Testimony of
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on Behalf of the
Association of Oil Pipe Lines (AOPL) and the American Petroleum Institute (API)

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Summary

Pipelines are the safest and most efficient way to move crude oil and refined petroleum products such as gasoline, diesel fuel, jet fuel, home heating oil and propane. The safety record of the liquid pipeline industry shows strong improvement over the past decade, because of new laws and regulations, improving technologies, and vigorous industry action. Each of the major causes of pipeline accidents also showed marked decreases during this time period. Pipeline operators pursue continuous improvement by sharing best practices and information about incidents and near misses, conducting research, and making technically based recommendations to industry leaders.

Pipeline operators take safety seriously. Operators of liquid pipelines invest millions of dollars annually to maintain their pipelines and comply with federal pipeline safety laws and regulations. Improved tool technology and greater experience with data integration has resulted in operators and vendors detecting anomalies not found in earlier tool runs. While catching these anomalies before they go to failure is a positive outcome, it means that the costs of integrity management remain high, a situation we expect to continue for the foreseeable future. Costs for conducting integrity management incurred by pipeline operators are ultimately borne by the shippers who pay for transportation services and the consumers of the products that are shipped through the pipeline.

Congress has provided PHMSA with broad authority to regulate pipeline safety. PHMSA is an aggressive regulator, conducting rigorous inspections and vigorously enforcing compliance with pipeline safety laws. Operators face a comprehensive set of federal regulatory requirements for construction, operation, and maintenance of pipelines. Existing laws and regulations already address the leading causes of pipeline failures, including corrosion, excavation damage, materials and equipment failure, and operations. AOPL and API have proposed additional requirements on liquid pipeline operators regarding repair criteria, leak detection evaluations, and a systematic updating of High Consequence Area designations.

AOPL and API ask for the help of Congress to protect pipelines from excavation damage, the leading cause of accidents which kill or injure people. Exemptions from One-Call requirements in State programs create a safety gap which must be closed. PHMSA should close the gap by exercising One Call Civil Enforcement authority granted by Congress in 2006. Congress should require PHMSA to terminate these State exemptions.

AOPL and API also encourage Congress to bring PHMSA's procedural rules up to par with those used by other regulatory agencies. AOPL and API also recommend that Congress not expand PHMSA jurisdiction or require rulemakings before receiving studies that assess whether the current regulatory framework is adequate.

AOPL and API are ready to work with Congress, PHMSA, and other stakeholders on these and other issues to continue pipeline safety gains and reauthorize the pipeline safety laws.

Introduction

I am Andy Black, President and CEO of the Association of Oil Pipe Lines (AOPL). I appreciate this opportunity to appear before the subcommittee today on behalf of AOPL and the American Petroleum Institute (API).

AOPL is an incorporated trade association representing 49 liquid pipeline transmission companies. The American Petroleum Institute (API) represents more than 470 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.2 million U.S. jobs, accounts for 7.7 percent of the U.S. economy, and delivers more than $85 million a day in revenue to the U.S. Treasury. Together, our organizations represent the operators of approximately 90 percent of total U.S. oil pipeline mileage in the United States.

I will discuss the industry's commitment to safety, our improving safety record, and our views on pipeline safety reauthorization.

Liquid pipelines overview

Pipelines are the safest, most reliable, economical and environmentally favorable way to transport oil and petroleum products, other energy liquids, and chemicals, throughout the U.S.

Liquid pipelines bring crude oil to the nation's refineries and petroleum products to our communities, including all grades of gasoline, diesel, jet fuel, home heating oil, kerosene, and propane. AOPL's and API's member companies provide hydrocarbon feedstocks for use by many other industries, including food, pharmaceuticals, plastics, chemicals, and road construction. America depends on the network of more than 170,000 miles of liquid pipelines to safely and efficiently move the energy that fuels our nation's economic engine.

Approximately 2.5 cents of the cost of a gallon of gasoline to an end-user can be attributed to pipeline transportation[1], resulting in a low and predictable price for pipeline customers (referred to as "shippers"). Liquid pipeline transportation rates are regulated by the Federal Energy Regulatory Commission (FERC). Rates are generally stable and predictable, and do not fluctuate with changes in crude oil, gasoline, or other fuel prices.

