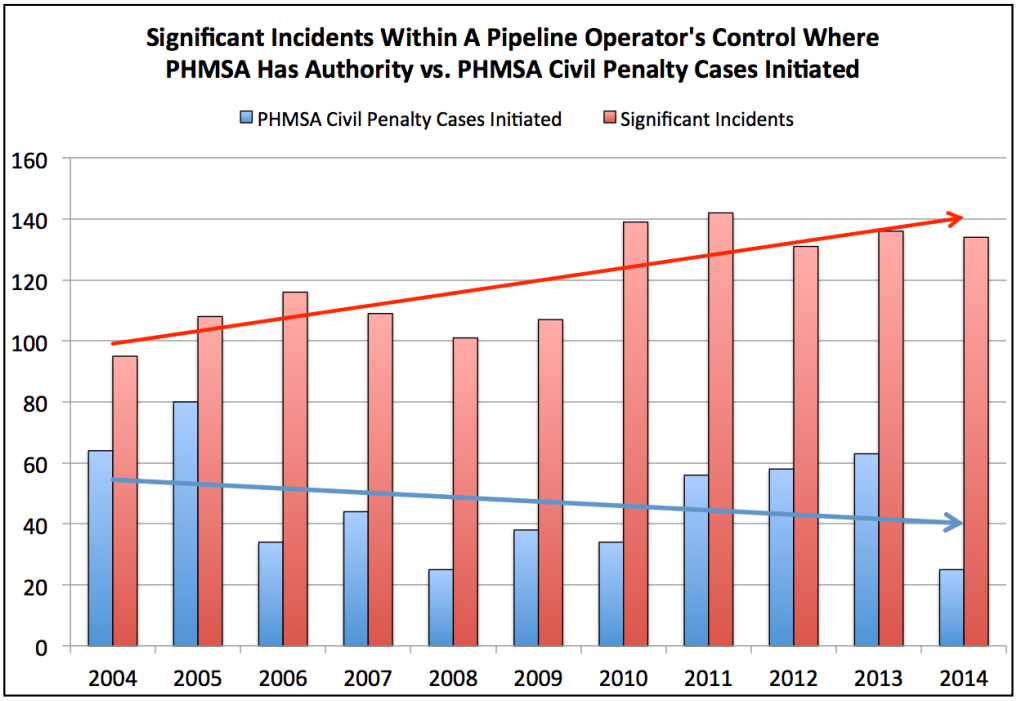

Figure 1

Sec. 3. Pipeline damage prevention.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress asked PHMSA to produce a report to examine the impact of excavation damage on pipeline safety, including frequency, severity and type of damage, and a survey of state exemptions. This report was sorely needed to help all those involved know where to invest in prevention strategies. The recent NTSB report[1] that noted that significant incidents are increasing on pipelines in high consequences areas stated, "***strategies should be developed to reduce other failure causes, such as equipment failure and excavation damage, in all pipelines.***" While PHMSA has produced this report, damage to pipelines by excavation continues to be one of the main causes of significant pipeline incidents as shown in figure 2.

[1] Integrity Management of Gas Transmission Pipelines in High Consequence Areas, NTSB Safety Study, SS-15/01

