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

Legislative Hearing Before the House Committee on Energy and Commerce
Subcommittee on Energy and Power

July 15, 2011

The Association of Oil Pipe Lines
1808 Eye Street, NW
Suite 300
Washington, DC 20006
202-408-7970 phone
www.aopl.org

The American Petroleum Institute
1220 L Street, NW
Washington, DC 20005-4070
202-682-8000 phone
www.api.org

Summary of Testimony

The Association of Oil Pipe Lines (AOPL) and the American Petroleum Institute (API) appreciate the opportunity to share our views on the Committee's draft reauthorization proposal. The liquids pipeline industry regrets *any* pipeline leaks and works hard to prevent them, while providing reliable, economical service to consumers of petroleum products across the nation. Pipelines remain the safest way to transport oil and gas from the wellhead to market.

Pipelines carrying crude oil and refined petroleum products are governed by a thorough set of federal and state safety regulations. The major causes of pipeline failures, including internal and external corrosion, materials and equipment failures, operations errors, and excavation damage, are all addressed by existing regulations.

In the event of a pipeline accident, determining the root cause is required in order to identify lessons the operator and the industry can implement. In the case of pipeline safety regulation, an accident's root cause must be known before determining if regulations need changing. Wise pipeline regulation involves a technical engineering analysis of risks and potential solutions. Basing pipeline regulation on solid information will help achieve the objective of minimizing pipeline accidents.

The Subcommittee Discussion Draft builds upon the good work in S.275. AOPL and API believe the Draft would advance the cause of pipeline safety and should be adopted with the changes noted in our testimony. We applaud the decision to delegate many technical and engineering risk management decisions to PHMSA.

Our testimony on the Draft addresses, among other provisions, the following:

- Damage Prevention Programs – We *support* Section 3, which would help prevent damage caused by excavation, the leading cause of serious accidents.
- Administrative Enforcement Processes – We *support* Section 26, which would help ensure impartiality in the PHMSA enforcement process.
- Gathering lines – We *do not oppose* Section 4 and consider it an improvement over S. 275, because it requires a study, not a rulemaking, on a regulatory framework that has not failed.
- Leak detection – We *do not oppose* the requirement in Section 10 for a study of important technology limitation issues, but we are concerned with the Draft's provision that pre-judges the outcome of the study by requiring a PHMSA rulemaking regardless of the study.

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 appreciate the opportunity to share our views on the Committee's draft reauthorization proposal, the "Pipeline Infrastructure and Community Protection Act of 2011."

Pipeline safety and regulation

The liquids pipeline industry regrets *any* pipeline leaks and works hard to prevent them, while providing reliable, economical service to consumers of petroleum products across the nation. Pipelines are the safest way to transport oil and gas from the wellhead to market.

Pipelines carrying crude oil and refined petroleum products are governed by a thorough set of federal safety regulations and state laws. The major causes of pipeline failures, including internal corrosion, external corrosion, materials and equipment failures, operations errors, and excavation damage, are all addressed by existing regulations.

In the event of a pipeline accident, determining the root cause is required in order to identify lessons the operator and the industry can learn from and implement. In the case of pipeline safety regulation, an accident's root cause must be known before determining if regulations need changing. Wise pipeline regulation involves a technical engineering analysis of risks and potential solutions. Any changes advocated prematurely could distract regulators and the industry from addressing the real cause of an incident.

AOPL and API maintain ongoing processes to share information about pipeline incidents once the root cause is understood and to develop best practices on safety that can be deployed throughout our industry.

The frequency and volume of pipeline releases have decreased markedly over the past decade. The industry is proud of its record of improvement, but continues to strive for zero releases, zero injuries, zero fatalities and no operational interruptions. Pipeline operators have every incentive to avoid accidents and work

hard to prevent them. Basing pipeline regulation on solid information will help achieve our shared objective of minimizing pipeline accidents.

Comments on Subcommittee Discussion Draft

The Subcommittee Discussion Draft ("Draft") builds upon the good work in S.275, the "Pipeline Transportation Safety Improvement Act." S. 275 was approved by the Senate Committee on Commerce, Science, and Transportation by voice vote on May 5, 2011. AOPL and API believe S. 275 was a constructive start to the reauthorization process in Congress.