Pipeline operators insist on safety

Pipeline operators have every incentive to invest in safety. Indeed, in our members' view, there are no incentives to cut corners on pipeline safety. Most important is the potential for injury or loss of life to members of the public, pipeline employees and contractors, and the effect on the environment. In addition to the public and third-party impact, if a pipeline experiences a failure or a release, there are numerous potentially harmful consequences for the operator and its reputation. The operator could incur potentially costly repairs, cleanup costs, litigation, and fines. Further, the pipeline could suffer a significant loss of revenue and goodwill by not being able to serve its customers for extended periods of time. In short, when it comes to safety, pipeline operators have every reason to operate in a manner consistent with the public interest.

Operators of liquid pipelines invest millions of dollars annually to maintain their pipelines and comply with federal pipeline safety laws and regulations. A large percentage of liquid pipeline assets are inspected regularly and all are monitored continuously. Safety measures include proper pipeline route selection, design, construction, operation, and maintenance, as well as comprehensive public awareness and excavation damage prevention programs.

[1] "Liquid Transportation Fuels from Coal and Biomass: Technological Status, Costs, and Environmental Impacts", National Academy of Sciences, 2009.

As a result of industry actions and pipeline safety rules and regulations, liquid pipeline spills along rights-of-way have decreased significantly over the past decade, in terms of both the number of spills and the volume of product released. Both industry and government continue to work to improve this record further.

Pipeline safety laws and regulations

Congress enacted the Hazardous Liquids Pipeline Safety Act of 1979 (HLPSA, 49 U.S.C. 2001) to regulate comprehensively the transportation of liquids by pipeline. Since then, several new laws have been passed affecting the regulation of the liquids pipeline industry, including: the Pipeline Safety Act (PSA) of 1994, the Pipeline Safety Improvement Act of 2002 (PSA), and the Pipeline Inspection Protection, Enforcement, and Safety Act of 2006 (PIPES).

Pipeline safety is closely regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA is responsible for establishing and enforcing regulations to assure the safety of liquid pipelines (Title 49 CFR Parts 190-199). Operators face a rigorous set of PHMSA regulations pertaining to pipeline construction, operation, and maintenance. Regulations also cover public awareness, reporting, design standards, construction methods, operational controls and limitations, pressure testing, maintenance standards, qualification of personnel, and emergency response. Laws and regulations address the leading causes of pipeline failures, including corrosion, excavation damage, materials and equipment failure, and operations.

Integrity management

Pipeline operators are required under federal regulations (Title 49 CFR, Part 195.450 and 452) to develop an Integrity Management Plan (IMP), for pipeline segments which could affect High Consequence Areas (HCAs). HCAs for liquid pipelines include any of the following:

- Population centers, urbanized areas, or areas with large population density;
- Commercially navigable waters; and
- Unusually sensitive areas such as areas proximate to water supplies and ecological reserves.

Liquid pipeline operators are required in their IMPs to identify pipeline segments that could impact HCAs, conduct periodic integrity assessments on those segments at intervals not to exceed five years, and review assessment results to make mitigation and repair decisions. When identifying segments which could affect HCAs, operators are required to conduct risk assessments and consider local topographical characteristics, operational and design characteristics of the pipeline, and the properties of transported commodities in determining potential impacts of an incident. These assessments set a point of comparison so that operators may gauge the impact of time-dependent threats, like corrosion. This is an extra layer of oversight based on the fact that the consequences of a release are potentially greater if there is an impact on an HCA. Many operators use these same assessment techniques on non-HCA pipeline segments. Liquid pipeline baseline assessments for pipelines that could affect HCAs were completed for existing pipelines by March 2008. Operators are now on their second or third round of assessments.

Assessments include in-line inspection by "smart pigs", which detect features in the pipe that need to be addressed, such as corrosion, pipe deformation, cracking and other anomalous features. This technology includes sensitive internal detection devices, such as magnetic flux leakage tools (MFL) and ultrasonic testing, to examine pipeline wall thickness and detect other anomalies. Another widely-used assessment method is hydrostatic pressure-testing, where a pipeline segment is filled with water, pressurized, and monitored to assure it will hold pressure at a safety factor well above the intended operating pressure.

