

BEFORE THE ENERGY AND COMMERCE COMMITTEE  
SUBCOMMITTEE ON ENERGY AND POWER  
U.S. HOUSE OF REPRESENTATIVES



NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES

TESTIMONY OF

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## **SUMMARY OF KEY POINTS IN TESTIMONY OF RANDALL S. KNEPPER**

State pipeline safety personnel represent 75 percent of the state/federal inspection workforce, and inspect 88 percent of the nation's gas and hazardous liquid pipelines. State personnel are the "face" that most municipal officials, state agencies, politicians, media entities and consumers are able to identify with and depend upon. NAPSRS is the collective voice of state pipeline safety programs. Summarized below is our position on some key provisions in the draft Bill.

Section 3 - Pipeline Damage Prevention: The primary goal of our NAPSRS members is to continue to enhance pipeline safety. We believe that without additional data to support this Bill's position, the potential benefits of eliminating the exemptions as proposed in this Bill will be eclipsed by the loss in safety due to the losses in funding being proposed. Rather than mandating elimination of mechanized excavation and government agency exemptions, the legislative proposal should direct the Secretary to conduct a study with assistance from the states, on the appropriateness of exemptions from participation in the One-Call process for certain activities.

Section 7 - Integrity Management: It is unclear to us that the pipeline integrity management regulations in 49 CFR Part 192 cover all aspects where pipeline class location plays a role in added safety. If the elimination of class location is desired, the DOT Secretary should be first required to conduct a thorough analysis of the existing regulations to determine the extent to which they should be amended and whether it would be consistent with safety to implement such elimination when the pipeline is covered by integrity management regulations.

Section 11 - Incident Notification: The information surrounding the incident if collected within an hour or less of discovery, may not be factual and is likely to result in confusion and misrepresentation while also causing state pipeline safety agencies to spend time and resources chasing after a large number of what could be minor events. Most NAPSRS members already address incident notification and response time in their state regulations or statutes. We suggest that a rulemaking by the Secretary be instead required in the Bill to give the affected parties an opportunity to establish an appropriate notification time limit that combines timeliness with accurate and useful information.

Section 25 - Maintenance of Effort: Although NAPSRS supports the language proposed in the draft Bill we are suggesting that the average of state program spending exclusive of the Federal grant contribution be instead based on the average of fiscal years 2009 and 2010.

# **NATIONAL ASSOCIATION OF PIPELINE SAFETY REPRESENTATIVES**

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## **Introduction**

Chairman Whitfield, Ranking member Rush, members of the Committee, thank you for providing us the opportunity to discuss our view of the proposed Committee draft pipeline safety bill as related to reauthorization of the pipeline safety law. This law contains necessary protections that our nation depends on to maintain safety in its energy pipeline network. I am the current Secretary of the National Association of Pipeline Safety Representatives (NAPSR). I am pleased to testify on behalf of NAPSR and in support of our member states' efforts in helping to ensure pipeline safety.

My testimony will briefly describe the role of the states in inspection and enforcement and address the concerns of NAPSR members in specific areas of the proposed draft Bill.

## **The Role of States in Inspection**

State pipeline safety personnel represent 75 percent of the state/federal inspection workforce, with over 325 State inspectors being the "first line of defense" at the community level to promote pipeline safety, underground utility damage prevention, education, and public awareness regarding gaseous and liquid fuel pipelines. Direct state oversight provides for the greatest level of public safety because we incorporate knowledge of local conditions, considerations of local concerns, relationships with local first responders and the ability to provide direct and immediate feedback to the public. We are the "face" that most municipal officials, state agencies, politicians, media entities and consumers are able to identify with and

depend upon. Unfortunately, we too, directly experience the consequences of any accidents or incidents occurring on our nation's pipeline systems but this serves as constant reminder for vigorous oversight of non-compliant behavior and misdirected operator programs.

Under the *certification* enabled by 49 USC Chapter 601, Section 60105 a State pipeline safety program assumes oversight responsibilities with respect to the intrastate facilities over which it has jurisdiction under State law. If state jurisdiction is lacking for any class of operator, those operators are then inspected by PHMSA personnel.

State agency duties cover a wide range of activities including inspections of safety records, physical facilities, qualifications of pipeline personnel, construction, operations, maintenance, integrity management, compliance and enforcement, accident investigations, and other safety programs.

