

Testimony of Andrew J. Black
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before the
House Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Hearing on “Pipeline Safety: Reviewing Implementation of the PIPES Act of 2020
and Examining Future Safety Needs”

March 8, 2023

Thank you, Chair, Ranking Member, and members of the subcommittee. My name is Andy Black and I am President and CEO of the Liquid Energy Pipeline Association. LEPA represents pipeline owners and operators delivering transportation fuels like gasoline, diesel, and jet fuel, transportation feedstocks like crude oil, home heating fuels like propane and home heating oil, industrial feedstocks like ethane and butane, and low carbon solutions like renewable diesel, liquified petroleum gas and carbon dioxide. We have over 50 member companies delivering over 20 billion barrels annually across a nearly a 230,000-mile network of pipelines.

As Congress examines federal pipeline safety provisions and programs, let me first begin by providing some data and information on the current state of liquids pipeline safety. According to publicly available government data from PHMSA, pipelines are the safest way to transport energy and they are getting safer.

Over the last 5 years, total incidents from liquids pipelines have dropped over 25%. Incidents impacting people or the environment are down 15%. This last metric, Incidents Impacting People or the Environment, was developed jointly by PHMSA, the Pipeline Safety Trust and industry under the recommendation of the National Transportation Safety Board. NTSB asked the pipeline community to identify the most meaningful metric for measuring pipeline safety. You’ll hear from witnesses about various metrics and PHMSA certainly tracks many. But we agree that Incidents Impacting People or the Environment are the most meaningful and are gratified they are down 15% over the last 5 years.

Not only are pipelines getting safer, they are the safest way to deliver energy. A 2018 report completed by PHMSA at the direction of the Senate Appropriations Committeeⁱ, compared incident and spill rates across pipeline, rail and trucks. PHMSA found pipelines have a

lower incident rate per barrel of crude oil shipped compared to rail or truck. PHMSA also found pipelines result in the lowest percentage of crude oil released compared to rail or truck.

Administration analysis and conclusion that pipelines are the safest way to deliver energy is also bipartisan. Secretary Hillary Clinton's State Department during the Obama administrationⁱⁱ found not only would a major proposed pipeline be the safest way to deliver energy, it would be safer and have less impact on the environment than taking no action at all. The Obama administration found rejecting that pipeline project and shipping the same energy by rail increased the risk of oil release by over 800 times and barrels released by 2.6 times.

We certainly understand in many locations shipment by rail or truck is necessary and generally a safe delivery mode on their own. But we are proud that pipelines are the safest way to deliver the energy American consumers need and want.

We also are not resting on improving pipeline safety. The pipeline industry wants to reduce the number of incidents and barrels released even further. That is why we partner with the American Petroleum Institute and our member companies on numerous industry-wide initiatives to improve pipeline safety.

We have ongoing industry-wide initiatives to improve public engagement, develop best practices for managing geohazards and seismicity, improve pipeline inspection technologies, implement pipeline safety management systems, and share safety improvement lessons from pipeline incidents and near misses across our pipeline community. In the last several years, we have completed initiatives on crack management, pipeline integrity management, data integration, hydrotesting and emergency response. Our upcoming API-LEPA strategic plan for pipeline excellence will include new goals on cybersecurity, attracting, training and retaining quality personnel, and low carbon solutions. We will release that in May and will look forward to briefing the committee and member offices on its safety programs.

We also look forward to Congress reauthorizing federal pipeline safety provisions and making improvements to PHMSA pipeline programs. LEPA recommends pipeline safety improvements in three categories: 1) Leveraging Safety Technology and Knowledge, 2) Safe Low Carbon Future, and 3) Improving PHMSA Safety Programs.

I have attached to my testimony further brief summaries of each of our specific recommendations and so will highlight just a few here today. A continuing frustration for pipeline operators is how old are some of PHMSA's regulations. Key requirements for inspecting and repairing pipelines are now over 20 years old. The pipeline technologies and analytic methods on which they were based are woefully out of date, replaced by new technologies and analytic methods that PHMSA should reflect in its regulations but often does

not. Congress in the 2020 PIPES Act authorized a program to demonstrate cutting edge pipeline safety technologies and advanced analytics. The hope is data from these technology pilots would help PHMSA modernize their regulations. However, PHMSA in implementing the program added a number of additional administrative hurdles and requirements beyond what Congress mandated, making the program untenable. We have proposals to unlock this program and others from unnecessary government red tape.