As in-line inspection tools become more sophisticated, they are more effective at identifying anomalous conditions for pipeline operators to consider, resulting in increased costs incurred by pipeline operators. Integrity management compliance costs have trended upward since implementation of the IMP regulations, a trend that the industry expects to continue in the coming years. Liquid pipeline operators representing approximately 75 percent of the PHMSA-regulated pipeline mileage report spending approximately $2.7 billion on pipeline integrity management activities, and approximately $600 million on integrity management related to pipeline-owned tankage, from 2004 to 2009. The costs for conducting integrity management are incurred by pipeline operators, and are ultimately paid for by the pipelines' shippers and the consumers of the products that are shipped.

Liquid pipeline safety record has improved

The frequency of releases from liquid pipelines decreased from 2 incidents per thousand miles transported in 1999-2001 to 0.8 incidents per thousand miles in 2007-2009, a decline of 59 percent. Similarly, the number of barrels released per thousand miles decreased from 629 in 1999-2001 to 364 in 2007-2009, a decline of 41 percent[2]. The industry is proud of it's improvement to date, but continues to strive for zero releases, zero injuries, zero fatalities and no operational interruptions.

Each of the major causes of pipeline accidents showed decreases during this time period, reflecting the success of several different strategies to manage risk.

Cause	*Decrease from 2001 to 2009 (3-year averages)*
Corrosion	73 percent

[2] These figures are from the Industry's Pipeline Performance Tracking System, an industry-led reporting system that tracks pipeline system spills.

Third-party damage (excavation or other mechanical damage)	66 percent
Equipment	50 percent
Pipe materials and seams	30 percent
Operator error	40 percent

Furthermore, releases due to time-dependent causes (those that occur or worsen over time) were reduced by 36 percent from 2002-2009. Those trend line reductions were even greater for large releases (down 50 percent) and releases on pipes installed before 1950 (down 83 percent).[3] If properly constructed, maintained, and protected, pipelines should have extraordinarily long lives. Old age in a pipeline does not automatically mean a pipeline segment should be replaced or is unsafe. A more accurate determination of a pipe's integrity is its "fitness for service", not simply its age. Operators choose tools to use in inspecting and maintaining a pipeline using several factors, including the type of pipe, its constructions, and its operating history.

Performance Improvement

We continue to work hard at the company and association level to achieve the goal of zero releases. Since 2001, the vision of AOPL and API member companies has been an oil pipeline industry that –

- Conducts operations safely and with respect for the environment, with zero deaths, injuries, or releases;
- Respects the privilege to operate granted to it by the public; and
- Provides reliable transportation of the crude oil and refined products upon which America and all Americans rely.

We have committed to fulfill this vision by:

[3] PHMSA Form F 7000-1 data (2002-2009) on time-dependent causes.

1. Supporting effective federal oversight of pipeline operations in cooperation with states and local communities;
2. Promoting cooperation among communities, public officials, employees and companies by sharing information on pipelines and pipeline safety;
3. Employing proven pipeline safety technologies and investing in new technologies to further improve performance; and
4. Achieving operational excellence through sound risk management approaches.

After the 1999 pipeline accident in Bellingham, Washington, the U.S. oil pipeline industry created the Environmental and Safety Initiative (ESI) to push ourselves to make further improvements in spill and accident prevention. Led by pipeline executives, the ESI promotes achievement of operational excellence through promotion of sound risk management approaches, sharing of best practices, implementation of proven pipeline safety technologies, and investment in new technologies. Company executives have extensive discussions on safety during industry leadership meetings, share effective safety policies and programs, discuss topics of concern and approaches to improvement, and reinforce the industry's commitment to safety.

The Performance Excellence Team (PET) of the ESI pursues environmental and safety excellence in operations and system integrity. PET promotes inter-company learning and high quality, accurate and useful data analysis leading to actionable recommendations to the pipeline industry for continuous performance improvement. PET members from operations, engineering, regulatory compliance, and environment, health and safety, meet regularly to share information and best practices.

