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PIPELINE SAFETY

HEARING

BEFORE THE

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OF THE

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HOUSE OF REPRESENTATIVES

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PIPELINE SAFETY

TUESDAY, JULY 20, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room 2123 of the Rayburn House Office Building, Hon. Ralph M. Hall (chairman) presiding.

Members present: Representatives Hall, Norwood, Shimkus, Shadegg, Walden, Otter, Barton (ex officio), Boucher, Allen, Pallone, Wynn, Green, and McCarthy.

Staff present: Mark Menezes, majority counsel; William Cooper, majority counsel; Peter Kielty, legislative clerk; Bruce Harris, minority professional staff member; and Sue Sheridan, minority senior counsel.

Mr. HALL. The subcommittee will come to order. I certainly want to thank everyone for coming to today's hearing on pipeline safety. Without objection, the committee will proceed pursuant to committee rule 4(e). It is so ordered. The Chair recognizes himself for an opening statement.

The life's blood I guess of this Nation depends upon the intricate network of pipelines that criss-cross our country. Pipelines deliver natural gas, crude oil, gasoline, diesel fuel, and a variety of other products to factories, industrial sized distribution systems and homes throughout the United States.

Without pipelines, delivering these products would be just absolutely prohibitive. Without pipelines, the safety of our citizens and the security of our Nation would be jeopardized. Indeed, pipelines are the safest mode of transportation for fuels that we depend upon every day for our existence and quality of life.

Yet, Federal regulation is needed to ensure that interstate pipelines operate as safely as possible. The Office of Pipeline Safety is charged with the duty of regulating the pipeline industry. Over the past few years, OPS has made a great effort to improve its office and even to redefine what it means to be a regulator.

Instead of the old "Wait until it breaks, then fix it" attitude, OPS has instituted a new mode of enforcement that seeks to correct problems before accidents occur; in other words, work together to solve pipeline safety issues beforehand and not wait until an accident occurs and then point fingers.

The government spends too much time trying to attach blame after the fact and not enough time working on prevention. Gladly, OPS has broken out of that mold.

I'm encouraged by the progress we see. However, I caution the Department of Transportation on two fronts. One, if the DOT wants to relocate OPS, be cautious. Don't go beyond your statutory boundaries, such as has been suggested with local distribution companies.

When my children were younger, I was always telling them to color within the lines within their coloring books. Each time they saw the wisdom in doing so. We all have boundaries. Let's stay in them.

I look forward to learning from these witnesses here today. As you will note during the course of this hearing, members will come and go. I want to assure you that your complete testimonies will be made available to each member of this subcommittee, whether they are here in person or not.

Your testimony is important in the decisionmaking process of this subcommittee and will be duly considered. Actually, we base most legislation around intelligent and giving people like you that give of your time to prepare for this hearing, give of your time to arrive here, give of your time to advise us and to sit through this committee hearing and listen to opening statements that you may get tired of hearing. I don't know how many we will have today, not very many, but I was as quick and as least destructive as I could be with mine.

At this time, I recognize the ranking member, who will probably have an outstanding opening statement because he is an outstanding member of this committee, the Honorable Rick Boucher.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. I will try to make my statement as expeditious as was yours. I appreciate your convening today's hearing on the topic of pipeline safety.

In 2002, the Pipeline Safety Act, which originated in this subcommittee, was signed into law. Prior to 2002, the GAO released a report which contained troubling information about the enforcement of pipeline safety.

For example, the General Accounting Office found that the Office of Pipeline Safety at the Department of Transportation had effectively eliminated the use of fines as an enforcement tool and that monetary penalties had declined by more than 90 percent from the year 1990 until 1998.

Meanwhile tragic pipeline accidents in Bellingham, Washington in 1999 and in Carlsbad, New Mexico in the year 2000, which claimed a total of 15 lines, underscored the consequences of inadequate enforcement of the pipeline safety laws.

Given the problems highlighted by the GAO's report and the National concern about the adequacy of pipeline safety law enforcement, the Congress made significant reforms to the pipeline safety program when we passed the Pipeline Safety Act in 2002.

That law contains several new mandates, including a requirement that gas pipeline operators in high-consequence areas, implement integrity management programs, mandatory baseline inspections of all high-consequence area gas pipelines within 10 years and reinspections every 7 years thereafter, increased civil penalties for companies found to be operating below safety standards, and a variety of community assistance programs, including enhanced one-call notification, public education, and the authorization of tech-

nical assistance grants, so that communities could participate in a meaningful way in local pipeline proceedings.

As a part of the act, GAO was required to conduct a study of the fine and penalty assessment and collection process. That study is scheduled to be released publicly later this week.

In addition, the Department of Transportation's Inspector General has released a report that indicates that significant progress has been made with regard to pipeline safety since the year 2000. We will hear from our witnesses today, who can address findings in each of these reports.

The final rule establishing an integrity management program for natural gas transmission lines was issued by the department in December 2003. That rule does not cover distribution lines. And I am interested in hearing from our witnesses today about the potential for including distribution lines and required integrity management plans on a going-forward basis. I personally think they should be covered.

I am concerned about the problems that arise with regard to natural gas distribution in municipalities around the Nation. It seems to me that IMPs should also be required with respect to distribution lines. I will be very interested in what our witnesses have to say on that subject this morning.

These plans work. IMPs for hazardous pipeline liquids have uncovered 20,000 pipeline integrity threats, which otherwise might have remained undiscovered.

It's also my understanding that there has been no action taken by the Office of Pipeline Safety to date with regard to technical assistance grants to communities which were mandated under the 2002 law. These grants were intended to provide funding to assist communities in obtaining technical analysis and other technical assistance so that communities could participate in a meaningful way when pipeline safety issues are discussed in those localities.

We need to know when regulations for technical assistance grants will be written and when funds will be available under these grants to communities across the Nation.

Today's witnesses will provide a timely update on the implementation of the reforms mandated by our 2002 legislation. I want to thank the witnesses for taking their time to join us this morning. And I very much look forward to their testimony.

Thank you, Mr. Chairman. I yield back.

Mr. HALL. Thank you, Mr. Boucher.

The Chair recognizes the gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Mr. Chairman, after your statement and the statement of the ranking member, I am well-prepared, and I will waive my opening statement.

Mr. HALL. Mr. Pallone? The Chair recognizes Mr. Pallone.

Mr. PALLONE. Mr. Chairman, thank you for holding this hearing today on pipeline safety.

I wish we could be sitting here today praising the Office of Pipeline Safety for dramatic improvements in assuring that our communities were safe from pipeline explosions, but, unfortunately, that is not the case.

In 2002, Congress worked together to pass comprehensive pipeline safety legislation. And when President Bush signed the bill

into law that year, I had hoped that we were making waves in strengthening and enhancing OPS' ability to conduct its duties. Sadly, this has not happened. And people remain vulnerable to pipeline hazards.

Part of the legislation that we passed required the GAO to issue a report on the OPS' progress in carrying out the required reforms of the 2002 law. From what I understand, this report will be released later this week and will reflect that minimal improvements have been made. And, moreover, the OPS is being criticized for not implementing a mechanism for collection of penalties or an overall strategy for improving pipeline safety.

In addition, the 2002 law required the Inspector General of the Department of Transportation to conduct a similar study of the OPS. This report was released in June. And it called on the OPS to complete implementation of congressional mandates, such as pipeline security.

I, along with my colleagues, worked very hard over a number of years to create a Nationwide one-call notification program in an effort to avoid disastrous pipeline disasters that we have seen in the past, including the one in my own district of Edison, New Jersey.

When such legislation was signed into law, we expected action. I understand that the FCC is in the midst of the rulemaking process with regard to a Nationwide one-call program, and I cannot express strongly enough the need for one-call damage prevention and education programs to be implemented in a timely manner and in an accountable manner.

As an avid proponent of improving pipeline safety, I expect compliance of congressional mandates from the OPS. I have seen firsthand a terrible pipeline explosion that occurred in Edison, in my district, in 1994.

I know that because of the role that pipelines play in the transportation of both natural gas and hazardous liquids we need to be sure that pipelines are safe. My constituents also understand the need for safe pipelines. A few years ago in my district, a section of a new pipeline was rejected, in part because the perception by the public is that pipelines are not kept safe through proper inspection and oversight.

Federal regulations to protect the public are woefully inadequate. And since pipeline safety laws were strengthened in 2002, I'm afraid the Office of Pipeline Safety has not yet come near the established standards or requirements regarding the timing and frequency of pipeline inspections or the use of internal inspection devices. And I hope that we will see some improvement as a result of this hearing today.

Thank you, Mr. Chairman.

Mr. HALL. The Chair recognizes Mr. Norwood, the gentleman from Georgia.

Mr. NORWOOD. Thank you very much, Mr. Chairman. I will just submit my opening statement for the record, even as good as it is.

[The prepared statement of Hon. Charlie Norwood follows:]

PREPARED STATEMENT OF HON. CHARLIE NORWOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Thank you, Mr. Chairman. I appreciate you taking the time to hold this important hearing today.

The safety and security of our pipeline system is absolutely vital to our country's energy market. The 2.3 million miles of natural gas and hazardous liquid pipelines carry almost two-thirds of the energy consumed by our country. Liquid pipelines carry over 75% of the crude oil and approximately 60% of the refined petroleum products delivered in the U.S. The management of these pipelines along with ensuring that their infrastructure is sound is vital to our national security and to every single energy consumer in this country.

Transporting hazardous material is an issue we seem to be in constant debate over in this Subcommittee. We know that our pipeline system is the safest mode for transporting natural gas and hazardous liquids. According to DOT statistics, third-party damage was the largest contributor to pipeline releases in 2002.

As we all know the Office of Pipeline Safety is charged with securing these vast pipelines. I was pleased to take part in a bi-partisan effort in the last Congress to improve our system. I was a cosponsor and strong supporter of the Pipeline Safety Improvement Act of 2002. That legislation included important changes to the federal pipeline safety programs as well as providing states with oversight responsibility of pipeline operators.

Today is an excellent opportunity to hear from our two panels of expert witnesses on the implementation efforts of the Pipeline Safety Improvement Act. Thank you Mr. Chairman, I look forward to the rest of today's hearing.

Mr. HALL. Thank you, Mr. Norwood.

The Chair recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

I appreciate your calling the hearing today and examining the progress made on pipeline safety. And I want to note that a number of witnesses, including the General Accounting Office or, as we call it now, I guess, the Government Accounting Office and the American Gas Association testified that pipelines are the safest means of energy transportation.

I support the continued efforts for improved pipeline safety standards, but we should give credit on the progress that has been made. Since their development, pipelines have always been the safest form of energy transportation. And they are getting safer.

From 1994 to 2003, accidents have been cut in half. The National Transportation Safety Board reports the Office of Pipeline Safety and the pipeline industry have implemented 86 percent of the board's pipeline safety recommendations, the second highest of any agency.

I want to point out that many pipeline accidents are not the result of the failure of the pipeline but of digging explanation by the parties that damaged the pipeline.

One of the most important things we can do to improve pipeline safety is increase the education and awareness of the safe construction procedures to protect our critical pipeline infrastructure. It's obviously a benefit for pipelines that once constructed they get out of sight, but they must not be out of mind for communities and construction crews who have shared responsibility for the safety of our underground infrastructure.

I support the efforts of the Federal Commutation Commission to implement a three-digit calling number for anyone to call before excavating to determine the location and depth of pipelines in their area.

Our pipeline infrastructure is expanding and aging. So to provide the levels of safety that the public expects owners of natural gas and hazardous materials transmission pipelines are implementing integrity management programs for those facilities that attack corrosion or other kinds of damage in populated areas.

Press reports reveal that these management programs combine with other measures to result in approximately $4 billion in costs to the industry. I think it's commendable that the industry is stepping up to the plate to improve safety on such an already safe transportation system.

There are two controversial issues that I know the witnesses will discuss today. First is the proposed merger of the Office of Pipeline Safety with the Federal Railroad Administration. This doesn't seem to make sense. Secretary Mineta, whom I greatly respect and is a good friend, wants to merge the research and development functions of the two agency. That's one thing, but they regulate two entirely different industries. So it appears to me they should remain distinct.

My concern is I have a district that is very pipeline-oriented and energy transportation-oriented. You know, you can look at the safety of trucks over the road, train cars, and then pipeline safety. And pipeline safety is always safer than rail cars or in over-the-road trucks. So I would hope that you can't manage two different distinct transportation systems on one agency.

The other controversial question rests on whether natural gas transmission pipelines should be regulated differently from natural gas distribution lines, the former a large diameter and often are interstate and the latter a small diameter and almost always intrastate.

So I look forward to hearing from our witnesses on this topic. Mr. Chairman, again thank you for calling this hearing.

Mr. HALL. Mr. Green, I thank you very much.

And I would note again to those of you who are in attendance here to testify the empty chairs, this is the last week for about 6 weeks that the Congress will be in session. We all have 3 or 4 committees we are supposed to be with today. It's not a lack of interest because I think everyone recognizes the same thing Mr. Green was pointing out, the importance of your testimony, because I think pipeline safety is right up at the top for terrorist threats or economic growth and for everything that this country has got going. It is important enough for the chairman of the Committee on Energy and Commerce to be here with us today.

At this time, I would like to recognize Chairman Barton for anything he has to say. I would make a special request of him, though, that he introduce probably the most important person to this committee and to this chairman that's in attendance today. The Chair recognizes Mr. Barton.

Chairman BARTON. Well, thank you, Mr. Chairman. I appreciate that helpful hint.

Actually, I have two young women I want to introduce to the committee and the audience. The first is someone who is working for you as an intern, young Ashley Eisenman, who is in the far left-hand corner as I look and the far right-hand corner. She is the daughter of Donna Eisenman, who is the special services lady at American Airlines who has bailed you, me, and others out so many times.

So, Ashley, would you stand up? You're in the far left hand. She's right back there.

Mr. HALL. Regular order.

Chairman BARTON. Now, on my right is a young woman who makes my life a joy, my wife of, what is it, 7 weeks, 3 days, 12 hours, and I don't know how many minutes, Terry Barton from Arlington, Texas, who is here to attend a conference for American Diabetes Association and is going to go to the reception for Cecil and Billy Tauzin this evening.

Terry, why don't you stand up and let everybody say hi to you?

Mr. HALL. We are honored to welcome the first lady of the Energy and Commerce Committee. Thank you.

Chairman BARTON. Mr. Chairman, I want to thank you for holding this hearing. I want to emphasize what you said just a second ago. Don't be disappointed that there are not lots of members here. If there were lots of members here, it would mean that you all had done a bad job and there is lots of controversy and everybody was ready to get a piece of your hide. It is a good thing in a way that we have four members here because that shows what a difference 2 years have made.