The pipeline industry also supports updating regulatory requirements for low carbon solutions, such as carbon dioxide pipelines. A major buildout of CO₂ pipelines is necessary to transport CO₂ from where it is captured to where we will store it permanently out of harm's way. Without a new network of CO₂ pipelines, we will not meet goals for reducing greenhouse gas emissions. We want policymakers and the public to know these CO₂ pipeline systems will be covered by federal pipeline safety requirements. Many do not know there are already dozens of federal regulatory requirements administered by PHMSA covering CO₂ pipeline safety. However, we agree that in a handful of discreet areas, PHMSA requirements would benefit from updates reflecting the latest safety approaches and learnings. We also believe a targeted approach is the best way for PHMSA to issue new requirements quickly. This would also help PHMSA avoid getting bogged down in an open-ended exercise that like other recent PHMSA rulemakings could take many years.

We also support PHMSA having the expert pipeline safety personnel it needs to complete its mission. Congress often places new regulatory mandates on PHMSA. Similarly, lessons learned from incidents, advances in technology, or our changing infrastructure systems can drive the need for PHMSA to issue guidance or undertake rulemakings. We encourage Congress to help PHMSA get the experts on pipeline safety it needs to meet the expectations of Congress and the public.

On this or any of our proposals or those under consideration by the subcommittee I'm happy to answer questions and thank the subcommittee again for inviting me to testify today.

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ⁱ Report on Delivering Crude Oil by Truck, Rail, and Pipeline, Office of Hazardous Materials Safety, U.S. Pipeline and Hazardous Materials Safety Administration, 2018.

ⁱⁱ Final Supplemental Environmental Impact Statement for the Keyston XL Project, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, 2014.

LEGISLATIVE PRIORITIES

2023 Pipeline Safety Reauthorization



The Liquid Energy Pipeline Association (LEPA) represents over 50 pipeline operators with nearly 230,000 miles of pipelines across America delivering affordable, reliable and plentiful energy to American drivers, families, farmers, workers and shoppers. LEPA members deliver transportation fuels like gasoline, diesel and jet fuel, agriculture and rural home heating fuels like propane, heating fuels for the Northeastern U.S. like fuel oil and ultra low sulfur diesel, industrial feedstocks like ethane and butane, transportation fuel feedstocks like crude oil, and low carbon solutions like renewable diesel, ethanol, liquified petroleum gas and carbon dioxide. LEPA urges Congress to consider the following as they review federal pipeline safety laws in 2023:

1

Leverage Safety Technology & Knowledge

Hi-tech inspection and analytical tools, like an MRI or ultrasound in the doctor's office, are available for pipeline safety. However, key parts of PHMSA safety regulations are over 20 years old and do not reflect the latest advances in technology or know-how. Congress can do more to help modernize pipeline safety programs.

- **Improve Pipeline Safety Technology Demonstration Program**
- **Promote Safety Sharing through Voluntary Information Systems**
- **Modernize Pipeline Incident Notification with Online Filing**
- **Allow Risk-Based Inspections for Storage Tanks**
- **Incorporate Leading Safety Standards into Program Requirements**

2

Safe Low Carbon Future

Pipelines are the safest way to deliver liquid products, including low carbon economy byproducts like carbon dioxide. While existing federal regulatory requirements on CO₂ pipelines are extensive, Congress can provide additional safety measures and clarifications to close remaining gaps in pipeline safety programs.

- **Update CO₂ Pipeline Safety Standards**
- **Clarify Methane Regulation Scope**

3

Improve PHMSA Safety Programs

PHMSA, like the pipeline operators it oversees, can also benefit from adjustments reflecting continuous improvement efforts. Congress can help PHMSA increase the effectiveness and transparency of its pipeline safety programs and requirements.

- **Optimize PHMSA Valve Inspection Scope**
- **Increase PHMSA Inspection Program Transparency**
- **Focus PHMSA Special Permit Program**
- **Improve PHMSA Enforcement Processes**
- **Provide Expert Pipeline Safety Regulatory Personnel**
- **Enhance Pipeline Right of Way Management**
- **Jumpstart Required Regulation of Idled Pipe**
- **Close Loophole in Penalties for Pipeline Attacks**

Improve Pipeline Safety Technology Demonstration Program

Action Needed:

Congress should prevent bureaucratic red tape from stifling new technologies and analytics that could improve pipeline safety.



Background:

In the 2020 PIPES Act, Congress recognized pipeline safety could benefit from harnessing the latest hi-tech inspection technologies and analytics. Congress authorized PHMSA to conduct a pipeline safety technology demonstration pilot program under certain conditions. However, PHMSA added a host of additional administrative, regulatory and legal conditions to the program, effectively preventing its use.

Status:

PHMSA has received no applications to conduct technology pilots. Pipeline operators cite the additional conditions PHMSA imposed in its implementation guidance as making the program infeasible.

Promote Safety Sharing through Voluntary Information Systems

Action Needed:

Congress should authorize a Voluntary Information Sharing (VIS) program based on the recommendations of the public advisory committee formed pursuant to the 2016 pipeline safety reauthorization law.