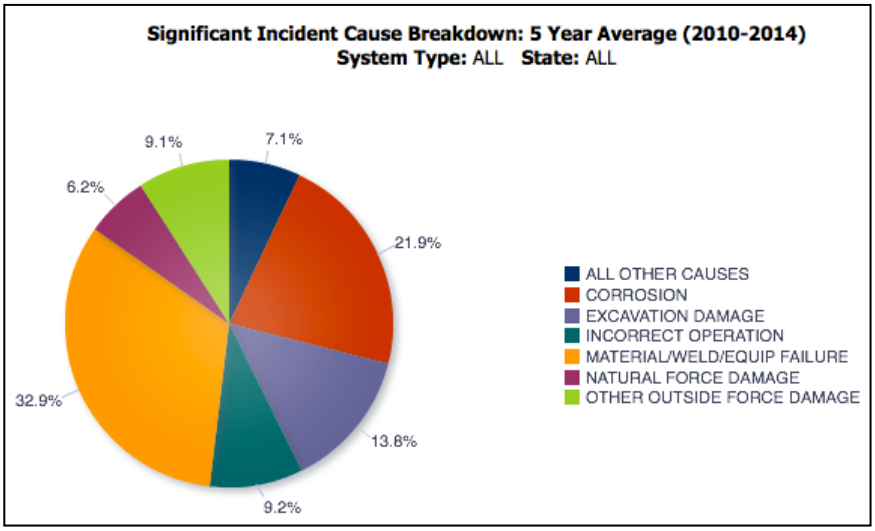

Figure 2

One issue that was identified in the report is that PHMSA does not collect any data on the vast majority of the incidents caused by excavation damage, and most states also lack such data. For example, because of the limited reporting requirements, the PHMSA incident database only includes 43 total pipeline incidents nationwide in 2012 caused by excavation damage. Yet the Annual Reports submitted each year to PHMSA from the gas distribution operators list 76,739 incidents of excavation damage in 2012. Unfortunately the reporting of excavation damage in the annual reports does not require any description about the incidents, so no real conclusions about these damages can be gleaned. The Common Ground Alliance, which is supported by PHMSA and the industry, has tracked excavation damage incidents for a few years now. Their “DIRT” report provides valuable information, but their reporting mechanism is voluntary, and all involved admit there are data quality issues and gaps in the reporting.

The industry and PHMSA continue to spend millions of dollars each year on these important damage prevention efforts. Clearly better data is needed to ensure that those expenditures are targeted in the right areas, and are being effective in reducing damage to pipelines.

To make matters worse, PHMSA drafted a proposed rule in 2012 to establish criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement

programs. According to the most recent Report on DOT Significant Rulemakings[2] that rule has been held up in the Secretary of Transportation's Office for two years, and has yet to even be sent to the Office of Management and Budget for review.

Sec. 4. Automatic and remote-controlled shut-off valves.

Nineteen years ago Congress was debating a requirement for remote or automatic shutoff valves on natural gas pipelines in the wake of the Edison, NJ accident and the two and a half hours it took to shut off the flow of gas that fed the fireball due to the lack of a remotely controlled shut off valve. After the 2010 San Bruno tragedy where it took the pipeline operator over an hour and a half to drive to and close a manual valve the NTSB recommended that PHMSA "***Amend Title 49 Code of Federal Regulations 192.935(c) to directly require that automatic shutoff valves or remote control valves in high consequence areas and in class 3 and 4 locations be installed and spaced at intervals that consider the factors listed in that regulation."*** Most recently the spill of at least 20,000 gallons of crude oil into the ocean near Santa Barbara has again reiterated the need for new rules regarding these types of valves to help limit the damage from pipeline failures.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 Congress asked the Secretary to consider within two years appropriate regulations to require the use of automatic or remote-controlled shut-off valves, or equivalent technology, on new or replaced pipelines. PHMSA did contract with Oak Ridge National Laboratory for a study of such valves. That study[3] concluded that ***"installing ASVs and RCVs in pipelines can be an effective strategy for mitigating potential consequences of unintended releases because decreasing the total volume of the release reduces overall impacts on the public and to the environment."***

In 2010 PHMSA issued an Advanced Notice of Proposed Rulemaking (ANPRM) for hazardous liquid pipelines, and then in 2011 PHMSA issued an ANPRM for gas transmission pipelines. Both ANPRMs made it clear that some change to the requirements for automatic or remote-controlled valves was

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[2] June 2015 Significant Rulemaking Report - http://www.transportation.gov//regulations/june-2015-significant-rulemaking-report

[3] http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_2C1A725B08C5F72F305689E943053A96232AB200/filename/Final%20Valve_Study.pdf

being considered, although it was not clear whether those changes would be under these rulemakings or a separate future rulemaking. Many stakeholder groups invested a significant amount of time responding to these ANPRMs. Unfortunately, years later, information regarding how PHMSA will deal with this issue in their rulemaking has not been made available. The slowness of the rulemaking process regarding automatic and remote-controlled shut-off valves seems at odds with the public proclamations of concern and action.

Perhaps it is time for Congress to write in the statute what is expected regarding the use of these valves instead of relying on PHMSA to ever address this issue.