The liquid pipeline industry is focused on continuous learning and improvement. Toward this end, the industry collects and carefully analyzes data on pipeline spills. Every spill of at least five gallons is reported to the U.S. Department of Transportation, and operators contribute more detailed spill data to the Pipeline Performance Tracking System (PPTS). The stated philosophy of PPTS is to measure, learn, manage and improve. Through PPTS, the industry measures and

evaluates its performance and focuses on areas for improvement. PPTS data helps provide actionable recommendations to the pipeline industry targeting continuous performance improvement and solutions addressing the known and anticipated challenges.

Hazardous liquids pipeline employees also participate in the annual Pipeline Information Exchange (PIX) workshop, a confidential forum in which operators can share learning opportunities from specific pipeline incidents or near misses. Attendees include control room operators, safety managers, engineering and integrity staff and executives. The objective is for participants to take these learnings back to their respective companies to help prevent similar situations from occurring.

Finally, pipeline operators invest in research to identify new technologies and practices to improve pipeline safety. In addition to company research, pipeline operators, AOPL, API and others fund research conducted by Pipeline Research Council International (PRCI), a global cooperative R&D organization for the energy pipeline industry. PRCI members contribute technical and operations experts from their companies to work with expert consultants, maintain a research forum of ideas, and produce tangible solutions companies can implement. Over the last five years, liquid and natural gas pipelines contributed more than $39 million toward PRCI pipeline research.

PHMSA ANPRM for Hazardous Liquid Lines

On February 18, 2011, AOPL and API provided comments in response to PHMSA's Advanced Notice of Proposed Rulemaking (ANPRM) for hazardous liquid pipeline safety (Docket # PHMSA-2010-0229). AOPL and API proposed several new regulatory requirements to improve pipeline safety.

Repair Criteria for Non-HCA Segments – AOPL and API proposed that PHMSA require liquid pipeline operators to treat all pipeline anomalies identified as "immediate repairs" in PHMSA's integrity management repair criteria regulations the same regardless of whether they could affect an HCA. This concept would capture a significant portion of the nation's total liquid pipeline mileage. A recent survey conducted by API of its member pipeline companies (covering 93,867 miles) showed that through the course of assessing HCA "could-affect" segments, operators had assessed 83 percent of their non-HCA mileage. When combined with HCA mileage, this represents 90 percent of the total mileage for the survey respondents. This is a significant step forward and voluntarily expands the current regulatory requirements that trigger immediate response only for pipeline segments which could affect an HCA.

Leak Detection – AOPL and API proposed that PHMSA expand leak detection capability evaluations to all pipelines currently subject to PHMSA's regulations, except rural gathering lines.

Current Criteria for HCA Designation – AOPL and API proposed PHMSA regularly update HCA determinations and boundaries to reflect census population data from the decennial census and updated water intake information.

Damage prevention and One-Call

Excavation damage to pipelines is the leading cause of pipeline accidents which kill or injure people. Excavation accidents are less frequent today, but often still result in extremely adverse consequences. Incidents from excavation damage by third parties accounted for only 7 percent of release incidents from 1999 to 2008. However, 31 percent of all significant incidents (those that result in spills of 50 barrels or more, fire, explosion, evacuation, injury or death) are caused by third-party excavation damage. Further, at an even higher frequency, pipelines suffer

damages from third parties that contribute to accidents later, are not severe enough to cause a release at the time the pipeline is struck.

To protect communities, sensitive environmental areas, as well as the pipeline itself, the pipeline industry and other operators of underground facilities joined together to create notification centers that are used by those preparing to conduct excavation close to underground facilities. These "One-Call Centers" serve as the clearinghouse for excavation activities that are planned close to pipelines and other underground utilities.

Established by Congress in 2007, 811 is the national "call-before-you-dig" number which informs operators when someone wants to dig near the pipeline, and homeowners, and excavators about the location of underground utilities before they dig to prevent unintentional damage to underground infrastructure, including pipelines. When calling 811 from anywhere in the country, a call is routed to the local One-Call Center. Local One-Call Center operators identify the location of the proposed excavation and route information about the proposed excavation to affected infrastructure companies. Under One-Call regulations, excavators must wait a specified amount of time before beginning any excavation project, to allow operators of underground infrastructure time to locate and mark underground infrastructure to protect it from excavation-related damage.