The Draft addresses many of our concerns with S. 275 in a thoughtful and workable fashion. We believe the Draft would advance the important cause of pipeline safety. We encourage the Committee to adopt it or a similar proposal. Below we note both provisions of the legislation that are particularly important and suggested changes.

1. Improving Damage Prevention Programs – AOPL and API *support* Section 3, which would require PHMSA to remove all exemptions for mechanized excavators from complying with the 811 "national call before you dig" requirements, also known as "One-Call." While third-party damage (typically from mechanized excavation) accounts for only a small number of releases from liquid pipelines, failing to "call before you dig" can have very serious

consequences -- it is the leading cause of pipeline accidents which kill or injure people. Section 3 would go a long way to protecting the public. Exemptions from One-Call requirements create an unnecessary gap in pipeline safety. S. 275 removes exemptions for municipalities, States, and their contractors. We urge Congress, the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the States to remove additional exemptions for all mechanized excavators as this Draft would do.

2. Administrative Enforcement Processes – AOPL and API *support* Section 26, which would ensure that pipeline operators are afforded basic legal protections found at other federal agencies during PHMSA enforcement proceedings. The section mirrors provisions in S. 275 by requiring hearings to be conducted by a Presiding Official who is not involved in investigations and enforcement, and allowing a person that requests a hearing the opportunity to arrange for a transcript.

The Draft improves upon S. 275 by adding two important components that are consistent with basic tenets of due process and transparency in agency proceedings. First, it requires a separation of functions between the investigative/prosecutorial staff and decisional staff advising the Secretary on enforcement matters. We believe this important firewall is necessary to ensure impartiality in agency proceedings, and it is a common practice found

throughout other federal agencies, such as the Federal Energy Regulatory Commission. It is also consistent with the Administrative Procedures Act. We also support the additional provision providing pipeline operators the opportunity for a timely hearing to contest a Corrective Action Order (CAO) that is issued in an emergency, without a prior hearing, as is the law governing emergency orders issued by the PHMSA Office of Hazardous Materials Safety. This would not prevent PHMSA from issuing safety orders and should not add a significant burden on PHMSA.

Finally, we encourage the Committee to consider expediting the timeline for PHMSA to issue its rulemaking on these important administrative enforcement procedures. Just this week, PHMSA published a General Policy Statement on its informal hearing process. Although the policy statement is non-binding on the agency, AOPL and API appreciate PHMSA's efforts to issue a policy statement that is consistent with some of the reforms required by Section 26. Because of the limited nature of the issues in the rulemaking, and given that PHMSA has already issued a policy statement that advances the implementation process, we submit PHMSA should be able to complete the rulemaking in less than two years.

3. Gathering Lines – AOPL and API do not oppose Section 4, which would require the Secretary of Transportation to review exemptions for gathering lines

and report to Congress about whether any exemptions should be modified. We believe, however, that Congress should not presume that a PHMSA rulemaking is required on this issue, as S. 275 does. Gathering lines can be regulated by the States, the Environmental Protection Agency (EPA), and federal lands agencies. There is no evidence this regulatory framework has failed. Should Congress decide, nevertheless, to expand PHMSA's reach, we would urge Congress and PHMSA to proceed cautiously. Many gathering lines are not large enough for the use of "smart pigs". Moreover, an overly burdensome regulatory approach that does not take into account the unique operating characteristics of gathering lines could cause them to become uneconomic, potentially shutting in significant supply. We believe the Draft approach is an improvement to the provision in S. 275.