Sec. 5. Integrity management.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress asked the Department of Transportation to evaluate and report back within two years whether Integrity Management system requirements should be expanded and whether such an expansion would mitigate the need for class location requirements. After the 2010 San Bruno tragedy the NTSB released recommendations (P-11-004 & P-11-005) asking that the Department of Transportation conduct an audit of the effectiveness and enforcement of PHMSA's performance-based safety programs. While PHMSA did hold a workshop on possible Class Location changes, and has issued ANPRMs for both hazardous liquid and gas transmission pipelines, to date the required report, the NTSB requested audit, and any rule changes have not been completed.

We were contacted and interviewed by the Secretary's Office for input on the audit that was requested by the NTSB. We were told over two years ago that the draft of that audit was complete and was just undergoing review by PHMSA. PHMSA is proceeding with major rulemakings that will almost certainly include changes to Integrity Management programs. The Congressionally requested report on integrity management, as well as the NTSB requested audit of the effectiveness of this program should be used to inform the proposed changes that in some cases have already been drafted. We hope Congress will push for the release of these two reviews of the integrity management program.

In the meantime, NTSB has recently released their own report on the Integrity Management of Gas

Transmission Pipelines in High Consequence Areas.[4] That report identified the following areas where integrity management could be improved:

1. Expanding and improving PHMSA guidance to both operators and inspectors for the development, implementation, and inspection of operators' integrity management programs;

2. Expanding the use of in-line inspection, especially for intrastate pipelines;

3. Eliminating the use of direct assessment as the sole integrity assessment method;

4. Evaluating the effectiveness of the approved risk assessment approaches;

5. Strengthening aspects of inspector training;

6. Developing minimum professional qualification criteria for all personnel involved in integrity management programs; and

7. Improving data collection and reporting, including geospatial data

That NTSB report goes on to say:

"***that strategies for reducing potential incidents due to corrosion and material failure appear to be effective and should be expanded to non-HCA pipelines***" and

"The NTSB further concludes that despite the intention of the gas IM regulations to reduce the risk of all identified threats, HCA incidents attributed to causes other than corrosion and material defects in pipe or weld increased from 2010–2013."

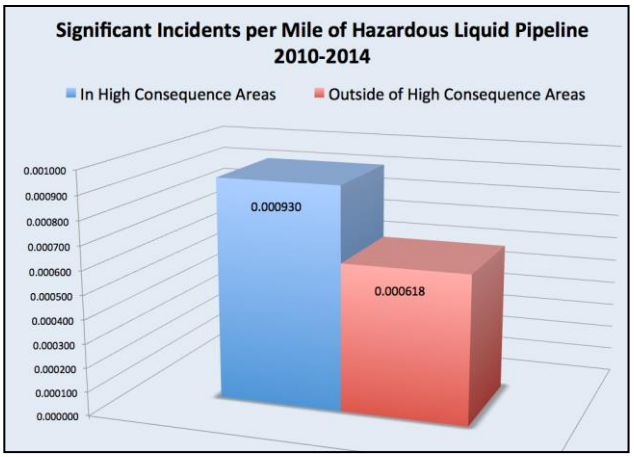

Figure 3

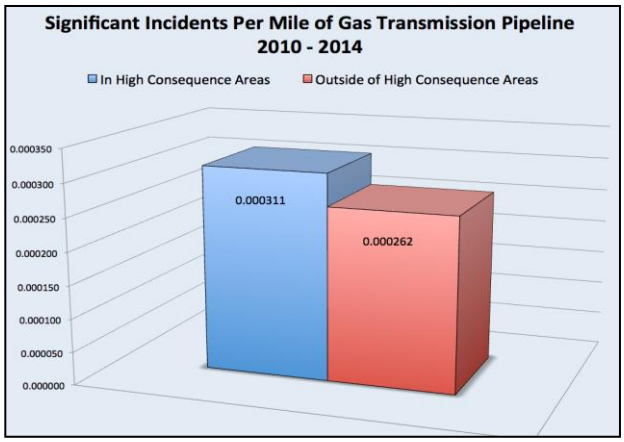

Figure 4

[4] Integrity Management of Gas Transmission Pipelines in High Consequence Areas, NTSB Safety Study, SS-15/01, http://www.ntsb.gov/safety/safety-studies/Documents/SS1501.pdf

These NTSB findings are in line with our own analysis of the PHMSA data (see figures 3 & 4) which concludes that the number of significant incidents per mile of hazardous liquid and gas transmission pipeline is actually higher in High Consequence Areas covered by Integrity Management that in those areas outside of those additional "safety" requirements. All of these findings again point to the need for a thorough analysis of the current integrity management program to find out what is working well and what is not.