Background:

Programs where regulators, operators, vendors, unions and safety advocates can share information, with appropriate legal protections, and develop joint safety recommendations, have found success at FAA. Interested stakeholders developed a legislative proposal to implement recommendations of the Congressional VIS public advisory committee. That language did not reach consensus before the 2020 Pipes Act.

Status:

Stakeholders appear to have agreement on draft legislative language after overcoming remaining issues which prevented VIS inclusion in the 2020 Pipes Act.

Modernize Pipeline Incident Notification with Online Filing

Action Needed:

Congress should require the National Response Center (NRC) to develop and allow use of a simple and quick online incident notification system.



Background:

The NRC currently requires placing a telephone call to the NRC to notify it of a pipeline incident. Operators and regulators have experienced lengthy delays waiting for a live person to answer the phone at NRC. In the decades since the NRC first established its telephone requirement, web-based applications accessed online now allow for simple and quick notification to all stakeholders.

Status:

Online notification of pipeline incidents, such as through a simple online app, is not currently available.

Allow Risk-Based Inspections for Storage Tanks

Action Needed:

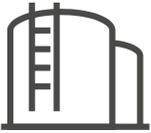
Congress should prevent unnecessary greenhouse gas and air pollutant emissions, worker safety threats and hazardous waste by allowing risk-based storage tank inspections.

Background:

PHMSA regulation requires inspection of petroleum storage tanks on fixed schedules, regardless of their actual maintenance needs. The early draining and cleanout of tanks to perform unneeded inspections releases greenhouse gas emissions and air pollutants, subjects workers to unnecessary risks in confined spaces, and creates hazardous waste needing disposal. Current industry standards on tank inspection are already accepted by other federal and state agencies, including EPA's program.

Status:

Engineering assessments methods to set maintenance schedules that avoid climate, environmental and worker impacts are available for PHMSA to incorporate into regulation.



Incorporate Leading Safety Standards into Program Requirements

Action Needed:

Congress should direct PHMSA to review pipeline safety best practices and incorporate in a timely manner, where appropriate. Congress should also encourage PHMSA to participate more fully in the standard setting process.

Background:

Pipeline operators develop industry-wide best practices in an open and multi-stakeholder collaborative process certified by the American National Standards Institute. These practices are technical documents developed by engineers and PHMSA has incorporated several into their regulations.

Status:

PHMSA is often slow to incorporate the latest editions of best practice standards. LEPA's legislative proposal would require PHMSA to review the latest editions to regulated industry standards in a timely manner and incorporate them where appropriate through the regular notice and comment process.



Update CO₂ Pipeline Safety Standards

Action Needed:

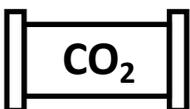
Congress should direct PHMSA to update existing carbon dioxide pipeline safety regulations in key areas.

Background:

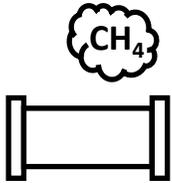
Current federal pipeline safety requirements already regulate CO₂ pipeline design, construction, operation, maintenance and emergency response. However, there are targeted areas in system coverage, impact modeling, maintenance and emergency response where PHMSA can do more to address the specific needs of CO₂ pipelines. These additions will promote new low carbon infrastructure.

Status:

While PHMSA has announced general plans to impose additional CO₂ regulation in the future, an opportunity exists to direct PHMSA to act more quickly in key areas that will improve CO₂ pipeline safety.



Clarify PHMSA Methane Regulation Scope



Action Needed:

Congress should clarify the 2020 PIPES Act provisions covering methane monitoring and mitigation from natural gas pipelines does not apply to hazardous liquids pipelines.

Background:

The 2020 PIPES Act requires PHMSA to issue regulations for the monitoring and mitigation of methane from natural gas pipelines. Hazardous liquids pipelines delivering crude oil, gasoline, diesel fuel or other energy liquids do not transport or release methane and the PIPES Act does not include them. However, some PHMSA inspectors are attempting to require hazardous liquids pipeline operators to update their inspection and maintenance plans to meet methane monitoring and mitigation program requirements.

Status:

PHMSA interpretation and implementation of the 2020 PIPES Act methane provisions remains uneven.

Optimize PHMSA Valve Inspection Scope



Action Needed:

Congress should direct PHMSA to revise its recent pipeline rupture rule to only apply additional inspection requirements to valves related to pipeline ruptures, and drop misapplied inspection requirements of all valves, including those which would not contribute to or limit a rupture.