We held a hearing in this subcommittee on pipeline safety on March 19, 2002. At that hearing, the Office of Pipeline Safety was the brunt of a lot of criticism. At that time, the Administrator of the Research and Special Programs Administration testified about the new direction charted for the Office of Pipeline Safety.

In hindsight, it appears that what she said has turned out to be correct. Instead of having a hearing in which the focus was all of the things that OPS was not doing as we did 2 years ago, today we can focus on all of the things that OPS has been doing and is doing to make pipelines safer.

We are seeing a partnership developing among all of the stakeholders in an effort to make the safest mode of fuels transportation even safer. Pipeline Safety Improvement Act of 2002 represents a major legislative accomplishment that will further enable OPS, the pipeline industry, and other interested stakeholders to reinvent administrative oversight and enforcement by encouraging the implementation of safety initiatives before a problem arises. I want to emphasize before a problem arises.

The act contained many mandates which were in various stages of development. Those mandates range from the integrity management rule for natural gas transmission pipelines to operator qualification to the three-digit number for the one-call telephone call.

Equally important as safety, security issues are also being addressed by OPS and the industry. As the Deputy Administrator of the Research and Special Programs Administration has stated, and I quote, "Pipeline system integrity and security are inextricably linked. Many of the programs and policies implemented for the safety of the public provide much needed security protection as well."

With over 2 million miles of pipelines, from the wellhead to people's furnaces, moving such fuels as natural gas, gasoline, and diesel fuel are very, very important. The Energy and Commerce Committee is committed to fulfilling its role in providing the security tools necessary for the government to protect the homeland. Therefore, I am encouraged by the news coming from OPS over the past 2 years. And I look forward to hearing the testimony of the witnesses today.

Mr. Chairman, thank you for holding this year. I would yield back the balance of my time.

Mr. HALL. Thank you, Mr. Chairman.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I would like to thank you for holding today's hearing which will allow us the opportunity to evaluate the progress on the Pipeline Safety Improvement Act of 2002.

There are millions of miles of pipelines that carry nearly two thirds of the energy consumed by our nation. It is the Committee's responsibility to continue to monitor the important work that is being done at the Federal and State level and by the private industry to assure the public that pipelines remain the safest mode of transportation for natural gas and hazardous products.

I thank you again Mr. Chairman for holding this important hearing. I look forward to hearing the testimony from our witnesses.

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I thank you for holding this important hearing today. Our Nation's pipeline system covers some two million miles serving tens of millions of Americans by delivering needed energy to heat our homes, fuel our automobiles, and power our factories. While it is a necessary and beneficial system, it carries with it inherent dangers that can wreak havoc if overlooked or neglected.

Two years ago this Committee led the way to the enactment of the Pipeline Safety Improvement Act of 2002, which was a bipartisan effort supported by industry, safety advocates, environmental organizations, and labor unions. If correctly implemented, this Act will lead to a safer, more reliable pipeline system. We are here today to examine the progress of the Office of Pipeline Safety (OPS) in implementing the Act and to receive testimony from the GAO and the Department of Transportation's Inspector General on the strengths and weaknesses of OPS.

I am pleased to note that the Department of Transportation's Inspector General finds that OPS has made progress on clearing the backlog of National Transportation Safety Board recommendations and past Congressional mandates—work that had previously been neglected. I also commend the agency for its aggressive implementation of the mandates from the 2002 legislation. There is still, however, much work to be done and I hope that OPS pays serious attention to the recommendations of both the Inspector General and the GAO as it moves forward.

The GAO was charged with studying the methods of OPS for assessing and collecting fines as well as the overall effectiveness of its enforcement strategy. On this point GAO says that it cannot determine overall effectiveness because OPS lacks program goals, a clearly-defined strategy, and performance measurements. This is a disappointing finding given OPS's past record on enforcement and the emphasis placed on this issue in the Pipeline Safety Improvement Act of 2002.

I know that OPS has increased both the number and amount of fines issued over the past four years and that the agency has been using some of the tools given to it in the legislation we passed in 2002. While this is a welcome improvement over OPS's near abandonment of the use of fines in the 1990s, there is still work to be done. The goal of an enforcement strategy must not be an arbitrary amount of fines, but rather the deterrence and prevention of accidents that can cause catastrophic damage to human life, property, and the environment. I urge OPS to take the GAO's comments with due seriousness.

Also, are these fines being collected? On February 20, 2004, I wrote to Administrator Bonasso regarding OPS's response to the tragic accidents that occurred in Bellingham, Washington, and Carlsbad, New Mexico. One of my concerns was that the Research and Special Programs Administration (RSPA), in previous testimony to this subcommittee, had cited a rather large number of $9 million in proposed penalties, seemingly as proof of its effectiveness. I specifically asked for a detailed list of the fines that comprised that amount; the March 17, 2004, response did not include such a list. Based on RSPA testimony, the $9 million figure would have included a $2.5 million fine in the Carlsbad, New Mexico, case. But at this point that fine remains uncollected. What about the others?

Finally, while I commend the GAO for their usual hard work, I am concerned with one area they seem to have overlooked. Section 8 of the 2002 pipeline safety

act specifically requires GAO to study "changes in the amounts of fines recommended, assessed by the Secretary, and actually collected." While the GAO report does include the number of times that a recommended fine was reduced, it does not tell us why.

Statistics without explanation are merely numbers. This is no small matter, given that GAO reports that fines were reduced 31 percent during the period when their study was conducted. We need to know why these fines were reduced and what impact these reductions had on the effectiveness of OPS's enforcement efforts.

Again Mr. Chairman, I thank you for holding this hearing and look forward to this Committee's continued oversight over this important issue.

Mr. HALL. We will now turn to our panel. We are honored to have the Honorable Samuel G. Bonasso, Deputy Administrator, Research and Special Programs Administration, U.S. Department of Transportation. Attending with him is one of those CDW-type people you can't do without, the associate administrator of the Office of Pipeline Safety. We thank you, and we turn to you for advice if your boss gets in trouble in any way.

We have Katherine Siggerud, Director of Physical Infrastructures, Government Accountability Office. Happy to have you.

You always need an Inspector General from time to time but not much. You shouldn't when you're doing your job like this one is. Honorable Kenneth M. Mead, Inspector General, Department of Transportation, who is running a good office and cared enough to give us some of his time today. We appreciate it.

And we look forward to hearing from you and recognize you, Mr. Bonasso, at this time.

STATEMENTS OF SAMUEL G. BONASSO, DEPUTY ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY STACEY GERARD, ASSOCIATE ADMINISTRATOR, OFFICE OF PIPELINE SAFETY; KATHERINE SIGGERUD, DIRECTOR OF PHYSICAL INFRASTRUCTURE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE; AND KENNETH M. MEAD, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION

Mr. BONASSO. Thank you, Mr. Chairman. Thank you for the opportunity to discuss our strategy and our long-term prospects for improving the safety and reliability of our Nation's pipeline infrastructure.

My testimony addresses our responses to the mandates in the Pipeline Safety Improvement Act of 2002, issues in its implementation, and the results of our actions.

As you all have so aptly stated, our Nation, our economy, and our way of life depend on pipeline transportation system. Pipelines are the safest, most efficient way to transport the enormous quantities of natural gas and hazardous liquids we use each day.

The act challenged RSPA to improve our pipeline safety program. We have responded to this challenge with improved regulations, improved inspection, and improved enforcement. This is a comprehensive and informed plan to identify and manage the risks faced by operators and our communities. This has helped us implement new regulations and address the majority of tasks required by the new law.

Last year we completed the second step of our hazardous liquid and natural gas integrity management regulations. These regulations are the most significant safety standards improvements for

pipelines in the last 30 years. We are moving further to incorporate improved consensus standards that evaluate the adequacy of a pipeline operators' public education program and by the end of the year will finalize standards for operators' qualifications.

We are improving opportunities for communities to understand the importance of pipeline safety and take action for further pipeline protection. In addition, we have begun a crisis communications initiative to improve the process of coordination and information sharing following a pipeline accident.

With the Common Ground Alliance, we are spinning off regional alliances to help prevent underground accidents. We have also petitioned the Federal Communications Commission for a National three-digit dialing code to provide a faster, simpler, more efficient one-call system. The Transportation Research Board of the National Academies recently completed a study on pipeline encroachment at our request. That study is now public.

Secretary Mineta recently submitted to Congress our 5-year plan for pipeline research and development. In addition, we have developed a memorandum of understanding with the Department of Energy and the National Institute of Standards and Technology for Research Planning. This has provided a clear vision for the advancement of technology focusing on improving pipeline safety.

As we continue with rigorous integrity management inspections, the pipeline operators, we expect to discover more pipeline defects needing speedy repairs. This increased inspection, testing, and repair of pipelines could take more pipelines temporarily out of service and potentially impact the delivery of energy. Recognizing this potential problem, Congress required Federal agencies to participate in an interagency committee to facilitate the prompt repair of these pipelines so as to minimize safety, environment, and energy supply consequences.

We are moving forward on the Council of Environmental Quality four-point plan recommended by Chairman James Connaughton. Under RSPA safety regulations, we have established timeframes for pipeline repairs, depending on defect type and severity. Any serious time-sensitive repair should qualify for expedited permitting. Once a serious pipeline condition is identified, it could potentially impact the safety of our citizens and surrounding sensitive environments.

Reviewing applications for such pipeline repairs should move to the front of the line and be dealt with in a new way. RSPA and its Office of Pipeline Safety are strongly committed to improving safety, reliability, and public confidence in our Nation's pipeline infrastructure. We are also working hard to educate communities on how they can continue to live safely with pipelines.

Following the leadership of your committee and this administration, the legislation passed in recent years takes a new, more comprehensive, informed approach to identifying and managing the risks pipeline operators face and the risks those pipelines pose to our communities. Thanks to this knowledge and the cooperation of all of the parties, today everyone involved with pipelines is safer. And so is the environment they pass through.

I will be happy to take your questions.

[The prepared statement of Samuel G. Bonasso follows:]

PREPARED STATEMENT OF SAMUEL G. BONASSO, DEPUTY ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman, my name is Samuel Bonasso. I am the Deputy Administrator of RSPA, the Research and Special Programs Administration of the U.S. Department of Transportation. With me is Stacey Gerard, Associate Administrator for the Office of Pipeline Safety (OPS).

Thank you for this opportunity to discuss our strategy and our long term prospects for improved safety and reliability of the Nation's pipeline infrastructure. We greatly appreciate this subcommittee's attention and support for our work.

Under Secretary Mineta's leadership, RSPA and OPS have made great strides in meeting the mandates set forth in the Pipeline Safety Improvement Act (PSIA) of 2002. My testimony today will address our responses to these mandates, including specific implementation issues, and the results of our actions. Further, I want to make you aware of potential short and near term risks of reduced pipeline capacity and energy supply due to required pipeline testing and repairs.

The Nation's pipelines are essential to our way of life. The 2.3 million miles of natural gas and hazardous liquid pipelines carry nearly two-thirds of the energy consumed by our Nation. Pipelines are the safest and most efficient way to transport the enormous quantities of natural gas and hazardous liquids across land used by our country.

Recent increased attention to the need for pipeline safety is rooted in demographic changes taking place in our country. Suburban development in previously rural areas has placed people closer to pipelines. This increases the risk that pipeline accidents, although infrequent, can have tragic consequences. Expansion and development also means more construction activity near pipelines' the leading cause of pipeline accidents.

Pipeline safety is more than inspecting pipelines. It involves 1. having better information to understand safety problems, 2. knowing where to set the bar in safety standards, 3. advancing technology to find and fix those problems, 4. partnering with state and local governments to oversee this critical infrastructure, and 5. building alliances to prevent damage and educate the public about how to live safely with pipelines.

Pipeline safety is a top priority for the Bush Administration and for Secretary Mineta, personally. With their support, RSPA and OPS have strengthened each of these five elements in just a few years.

Expanded enforcement has been an important approach in strengthening the pipeline safety program. In the past 10 years, 57 inspectors have been added to the OPS staff, from 28 inspectors in 1994 to 85 inspectors today. Our partnerships with the states, such as our agreement with the Arizona Corporation Commission, provide several hundred more inspectors.

I. WE ARE IMPLEMENTING A PLAN

With the enactment of the PSIA, we embarked on a new, more comprehensive and informed plan to identify and manage the risks that pipeline operators face and that pipelines pose to our communities. By collecting and using better information about pipelines, today we know more about pipelines, the world they traverse, and the consequences of a pipeline failure.

1. Higher Standards

We have raised the standards for pipeline safety, through integrity management requirements and 17 other regulations, and incorporated 30 new national consensus safety standards into our regulations.

2. Better Technology

To improve the technology available to assess and repair pipelines, we have secured investment of almost twelve million dollars, for three dozen research projects since March 2002, with over half provided by the private sector.

3. Stronger Enforcement

Our inspections are much more rigorous. Today, we spend 240 hours on a comprehensive integrity management inspection, in contrast to 32 hours in 1996 for a standard pipeline safety inspection.

We have adopted a tough-but-fair approach to improving enforcement, making heavier use of fines, while directing pipeline operators to meet higher standards. We have initiated steps to ensure that penalties are collected promptly.

4. Better States' Partnership

We have strengthened our partnerships with state pipeline safety agencies, such as the Arizona Corporation Commission, through increased training, shared inspection data bases, a distributed information network to facilitate communications, and policy collaboration.

5. Cleaning Up Our Record

Our new record as a regulator is important to us. In the past three years, the OPS has eliminated most of a 12-year backlog of outstanding mandates and recommendations from Congress, the National Transportation Safety Board, the DOT Inspector General, and the GAO. Over the past 4 years, we have responded positively to 41 NTSB safety recommendations and are working to close the remaining 10 recommendations.

6. Preparing Partners and Going Local

Helping communities to know how they can live safely with pipelines is a very important goal. We cannot succeed in improving pipeline safety without enlisting the help of local officials. We are moving on a number of fronts:

- Working with others, we have proposed to incorporate a new national consensus standard for public education in regulations to ensure community officials and citizens have essential safety information they need to make informed decisions;
- The Transportation Research Board of the National Academy of Sciences recently delivered a study we commissioned on the risks of community encroachment on energy pipelines. We are evaluating this study now and the Secretary will shortly report to the Congress on our plans for addressing this issue.
- We have enlisted the help of the Nation's state fire marshals to bring information and guidance to communities to build understanding of pipeline safety and first responder needs, to help identify high consequence areas in communities, and to provide an understanding of LNG operations.
- Similarly, to foster safety and environmental protection on Tribal Lands, we are working toward a partnership with the Council of Energy Resource Tribes.