Sec. 6. Public education and awareness.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress required the Secretary to provide a variety of information to help build public awareness regarding important pipeline safety programs. One of those requirements was to maintain on the National Pipeline Mapping System (NPMS) a map of High Consequence Areas. Such a map would allow emergency responders, local government planners, and the public to get a sense of where pipelines pose a higher threat, and also where pipeline regulations are more stringent to counter that increased threat. Unfortunately, PHMSA has not yet fully implemented this requirement, with only two of the five types of High Consequence Areas currently available to the public on the NPMS. In 2011 NTSB also recommended (P-11-008) ***"operators of natural gas transmission and distribution pipelines and hazardous liquid pipelines to provide system-specific information about their pipeline systems to the emergency response agencies of the communities and jurisdictions in which those pipelines are located. This information should include pipe diameter, operating pressure, product transported, and potential impact radius."*** Then in 2012 the NTSB recommended (recommendation P-12-019) to the International Association of Fire Chiefs and the National Emergency Number Association to ***"urge your members to aggressively and diligently gather from pipeline operators system-specific information about the pipeline systems in their communities and jurisdictions."*** Unfortunately such system-specific information remains difficult or impossible to get from pipeline operators. This type of information could also be made easily available on the NPMS. We hope Congress will push PHMSA to complete these actions soon.

The Oil Pollution Act of 1990 and its implementing regulations in part 194 of PHMSA's regulations require the operators of pipelines carrying petroleum products to submit a spill response plan to PHMSA for review and approval. In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress required that PHMSA maintain a copy of each such plan and make them available to

the public, while allowing the Secretary to determine if certain kinds of information should be withheld. It appears that PHMSA has met the letter of the law regarding this requirement, but the recent oil spills into the Yellowstone River in Montana and the ocean in California, have again called into questions the extensive redaction that PHMSA does to these plans before releasing them to local governments or the public. This extensive redaction makes it nearly impossible to determine if a company has drafted effective and feasible spill plans, or whether they were able to actually successfully implement the plans when a spill occurs.

Sec. 7. Cast iron gas pipelines.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress asked the Secretary to develop a status report that would be updated every two years to portray the mileage of cast iron pipeline in the country, and show the progress companies are doing in replacing that troublesome pipe. PHMSA completed that status report in December of 2012, and now provides an online status report[5] that shows the mileage of cast iron pipe in the ground by state, and also the progress every individual company has made in replacing that pipe since 2004.

We applaud PHMSA's efforts in this regard to shine a light on how well both the individual companies have worked to replace these cast iron pipelines, but also how well each state is doing, since the states play an important role in designing the rate structures that allow and encourage such important replacement programs. Such individual comparisons of pipeline safety efforts would be a welcome addition in many other areas under PHMSA's authority.

Sec. 8. Leak detection.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress asked the Secretary to provide a report within one year on the technical limitations of current leak detection systems, the practicability of developing standards for the capabilities of leak detection systems, and the costs and benefits of requiring pipeline operators to use such systems. PHMSA completed an in-depth study of leak detection systems in December of 2013.[6] That study found that for hazardous liquid pipelines:

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[5] http://opsweb.phmsa.dot.gov/pipeline_replacement/

[6] http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_4A77C7A89CAA18E285898295888E3DB9C5924400/filename/Leak%20Detection%20Study.pdf

- "The pipeline controller/control room identified a release occurred around 17% of the time."
- Emergency responders or a member of the public were currently the most likely means of discovering a pipeline release.
- "There is no technical reason why several different leak detection methods cannot be implemented at the same time. In fact, a basic engineering robustness principle calls for at least two methods that rely on entirely separate physical principles."
- "External sensors have the potential to deliver sensitivity and time to detection far ahead of any internal system."