In addition, pipeline operators, associations, state regulators and federal and state agencies take part in the Common Ground Alliance (CGA), an association that promotes effective damage prevention practices for all underground utility industry stakeholders to ensure public safety, environmental protection, public awareness and education to guard against excavation damage. Industry has worked closely with CGA to develop best practices and

participates fully in its damage prevention programs, including the establishment and implementation of 811 programs.

The need for improved damage prevention enforcement

We believe more must be done to encourage adherence to state damage prevention laws and strengthen state and national programs already in place. We recognize and support the role of the states in preventing damage to pipelines. However, in some cases, state excavation damage prevention laws are weak or incomplete, or are not adequately enforced. In many states, state agencies, municipalities and other local entities are exempted from requirements to use the One-Call system before they undertake excavation activities. These exemptions create a gap in enforcement and safety, because the threat and impact of pipeline damage is the same regardless of the excavator's identity or affiliation.

PHMSA could close the gap by exercising its One Call Civil Enforcement authority as modified by Section 2 of the PIPES Act of 2006 (Public Law 109-468). The Secretary of Transportation has authority to conduct enforcement proceedings for a violation within the boundaries of a state if the Secretary "has determined that the State's enforcement is inadequate to protect safety" after the Secretary "issues, through a rulemaking proceeding, the procedures for determining inadequate State enforcement of penalties."

PHMSA commenced an Advanced Notice of Proposed Rulemaking (ANPRM) in October 2009 to assess state damage prevention programs.[4] Under the proposed rule, PHMSA would assess a state's damage prevention program and make the determinations of adequacy or

[4] 74 Fed. Reg. 55797-55803; October 29, 2009; Pipeline Safety: Pipeline Damage Prevention Programs; Advance notice of proposed rulemaking; Docket #: PHMSA-2009-0192

inadequacy called for by Congress. AOPL and API support the spirit of the proposal, and recommend PHMSA go further toward protecting the public and environment from pipeline accidents caused by excavation damage. As AOPL and API commented in the rulemaking,[5] we recommend that, as a minimum requirement in a state damage prevention program, all excavators, including state agencies and municipalities:

(1) use state One-Call systems prior to excavation;

(2) follow location information or markings established by pipeline operators;

(3) report all excavation damage to pipeline operators; and

(4) immediately notify emergency responders when excavation damage results in a release of pipeline products.

Congress has already given the Department of Transportation the authority to close the safety gap caused by state-granted exemptions to One-Call damage prevention laws. We believe PHMSA should use that authority to close that gap. We also believe Congress should consider directing PHMSA to close this safety gap expeditiously, by requiring timely promulgation of a final rule effectively prohibiting One-Call exemptions for mechanized excavators. We recommend PHMSA move forward soon with a final rule, as it has been nearly 20 months since it issued the ANPRM, to promote more effective and streamlined damage prevention rules that will promote safety and greater awareness of pipeline right-of-ways. We support more aggressive enforcement, recognizing it will apply equally to pipeline operators should they fail to adhere to excavation damage prevention laws.

Pipeline safety reauthorization

AOPL and API are ready to work with Congress, PHMSA, and stakeholders to reauthorize pipeline safety laws. We believe Congress should recognize the success of

[5] December 14, 2009 letter to Jeffrey D. Wiese regarding 74 FR 55797 (October 29, 2009).

PHMSA's performance-based regulatory system, and continue to provide the agency with the flexibility to propose and enforce common-sense safety regulations using its technical judgment. PHMSA already has broad authority, a strong set of enforcement tools and a full suite of existing regulations, some of which are just now being implemented, to effectively regulate the safety of liquid pipelines. PHMSA regulations already address the major causes of transmission pipeline failures.

We would urge Congress not to make drastic revisions to a regulatory model that is driving down the number of releases from pipelines. It would be premature to suggest that any recent incident means current safety regulations need to be changed, let alone to know what those changes should be. Nothing has been suggested in preliminary findings that the causes of accidents in San Bruno, California or Marshall, Michigan were the result of a gap in existing federal laws and regulations. Our members await the findings of the National Transportation Safety Board (NTSB) regarding pipeline incidents under investigation, so that they may implement any learnings. We commit to work with NTSB, PHMSA, and Congress should the findings unexpectedly identify any regulatory gaps.