RESPONDING TO THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002 (PSIA)

Pipelines are the arteries of our Nation's energy infrastructure and critical to the Nation's viability and well being. The Congress recognized the critical importance of pipelines when it passed the Pipeline Safety Improvement Act of 2002.

The actions described above are consistent with the PSIA, which also has given us new mandates. Under Secretary Mineta's leadership, RSPA and OPS are aggressively responding to these new mandates.

1. Integrity Management

We have completed the most significant improvement in pipeline safety standards history by finalizing regulation of integrity management programs for hazardous liquid and natural gas transmission operators. Going beyond the PSIA requirements, we are also studying, in conjunction with the American Gas Association, the potential for an integrity management program that would be appropriate for gas distribution and municipal operators. We and our state partners have completed comprehensive inspections of large hazardous liquid operators. During these inspections, we observed that operators had completed over 20,000 repairs, 4,400 of which were time sensitive and important to find and fix expeditiously.

2. Operator Qualification

We have completed half of the reviews of interstate operators' qualification programs and expect to meet the 2006 statutory deadline. States have made similar progress. We plan to incorporate improved consensus standards for the qualification of pipeline operators for safety critical functions when the standards are completed later this year.

3. Public Education and Mapping

We believe that communication between Federal, State and local government, the operator and the public about how to live safely with pipelines is an important element in helping to assure the safety of our Nation's energy transportation pipeline infrastructure. Actions are underway to improve communications with state and local officials about actions they can take to protect their citizens and pipelines. We are improving opportunities for communities to understand pipeline safety and to take local action as required by the PSIA. Finally, with Congressional help, we completed the National Pipeline Mapping system. The public can use this system now to know who operates pipelines in their communities.

To respond to the need for improved public awareness of pipelines, OPS, the National Association of Pipeline Safety Representatives (NAPSR), and the pipeline industry have cooperated to develop a national consensus standard— American Petroleum Institute's Recommended Practice 1162 (RP 1162) for public education. RP1162 is designed to help pipeline operators meet new standards established in the PSIA. It requires operators to identify audiences to be contacted, effective messages and communications methods, and information for evaluating and updating public awareness programs. Lastly we worked with pipeline operators to complete, by the December 2003 deadline, self assessments of their public education programs against new, higher standards and have proposed incorporation of RP 1162 into our regulations.

We are starting a Crisis Communications Initiative to improve communications following an accident. We are working hard to develop the framework for this initiative, including a pilot program on crisis communications and interagency relationships. We expect this initiative to meet national objectives and to be complementary to the Homeland Security's National Response Plan, FERC's Liquefied Natural Gas efforts, and the National Association of Fire Marshal's education program.

4. Damage Prevention

Working with the Common Ground Alliance and the Federal Communications Commission, we are delivering a single, national three-digit number for one call systems, most likely 811. The Federal Communications Commission is expected to finalize this action later this year. This will allow all Americans to take one action to protect all pipelines from excavation damage— the major cause of pipeline damage and high consequence failures. By making it simpler to call one number to mark underground lines, we expect more people to use this important prevention service.

5. Research and Development

To provide a vision for the advancement of technology, we developed a memorandum of understanding with the Department of Energy and the National Institute of Standards and Technology for research planning, and the Secretary recently transmitted to Congress our five year plan. The plan includes a detailed management strategy that covers oil as well as natural gas research solicitation and procurement; technology transfer and application of results; coordination and collaboration with other agencies, industry and stakeholders; approaches to communicate project findings; and methods of optimizing the use of resources.

6. Security

Since 9/11, the Department has devoted considerable attention to security across all modes of transportation, including national pipeline security. While the PSIA did not speak specifically to security, pipeline system integrity and security are inextricably linked. We maintain clear expectations for critical pipeline operators' security preparedness. With the Department of Homeland Security (DHS), we verify industry action by conducting audits of all major pipeline operators' security preparedness. OPS expanded its oil spill emergency response exercise program to include focus on security and law enforcement for maintaining the reliability of energy supply. The Department plans to continue working closely with DHS on pipeline security issues.

7. Interagency efforts to Implement Section 16 of the PSIA

Section 16 of the PSIA requires agencies with responsibilities relating to pipeline repair projects to develop and implement a coordinated process for environmental review and permitting. The interagency working group currently has five efforts underway to:

- refine early notification and Federal involvement procedures;
- identify electronic communication methods that would expedite and streamline review;
- establish practices that would reduce or minimize effects to the environment such that reviews would be expedited; and
- refine permitting and review procedures for time-sensitive pipeline repairs consistent with our regulatory and statutory obligations.

III. KEEPING THE ENERGY INFRASTRUCTURE VIABLE

The Nation's economic viability and well-being depend on the enormous quantities of oil, fuel and natural gas transported safely, reliably and at low cost by pipelines each and every day. The energy pipeline infrastructure in the United States represents a $31 billion investment in over 2 million miles of pipeline infrastructure that is critical to American economic interests— a myriad of goods and services as

well as millions of jobs are made possible and supported by this transportation infrastructure.

Federal integrity regulations and PSIA have significantly increased the requirements on operators to test the integrity of this infrastructure, discover any defects and make repairs before ruptures or leaks can occur during the implementation of this important safety initiative. This initiative could take more pipelines temporarily out of service for inspection, assessment and repairs and could impact the delivery of energy.

There are two aspects of this safety initiative which are being given special attention by DOT and other Federal agencies.

First, we, from our safety purview, are the agency that sees the results of the testing of multiple pipelines by multiple operators across the regions of our Nation. Our experience suggests that many repairs will be required under our integrity management regulations— potentially tens of thousands of repairs annually, and perhaps clustering in a particular region of the country.

Second, while a pipeline operator awaits permits for repairs, the operating pressure of the pipeline usually needs to be reduced to maintain a safety margin. There is a risk that the amount of pressure reductions required pending permitting of repairs could measurably reduce the energy capacity of pipeline systems in certain regions. Depending on where pipelines are located and how energy markets are impacted, pressure reductions during peak demand periods could result in fuel shortages and price increases.

The Congress recognized this potential problem and required Federal agencies to participate in an Interagency Committee to facilitate the prompt repair of our pipelines. Work is ongoing with the other relevant Federal agencies to develop guidance to ensure that any necessary Federal permits for repairs of pipelines in danger of rupture can be coordinated and expedited. We are actively working with the pipeline industry to make progress on the implementation of the interagency memorandum of understanding, and to develop an expedited and coordinated pipeline permit review process. We are focused on encouraging early sharing of information and best management practices between pipeline operators and Federal agencies, which will allow expedited completion of time-sensitive repairs while protecting environmental, cultural, and historic resources.

Some of the specific issues the Interagency Committee is addressing include:

- Feasibility of providing Federal permitting agencies with advance information about operator test schedule. Obtaining this information in advance could help agencies anticipate resources needed for permitting repairs and to exchange information about required actions as soon as possible. Pipeline operators, however, are concerned that by providing this information they might be expected to meet the schedule regardless of factors that are beyond their control (weather, availability of appropriate equipment and certified crews, etc.). Operators are also concerned that the testing schedules could become public information that can not be protected as proprietary information, releasing business-sensitive and possibly security-sensitive information.
- Methods to expedite environmental reviews. The Interagency Committee is examining the required consultative processes for permitting repairs in order to determine if actions can be taken that would enable operators to carry out repairs quickly while meeting safety standards.
- Potential energy supply impacts of multiple repairs in a regional area. As we have experienced recently in gasoline markets, a small change in pipeline supplies can have a dramatic impact on fuel price. In a situation with multiple pipelines in a regional area in need of repair, OPS would work with operators to prioritize the order of repairs and maintain safety. A time sensitive repair might qualify for expedited permitting because of the potential energy supply impact. Maintaining pipeline capacity and throughput is essential in supplying fuels to regional markets and vital to the Nation's industries.

IV. WE ARE ACHIEVING RESULTS.

Comparing years 1999 to 2003 to the previous five years, from 1994 to 1998, hazardous liquid incidents have decreased by 25 percent. By 2003, the volume of oil spilled had decreased by 15 percent from the previous 10-year average.

Excavation accidents have decreased over the past ten years by 59 percent. This is largely the result of work with our state partners and the more than 900 members of a damage prevention organization we initiated—the Common Ground Alliance (CGA). The CGA has formed 22 regional alliances to foster damage prevention activities and will soon announce two additional regional alliances, including a west-

ern regional common ground alliance, which is the result of a three-state effort led by the Arizona Corporation Commission.

In closing, I want to reassure you, Mr. Chairman, and all of the members of this subcommittee, that Secretary Mineta, RSPA and the hardworking men and women in the Office of Pipeline Safety share your strong commitment to improving safety, reliability, and public confidence in our nation's pipeline infrastructure.

I will be happy to take your questions.

Mr. HALL. I thank you.

The Chair recognizes Mrs. Katherine Siggerud.

Ms. SIGGERUD. Good morning.

Mr. HALL. I hope I pronounced that correctly. Did I?

Ms. SIGGERUD. That was just fine, yes. Thank you.

STATEMENT OF KATHERINE SIGGERUD

Ms. SIGGERUD. Good morning, Mr. Chairman. And thank you and members of the subcommittee for the invitation to testify at this hearing on pipeline safety.

As you noted, the Pipeline Safety Improvement Act made a number of important changes in Federal pipeline safety programs, including in enforcement. As several members of the subcommittee noted, we did report in 2000 that the Office of Pipeline Safety has significantly reduced its use of certain enforcement actions, such as the monetary sanctions known as civil penalties, in favor of administrative actions. The 2002 act required that we, in essence, follow up on that report by reviewing OPS' enforcement program, including its use of civil penalties. The information I will present today is based on that ongoing work. We will be issuing a full report later this week.

As you know, pipeline transportation remains the safest form of freight transportation. OPS has been taking a number of steps toward implementation of the act to make pipelines safer. Enforcing pipeline safety standards and taking action against violators is an important part of OPS' efforts to prevent accidents.

My testimony today will cover the two topics directed by the act: First, the effectiveness of OPS' enforcement strategy; and, second, OPS' assessment of civil penalties against interstate pipeline operators that violate Federal pipeline safety rules.

Before I address these two topics, let me put OPS' enforcement in context. Over the past several years, OPS has been developing and implementing its integrity management program, a risk-based approach that it believes will fundamentally improve pipeline safety. According to OPS, this approach has more potential to improve safety than its traditional approach, which has focused on compliance but not as much on risk.

During this time, OPS has taken enforcement action but has not placed as much effort on developing enforcement policies and practices. Therefore, OPS told us that it is planning to improve the management of its enforcement program.

Accordingly, my testimony today focuses on potential management improvements that should be useful to OPS as it decides how to proceed and to this subcommittee as it continues to exercise oversight.

Turning now to my first topic, the effectiveness of OPS' enforcement strategy, we found that definitive information on the strategy's effectiveness is not available because OPS is not yet using

three elements of program management that we view as necessary to demonstrate the strategy's relationship to industry compliance and ultimately to safety. First, OPS has not established goals that specify the intended results of the new, more aggressive strategy it has had in place since 2000. Second, OPS has not developed a policy that describes the enforcement strategy and its contribution to pipeline safety. Finally, OPS has not yet put measures in place that would allow it to determine and demonstrate the effects of a new strategy on the industry's compliance. Without these three elements, OPS cannot determine whether recent important changes in its enforcement strategy are having or will have the desired effects.

OPS is currently developing an enforcement policy that would help to define the strategy and has begun to identify new measures of enforcement performance. OPS plans to finalize this strategy sometime in 2005 but still has work to do related to developing performance measures and linking them to the program goals I mentioned earlier.

Another component of enforcement, OPS' assessment of civil penalties is my second topic. Here OPS is taking a more aggressive approach, imposing more and larger penalties than it did in the late 1990's, when its policy stressed partnering with industry. For example, from 2000 to 2003, OPS increased its assessment of civil penalties to an average of 22 a year compared to an average of 14 penalties a year from 1995 through 1999.

The average size of the civil penalties also increased to about $29,000 during the more recent years compared with an average of about $18,000 during the earlier years.

We also looked at the extent to which OPS reduced the amount of penalties between the time they are originally proposed and when they are finally assessed. As you know, pipeline operators can bring evidence for OPS to consider. And OPS may reduce the amount of the proposed penalty. We found that this happened in 31 percent of the cases since 1994, and that the total percentage reduction in penalty between the proposed and assessed amount was 37 percent.

We also found that DOT had collected most of the civil penalties that OPS assessed over the past 10 years. Data show that operators have paid about 94 percent of the assessed civil penalties.

Finally, pipeline safety stakeholders express differing views on whether OPS' increased assessment of civil penalties will help improve compliance with the agency's pipeline safety regulations. Some of those we spoke with, such as pipeline industry officials, said that civil penalties of any size or other enforcement actions do act as a deterrent, in part because they keep the company in the public eye. Others, such as pipeline safety advocacy groups, said that OPS' civil penalties may be too small in some cases to deter noncompliance.

In light of the issues raised in my statement today, we are considering recommendations regarding OPS' management of its enforcement program that could enable OPS to demonstrate to the Congress that it has an effective enforcement strategy.

Mr. Chairman, this completes my statement. I am happy to answer any questions.

[The prepared statement of Katherine Siggerud appears at the end of the hearing.]

Mr. HALL. Thank you.

The Chair recognizes the Honorable Kenneth M. Mead, Inspector General.

Mr. Mead?

STATEMENT OF KENNETH MEAD

Mr. MEAD. Thank you, Mr. Chairman.

When we testified in 2000, we reported that the Office of Pipeline Safety was very slow to implement pipeline safety initiatives, congressionally mandated or otherwise. Numerous mandates from legislation were outstanding, some more than 8 years past due. Also overdue were National Transportation Safety Board recommendations. They remained open, some for more than 10 years.

The lack of responsiveness prompted Congress to again mandate basic elements of a pipeline safety program. The Pipeline Safety Act of 2002 was a result. It included recommendations from our 2000 report. Last month we issued this report on where things stand.

I can report today that OPS has clearly gotten the message and has made considerable progress clearing out most, but not all, of the 1992 and 1996 congressional mandates and completing 15 of them to act with the deadlines that have passed.

It also closed out most of the NTSB recommendations, and pipeline safety was removed from NTSB's most wanted list of safety improvements. That said, what remains done?

OPS has issued important rules for improving pipeline safety in the past 2 years. The most important ones were those requiring integrity management plans. They are for operators of hazardous liquid and natural gas transmission pipelines. They call them IMPs for short. Safety program operators use these to assess their pipelines for risk of a leak or failure, also to repair pipelines and mitigate risks.