In 2010 PHMSA issued an ANPRM for hazardous liquid pipelines that asked in part whether PHMSA should "establish and/or adopt standards and procedures for minimum leak detection requirements for all pipelines." Nearly four and a half years after the close of the comment period on that ANPRM the proposed rule has still not been issued. Again, the slowness of the rulemaking process seems at odds with the public proclamations of concern and action.

Perhaps it is time for Congress to write into the statute what is expected regarding the use of these valves instead of relying on PHMSA to ever address this issue.

Sec. 16. Study of transportation of diluted bitumen.

The July 2010 rupture of Enbridge Line 6b near Marshall, Michigan resulted in a release of approximately one million gallons of diluted bitumen ('dilbit'), comprising the largest onshore oil spill in U.S. history. That catastrophic spill polluted much of Talmadge Creek and dozens of miles of the Kalamazoo River.

Dilbit behaves differently in water than traditional crude in that it sinks as the light fractions evaporate, or when it weathers or mixes with sediment. Neither the operator, the local first responders, the local health department and medical providers, nor the state and federal resource agencies were prepared for a spill of this magnitude of this kind of oil. The cleanup has necessitated the development and modification of entirely new cleanup strategies and thus far exceeds one billion dollars in cost. The local communities did not have appropriate air quality monitoring equipment on site at the time of the spill to know the type or concentration of airborne contaminants they were

being exposed to, and some residents report continuing health effects from exposure to airborne pollutants in the days and weeks following the spill.

In response to concerns about plans for dramatic increases in pipeline transportation of this oil across the U.S. and the many unknowns about the safety of those plans, Congress enacted section 16 of the 2011 Act, directing the Secretary to "complete a *comprehensive review of hazardous liquid pipeline facility regulations* to determine whether the regulations are sufficient to regulate pipeline facilities used for the transportation of diluted bitumen" within 18 months (emphasis added). The Act further directed that in the course of that review, the Secretary was to conduct "an analysis of whether *any increase in the risk of a release* exists for pipeline facilities transporting diluted bitumen" (emphasis added). Unfortunately, the Secretary, acting through PHMSA, chose to very narrowly construe its mandate under this section, and in our view, ultimately initially completed only a fraction of its obligations.

First, no "comprehensive review of the hazardous liquid pipeline regulations" has occurred at all. PHMSA chose instead to initially focus only on a single piece of the second requirement of Section 16 and to contract out a study to the National Academy of Sciences with a very narrow scope: "whether shipments of diluted bitumen differ sufficiently from shipments of other crude oils in such a way as to increase the likelihood of releases from transmission pipelines."[7] As the report from the NAS itself acknowledged: ***"[D]etermination of the risk of a pipeline release requires an assessment of both the likelihood and the consequences of a release***."[8] The scope of work for the contract indicated that if the NAS report indicated (after looking only at existing information) that the differences between shipping dilbit and shipping traditional crude was likely to increase the *probability* of a pipeline spill, then and only then would it be asked to undertake a review of the differences in *consequences* from a dilbit spill, or to undertake the primary directive of Section 16, the comprehensive review of hazardous liquid regulations.[9] Fortunately Congress stepped in and demanded that PHMSA also complete the part of the mandate that deals with the consequence of such a spill. PHMSA has again contracted with the National Academy of Sciences to investigate whether spill properties of diluted

[7] TRB Special Report 311: Effects of Diluted Bitumen on Crude Oil Transmission Pipelines, (2013) at page 1.
[8] Id. at page 2. (emphasis added).
[9] Id.

bitumen differ sufficiently from those of other liquid petroleum products to warrant modifications of spill response plans, spill preparedness, or clean up regulations. This work is still ongoing

Sec. 19. Maintenance of effort.

PHMSA did grant waivers under the Maintenance of Effort clause to states in need during the 2012 and 2013 fiscal years. We believe this maintenance of effort was of value during the recent economic downturn to ensure that states had the resources to maintain pipeline safety programs, and to allow time to change funding structures if need be within their states to be able to cover the matching funds required to maintain their own pipeline safety programs. Many states already have implemented user fees on the pipeline operators within their jurisdictions to cover their state costs, and all states have this ability. At some point this waiver should cease so states that have taken responsible actions to find ways to cover their share of costs are not effectively subsidizing states that have not tried to do so.