Background:

In 2022, PHMSA required semi-annual inspection of valves that could mitigate the extent of a pipeline rupture. However, between the proposed and final versions of the rule PHMSA without notice expanded the requirement to include all valves, even those unrelated to addressing ruptures. PHMSA claims this expansion was unintended but has not addressed the legal uncertainty created by the change.

Status:

Informal PHMSA discussions to issue guidance would not change the clear regulatory language and legal liability presented by the final regulation.

Increase PHMSA Inspection Program Transparency



Action Needed:

Congress should require PHMSA annually to share publicly its inspection priorities and number of federal and state inspections of pipelines across PHMSA regions. PHMSA should also ensure any guidance used by PHMSA inspectors is publicly available.

Background:

The current system of PHMSA region inspections and state inspection of pipelines can lead to unbalanced and duplicative inspection patterns across the country. More transparency would help ensure PHMSA's inspection program is meeting pipeline safety priorities

Status:

While PHMSA is transparent with public sharing of its enforcement activities, PHMSA does not publicly share its inspection priorities or numbers of inspections across PHMSA regions and states.

Focus PHMSA Special Permit Program

Action Needed:

Congress should direct PHMSA to focus requirements of its special permit program on issues presented by the permit request and require timely review of applications.

Background:

Key PHMSA inspection and maintenance regulations are over 20 years old reflecting outdated technology and knowledge of the time. Federal law authorizes PHMSA to issue special permits varying from existing regulations as long they achieve equal levels of safety or are consistent with the public interest. However, PHMSA's special permit implementation program has grown over the years to include numerous requirements unrelated to the variances sought. Permit reviews can also take multiple years.

Status:

PHMSA's special permit process remains stuck in unnecessary requirements, reviews and delays.



Improve PHMSA Enforcement Processes

Action Needed:

Congress should direct PHMSA to establish a process when opening PHMSA enforcement proceedings to the public.

Background:

PHMSA historically conducted informal enforcement proceedings without public attendance. Public interest in pipeline cases is growing and PHMSA has allowed public attendance. PHMSA should set an orderly process for public attendance and protection of confidential information during proceedings.

Status:

There is no established process when opening PHMSA enforcement proceedings to the public.



Provide Expert Pipeline Safety Regulatory Personnel

Action Needed:

Congress should direct DOT and PHMSA to hire experienced pipeline safety regulatory personnel.

Background:

PHMSA is a small agency with personnel limitations that prevent it from timely addressing Congressional mandates and evolving pipeline safety needs. The 2020 PIPES Act authorized PHMSA to hire additional inspection and regulatory personnel. PHMSA used the resources to hire environmental policy experts and develop a methane monitoring and mitigation rulemaking. Work on other pipeline safety priorities face years of delay.

Status:

DOT human resources requirements placed on PHMSA limited hiring to junior personnel with less skill and experience. There are no requirements to hire pipeline safety expertise.



Enhance Pipeline Right of Way Management

Action Needed:

Congress should direct PHMSA to allow pipeline right of way conservation practices that benefit habitat and the environment.



Background:

PHMSA regulations requires activities along pipeline rights of way which can prevent natural habitat benefitting local wildlife and the environment. Conservation practices are available that balance pipeline monitoring and conservation.

Status:

Pipeline industry conservation initiatives are available for operator use if PHMSA allows the practice.

Jump Start Required Regulation of Idled Pipe

Action Needed:

Congress should direct PHMSA to complete the Congressionally mandated idled pipe rulemaking.

Background:

Operators sometimes suspend service on pipeline systems to reflect market conditions and temporary lack of demand for product movement along certain routes. However, no current PHMSA regulations govern maintenance and monitoring of pipelines in an idled status or the steps they must take to return to full service. Congress in the 2020 PIPES Act mandated PHMSA issue regulations addressing idled pipe.

Status:

The Congressionally mandated 2-year deadline for PHMSA to complete an idled pipeline rulemaking expired December 2022. PHMSA regulatory agenda currently predicts it will not issue a proposal before November 2023 with a future finalization date undetermined.



Close Loophole in Penalties for Pipeline Attacks

Action Needed:

Congress should close loophole in criminal penalties for pipeline attacks that are dangerous but do not result in damage.

Background:

Multiple past cases of attacks on pipelines and pipeline infrastructure posed a danger to the attackers, general public and environment. The federal government has obtained convictions on attacks resulting in physical damage to energy infrastructure. However, attacks that manipulate pipeline valves or other equipment, while not resulting in physical damage, are still dangerous due to risk of explosion or product release from a pressure buildup and rupture. Judges have dismissed prosecution of such cases because they did not result in physical damage, as the statute is currently interpreted.

Status:

Provisions exist in Title 18 against damaging energy infrastructure and Title 49 against damaging or destroying pipeline infrastructure, but there are no provisions against dangerous non-damaging activities.