It is against that backdrop I would like to highlight four basic points: mapping, where these pipelines are located; two, the new IMP inspection process; three, closing a gap on natural gas distribution pipelines; and, finally, pipeline security.

Mapping. In 2000, when testified, we did not know where a substantial percentage of pipelines in the United States were located. A voluntary mapping initiatives that started in 1994 was clearly not working. Congress mandated it. OPS completed a mapping system this past year. This system is now operational and maps 100 percent of the hazardous liquid and gas transmission pipelines in this country. That's over 480,000 miles.

The new IMP inspection process. Operators are in the early stages, very early stages, of implementing their IMPs. They are not required to have all inspections completed for hazardous liquid pipelines until 2009 or for natural gas transmission pipelines until 2012. There are early signs that the inspections are working quite well. And there was clearly unanimously a need for them.

To date, more than 20,000 integrity threats have been identified and, according to OPS, remediated. A key point here is that these threats were identified in just 16 percent, about 25,000 miles, of

liquid pipeline that needs to be inspected. Of the 20,000 threats, about 1,200 required immediate repairs and attention. Seven hundred, sixty required repairs within 60 days, and 2,400 required repairs within 180 days. The remainder were not time-sensitive.

Now I would like to speak to another issue regarding environmental and permitting issues. The process here is not just as simple and straightforward as identifying the problem and figuring out how to fix it. For some repairs, the environmental review and permitting process has delayed preventive measures, as was demonstrated by a pipeline rupture in California as recently as April of this year.

The deteriorating condition of this pipeline in California was well-documented. It was no secret. The operator knew it. In 2001, the operator actually initiated action to relocate it. But it took nearly 3 years and over 40 permits before approval to relocate was obtained. It was too late to prevent that spill. But, fortunately, there was no loss of human life.

Now, when Congress passed the 2002 Pipeline Act, Congress recognized the need to expedite the environmental review process. An interagency task force was set up to do that.

A memorandum of understanding was signed in June. If you look that over, you will see that it is at a very high level of generality. I think it is probably too general to provide clear guidance on each agency's responsibilities to speed that permitting process up.

I would like to speak to natural gas distribution pipelines. Natural gas distribution pipelines delivered gas to end users to make up about 85 percent of the 2.1 million miles of natural gas pipelines. They are not required to have an IMP.

I think the IMP process could readily be applied to the gas distribution pipelines. Our concern here is that the number of fatalities and injuries from natural gas distribution accidents has increased in the past 3 years.

Now, the American Gas Foundation is sponsoring a study that is due out the end of this year that will, among other things, identify elements of the IMP that they are currently required to do and those that they are not required to do.

We think it is reasonable that the Office of Pipeline Safety report back to the Congress by March 2005 on the steps it is going to take to apply the IMP concept to natural gas distribution pipelines.

And, finally, pipeline security. The current directive on pipeline security we think is at too high a level of generality to provide clear guidance on each agency's responsibilities. I'm speaking here of the Department of Transportation, Homeland Security, and the Department of Energy.

The current guidance basically says collaborate. The roles and responsibilities of DOT, the DHS, and the Department of Energy need to be spelled out so it will be understood who is going to be making the rulemaking decisions, who is going to be conducting the security inspections, and who will enforce the security requirements.

Thank you, Mr. Chairman.

[The prepared statement of Kenneth Mead follows:]

PREPARED STATEMENT OF HON. KENNETH M. MEAD, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION

Mr. Chairman, Ranking Member, and Members of the Subcommittee: We appreciate the opportunity to testify today on the progress that the Office of Pipeline Safety (OPS) has made to improve pipeline safety and the actions that still need to be taken.

OPS is responsible for overseeing the safety of the Nation's pipeline system, an elaborate network of more than 2 million miles of pipeline moving millions of gallons of hazardous liquids and more than 55 billion cubic feet of natural gas daily. The pipeline system is composed of predominantly three segments—natural gas transmission pipelines, natural gas distribution pipelines, and hazardous liquid transmission pipelines—and has about 2,200[1] natural gas pipeline operators and 220 hazardous liquid pipeline operators.

In March 2000, the Office of Inspector General reported[2] that weaknesses existed in OPS's pipeline safety program and made recommendations designed to correct those weaknesses. These recommendations were later mandated in the Pipeline Safety Improvement Act of 2002 (2002 Act). This Act required us to review OPS's progress in implementing our recommendations. Our testimony today is based largely on the results of this second review.[3]

Historically, OPS was slow to implement critical pipeline safety initiatives, congressionally mandated or otherwise, and to improve its oversight of the pipeline industry. The lack of responsiveness prompted Congress to repeatedly mandate basic elements of a pipeline safety program, such as requirements to inspect pipelines periodically and to use smart pigs[4] to inspect pipelines.

When we testified before the House Subcommittee on Transit, Highways and Pipelines on the reauthorization of the pipeline safety program in February 2002, our testimony included actions taken and actions still needed to implement the recommendations in our March 2000 report. While much remained to be done at that time, today we can report that OPS has shown considerable progress in implementing our prior recommendations.

Before proceeding to the core of our statement, we would like to highlight OPS's progress and challenges in closing out congressional mandates enacted in 1992, 1996, and 2002. This progress is a direct result of attention at the highest levels in DOT management, including the Secretary.

- **Closing out most, but not all, of the congressional mandates enacted in 1992 and 1996.** Of the 31 mandates from legislation enacted in 1992 and 1996, OPS has completed its actions on 26 mandates, 18 of which have been completed since our March 2000 report. The most noteworthy of those mandates required integrity management programs[5] (IMP) for operators of hazardous liquid pipelines. The operators use the IMPs to assess their pipelines for risk of a leak or failure, take action to mitigate the risks, and develop program performance measures. In spite of the progress, five mandates from legislation enacted in 1992 and 1996 remain open.
- **Meeting the deadlines of the congressional mandates enacted in 2002.** Of the 23 mandates from legislation enacted in the 2002 Act, OPS has completed its actions, and mostly on time, for 15 of the 17 mandates with deadlines that have expired. OPS expects to complete its actions on two more mandates with expired deadlines by the end of July 2004.

  This progress was the direct result of a high level of management attention and priority in the past few years to implement the mandates. The most noteworthy of those mandates required IMPs for operators of natural gas trans-

[1] Of the 2,200 operators of natural gas pipelines, there are approximately 1,300 operators of natural gas distribution pipelines and 880 operators of natural gas transmission pipelines.

[2] OIG Report Number RT-2000-069, "Pipeline Safety Program," March 13, 2000.

[3] OIG Report Number SC-2004-064, "Actions Taken and Needed for Improving Pipeline Safety," June 14, 2004.

[4] A "smart pig" is an instrumented internal inspection device that traverses a pipeline to detect potentially dangerous defects, such as corrosion.

[5] The Integrity Management Program is a documented set of policies, processes, and procedures that includes, at a minimum, the following elements: (1) a process for determining which pipeline segments could affect a highconsequence area, (2) a baseline assessment plan, (3) a process for continual integrity assessment and evaluation, (4) an analytical process that integrates all available information about pipeline integrity and the consequences of a failure, (5) repair criteria to address issues identified by the integrity assessment and data analysis, (6) features identified through internal inspection, (7) a process to identify and evaluate preventive and mitigative measures to protect highconsequence areas, (8) methods to measure the integrity management program's effectiveness, and (9) a process for review of integrity assessment results and data analysis by a qualified individual.

mission pipelines and a national pipeline mapping system that maps 100 percent of the hazardous liquid and natural gas transmission pipeline systems operating in the United States.

- **Challenges OPS faces in meeting the deadlines of congressional mandates enacted in 2002.** For the few mandates whose deadlines were not met, the delays were a result of multiple Federal agencies, including OPS; state and local agencies; and private industry having to coordinate and collaborate to complete the actions necessary to clear out the mandates. For example, the 2002 Act required the execution of a Memorandum of Understanding (MOU) by December 17, 2003, (1 year after the enactment of the 2002 Act) to provide for a coordinated and expedited pipeline repair permit process that will enable pipeline operators to commence and complete timesensitive pipeline repairs in environmentally sensitive areas. However, it was only last month (June 14th) that all nine participating Federal agencies signed the MOU.

  Although the MOU has been signed, the question now is will the MOU be effective in expediting the permit process. In our opinion, the provisions in the MOU are too general to provide clear guidance on each agency's responsibility for coordinating and expediting the pipeline repair permit process. Also, there are no deadlines to help foster quicker reviews and decision processes nor are the agencies held accountable for not abiding by the provisions of the MOU.

OPS has issued important rules for improving pipeline safety in the past 2 years. The most important ones were those requiring IMPs for hazardous liquids and natural gas transmission pipelines. This is a key issue, as the IMP is the backbone of OPS's riskbased approach to overseeing pipeline safety.

It is against this backdrop that I would like to discuss five major points regarding pipeline safety: (1) mapping the pipeline system; (2) monitoring the evolving nature of IMP implementation; (3) monitoring operators' corrective actions for remediating pipeline integrity threats; (4) closing the safety gap on natural gas distribution pipelines; and (5) developing an approach to overseeing pipeline security.

- **Mapping the Pipeline System.** The first step to an effective oversight program is to locate the assets to be overseen. In the past year, OPS completed the development of its national pipeline mapping system (NPMS). The pipeline industry was reluctant to support this initiative, so Congress mandated it in the 2002 Act. The NPMS is now fully operational and has mapped 100 percent of the hazardous liquid (approximately 160,000 miles of pipeline) and natural gas transmission (more than 326,000 miles) pipeline systems operating in the United States. Congress exempted natural gas distribution pipelines from the mapping mandate, so currently OPS does not have mapping data on the approximately 1.8 million miles of this type of pipeline.
- **Monitoring the Evolving Nature of IMP Implementation.** The next step is for operators to assess their pipelines for any potential integrity threat and correct any threats that are identified and for OPS to assess whether the implementation of the operators' IMPs were adequate.
  - —As mandated by Congress, OPS issued regulations requiring pipeline operators of hazardous liquid and natural gas transmission pipelines to develop and implement IMPs. IMPs are in the early stages of implementation, and operators are not required to have all baseline integrity inspections completed of hazardous liquid pipelines until 2009 and of natural gas transmission pipelines until 2012. OPS required hazardous liquid pipeline operators—the first operators required to implement the IMP—to complete baseline integrity inspections of pipeline miles first in highconsequence areas, such as residential communities and business districts. These pipelines present the highest risk of fatalities, injuries, and property damage should an accident occur.

    About 135,000 miles of hazardous liquid and more than 326,000 miles of natural gas transmission pipeline still need baseline integrity inspections. Nevertheless, there are early signs that the baseline integrity inspections of operators of hazardous liquid pipelines are working well. There was clearly a need for such inspections. According to OPS, in the pipelines inspected so far, more than 20,000 integrity threats have been identified and remediated. A key point to remember, though, is these threats were identified in less than 16 percent (about 25,000 miles) of hazardous liquid pipeline miles requiring baseline integrity inspections.
  - —OPS will be monitoring the implementation of the IMP by more than 1,100 hazardous liquid and natural gas transmission pipeline operators. This is in addition to OPS's ongoing oversight activities, such as inspecting new pipeline construction and investigating pipeline accidents. As of April 30, 2004, the 63 largest operators of hazardous liquid pipelines have undergone initial IMP reviews by OPS inspection teams, leaving 157 hazardous liquid and 884 natural

gas transmission pipeline operators still needing an initial IMP review by an OPS inspection team. Monitoring the implementation of pipeline operators' IMPs will be an ongoing process for years.

- **Monitoring Operators' Corrective Actions for Remediating Pipeline Integrity Threats.** Once a threat is identified, OPS will need to follow up to ensure that the operators take timely and appropriate corrective action. Of the more than 20,000 threats that have been repaired to date, more than 1,200 required immediate repair, 760 threats required repairs within 60 days, and 2,400 threats required repairs within 180 days. More than 16,300 threats fall into the category of "other repairs," for which remediation activities are not considered timesensitive.

  OPS's remediation criteria encompass a broad range of actions, such as mitigative measures (e.g., reducing the pipeline pressure flow) and repairs that an operator can take to resolve an integrity threat. But the process is not as simple as identifying the problem and determining how best to fix it. For some repairs, Federal and state environmental review and permitting processes have delayed preventive measures from occurring, as was demonstrated by the recent pipeline rupture in northern California.

  A hazardous liquid pipeline ruptured and released about 85,000 gallons of diesel fuel, affecting 20 to 30 acres of marshland. The deteriorating condition of this pipeline was well documented by the operator, who initiated action to relocate the pipeline in 2001. However, it took nearly 3 years and more than 40 permits before the operator was given approval to relocate the pipeline. It was too late to prevent this spill, but, fortunately, in this case there was no loss of human life.

  An Interagency Task Force was set up to monitor and assist agencies in their efforts to expedite their review of permits. However, the Task Force participating agency members only recently signed the MOU that is expected to expedite the environmental review and permitting processes so that pipeline repairs can be made before a serious consequence occurs.

  Although the MOU has been signed, the question now is will the MOU be effective in expediting the environmental review and permitting processes. In our opinion, the provisions in the MOU are too general to provide clear guidance on each agency's responsibility for coordinating and expediting the environmental review and pipeline repair permitting processes. Also, there are no deadlines to help foster quicker reviews and decision processes nor are the agencies held accountable for not abiding by the provisions of the MOU. If the participating agencies cannot effectively expedite the environmental review and permitting processes, it may be necessary for Congress to take action.

- **Closing the Safety Gap on Natural Gas Distribution Pipelines.** The natural gas distribution system makes up over 85 percent (1.8 million miles) of the 2.1 million miles of natural gas pipelines in the United States. Distribution is the final step in delivering natural gas to end users such as homes and businesses. While hazardous liquid and natural gas transmission pipeline operators are moving forward with IMPs, natural gas distribution pipeline operators[6] are not required to have an IMP. According to industry officials, the initial reason why natural gas distribution pipelines were not required to have an IMP is that the majority of distribution pipelines cannot be inspected using smart pigs.

  The IMP is a risk-management tool designed to improve safety, environmental protection, and reliability of pipeline operations. That natural gas distribution pipelines cannot be internally inspected using smart pigs is not by itself a sufficient reason for not requiring operators of natural gas distribution pipelines to have IMPs. Other elements of the IMP can be readily applied to this segment of the industry, such as a process for continual integrity assessment and evaluation, and for repair.

  Our concern is that the Department's strategic safety goal is to reduce the number of transportationrelated fatalities and injuries, but natural gas distribution pipelines are not achieving this goal. Over the last 10 years, natural gas distribution pipelines have experienced over 4 times the number of fatalities (174 fatalities) and more than 3.5 times the number of injuries (662 injuries) than the combined totals of 43 fatalities and 178 injuries for hazardous liquid and natural gas transmission pipelines.