Sec. 21. Gas and hazardous liquid gathering lines.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress asked the Secretary to provide a report "of existing Federal and State regulations for gas and hazardous liquid gathering lines located onshore and offshore in the United States." To date PHMSA has not provided that report.

According to PHMSA's data,[10] from reports that regulated pipeline operators have to submit each year, in 2013 there were 17,380 miles of regulated gas gathering lines. Many of these lines are the same size and pressure as transmission pipelines, but they are regulated far less with no requirements that they are ever inspected using the latest technologies. To make matters worse, according to a briefing paper from PHMSA[11] they estimate that there are 230,000 miles of actual gathering lines in the country, with over 210,000 miles of these gathering lines falling outside of any federal or state pipeline safety regulation.

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http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnextoid=78e4f5448a359310VgnVCM1000001ecb7898RCRD&vgnextchannel=3b6c03347e4d8210VgnVCM1000001ecb7898RCRD&vgnextfmt=print

11 PHMSA Briefing Paper, Onshore Gas Gathering, Technical Pipeline Safety Standards Committee Meeting, March 2011

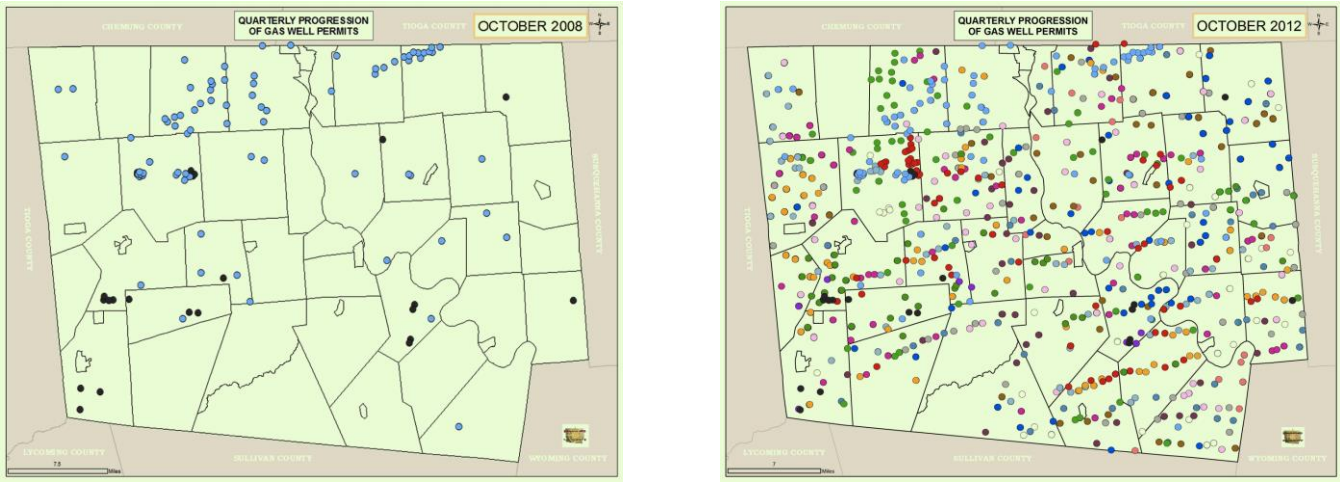

Figure 5[12]

Figure 5 shows the proliferation of wells drilled in just one county in Pennsylvania over a five-year period. All of these wells will eventually be connected with gathering pipelines, and most all of these pipelines will be totally unregulated in regards to safety. We believe it is time to ensure that any gathering pipeline with similar size and pressure characteristics to transmission pipelines fall under the same level of minimum federal regulations, including the integrity management requirements for those in high consequence areas. While PHMSA has hinted that they may include gas gathering lines in the rule that may eventually be proposed on gas transmission lines, that rule, like the required gathering line report, is still nowhere to be found. Again, the slowness of the reporting and rulemaking process seems at odds with the public proclamations of concern and action.

Sec. 22. Excess flow valves.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress asked the Secretary within two years, if appropriate, to "require the use of excess flow valves, or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced distribution branch services, multifamily facilities, and small commercial facilities.'' In late 2011 PHMSA issued an ANPRM to start considering this process. Finally, more than three years after the close of comments on the ANPRM PHMSA just last week released a proposed rule and opened that rule for the comment period. We are most likely still at least a year away from actual adoption of some new requirements for expansion of the use of these valuable life saving valves. This is an open recommendation from the NTSB (P-01-002) dating back to 2001.