4. Leak Detection – Section 10 would require a study of leak detection technologies for liquids pipelines, which AOPL and API do not oppose. Leak detection systems are very complicated and typically calibrated to the unique characteristics of an operator's system. A 2007 study by PHMSA noted these complexities and did not suggest that a one-size-fits-all leak detection standard was appropriate. AOPL and API are concerned, however, with the Draft's provision that essentially pre-judges the outcome of the study by requiring a PHMSA rulemaking on leak detection standards "based on the study". We

believe Congress should not presume that a PHMSA rulemaking is required before a study is completed. The study may logically conclude a rulemaking is not necessary. Similarly, S. 275 requires a PHMSA rulemaking regarding leak detection technologies "as appropriate", regardless of the findings of the study. AOPL and API believe the important place to focus concerns about leak detection are on system-specific leak detection capability evaluations and technological advances, not a one-size-fits-all mandate for performance standards. AOPL and API submit that, once the study is completed, PHMSA should determine whether or not to proceed with a rulemaking based on the results of the study, not on a Congressional pre-determination.

5. Incident Notification – AOPL and API do not oppose Section 11, which would require the Secretary of Transportation to review procedures for pipeline operators and the National Response Center (NRC) regarding notification of pipeline accidents. Pipeline operators are currently required by federal regulation to notify the NRC of a pipeline release at "the earliest practicable moment.' The NRC, in turn, provides notice to agencies, federal responders and other appropriate entities. The Draft would replace the technically based administrative interpretation of "earliest practicable moment" with an inflexible one-hour deadline, potentially causing an increase in false alarm notifications. The impact of imposing an inflexible reporting time period, therefore, should be

carefully considered. Moreover, approval of a strict one-hour deadline would be particularly problematic if not accompanied by the revisions to the NRC reporting process in the Draft.

When a pipeline operator contacts the NRC to report a release, it is required to estimate the volume of the release. Currently, a pipeline operator is not allowed to revise the estimate later without a new report being created and issued. This can cause operators to feel compelled to develop more precise estimates of leaks, even though this level of precision may not be immediately necessary, and thereby delay notification. Notification provisions should provide the NRC and federal responders with the information they need to calibrate responses, but should not require a level of precision in making initial estimates upon the occurrence of an event that is not practical to achieve.

Apart from the one-hour reporting requirement, we support the changes to the NRC reporting process included in the Draft, as compared to the relevant provisions in S.275. Pipeline operators should be 1) allowed to inform the NRC during initial notifications whether a suspected release could be small, medium, large, or very large, and 2) provide an improved volume estimate later. These changes could help facilitate earlier notifications and ultimately provide more accurate and complete information to responders. Otherwise, advancing the statutory notification deadline may cause pipeline operators to notify the

NRC of potential releases even before definitively concluding a release has occurred or having a reasonable understanding of the magnitude of a release. False alarm notifications cause unnecessary deployments of first responders, and an unwarranted expenditure of resources and manpower. In order to comply with an impractical standard, operators may be forced to treat any abnormal condition as a suspected release even before concluding a release is actually occurring.

S. 275 takes a different approach. S. 275 would require the Secretary of Transportation to review incident notification reporting procedures, without replacing the administrative interpretation of the ”earliest possible moment”. We support the decision in S. 275 to require a review of procedures but to not change the deadline. However, S. 275 appears to replace the currently effective NRC notice requirement with a new and unwieldy requirement for a pipeline operator to directly notify State and local officials potentially along the entire right-of-way. Congress should maintain the structure of notifications to the NRC, because it is the well-established federal entity that disseminates information to the myriad of federal, state and local stakeholders involved in a release.

6. PHMSA enforcement of facility response plans – AOPL and API do not oppose Section 12 of S. 275, which extends PHMSA enforcement authority over

facility response plans under Subparagraphs (A) and (B) of section 311(m)(2) of the Federal Water Pollution Control Act. AOPL and API do not oppose Subparagraphs (A) and (B) of the Draft, which would authorize PHMSA to require recordkeeping and reporting, and to inspect facilities and records at covered pipelines. However, we oppose Subparagraph (C) of the Draft, which would authorize PHMSA personnel to arrest pipeline operators with or without a warrant, and execute warrants. S. 275 has no such provision, and no such provision is warranted. While PHMSA may enforce its regulation of pipeline operators through the issuance of civil and criminal penalties, it is currently not authorized to arrest a pipeline operator for a violation of law. There is no reason why it should be granted such powers in these circumstances. Law enforcement authority should continue to be exercised by those with such authority today, not by PHMSA.