  To address this issue, the American Gas Foundation, with OPS support, is sponsoring a study to assess the Nation's gas distribution infrastructure that will evaluate safety performance, current operating and regulatory practices,

[6] There are some operators of natural gas transmission pipelines that are also operators of natural gas distribution pipelines. IMP requirements do not apply to their distribution pipelines.

and emerging technologies. The study, among other things, will identify those elements of an IMP that are and are not required under existing Federal regulations. The study has been ongoing for about 6 months, with results expected to be reported to OPS in December 2004. With the results of the study in hand, OPS should finalize its approach, by March 31, 2005, for requiring operators of natural gas distribution pipelines to implement some form of integrity management or enhanced safety program with the same or similar integrity management elements as the hazardous liquid and natural gas transmission pipelines.

- **Developing an Approach To Overseeing Pipeline Security.** It is not only important that we ensure the safety of the Nation's pipeline system, we must also ensure the security of the system. OPS took the lead to help reduce the risk of terrorist activity against the Nation's pipeline infrastructure following the events of September 11, 2001, but OPS now states it plays a secondary or support role to the Department of Homeland Security's (DHS) Transportation Security Administration (TSA).

  The current Presidential Directive[7] that addresses this issue is at too general a level to provide clear guidance on each Agency's (the Department of Transportation [DOT], DHS, and the Department of Energy [DOE]) responsibility in regards to pipeline security. The delineation of roles and responsibilities between DOT, DHS, and DOE needs to be spelled out in an MOU at the operational level so that we can better monitor the security of the Nation's pipelines without impeding the supply of energy.

MAPPING THE PIPELINE SYSTEM

To provide effective oversight of the Nation's pipeline system, OPS must first know where the pipelines are located, the size and material type of the pipe, and the types of products being delivered. The Nation's pipeline system is an elaborate network of over 2 million miles of pipe moving millions of gallons of hazardous liquids and more than 55 billion cubic feet of natural gas daily. The pipeline system is composed of predominantly three segments—natural gas transmission pipelines, natural gas distribution pipelines, and hazardous liquid transmission pipelines—run by about 2,200 natural gas distribution and transmission pipeline operators and 220 operators of hazardous liquid pipelines (as seen in Table 1). Of the 2,200 operators of natural gas pipelines, there are approximately 1,300 operators of natural gas distribution pipelines and 880 operators of natural gas transmission pipelines. There are approximately 90 Federal and 400 state inspectors responsible for overseeing the operators' compliance with pipeline safety regulations.

Table 1. Pipeline System Facts and Description

System Segment	Facts	Segment Description
Natural Gas Transmission Pipelines ...	326,595 Miles	Lines used to gather and transmit natural gas from wellhead to distribution systems
Natural Gas Distribution Pipelines	1.8 Million Miles	Mostly local lines transporting natural gas from transmission lines to residential, commercial, and industrial customers
Hazardous Liquid Transmission Pipelines.	160,000 Miles	Lines primarily transporting products such as crude oil, diesel fuel, gasoline, and jet fuel
System Operators	**Facts**	**Operators Description**
Natural Gas Transmission Operators ..	880	Large, medium, and small operators of natural gas transmission pipelines
Natural Gas Distribution Operators	1,300	Large, medium, and small operators of natural gas distribution pipelines
Hazardous Liquid Operators	220	Approximately 70 large operators and 150 small operators

Originally, industry was reluctant to map the Nation's pipeline system, so Congress responded by requiring, in the 2002 Act, the mapping of hazardous liquid and natural gas transmission pipelines. In the past year, OPS completed the develop-

[7] Homeland Security Presidential Directive/HSPD-7, "Critical Infrastructure Identification, Prioritization, and Protection," issued December 2003.

ment of the national pipeline mapping system (NPMS). The NPMS is now fully operational and has mapped 100 percent of the hazardous liquid (approximately 160,000 miles of pipeline) and natural gas transmission (more than 326,000 miles) pipeline systems operating in the United States. Congress excepted natural gas distribution pipelines from the mapping mandate, so OPS does not have mapping data on these pipelines.

As a result of mapping efforts by OPS and industry, Government agencies and industry have access to reasonably accurate pipeline data for hazardous liquid and natural gas transmission pipelines in the event of emergency or potentially hazardous situation. The public also has access to contact information about pipeline operators within specified geographic areas.

MONITORING THE EVOLVING NATURE OF IMP IMPLEMENTATION

Hazardous liquid and natural gas transmission pipeline operators are in the early stages of implementing their IMPs. Baseline integrity inspections are just now being established systemwide—starting with hazardous liquid pipelines—so there are no comparable benchmarks and not yet enough evidence to evaluate the IMP's effectiveness in strengthening pipeline safety. However, early signs show that the baseline integrity inspections of hazardous liquid pipelines are working well, and there was *clearly a need for such inspections.*

OPS is also in the early stages of overseeing the implementation of the operators' IMPs, starting with IMP assessments of operators of hazardous liquid pipelines. OPS is challenged with monitoring the implementation of the IMPs of more than 1,100 hazardous liquid and natural gas transmission pipeline operators and assisting in the development of technologies to meet the requirements of the IMP for all sizes and shapes of pipelines and all types of threats.

Early Stages of Implementing Pipeline Operators' IMPs

The operators' implementation of their IMPs is a lengthy process. Even though the IMP rules have been issued in their final form, they will not be fully implemented for up to 8 years. For example, as part of the rules requiring IMPs for operators of natural gas transmission pipelines, only recently (June 17, 2004) were operators required to begin baseline integrity inspections, with inspections to be completed no later than December 17, 2012.

As operators begin implementing their IMPs, there are early signs that the baseline integrity inspections are working well for operators of hazardous liquid pipelines and that there was clearly a need for such inspections. So far, according to OPS, results from the operators' baseline integrity inspections in predominantly high-consequence areas show that more than 20,000 integrity threats were identified and remediated. These threats might not have been discovered during the operators' routine inspections. One of the most serious threats discovered was a case of corrosion where greater than 80 percent of the pipeline wall thickness had been lost. It has since been repaired. A lesser threat discovered was minor corrosion along a longitudinal seam.

A key point to remember about the early baseline integrity inspection results for operators of hazardous liquid pipelines is that these 20,000 threats were discovered and remediated in less than 16 percent (about 25,000 miles) of pipeline miles needing inspection. About 135,000 miles of hazard liquid pipeline still need baseline integrity inspections.

Although 20,000 threats were discovered in the first 25,000 miles, we cannot statistically project the number of threats that could be expected in the 135,000 miles of pipeline that still need baseline integrity inspections. We also cannot project the number of threats that could be expected in the more than 326,000 miles of natural gas transmission pipelines that have yet to receive baseline integrity inspections. Baseline integrity inspections will not be completed for several years and certain threats may be very timesensitive, especially those to do with severe internal corrosion.

OPS required hazardous liquid pipeline operators—the first segment of the industry required to implement the IMP—to complete baseline integrity inspections of pipeline miles first in high-consequence areas, as these areas are populated, unusually sensitive to environmental damage, or commercially navigable waterways. These pipelines present the highest risk of fatalities, injuries, and property damage should an accident occur.

According to the American Petroleum Institute, nationwide there are approximately 160,000 miles of hazardous liquid pipelines, of which 51,400 miles are located in highconsequence areas. As required by the IMP rule, 25,700 of the 51,400 miles (50 percent) should receive baseline inspections by September 30, 2004. OPS estimates that of the nearly 327,000 miles of natural gas transmission pipelines,

24,970 miles are located in high-consequence areas. But pipelines in high-consequence areas represent only about 16 percent of the total miles (76,370 of 487,000 total miles) for both hazardous liquid and natural gas transmission pipelines,[8] and accidents that occur in nonhigh-consequence areas can have catastrophic consequences, such as the deadly pipeline rupture, explosion, and fire near Carlsbad, New Mexico.

On August 19, 2000, a 30-inch-diameter natural gas transmission pipeline ruptured adjacent to the Pecos River near Carlsbad. The released gas ignited and burned for 55 minutes. Twelve members of a family who were camping under a concrete-decked steel bridge that supported the pipeline across the river were killed and their three vehicles destroyed. Two nearby steel suspension bridges carrying gas pipelines across the river were extensively damaged.

During the investigation, NTSB investigators found the rupture was a result of severe internal corrosion that reduced the pipe wall thickness to the point that the remaining metal could no longer contain the pressure within the pipe. The significance of this finding cannot be overstated, as corrosion is the second leading cause of pipeline accidents. Pipeline operators will need to move forward on their baseline integrity inspections.

Monitoring the Implementation of Pipeline Operators' IMPs

OPS must now begin assessing whether the implementation of more than 1,100 hazardous liquid and natural gas transmission pipeline operators' IMPs were adequate. OPS must also perform ongoing oversight activities, such as inspecting new pipeline construction, monitoring research and development projects, and investigating pipeline accidents. To do so while efficiently and effectively overseeing the operators' IMPs, OPS believes it will need to augment its own resources with those of the states.

OPS is actively overseeing IMP implementation through its assessments of hazardous liquid pipeline operators' IMP plans. As of April 30, 2004, the 63 largest operators of hazardous liquid pipelines have undergone the initial IMP assessments. That leaves 157 more operators of hazardous liquid pipelines and 884 operators of natural gas transmission pipelines who will need initial IMP assessments.

Monitoring the implementation of pipeline operators' IMPs will be an ongoing process. OPS IMP inspection teams, made up of Federal and state inspectors, spent approximately 2 weeks at each operator's headquarters reviewing results of integrity inspection and actions taken to address integrity threats, as well as overall IMP development and effectiveness. With over 1,000 pipeline operators who have not yet had an initial IMP assessment (at 2 weeks for each assessment), compounded by the fact that pipelines operators have up to 8 years to complete their baseline integrity inspections, the *overall* effectiveness of operators' IMPs in strengthening pipeline safety will not be known for years.

Advancing Threat Detection Technologies Is Fundamental to the Success of Integrity Inspections

As part of OPS's IMP rule, operators of hazardous liquid and natural gas transmission pipelines are required to inspect the integrity of their pipelines using smart pigs or an alternate but equally effective method such as direct assessment. To date, OPS's integrity management assessments indicate that operators of hazardous liquids pipelines used smart pigs about 70 percent of the time to conduct their baseline integrity inspections and strongly favored the use of smart pigs over alternative inspection methods. Although there have been significant advances in smart pig technology, the current technology still cannot identify all pipeline integrity threats. Today's smart pigs can successfully detect and measure corrosion, dents, and wrinkles but are less reliable in detecting other types of mechanical damage. As a result, certain integrity threats go undetected and pipeline accidents may occur.

For example, on July 30, 2003, an 8inch-diameter hazardous liquid pipeline ruptured near a residential area under development in Tucson, Arizona, releasing more than 10,000 gallons of gasoline and shutting down the supply of gasoline to the greater metropolitan Phoenix area for 2 days. Whether this rupture could have been prevented is still not known because the cause of the rupture, stress crack corrosion,[9] rarely causes failure in hazardous liquid pipelines. Also, there are currently

[8] The percentage of total miles in high-consequence areas for hazardous liquid and natural gas transmission pipelines are early estimates and may change with the beginning of the pipeline operators' baseline integrity inspections.

[9] Stress crack corrosion (SCC), also known as environmentally assisted cracking, is a relatively new phenomenon. Instead of pits, SCC manifests itself as cracks that are minute in length and depth. Over time, individual cracks coalesce with other cracks and become longer.

no tools or mechanisms that can identify the threat of stress crack corrosion and are also small enough to fit in 8inch-diameter piping.

OPS's research and development (R&D) program is aimed at enhancing the safety and reducing the potential environmental effects of transporting natural gas and hazardous liquids through pipelines. Specifically, the program seeks to advance the most promising technological solutions to problems that imperil pipeline safety, such as damage to pipelines from excavation or corrosion. OPS sponsors R&D projects that focus on providing near-term solutions that will increase the safety, cleanliness, and reliability of the Nation's pipeline system.

OPS's R&D funding has more than tripled, from $2.7 million in FY 2001 to $8.7 million in FY 2003. Nearly $4 million of the $8.7 million is funding projects to improve the technologies used to inspect the integrity of pipeline systems for the IMP. OPS currently has 22 active projects that explore a variety of ways to improve smart pig technologies, develop alternative inspection and detection technologies for pipelines that cannot accommodate smart pigs, and improve pipeline material performance. For example, OPS has a project underway that will improve the capabilities of smart pigs to detect and measure both corrosion and mechanical damage. The expected project outcome is a smart pig that is more versatile and simpler to build and to use.

The R&D challenge OPS now faces is seeing these projects through to completion, without undue delay and expense, to ensure that viable, reliable, costeffective technologies become readily available to meet the demands of increased usage required under the IMP.

Monitoring Remediation of Pipeline Integrity Threats

Much of the Nation's existing pipeline infrastructure is over 50 years old. When pipeline integrity threats are identified, repairs may require Federal and state environmental reviews and permitting before the operator can proceed. However, OPS regulations identify repair criteria for the types of threats that must be repaired within specified time limits. At times, the environmental review and permitting processes become an obstacle that can delay the operators' remediation efforts.

When it passed the 2002 Act, Congress recognized that timely repair of pipeline integrity threats was essential to the well-being of human health, public safety, and the environment. Therefore, Congress directed the President to establish an interagency committee to develop and ensure the implementation of a coordinated environmental review and permitting process. This should allow pipeline operators to commence and complete all activities necessary to carry out pipeline repairs within any time periods specified under OPS's regulations.

Certain Pipeline Repairs Must Be Completed Within Specified Time Limits

OPS regulations identify remediation criteria for the types of threats that must be repaired within specified time limits, the length of which reflects the probability of failure. For hazardous liquid pipelines, the three categories of repair are defined as immediate repair, 60 days to repair, and 180 days to repair. For example, a top dent with any indication of metal loss requires immediate response and action, whereas a bottom dent with any indication of metal loss requires a response and action within 60 days. Other types of threats require remediation activities that are not considered time-sensitive. Using the criteria, pipeline operators must characterize the type of repair required, evaluate the risk of failure, and make the repair within the defined time limit.

As of April 30, 2004 (the most current OPS data available), of the more than 20,000 threats that have been identified and remediated to date, more than 1,200 required immediate repair, 760 required repairs within 60 days, and 2,400 required repairs within 180 days. More than 16,300 threats were not considered timesensitive. OPS's remediation criteria encompass a broad range of actions, which include mitigative measures, such as reducing the pipeline pressure flow, and repairs that an operator can make to resolve an integrity threat. For immediate repairs, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair.