[12] Bradford County, PA - http://www.bradfordcountypa.org/Natural-Gas.asp?specifTab=2

Sec. 23. Maximum allowable operating pressure.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress required that "Not later than 18 months after the date of enactment of this section, the Secretary **shall** issue regulations for conducting tests to confirm the material strength of previously untested natural gas transmission pipelines located in high-consequence areas and operating at a pressure greater than 30 percent of specified minimum yield strength." This requirement stems from one of the key failures that led to the San Bruno, California disaster that killed eight people and destroyed a good portion of an entire neighborhood. The NTSB following their investigation of this tragedy recommended (P-11-014) that PHMSA ***"Amend Title 49 Code of Federal Regulations 192.619 to delete the grandfather clause and require that all gas transmission pipelines constructed before 1970 be subjected to a hydrostatic pressure test that incorporates a spike test."*** The NTSB also recommended (P-11-015) that PHMSA ***"Amend Title 49 Code of Federal Regulations Part 192 of the Federal pipeline safety regulations so that manufacturing- and construction-related defects can only be considered stable if a gas pipeline has been subjected to a post-construction hydrostatic pressure test of at least 1.25 times the maximum allowable operating pressure."*** We agree with these NTSB recommendations.

To date PHMSA has held a public workshop on a draft Integrity Verification Process in August of 2013, has held an extended comment period on that draft process, but has not yet released a proposed rule or even an ANPRM. Perhaps they plan to address this issue as part of the ANPRM they released regarding gas transmission pipelines in 2011, but that proposed rule also has not yet been released. Again, the slowness of the rulemaking process seems at odds with the public proclamations of concern and action.

Sec. 24. Limitation on incorporation of documents by reference.

In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress required the Secretary to ensure that any documents that were incorporated by reference into federal rules be made easily available to the public. This requirement was based on the common sense belief that the American public should have easy access to, and not have to pay to review, parts of the federal regulations and guidance documents that impact their lives. At the time this requirement was passed by Congress PHMSA estimated that there were 65 standards that were incorporated by reference into the federal pipeline safety regulations. To access those standards from the private standards

setting organizations, PHMSA estimated it would cost an individual between $8500-$9500.[13]

In the time since this requirement was passed PHMSA held a workshop on this issue, and has worked with the various standard setting organizations to make their standards that are incorporated into the regulations easily and freely available to the public. While great progress has been made this requirement is not yet complete because one standard setting organization – ASME – has refused to follow the lead of all the others. PHMSA continues to work with ASME to at least meet the letter of the Congressional requirement, if not the complete common sense intent.

Sec. 28. Cover over buried pipelines.

In July 2011, the ExxonMobil Silvertip Pipeline ruptured where it crosses the Yellowstone River near Laurel, Montana. The investigation into the cause of the failure revealed that the pipeline had been undermined by sustained floodwaters scouring the riverbed and exposing the pipeline, resulting in its failure along what had become an unsupported span submerged in the river. The rupture resulted in the release of about 1500 barrels of crude oil into the Yellowstone River, and approximately $135 million dollars in property damage.

In the 2011 reauthorization act, Congress asked the Secretary to study hazardous liquid pipeline incidents at crossings of inland bodies of water with a width of at least 100 feet to determine if the depth of cover over the buried pipelines was a factor in any accidental release of hazardous liquids. If the Secretary's study found that depth of cover was "a contributing factor," then a review of the existing regulations and development of legislative recommendations was required.

The existing regulations require that newly constructed pipelines that cross inland water bodies with a width of at least 100 feet between high water marks be buried at least 48 inches beneath the riverbed. There is no requirement for maintaining any particular depth of cover. PHMSA concluded after its study that it required no additional legislative authority to address risks of hazardous liquid pipeline failures at major river crossings. We agree. While we feel there were major shortcomings in the study produced by PHMSA, and we believe that significant changes are necessary to the existing regulatory requirements for pipelines crossing water bodies, we concur that PHMSA possesses

[13] PHMSA – FAQ on Incorporation by Reference - http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_CE1A83B0F73007F34B19FB80020AF3D9FB5B0100/filename/PHMSA%20IBR%20Meeting_FAQs%207.13.2012.pdf

adequate authority to improve the regulations. Whether such a rulemaking might ever be undertaken, or could make it through the substantial bottleneck that the rulemakings underway since 2010 and 2011 have encountered, are separate questions.