7. Carbon dioxide pipelines – Nearly all carbon dioxide is transported by pipeline in a supercritical liquid state today. Any transportation in a gaseous state in the future may occur in the same pipelines that carry carbon dioxide in a supercritical liquid state. Therefore, AOPL and API support the regulatory approach taken in Section 20, which provides that PHMSA may issue rules for transportation of carbon dioxide in a gaseous state in accordance with the rules which govern supercritical carbon dioxide transportation today. There should

not be two regulatory standards for the transportation of chemically similar products.

8. Transportation-related oil flow lines – AOPL and API believe lines from a production well to a processing unit should remain exempt from the PHMSA regulation proposed in Section 15, and subject to regulation by the States, Federal land agencies, and EPA. These lines are related to production, not interstate movement of oil or petroleum products. The fact that these production-related lines can leave the property of the operator and cross other property using rights of way does not change their essential nature. There is no evidence the existing regulatory framework has failed.

9. Community pipeline information grants – AOPL and API do not oppose the current technical assistance grants program. However, we believe Congress should ensure that the focus of the grants is true technical assistance, particularly when the grant program may become eligible for Pipeline Safety User Fees. Current law prohibits the use of these grant monies for "lobbying" or "direct support of litigation". Section 27(e) of the Draft should be revised to also prohibit use of grant funds by an awardee or contractor for any type of advocacy work, including with respect to pipeline construction or expansion projects, or pipeline safety standards or practices. Making these grants eligible for funding by Pipeline Safety User Fees seems inconsistent with the spirit of

user fees, which traditionally fund the activities of a regulator, but we would not oppose such eligibility so long as the prohibited uses clause is amended as we suggest. Also, we believe Congress should establish an authorization for this program of no more than $2,000,000.

10. Cost recovery and design reviews – AOPL and API support the change made to Section 17 requiring PHMSA to provide timely responses and guidance to operators for any projects that meet the prescribed considerations. In addition, AOPL and API support additional guidance afforded by a rulemaking at PHMSA to explain the applicability of how the agency will determine what is "new or novel technology."

11. Special permits – AOPL and API support the change made to Section 18 to make the review criteria less subjective and more balanced, by directing that the issuance of special permits be based solely on an operator's compliance and safety history.

12. Civil penalties - Both the Draft and S. 275 would substantially increase maximum civil penalties. Under each proposal, the maximum penalty for serious violations would increase from $100,000 per violation day and $1,000,000 per series to $250,000 per violation day and $2,500,000 per series. This is a substantial increase of 150 percent from current law, on top of significant increases in the 2002 Pipeline Safety Act. AOPL and API do not

oppose the proposed changes, but call the substantial increases to the Committee's attention.

13. User fee increases and potential consumer impacts - PHMSA primarily recovers its costs for pipeline safety through Pipeline Safety User Fees, which are paid by oil pipelines, and transfers from the Oil Spill Liability Trust Fund, which are paid by the oil industry. Both of these costs are passed through to pipeline shippers to some extent and are ultimately borne by consumers, rather than taxpayers. A recent analysis produced by the Congressional Budget Office (CBO) found that user fee collections under S.275 would be $365 million over a three-year period.[1] Both the Draft and S. 275 would increase the number of PHMSA personnel authorized in the law. The Draft would require several rulemakings, reviews and studies, which could result in still more rulemakings. AOPL and API do not oppose the additional PHMSA responsibilities, except as otherwise stated herein, but we note the potential financial impact to operators and, ultimately, consumers.

Conclusion

AOPL and API support the thoughtful and meaningful improvements made in the Committee's proposal on pipeline safety reauthorization. We applaud the

[1] Congressional Budget Office Cost Estimate of S.275. June 9, 2011, http://www.cbo.gov/ftpdocs/122xx/doc12235/s275.pdf

decision to delegate many technical and engineering risk management decisions to PHMSA. We hope to offer our support for a comprehensive reauthorization bill that improves pipeline safety in a responsible manner. The Draft appears to achieve these goals well, with the recommended changes noted.

Again, thank you for the opportunity to be here today. I am happy to answer any questions.