The challenges inspectors face during a review of an operator's baseline integrity inspection results are to determine whether OPS's repair criteria were properly used to characterize the type of repair required for each threat identified and whether the operator's threat remediation plans are adequate to repair or mitigate the threat. More importantly, however, is that OPS will need to follow up to ensure that the operator has properly executed its remediation actions within the defined time limit.

Improvements Are Needed in Coordinating Federal and State Environmental Reviews and Permitting Processes

The transmission of energy through the Nation's pipeline system in a safe and environmentally sound manner is essential to the well-being of human health, public safety, and the environment. One way to do this is to develop and ensure implementation of coordinated Federal and state environmental review and permitting processes that will enable pipeline operators to complete pipeline repairs quickly. There will be mounting pressures to accelerate the environmental review and permitting processes, given the high number of threats found during the early stages of baseline integrity inspections that must be repaired within specified time limits.

The recent pipeline rupture in northern California demonstrates the perils of not being able to promptly repair pipeline threats. In April 2004, a hazardous liquid pipeline ruptured in the Suisun Marsh south of Sacramento, California, releasing about 85,000 gallons of diesel fuel into 20 to 30 acres of marshland. Muskrats, beaver, and water fowl were harmed by the spill. Fortunately, there were no human fatalities or injuries.

The deteriorating condition of the pipeline that ruptured was well documented by the pipeline operator, who had reduced pipeline operating pressure to lessen the risk of a rupture but keep the flow of energy to users in Sacramento and Chico, California, and Reno, Nevada. The pipeline operator wanted to relocate the pipeline away from the Suisun Marsh and initiated actions to do so in 2001. However, the environmental review and permitting processes took far too long: nearly 3 years and more than 40 permits in total. There is little doubt that the rupture would not have occurred had the permit process been quicker.

The importance of accelerating the permit process, when necessary, cannot be overstated. As we have noted, results from the hazardous liquid pipeline operators' baseline integrity inspections in high-consequence areas show that more than 20,000 integrity threats were identified for remediation. More than 1,200 threats required immediate repairs. As operators continue with their baseline integrity inspections, the implications are that the number of integrity threats will continue to rise. According to OPS, repairs for other known pipeline threats are being delayed because of the environmental review and permitting processes. These repairs are best taken care of sooner rather than later to prevent another incident like the Suisun March rupture.

When it passed the 2002 Act, Congress recognized the need to expedite the environmental review and permitting processes. Section 16 of the 2002 Act directed the President to establish an interagency committee that would develop and ensure implementation of a coordinated environmental review and permitting process so that pipeline repairs could be made within the time periods specified by IMP regulations.

The committee was to:

- Evaluate Federal permitting requirements.
- Identify best management practices to be used by industry.
- Enter into a MOU by December 17, 2003, (1 year after the enactment of the 2002 Act) to provide for a coordinated and expedited pipeline repair permitting process that would result in no more than minimal adverse effects on the environment.

The 2002 Act also requires the committee to consult with state and local environmental, pipeline safety, and emergency response officials and requires the Secretary of Transportation to designate on ombudsman to assist in expediting the permit process and resolving disagreements over pipeline repairs between Federal, state, and local permitting agencies and the pipeline operator.

To implement Section 16, the President issued an Executive Order in May 2003 establishing the Interagency Task Force and directed it to implement the committee initiatives. The Chairman of the Council on Environmental Quality chairs the Interagency Task Force, whose membership includes representatives from the Departments of Agriculture, Commerce, Defense, Energy, the Interior, and Transportation; the Environmental Protection Agency; the Federal Regulatory Commission; and the Advisory Council on Historic Preservation.

However, the Task Force only recently finalized its MOU that would expedite the environmental review and permitting processes. According to OPS, the reason for the delay was that not all members of the Interagency Task Force had agreed to the provisions of the MOU. Other members believe that there are provisions in the Clean Air Act, Clean Water Act, and Endangered Species Act that prohibit them from taking any action to expedite the environmental review and permitting processes.

Although the MOU has been signed, the question now is will the MOU be effective in expediting the environmental review and permitting processes. In our opin-

ion, the provisions in the MOU are too general to provide clear guidance on each agency's responsibility for coordinating and expediting the environmental review and pipeline repair permitting processes. Also, there are no deadlines to help foster quicker reviews and decision processes, nor are the agencies held accountable for not abiding by the provisions of the MOU. If the participating agencies cannot effectively expedite the environmental review and permitting processes, it may be necessary for Congress to take action.

CLOSING THE SAFETY GAP ON NATURAL GAS DISTRIBUTION PIPELINES

The 2002 Act requires that the operators of natural gas pipeline facilities implement IMPs. However, the IMP requirement applies only to natural gas transmission pipelines and not to natural gas distribution pipelines.

As part of the IMP, operators of hazardous liquid and natural gas transmission pipelines are required to inspect the integrity of their pipelines using one or more of the following inspection methods: smart pigs, pressure testing, or direct assessment.[10] According to officials of the American Gas Association, the initial reason why IMPs were not required for natural gas distribution pipelines is that distribution pipelines cannot be inspected using smart pigs. The smart pig technologies currently available cannot be used in natural gas distribution pipelines because the majority of distribution piping is too small in diameter (1 to 6 inches) and has multiple bends and material types intersecting over very short distances.

The IMP is a riskmanagement tool designed to improve safety, environmental protection, and reliability of pipeline operations. That natural gas distribution pipelines cannot be internally inspected using smart pigs is not by itself a sufficient reason for not requiring operators of natural gas distribution pipelines to have IMPs. Other elements of the IMP can be readily applied to this segment of the industry, including but not limited to (1) a process for continual integrity assessment and evaluation, (2) an analytical process that integrates all available information about pipeline integrity and the consequences of failure, and (3) repair criteria to address issues identified by the integrity assessment and data analysis.

The American Gas Foundation, with OPS support, is sponsoring a study to assess the Nation's gas distribution infrastructure that will evaluate safety performance, current operating and regulatory practices, and emerging technologies. The study, among other things, will identify those elements of an IMP that are and are not required under existing Federal regulations. The study has been ongoing for about 6 months, with results expected to be reported to OPS in December 2004.

Natural Gas Distribution Pipeline Safety Concerns

Our concern is that the Department's strategic safety goal is to reduce the number of transportationrelated fatalities and injuries, but natural gas distribution pipelines are not achieving this goal. In the 10year period from 1994 through 2003, OPS's data show accidents in natural gas distribution pipelines have caused more than *4 times* the number of fatalities (174 fatalities) and more than *3.5 times* the number of injuries (662 injuries) when compared to a combined total of 43 fatalities and 178 injuries associated with hazardous liquid and gas transmission pipeline accidents combined.

Accidents involving natural gas distribution pipelines can be as catastrophic as accidents involving hazardous liquids or natural gas transmission pipelines. For example, on December 11, 1998, in downtown St. Cloud, Minnesota, a communications crew ruptured an underground natural gas distribution pipeline, causing an explosion that killed 4 people, seriously injured 1, and injured 10 others. Six buildings were destroyed. In another example, in July 2002, a gas explosion in a multiplefamily dwelling in Hopkinton, Massachusetts, killed 2 children and injured 14 others.

In the past 3 years, the number of fatalities and injuries from accidents involving natural gas distribution pipelines has increased while the number of fatalities and injuries from accidents involving hazardous liquid and natural gas transmission pipelines has held steady or declined. OPS's data show that fatalities and injuries from accidents involving natural gas distribution pipelines increased from 5 fatalities and 46 injuries in 2001 to 11 fatalities and 58 injuries in 2003. For the same period, fatalities and injuries from accidents involving hazardous liquid and natural gas transmission pipelines decreased from 2 fatalities and 15 injuries in 2001 to 1 fatality and 13 injuries in 2003.

[10] Operators can choose another technology that demonstrates an equivalent understanding of the integrity of the pipeline but only if they notify OPS before the inspection begins.

Although the American Gas Foundation has moved forward with its study to assess the performance and safety of natural gas distribution pipelines, OPS needs to ensure that the pace of this effort moves quickly enough, given the upward trend in fatalities and injuries involving these pipelines and the projected increase in distribution pipelines to meet the increasing demand for natural gas. In December 2004, when industry presents the results of its safety study on natural gas distribution pipelines, OPS will have the information to finalize its approach, by March 31, 2005, for requiring operators of natural gas distribution pipelines to implement some form of integrity management or enhanced safety program with the same or similar integrity management elements as the hazardous liquid and natural gas transmission pipelines. This would be consistent with OPS's riskbased approach to overseeing pipeline safety by using IMPs to reduce the risk of accidents that may cause injuries or fatalities to people near natural gas distribution pipelines, as well as the risk of property damage.

DEVELOPING AN APPROACH TO OVERSEEING PIPELINE SECURITY

The focus of our recently completed review was pipeline safety. However, given the importance of protecting the Nation's infrastructure of pipeline systems, we also reviewed OPS's involvement in the security of the pipeline systems.

OPS's Security Efforts Following September 11, 2001

Following the events of September 11, 2001, OPS moved forward on several fronts to help reduce the risk of terrorist activity against the Nation's pipeline infrastructure, such as opening the lines of communication among Federal and state agencies responsible for protecting the Nation's critical infrastructure, including pipelines; conducting pipeline vulnerability assessments and identifying critical pipeline systems; developing security standards and guidance for security programs; and working with Government and industry to help ensure rapid response and recovery of the pipeline system in the event of a terrorist attack.

To protect the Nation's pipeline infrastructure, OPS issued new security guidance to pipeline operators nationwide in September 2002. In the guidance, OPS requested that all operators develop security plans to prevent unauthorized access to pipelines and identify critical facilities that are vulnerable to a terrorist attack. OPS also asked operators to submit a certification letter stating that the security plan had been implemented and that critical facilities had been identified. During 2003, OPS and the DHS's TSA started reviewing operator security plans. The plans reviewed have been judged responsive to the OPS guidance.

Unlike its pipeline safety program, OPS's security guidance is not mandatory: industry's participation in a security program is strictly voluntary and cannot be enforced unless a regulation is issued to require industry compliance. In fact, it is still unclear what agency or agencies will have responsibility for pipeline security rulemaking, oversight, and enforcement. Although OPS took the lead to help reduce the risk of terrorist activity against the Nation's pipeline infrastructure following September 11, 2001, OPS has stated it now plays a secondary, or support, role to TSA, the agency with primary responsibility for ensuring the security of the Nation's transportation system, including pipelines.

Recent Initiatives Clarifying Security Responsibilities

Certain steps have been taken to establish what agency or agencies would be responsible for ensuring the security of the Nation's critical infrastructure, including pipelines. For example, in December 2003, Homeland Security Presidential Directive/HSPD-7 (HSPD7):

- Assigned DHS the responsibility for coordinating the overall national effort to enhance the protection of the Nation's critical infrastructure and key resources.
- Assigned DOE the responsibility for ensuring the security of the Nation's energy, including the production, refining, storage, and distribution of oil and gas.
- Directed DOT and DHS to collaborate on all matters relating to transportation security and transportation infrastructure protection and to regulating the transportation of hazardous materials by all modes, including pipelines.

Although HSPD-7 directs DOT and DHS to collaborate in regulating the transportation of hazardous materials by all modes, including pipelines, it is not clear from an operational perspective what "to collaborate" encompasses, and it is also not clear what OPS's relationship will be with DOE. The delineation of roles and responsibilities between DOT and DHS needs to spelled out by executing an MOU or a Memorandum of Agreement. OPS also needs to seek clarification on the delineation of roles and responsibilities between itself and DOE.

Mr. Chairman, this concludes my statement. I will be pleased to answer any questions that you or other members of the Subcommittee might have.

Mr. HALL. Thank you.

The Chair notes the presence of Mr. Walden of Oregon, Mr. Otter of Idaho, and Mr. Allen of Maine. The time for opening statements has passed, but if there is no objection, we can put your opening statements in the record, as can any other member who comes and goes during this hearing. Without objection, so ordered.

All right. Well, we begin the questions now. I think it would be helpful, Mr. Bonasso, if you would—your testimony notes that OPS has completed a National pipeline matching system. I think that is on page five of your testimony there. You state, and I quote, "The public can use this system now to know who operates pipelines in their communities." Explain, if you would,—this is for anybody who is watching or listening or who will read the record—how the public can access this system and what information is available that would be helpful, I think.

Mr. BONASSO. All right. Mr. Chairman, the Web site of the Office of Pipeline Safety has a feature that allows people to insert their Zip Code. So anybody in the United States with a Zip Code can enter the Zip Code. And once they enter that Zip Code, it will tell them the pipeline companies that are operating in their area. It will give them the name of the company and the telephone number. They can then call those companies and determine whether or not those pipelines are in the vicinity of their property and can determine what kind of service is involved and so on. So they have ability to identify that by Zip Code.

Mr. HALL. I thank you for that bit of public service.

Mr. BONASSO. Yes, sir.

Mr. HALL. Thank you. And that will be helpful.

Mrs. Siggerud, did I do better that time?

Ms. SIGGERUD. That's fine.

Mr. HALL. In your testimony, you note, and I quote, "The effectiveness of OPS' enforcement strategy cannot be evaluated because the agency has not incorporated three key elements of effective program management." And you listed clear program goals, a well-defined strategy for achieving these goals, and, logically, measures of performance that are linked to the problem goals. I think that is on page three of your testimony.

You further note that OPS is developing an enforcement policy that will help define its enforcement strategy, but will not be completed until the year 2005.

My question is, will that policy address the lack of the three key elements you set forth?

Ms. SIGGERUD. My understanding is it will address some of those key elements. In particular, I mentioned the need for a strategy as the first element. I noted in my statement that OPS has taken on a new and different approach to imposing enforcement actions since about 2000. In addition, it has started to take enforcement actions under integrity management.

What we would hope is that the new enforcement strategy that OPS will put into place in 2005 will essentially recognize both of those changes and be fairly specific on what it expects in terms of the types of enforcement actions that will be taken.

With regard to performance measures, the second element that I mentioned, we have spoken with the OPS officials. They have a

couple of measures that they are considering, particularly in the integrity management area, that we think will start to be responsive to our concerns.

What we think is important in terms of performance measures is really trying to understand what enforcement is trying to accomplish; for example, reducing the number of repeat violations, getting speedy remediation of any safety violations that are identified, et cetera. What we hope is that OPS will consider these types of performance measures in putting measures into place.

Finally, with regard to goals, this is very similar to the performance measure issue. What we hope is that OPS will put goals into place that specifically identify what its enforcement policy is meant to accomplish.