If a State no longer wishes to apply for annual certification or agreement, all inspection and compliance activities for intrastate and/ or interstate facilities revert back to PHMSA.

The majority of the states have put in place regulations that are more stringent than the Federal pipeline safety regulations. These state regulations have been developed over the years based on specific risk results derived from experience with state inspections, changing public priorities and increasing expectations of the public. State safety regulations thus inherently focus upon areas of higher risk warranting further requirements that help ensure a high level of safety. These more- stringent regulations imposed by state agencies can only be enforced by state regulators -- they cannot be enforced by federal regulators.

#### **NAPSR Views on the Proposed Draft Bill**

In general NAPSR believes the Draft Bill contains many improvements to pipeline safety and is in agreement with the majority of the sections. NAPSR does believe a few minor adjustments should be made that will further allow the Draft Bill to provide greater safety for our nation's growing pipeline infrastructure

These areas of concern are limited to Sections 3, 7, 11 and 25..

### Section 3. Pipeline Damage Prevention

Paragraph (a)(2) proposes to withhold One-Call program grants to states that exempt *mechanized excavation, and government agencies or their contractors* from its One-Call notification systems. Similarly, paragraph (b)(3) proposes to withhold State Damage Prevention grants to states that feature the exemptions above.

The primary goal of NAPSRS members is to continue to enhance pipeline safety. We believe that without additional data to support this Bill's position, the potential benefits of eliminating the exemptions as proposed in this Bill will be eclipsed by the loss in safety due to the losses in funding being proposed. While NAPSRS understands the concept of providing an incentive to states to eliminate exemptions by withholding One-Call and State Damage Prevention grants, the reality is that important programs that enhance excavation damage prevention supported through these grants may have to be discontinued because the state statute contains minor exemptions that do not adversely affect safety.

NAPSRS members are *the authority* for specific underground damage prevention programs since many of our members directly oversee, participate and enforce the state damage prevention laws and rules. We believe the term "mechanized excavation" is too far reaching and may lead to unintended consequences. To further illustrate the point, we address the reference to "*mechanized excavation*" in the Bill. Besides ordinary excavation for whatever purpose, this includes excavation such as the tilling of soil for agricultural purposes, daily excavation for sand pits, rock quarries, or landfill purposes, and includes excavations during emergencies involving the very pipelines we are trying to protect. We single these out because they involve some of the most common minor exemptions justified in many states. The following are examples of unintended consequences that may arise:

- Tilling of soil for agricultural or seeding purposes is a normal use of the land, often done several times each year. Other pipeline safety regulations require pipeline markers in the field to show the farmer where the buried line is in most circumstances. When planting or seeding season arrives in the vast agricultural areas throughout the country, and in the absence of an exemption, the workload associated with excavation notices to the One-Call centers and the marking of the lines would skyrocket, overwhelming One-Call organizations and infrastructure locators with requests to mark large areas in a very short time frame (48 to 72 hours).

- Excavation for mining, purposes usually involves a mining permit which specifies a number of conditions including protection of buried infrastructure lines known to the permitting agency. As a consequence, there is no need to require notice to the One-Call center and the marking of the facilities whose location is already known before excavating. Likewise excavation in sandpits and rock quarries is a daily operation that occurs to supply nearly every infrastructure replacement and new installation in America, every neighborhood development, street and bridge reconstruction as older inferior soil materials are replaced with screened materials conforming to specified size and properties. Requiring those operators to call One-Call notifications centers provides little safety benefit.
- In an emergency, such as when a hazardous leak occurs in an underground gas pipeline, the pipeline operator may not have the time to wait for a One-Call center to arrange for a "locate-and-mark" operation. Following special precautions already known to the pipeline operator, the pipeline must be excavated and the leak repaired as soon as possible.

Many states have studied these issues extensively and have developed special provisions to deal with problem areas. NAPSR thus believes that further gathering of facts and data is necessary to determine if any of the current exemptions are not justified and what adjustments must be made.

NAPSR firmly believes the elimination of all and government agency exemptions as a condition of eligibility for One-Call and State Damage Prevention grants will be counterproductive - doing more harm than good.