The river crossing study produced by PHMSA did succeed in highlighting several major issues with the existing rule and its implementation:

- PHMSA has no data set, geographic or otherwise, that identifies the 100-foot wide crossings that are subject to the rule at the time of construction, making enforcement of the rule dependent on having a PHMSA inspector on site at the time of construction at every crossing where the rule might apply.
- Rivers are dynamic systems, as the Silvertip failure graphically illustrates. The existing rule only applies at the time of construction, but does not require an operator to maintain four feet of cover over the lifetime of the pipeline.
- Many river systems narrower than 100 feet can dramatically scour their beds, putting perhaps thousands of other pipelines at risk of exposure and failure. The existing rule does not cover those crossings.
- The integrity management (IM) rules and their implementation and enforcement are not a sufficient substitute for an adequate rule prescribing operators' ongoing depth of cover obligations at all crossings. The Silvertip system underwent an IM inspection from PHMSA less than a month before its failure, yet there is no indication that the vulnerability of the line and the inadequacy of the operations plans were identified. Moreover, the IM rules apply to only 42% of liquid lines in the country. There may be many crossings that fall outside the narrow definition of an "unusually sensitive area" where IM rules would apply.

Sec. 31 & 32. Pipeline inspection and enforcement needs & Authorization of appropriations.
In the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Congress gave PHMSA permission to increase its inspection and enforcement staff by ten positions if PHMSA successfully filled the existing 135 authorized inspection and enforcement positions. In the fall of 2012 PHMSA notified Congress that the 135 positions had been filled.

With the large increase in new pipeline infrastructure in some parts of the country, the aging infrastructure in need of replacement in other areas, and increased complexity of regulations such as

the Distribution Integrity Management Program, we have long believed that a significant increase in personnel to ensure the safety of the nation's pipeline is justified. The Inspector General in 2014 released a report[14] on the effectiveness of PHMSA's oversight of the state pipeline safety programs, which in many areas drove home the point that more personnel were needed. The report noted many significant problems with PHMSA's oversight of the state programs, and that PHMSA has only "***six evaluators to review and score annual certifications and program evaluations, and oversee State agencies that participate in its State Pipeline Safety Program. Five of these evaluators also perform in-depth triennial grant reviews at State agencies***." The report pointed out that some states such as Texas "***lacked sufficient inspector resources to accomplish its integrity management inspections of gas transmission pipeline operators. This problem will become more acute because a PHMSA regulation that went into effect in 2010 requires States to inspect gas distribution integrity management programs as well as gas transmission."***

Our frequent interactions with PHMSA personnel have demonstrated how thinly stretched many of them are. For those reasons we are thankful that Congress supported PHMSA by providing nearly $27 million in additional funding for the 2015 fiscal year. That funding will allow PHMSA to substantially increase funding for state pipeline safety programs, and hire 109 new positions within PHMSA mainly targeted at inspections and enforcement activities. The ball is now in PHMSA's court to show that they can effectively expand and manage this increased workforce in ways that help decrease the recent uptick in significant pipeline safety incidents.

The Coming Reauthorization

Thank you again for inviting us to testify today. As we move closer to the next reauthorization of the national pipeline safety program there is still much left to do from the 2011 reauthorization. We believe that Congress has given PHMSA the authority and the resources they need to move forward on many important pipeline safety efforts. While we have many ideas for further ways to increase pipeline safety, perhaps a straight reauthorization of the current program this year would allow PHMSA to expand and train staffing as new levels of funding allow, finally produce all the rules and reports they have yet to produce, and address the long list of recommendations from the NTSB. We

[14] Office of the Inspector General – Audit Report, PHMSA's State Pipeline Safety Program Lacks Effective Management and Oversight, Report Number AV-2014-042, May 7, 2014

would support a quick straight reauthorization, as long as Congress remains actively involved in oversight to ensure the Administration is doing the things they have been charged with.