Mr. HALL. One follow-up to that. What, if anything, has been OPS' reaction to your draft report?

Ms. SIGGERUD. Yes. Our report is, in fact, in final processing. And we do have official comments from the Office of Pipeline Safety. And the office agreed with all of the recommendations that we made.

Mr. HALL. I thank you.

Mr. Inspector General, at one point the Department of Transportation intended to propose a reorganization as a part of the F.Y. 2005 budget—I think you are aware of that—which affected the Office of Pipeline Safety. Do you know what the status is of that proposal? Was it carried out? Was it initiated? Is it completed?

Mr. MEAD. No. I think my understanding is that the department is having discussions with some Members of Congress on it. I think Mr. Green raised this issue before.

Personally I like the idea of bringing together the research, different research, organizations into one, but OPS I personally would not move them to the Federal Railroad Administration. One possible option is to combine them, combine the hazmat and the Office of Pipeline Safety, as one other office within the Department of Transportation.

I think you have a pretty good thing going right now with the Office of Pipeline Safety. It has taken a while to turn them around. And it seems to me that they are going in the right direction.

Mr. HALL. I thank you. Mr. Green probably has follow-up on that.

My time has expired. The Chair recognizes the ranking member of this committee. Mr. Boucher?

Mr. BOUCHER. Thank you very much, Mr. Chairman.

Mr. Mead, let me return with you to the question of the scope of the requirement with respect to integrity management plans. Under the 2002 statute, required that they apply to transmission lines. We did not require that they apply to natural gas distribution lines.

Now, I notice in your testimony some comments with respect to their application to distribution. I would like for you to take just a moment, if you would, to elaborate on the reasons why perhaps in your opinion you believe that integrity management plans should apply to distribution lines.

Perhaps in answering that question, you could apprise us as to whether or not there have been any significant accidents that in-

volve distribution lines or give us other bases for the application of these plans to distribution.

Mr. MEAD. Yes, sir. I think this is a fairly straightforward matter. You are correct. They are not required to have integrity management plans.

Basically, an integrity management plan sets forth the frequency and the criteria for doing inspections; second, what you are going to do when you find a problem; and, third, a very organized way of communicating among the companies and with the government about what the current status of the pipelines are and what is going to be done about it. It is a fairly straightforward concept.

I think that they ought to be covered because: one, they actually comprise 85 percent of the pipeline mileage in this country; second, they are almost always in high-consequence areas; that is, densely populated things, like near your home and mine. And, third, in terms of the safety record, there has been an increase in the last several years in the fatalities and accidents and injuries.

Mr. BOUCHER. Associated with distribution lines?

Mr. MEAD. Yes, sir. And I can just quickly take that apart and stratify it. Actually——

Mr. BOUCHER. We are a little bit limited in terms of time. If you have some examples of accidents that have occurred, if you perhaps could submit those to the committee in written form I think that would be helpful.

Mr. MEAD. We would be glad to.

Mr. BOUCHER. Let me ask you a couple of additional questions about that subject. A comment has been made that with their larger diameter, the transmission lines perhaps are easier to inspect because automated remote sensing devices can be transmitted through these larger lines. With their smaller diameter, the distribution lines don't permit that technical application.

So how would an integrity management plan proceed in terms of specifying the means for sensing whether or not problems are arising with regard to the distribution lines?

Mr. MEAD. What you are referring to is pigging, instrumented pigging. And you are correct that the gas distribution pipelines generally are too small, have too many curves, and so forth, to accommodate them. But there are other inspection techniques.

In the first instance, you can look to the operator to say what techniques they would choose to use, but there are other techniques other than instrumented pigging.

Mr. BOUCHER. There are other techniques?

Mr. MEAD. Yes, there are.

Mr. BOUCHER. Such as? Do you have some examples?

Mr. MEAD. Well, one is visual inspection. One is pressure inspection. I can submit a full list of these for the record if you would like.

Mr. BOUCHER. Okay. Well, that would be helpful.

Mr. MEAD. But they are numerous.

Mr. BOUCHER. Just add that to the letter you are going to send us. I would appreciate that.

Well, that is helpful testimony. And I appreciate your apprising us of your views with regard to the application of these plans to distribution.

In the time I have remaining, I would like to propound a question to you, Mr. Bonasso. That relates to the development of regulations by the Office of Pipeline Safety with respect to the technical assistance grants for communities that were required in our 2002 act. These grants are designed to provide communities with the technical expertise necessary to let them participate in a meaningful way in hearings and other forums that are organized to address pipeline safety issues from the deployment of pipelines in the first instance and the permitting process associated with that to questions that arise post-pipeline deployment, such as the adequacy of testing with respect to the integrity of these pipelines.

In the absence of being able to get technical expertise, engineering assistance, and the like, communities are obviously to a large degree inhibited in their ability to do that. These technical assistance grants that we mandated in the 2002 statute were designed to fill that gap.

Now, in the regulations issued by the Office of Pipeline Safety in December of last year, there was silence on the question of these technical assistance grants. We do not have rules written with respect to them at the present time.

So my question to you is, when do you intend to write these rules? When will the regulations that specify the procedure for accessing the technical assistance grants be put in place in final form? When will these funds be available to localities?

Mr. BONASSO. Congressman, we have approached the implementation of the act based on a priority basis. The principal approach has been to secure the safety of the communities first. And we have spent our time focusing on those activities.

We have also spent a great deal of time considering what the issues are that these communities are going to be dealing with. What I mentioned, the Transportation Research Board research study, deals with the issues of encroachment and how significant these problems are.

The issue of the community technical assistance grant is certainly one of the items that we are preparing to work on. We expect to have a workshop with the industry and the communities tentatively scheduled for December to begin gathering information on the implementation of this particular part of the act.

So it is not something that we have forgotten. It is something that has been part of our priority approach. And it will be acted upon in the near future.

Mr. BOUCHER. So within the coming year, you would begin a rulemaking?

Mr. BONASSO. Stacey, what do you think? Within the year?

Ms. GERARD. We can certainly do that.

Mr. BONASSO. We can do that, sir.

Mr. BOUCHER. Thank you very much. Thank you, Mr. Chairman.

Mr. SHIMKUS [presiding]. The gentleman's time has expired. And I will recognize myself for 8 minutes. Hopefully I won't use that much. And, again, I would like to welcome you all.

I think I would like to start with Mr. Mead. There is some reorganization that is planned in the 2005 budget. Briefly can you talk about how you perceive that to be helpful? And then in your answer, what I will be looking for, is there congressional action that

you will be seeking that you think you need? And have you coordinated with anyone on the committee here, the Energy and Commerce Committee to that effect?

Mr. MEAD. Well, sir, the inspector general, we aren't carrying the brief for this reorganization. And I am not familiar with exactly who they have spoken to up here in the Congress or not.

I am aware in general of the proposal. I think the idea behind it to bring different research components within DOT together is a sound one because where there are cross-modal or intramodal connections in research, you ought not to have everybody going off in their own direction.

Mr. SHIMKUS. Well, let me flip to Mr. Bonasso because it is probably more in his area.

Mr. MEAD. Yes.

Mr. SHIMKUS. Can you answer, in essence, the same line of questioning on the reorganization plan by the administration and how you perceive that to be helpful with the follow-up questions on it? Will you be requesting legislative action in support of that?

Mr. BONASSO. What I can share with you is that the department is currently studying the potential of reorganization. It does revolve around the research function of the department, which is the key component, not only the research itself but what is informing the research; that is, the BTS activity, the Bureau of Transportation Statistics, the need to stop duplicating research to make sure that there is a clear oversight of all of the research that is involved.

Now, I think that is the basic intention. It is not the intention of the reorganization plan to impact the operation of the Office of Pipeline Safety or the operation of hazardous materials at all. It is to make an effort to improve their operation, if anything. So I think that there have been a lot of rumors and ideas that have been floated out.

I think that all of the information that has come back from those has been helpful. And I think that the Office of the Secretary is considering all of that information now. Hopefully they will be providing something soon in what they intend.

Mr. SHIMKUS. Let me follow up. I mean, this system of pipes for the distribution and transmission and all of these goods, I think the public as a whole, we just don't have an appreciation for how much is being transported. But we do on the fuels debate when one gets disrupted, gasoline fuel prices spike because of the bulkanization of the fuel markets and the boutique fuels and the like.

The one-call system, the third party intrusion into the pipeline system is one of the major reasons why we have these. The one-call system is successful when implemented and aggressively used. It is usually funded at the Federal level at a million dollars. The administration has reduced that to $800,000. That is what we are being told. Is that correct, Mr. Bonasso?

Mr. BONASSO. Yes, it is.

Mr. SHIMKUS. I guess the argument would be that obviously—what is the argument for cutting it from $1 million to $800,000?

Mr. BONASSO. It's just that we have limited resources. And our goal is to try to maximize the use of those resources and to focus on other forms of damage prevention activities. I mean, we cer-

tainly think that the call before you dig program is a very important program. And the speed at which we have successfully got FCC to consider the 3-digit dialing is an indication of that.

Mr. SHIMKUS. Yes. And then I want to follow on the same line of questions to Mr. Mead. In the reports, we have the issues of fatalities and stuff. Do you have a breakdown as to the cause of the fatalities and injuries? And was the bulk due to third party damage versus corrosion versus something else?

Mr. MEAD. Yes. That ties into this three-digit call issue because half of them are due to third party excavations of some sort.

Also, this is a change I didn't mention in my oral statement, but before the last law, they only had a few basic categories for reporting the calls. In the past year, they have been collecting calls data on 25 different categories. I think it is too early to report to you exactly what those results are.

Mr. SHIMKUS. Thank you.

Finally, let me ask, Ms. Siggerud, on the issue of penalties, reductions in 66 cases, 66 files do not seem to be that overwhelming. How many files did you review?

Ms. SIGGERUD. I think the issue that you are probably getting at is what were the reasons——

Mr. SHIMKUS. That's the follow-up question.

Ms. SIGGERUD. [continuing] that the penalties were reduced. The data bases that were available to us and to OPS do not always or, I should say, do not generally include information that tell us the reasons why the penalties were reduced between the proposed and the assessed phase.

We looked at several. We did not look at all 66 of those cases. We looked at several to try to get a sense of the reasons that the penalties are reduced over time. They actually can be quite voluminous. And it is not always obvious in looking at the file what the major reason was for the reduction. Therefore, I am not able to today give you any particular information on what the most common reason was.

Mr. SHIMKUS. That was the follow-up because you basically looked at the data bases.

Ms. SIGGERUD. Right.

Mr. SHIMKUS. And you're saying you didn't have the time or the personnel to go through and actually go through the files of the causes. For the layman's point of view, is that——

Ms. SIGGERUD. I guess essentially it boils down to that. There are a couple of issues to consider here. First of all, as I mentioned, in looking at these files, it's not always extremely obvious because of the way they are assembled what the reason for the reduction was.

Second, a lot of this information is also contained in the field offices. And we have focused our work primarily in headquarters but did contact various officials in the regional offices to try to get a sense of how they administered the program.

Mr. SHIMKUS. So obviously I used my entire 8 minutes, but to get a further more clarification, would you recall, then, for Members of Congress to ask the GAO to do a further explanation of why the reductions were in the 66 cases and ask for another follow-on report?

Ms. SIGGERUD. We would certainly be happy to work with you if you would care to request that kind of information.

Mr. SHIMKUS. Thank you very much.

I would now like to recognize Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. Bonasso, after the Pipeline Safety Act of 2002, DOT moved quickly on implementing pipeline safety mandates and recommendations. Why did DOT move to require integrated management programs for the transmission pipelines but not for the distribution pipelines?

In addition, the AGA's testimony later will explain the different pipelines, but it would help to get an understanding of the agency's decisionmaking.

Mr. BONASSO. First, distribution pipelines are all under State jurisdiction. That is sort of the nature of the animal. There is a great deal of plastic pipe involved in distribution pipelines as well.

The technology for integrity management programs for this type of pipe is limited. It involves basically visual inspections. There is a certain amount of pressure testing that can be done. There is a little bit of other nondestructive testing that can be done. So there are limited ways that we can implement an integrity management program.

So the prevention approach, the call before you dig, is probably the most significant approach on these distribution pipelines. So the reason that we focused on the large gas and liquid transmission lines is basically because the technology lent itself to doing integrity management programs with them. It helped the industry get prepared for what integrity management involved and that will allow us to go forward.

Mr. GREEN. Okay. Mr. Mead, in your testimony, you talked about the California pipeline that deteriorated. I assume that was intrastate?

Mr. MEAD. Yes, sir, inter.

Mr. GREEN. Interstate?

Mr. MEAD. Yes, sir.

Mr. GREEN. Okay. But it took 3 years and 40 permits to relocate it safely. What should OPS have done? What was the bottleneck? Was it State or Federal regulations? Typically we hear that "Nobody wants a pipeline in our backyard." I just happen to have lots of them in our area.

Mr. MEAD. Congressman, if I were to redo the list, it would take up all of your time.

Mr. GREEN. Okay. Submit that to the committee, if you would.

Mr. MEAD. I will submit it for the record, but basically 40 permits from 31 Federal, State, and local agencies. I will submit the entire list for the record. Essentially there are too many players, all of whom can put up a "Stop the show" sign. Also, there are no time lines.

In California, the sad part about that situation was everybody knew this was a deteriorating pipeline. They had tried all kinds of remediation before. And they knew they had to do something. But still the process didn't speed itself along.

Mr. GREEN. I've had some concern over the years about California's infrastructure and regulatory delay in dealing with the price jumps. But now we're talking about this would impact the safety.

Let me get to another question that the chairman followed up on. Does the DOT have the current authority to combine the pipeline R&D functions with other R&D functions, such as the Federal Railroad Administration while keeping the regulatory agency separate? Can they already under current law combine those functions?

Mr. MEAD. Some statutory changes would be required.

Mr. GREEN. Since you want to combine or the discussion is combining just the R&D, I would hope, for that, why not include the R&D also for over-the-road 18-wheeler trucks? Because we're talking about transportation of materials. Whether it is in an 18-wheeler or a tank car on a railroad or a pipeline, it is still the same substance. Has there been any discussion to expand it to that?

Mr. MEAD. Again, I haven't been privy to other discussions, and I am not carrying that brief. I do understand that locating, centralizing the research function was intended to apply to research functions that were intramodal or had cross-modal applications and things like where the FAA is just focusing on airplanes or the Federal Motor Carrier Safety Administration is just focusing on trucks, that that wouldn't necessarily be moved over. Maybe Mr. Bonasso can give a further exposition on it.

Mr. GREEN. Mr. Chairman, I had one other question, but if Mr. Bonasso could use the last 9 seconds?