On May 5, 2011, the Senate Committee on Commerce, Science, and Transportation ordered S.275, the Pipeline Transportation Safety Improvement Act, to be reported to the full Senate. AOPL and API believe the bill, which achieved bipartisan support, is a constructive step forward on pipeline safety reauthorization. S.275 would make significant strides to improve weak and ineffective State Damage Prevention Programs and prevent excavation damage. Section 3 specifically prevents states from exempting state agencies, municipal governments, and their contractors from One-Call notification requirements. While there are aspects of the legislation that need improvement, including Section 3, AOPL and API urge the Senate to

approve S. 275 and the House to complete pipeline safety reauthorization legislation this year. We point out below AOPL's and API's priorities for this legislation.

Policy Suggestions Moving Forward

Damage Prevention – Congress should require PHMSA to remove all exemptions in State Damage Prevention Programs for mechanized excavation. Such exemptions pose an unnecessary safety risk to the public and the environment.

Due Process – AOPL and API believe Congress should ensure that pipeline operators are afforded basic legal protections found at other federal agencies, such as FERC, during PHMSA enforcement proceedings, particularly if maximum civil penalties are increased. If Congress determines to raise substantially the maximum civil penalties that PHMSA may impose, the procedural rules that PHMSA must follow when using its enforcement authority also should be updated. S.275 would make a good start toward implementing basic procedural reforms and greater transparency in the PHMSA enforcement decision-making process. However, we suggest the addition of provisions to:

1. allow timely formal hearings to review Corrective Action Orders (CAO) after they have been issued; and,
2. require a separation of functions between PHMSA's investigative/prosecutorial staff and advisory/decisional staff.

These procedural protections are commonly provided by other regulators like FERC and the NRC. There is no reason to deny the pipeline industry similar protections. We understand that PHMSA may implement some of these safeguards administratively. We encourage PHMSA to do this, but note that they are reversible unless codified by Congress and the timing of such procedural reforms is uncertain.

Offshore Gathering Pipelines –Gathering lines are very small pipelines generally associated with production, not transmission. They are usually from 2 to 8 inches in diameter, gather oil from many wells and connect to storage facilities or larger trunk lines measuring from 8 to 24 inches in diameter. Many of these offshore lines are located in State waters, may be regulated by the States, and are not part of the interstate movement of petroleum products. Also, gathering lines must comply with EPA regulation under the Clean Water Act. These lines are appropriately suited for existing regulation, not additional federal regulation for transmission pipelines. The existing regulatory framework has worked effectively. If Congress decides to expand PHMSA's reach into offshore gathering pipelines, we would urge Congress and PHMSA to use significant care. Many gathering lines are not large enough for the use of "smart pigs". In addition, an overly burdensome regulatory approach that does not take into account the unique operating characteristics of the marine environment could cause gathering lines to become uneconomic, shutting in significant supply.

Leak Detection Mandates – S. 275 would require a study of leak detection technologies for liquids pipelines, which we do not oppose. A study issued in December 2007, pursuant to a prior Congressional mandate in the 2006 PIPES Act, demonstrated the complexity of leak detection technologies and applications, and did not recommend a one-size-fits-all mandate. Such a mandate would not take into account the complex operational characteristics of pipeline systems and could lead to false alarms and unnecessary shutdowns. S. 275 *requires* a PHMSA rulemaking regarding leak detection technologies "as appropriate", *regardless of the findings of the study*. We believe PHMSA should have the flexibility to determine whether any new information about leak detection systems is available and whether further steps are necessary

regarding leak detection, instead of being required to conduct a rulemaking. Accordingly, AOPL and API oppose the requirement for a PHMSA rulemaking on leak detection.

AOPL and API believe the important places to focus concerns about leak detection are on system-specific leak detection capability evaluations and technological advances. As mentioned previously, AOPL and API proposed that PHMSA require pipeline operators to perform leak detection capability evaluations on PHMSA-regulated liquid transmission pipeline systems. AOPL, API, and their members also support research into leak detection technologies.

Conclusion

In closing, we very much appreciate the opportunity to testify today and share our views. We are prepared to work with this Committee and others with jurisdiction, the Administration, and other stakeholders interested in advancing the shared goal of an effective and efficient pipeline safety reauthorization bill. I am happy to answer any questions that Members of the Committee may have.