First, the grant funds, when doled out among the states, are not of sufficient level to provide an incentive to a state to attempt to force a one size fit all solution to the multitude of excavation scenarios. Eliminating these funds will result in less effort by the state in promoting use of the 811 number, in educating locators and excavators and in carrying out other educational efforts with the affected stakeholders to reduce excavation damage to pipelines and other infrastructure. This could actually increase the number of incidents involving excavation damage and result in lower overall levels of safety.

Second, in some states, the One-Call grant is used to fund enforcement efforts. These states may have exemptions for some government agency activities; the resulting ineligibility for One-Call grants would detract from enforcement and thus lower the level of pipeline safety.

Third, some exemptions may pose little if any threat to pipelines. Challenging them would be to spend state political effort for little benefit. It would make more sense to compile data on whether certain types of exemptions have an impact on the overall number dig-ins or pose a material threat to pipelines, and to concentrate on those areas where problems are identified.

Rather than mandating elimination of mechanized excavation and all government agency exemptions, the legislative proposal should direct the Secretary to conduct a study with assistance from the states, on the appropriateness of exemptions from participation in the One-Call process for certain activities, including those by municipalities, (e.g. resurfacing streets), state agencies (e.g. or building roads and highways), or their contractors.

If any changes are warranted to One Call language, NAPSR believes Section 27 (c) (1) should read as:(1) by striking "under section 6106 \$1,000,000 for each of fiscal years 2007 through 2010" in subsection (a) and inserting " under section 6016 \$2,000,000 for each fiscal years 2011 through 2014"

#### Section 7. Integrity Management

NAPSR is concerned that the language under paragraph (c) of the Bill is not as explicit as it could be if it is meant to only apply to Integrity Management Evaluation. Many of our members interpret the proposed language to have broader impacts outside of the Integrity Management regulation in the federal pipeline safety code.

Notwithstanding the factors proposed under paragraph (c) of the Bill, NAPSR members believe the class location regulations in 49 CFR Part 192 serve multiple purposes, including but not limited to the determination of risks in high-consequence areas, the design, operation and post-construction testing of pipelines. By considering factors like these, we are hard-pressed to believe that the class location regulations are redundant with the gas transmission pipeline integrity management regulations for pipelines in high consequence areas in every aspect of pipeline safety. The concept of class location is used as a tool for mandating minimum operating and maintenance practices which take the consequences of a leak or rupture into account. It is unclear to us that the pipeline integrity management regulations cover all

aspects where pipeline class location plays a role in added safety. We are thus compelled to suggest that if the elimination of class location is desired, the DOT Secretary should first be required to conduct a thorough analysis of the existing regulations to determine the extent to which they should be amended and whether it would be consistent with safety to implement such elimination when the pipeline is covered by integrity management regulations. The time interval for such an analysis should be fixed.

#### Section 11. Incident Notification

The definition of "Immediate Telephonic Notice" proposed in the draft Bill includes a one-hour maximum time limit for notifying the National Response Center following the time of discovery of a qualifying release of gas or hazardous liquid. Based on NAPSR's past experience we believe the one-hour time limit to be unrealistic. Often, the emergency responder claiming sole jurisdiction over the on-going incident will not release any information or allow anyone else to enter the affected premises. Therefore, in instances where a discovery is made by other than the facility operator, for a while after discovery, it is not even known if a regulated facility or a regulated product is involved. Thus the information surrounding the incident may not be factual and is likely to result in confusion and misrepresentation while also causing state pipeline safety agencies to spend scarce resources chasing after a large number of what could be insignificant or minor events. There are hundreds of thousands of structure fires a year in the nation – most of which are not related to gas or hazardous liquid facilities; yet many might have to be investigated by the state pipeline safety agency because of the one-hour time limit on notification.

Most NAPSR members already address incident notification and response time in their state regulations or statutes. They recognize the priority of operator response to address the incident over all other actions. We thus suggest that a rulemaking by the Secretary be instead required in the Bill to give the affected parties an opportunity to establish an appropriate notification time limit that combines timeliness with accurate and useful information.

#### Section 25. Maintenance of Effort

NAPSR supports the language proposed in the draft Bill except for the portion that specifies the "remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent for gas and hazardous liquid safety programs for fiscal years 2004 through

2006,...". We are suggesting instead that the average amount be based on two years, namely 2009 and 2010.

Like you, we understand the importance of our mission to the safety of our citizens, energy reliability and continued economic growth of our Nation.

On behalf of NAPS, I thank you for the opportunity to submit these comments to the Subcommittee.

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