Mr. BONASSO. Well, just quickly, there is almost a billion dollars of research being done in the DOT across the agencies. What the secretary is trying to do is get a handle on all of that, not just the OPS and railroad research.

Mr. GREEN. Oh, I agree with that philosophy because you are dealing with the same substances.

Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time has expired. The Chair recognizes the gentleman from Idaho, Mr. Otter, for 5 minutes.

Mr. OTTER. Thank you, Mr. Chairman.

I appreciate the panel being here today. I can see that, even with the best of intentions—I was on the Transportation Committee when we passed the new pipeline safety bill. Of course, we had a litany of reasons for doing that. And we went back for years to relive, once again, many of the horrible accidents that we had on pipelines prior to the reauthorization or, I should say, I guess, the rehabilitation of the Pipeline Act.

Something that concerned me at the time—and I renew this concern today as I hear some of the delays and the pauses and the lawsuits and that sort of thing, and I would like to hear an expression from the entire panel as to what would be the instrument by which we could stop these delays or at least make the delays legitimate, rather than an oblique effort to either arrest, delay, or perhaps stop completely the rehabilitation of a pipeline to make it more safe or perhaps the construction of a new one.

We don't have this problem just in pipelines. In fact, at my last recollection in Idaho, we have got about $58 million still sitting in the bank from highway construction that we haven't been able to get to because somebody found a bug or a three-toed frog or some-

thing. Nationwide it's $14 billion, which would put 400,000 construction workers to work, which would also make the highways a lot safer in Idaho. We lose 32 lives a year on a stretch of road that we have been trying to get permission from all of the agencies.

Anyway, let's get back to my question. My question is, what can we put into the system in order to legitimately protect the environment, legitimately protect and save lives, and legitimately go forward with the mission that you are entrusted with?

Mr. MEAD. I think there are three things based on the work we did. One is you need a credible way of identifying an emergency or exigent circumstance where safety has to be the priority. I think that the current memorandum of understanding process lends itself to that.

The second thing you need, though, and the third, which I don't believe are in place, one, somebody has to be in charge. You can't have the situation where 31 or 40 people all are in charge and can all stop the show.

Finally, with something that is a priority safety matter, it seems to me that it is not unreasonable to set a time line and say, "You have all got to decide one way or the other by a time certain." You can't let this drag out, as we did in the case in California, for more than 3 years. The accident happened. Now we say, "Well, we are ready to give you the permit."

So there are the three suggestions I would have, Congressman.

Mr. OTTER. I love those suggestions. Would any of the three of you disagree with that? Yes, sir?

Mr. BONASSO. I would think that there is an additional component and one that is being worked on by the CEQ committee. That is the opportunity for a categorical exclusion for pipelines because they already exist in certain areas. There are certain practices that can be clearly identified and can be utilized.

The plan of Chairman Connaughton also involves tandem processing of permits and early notification by the operators as to when a need for something needs to be done.

Mr. OTTER. Any additional information?

Ms. SIGGERUD. Congressman, we haven't done any recent work in this area, but all of the suggestions that my fellow panel members suggested seem reasonable.

Mr. OTTER. I appreciate your comment about the categorical exclusion because the first time I ever heard of it was obviously on forest health. Thus far, although we haven't really generated all of the horrible consequences that many in communities thought was going to happen, we have been able to very slowly move forward with—did you have something you wanted to add?

Mr. BONASSO. One other thing that I answered in the previous hearing, and that is have the agencies who are considering permits for pipeline repairs report to Congress on the status of them?

Mr. OTTER. Well, if I could just briefly, one of the things that I have found out on categorical exclusions for forest health, even when we have a tremendous bug or night shade or some kind of a disease or an invasive plant in our forests, that being able to move forward on categorical exclusions, which I think is a tremendous instrument to overcome some of these problems, we still have folks in place that refuse to use categorical exclusion.

And so let me just end this, Mr. Chairman,—I appreciate the extra time—by suggesting to you that all of these are great suggestions, and I love them. Unless you have people in place that will do this, that will follow the law, and use their God-given talents to use categorical exclusion, if you will, to expedite the system, we have to have some penalty for removing those people, just as we would corporate governance today. And we have gone through that in the last 2 years. The bureaucracy and those who engage in bureaucratic efforts have to be just as accountable as we want the private sector to be.

Thank you, Mr. Chairman.

Mr. SHIMKUS. Gentleman's time has expired. The Chair recognizes the gentleman from Maine, Mr. Allen, for 5 minutes.

Mr. ALLEN. Thank you, Mr. Chairman.

Mr. Bonasso, I understand the Office of Pipeline Safety is responsible for regulating the safety of LNG facilities, which have been of great interest in my State recently. Our State is trying to find an appropriate community in which to cite such a facility, but, as you can imagine, there is great concern up and down the coast.

Could you describe for me the safety record of LNG facilities: first, in the United States; and, second, overseas? And with respect to the international safety record, if you could give us an explanation of the cause of the explosion in Algeria a little while ago?

Mr. BONASSO. In the United States, we have had 33,000 shipments of LNG to our facilities. And there has not been one safety incident.

Mr. ALLEN. Over how many years?

Mr. BONASSO. Since 1971, I think that has been.

The technology is very well-developed and proven, has proven itself. The physics of the LNG itself is that it is not explosive, that it doesn't explode. It vaporizes and then burns.

The jury is still out on the Algerian accident as to whether or not it was LNG that actually caused the explosion. So that is all I can give you, Congressman, on just in a nutshell where we are.

Mr. ALLEN. Do you have any comment on the international record apart from the incident in Algeria?

Mr. BONASSO. I don't. We don't have any other information on international statistics.

Mr. ALLEN. Well, I guess, then, can you talk a little bit about how LNG terminals compare in terms of safety with oil refineries, other ports of entry for petroleum products, and pipelines? Is there a way of comparing safety records across those different kinds of facilities?

Mr. BONASSO. Well, the Coast Guard has the responsibility for the ship as it comes into the terminal. FERC and Office of Pipeline Safety are responsible for the terminal itself and then the piping out of the terminal and how it is cited. And so basically the operations of these things has been safe.

Now, we don't have any comparison to refineries and how these would compare. There have been basically 60 years of experience with LNG. And it has basically been a safe approach to delivering natural gas.

Mr. ALLEN. Also, staying with you for the moment, the GAO notes on page 9 of its testimony that OPS created a new enforce-

ment office in 2002 and focuses on enforcement issues. We have been talking about that. The GAO says this office is not fully staffed and the key positions remain vacant.

Can you outline for this subcommittee what you envision the work of this office to be and when you think it will be fully staffed? I don't think that has been answered in the course of the previous questions. Correct me if I am wrong.

Mr. BONASSO. I don't believe it has been answered either. It is basically going to be our goal is to get our agency staffed by the end of the year. That has been one of the overriding goals that I have had this year with OPS.

This particular office will be a policy-setting office. It should be fully operational by next year, when we get these activities going. And it will fundamentally audit the activities of the enforcement division. These are people in the field, people that are monitoring the inspections and so on. So that is the kind of function and time line that we have in place.

Mr. ALLEN. When you said it will be fully staffed next year, beginning, end? What is the goal?

Mr. BONASSO. Early next year.

Mr. ALLEN. Early?

Mr. BONASSO. Yes, sir.

Mr. ALLEN. Mr. Bonasso, I thank you. I yield back.

Mr. SHIMKUS. Gentleman yields back. The Chair recognizes the gentle woman from Missouri, Ms. McCarthy, for 5 minutes.

Ms. MCCARTHY. Thank you, Mr. Chairman, for this hearing. Thank you to the panelists for the wisdom that you are sharing today.

I would just like to pursue the issue of what more we need to do. I know the issues of who is in charge and a time line and those kinds of activities were shared. I am very appreciative of the continued vigilance, Mr. Mead, that your organization is doing in this matter.

Even as recently as 1990, we had a major incident of natural gas pipeline in my district. In fact, we have got a major pipeline under our airport, the Continent Airport in Kansas City. That would really be long-term economic consequences and tragedy if something were to occur.

I wondered if you could give us a sense of what kind of priorities we should put as a Congress working with you with regard to the biggest threats that still exist for pipeline safety. Is there more the Congress could do?

You mentioned clarity in who is in charge and putting a time line together. Aside from just the continued oversight over OPS and pipeline safety in general, what is it that the Congress should do and can do to further this, in addition to all of the efforts that you are maintaining?

When I was in the State legislature before coming here, I worked on the call dig effort Statewide in Missouri, but what is it that we need to be doing to make sure that we reduce the incidence of major incidents and make it easier for you to do your jobs?

Mr. MEAD. All right. A very quick answer on that, in the last 2 months, there have been three oversight hearings in the Congress

on the subject of pipeline safety: one in the Senate, two in the House. This is the third today.

I would say keep it up. You are at a very critical juncture on your so-called IMPs, these inspection maintenance programs or integrity management programs, that they are applying to the hazardous liquid pipelines and natural gas transmission pipelines, very, very recent.

It's new. And they're finding a fairly substantial number of integrity threats that need to be remediated. They are focusing initially on inspections in what they call high-consequence areas. The airport, Lambert Field, for example, would be a high-consequence area, I'm sure. So if I were this committee, I would have a hearing next spring, for example, to say, "Where are we on the high-consequence areas?"

No. 2, I am concerned about the environmental permitting process. I do not have a high degree of confidence that that will clarify itself through the administrative bureaucratic process of the agency's signing a memorandum of understanding.

Third, pipeline security. I think the relationships between DHS, DOT, and the Department of Energy need to be spelled out with greater clarity. Finally, on natural gas distribution pipelines, I believe that that is an area where by March of next year, the Office of Pipeline Safety should report back to you on what they are going to do about them. They are currently not covered as part of the so-called IMP process like it is with the hazardous liquid pipelines and natural gas transmission pipelines.

So those are four things that——

Ms. MCCARTHY. Excellent things. Thank you very much.

Would anyone else like to comment? Please?

Mr. BONASSO. Yes. I would like to add the supporting elements in that. Congress could make sure that the three-digit dialing for the call before you dig actually takes place. That is the single greatest cause of pipeline accidents. And anything we can do to create a National campaign to make sure people know that would improve the safety greatly.

The other item is to support the Transportation Research Board's report, which helps us with communities and plans to help us with communities and local planning relative to pipelines. That is what the report is going to recommend.

So those are areas where local communities can have a greater involvement, both of them.

Ms. MCCARTHY. Thank you.

Mr. BONASSO. Yes, ma'am.

Ms. MCCARTHY. Any other thoughts? Yes?

Ms. SIGGERUD. Yes. Mr. Mead mentioned oversight. And I would like to echo that. I think it is very important to continue to have oversight of this office and of this program.

Let me just mention that there are several recommendations that GAO has made to OPS and to DOT that I think could bear some following up on. Things are in process but not yet finished. First, in the report that we are issuing this week, we have asked OPS to look at its management process in terms of setting goals and performance measures, both for its enforcement program. In

the past, we have made a similar recommendation with regard to its research program.

Second, we are concerned about workforce planning and getting the integrity management program up and running. It is very complex. We have made a recommendation. OPS is in process, but it is not yet finished with that effort.

Second to last, we have made some recommendations with regard to communicating and making better use of the State partners.

Ms. MCCARTHY. Yes.

Ms. SIGGERUD. Again, there is some action in OPS but more left to be done there.

Finally, we have a recommendation we have made to DOT in general and to the Department of Homeland Security with regard to security for all modes, including pipelines, so that there would be a memorandum of agreement that better states the roles of DOT and DHS are in all of these modes in terms of regulation oversight.

Ms. MCCARTHY. Thank you so much. Those were excellent recommendations.

Mr. Chairman, you have your work cut out for you.

Mr. SHIMKUS. Not me, the regular chairman. But I thank my colleague and ask the ranking member if he has any additional questions.

We are sort of waiting for another member, who wanted to address concerns to you. The door is open. What we'll do, since they are on the phone to him, we will adjourn this panel and convene the second panel. Thank you for your testimony.

Mr. BOUCHER. Mr. Chairman, while the second panel is coming forward, I have a unanimous consent request. And that is that the statement of the ranking member of the full committee, John Dingell of Michigan, be included in the record and along with his statement, a copy of correspondence between Mr. Dingell and Deputy Administrator Bonasso.

Mr. SHIMKUS. Is there objection?

[No response.]

Mr. SHIMKUS. Hearing none, so ordered.

[The correspondence of Hon. John D. Dingell follow:]

Congress of the United States
House of Representatives
Washington, DC 20515

February 20, 2004

The Honorable Samuel G. Bonasso
Deputy Administrator
Research and Special Programs Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Deputy Administrator Bonasso:

As you may know, I have a very strong and long-held interest in the effective and safe operation of our Nation's oil and gas pipeline system. I am writing today with regard to some troubling concerns raised by recent press accounts involving the collection of fines by the Office of Pipeline Safety (OPS).

In response to the tragic pipeline accidents in Bellingham, Washington, on June 10, 1999, and in Carlsbad, New Mexico, in August 2000 in which a total of 15 people were killed, the Office of Pipeline Safety proposed, with great fanfare, civil penalties in the amounts of $3.05 million (June 2, 2000) in the Bellingham case and $2.52 million (June 21, 2001) in the Carlsbad case. According to recent press accounts and letters from various pipeline safety organizations, neither fine has been collected.

A news article in the January 22, 2004, edition of the *Austin American-Statesman* quotes a Mr. James Mitchell, identified as a "spokesman for the pipeline office," as stating that the Carlsbad matter had been referred to the Department of Justice "because the department has a broader range of legal tools." The article goes on to say that with regard to the Bellingham accident that "the office reached a settlement last month under which Shell Oil Co., the current owner and operator of the Bellingham pipeline, agreed to pay $250,000."

These assertions, if true, raise several questions that I would appreciate your assistance in answering:

1) What is the exact status of the Carlsbad case? Has the Office of Pipeline Safety indeed referred the matter to the Department of Justice? Please provide a summary of OPS efforts to date to collect the civil fine announced in June 2001.

2) Did OPS reach a "settlement" with the Shell Oil Company in the Bellingham matter for the amount of $250,000? If so, please describe the process employed to arrive at that figure. Does this mean that OPS has no intention to pursue the full $3.05 million civil penalty announced in June 2000?

3) With regard to the Bellingham case, it is my understanding that the Olympic Pipe Line Co. is currently in bankruptcy proceedings. The U.S. Department of Justice

filed a Proof of Claim (NO. 03-14059-SJS) on November 14, 2003, in U.S. Bankruptcy Court (Western District of Washington) in which it asserts the following:

" . . .OPS issued Notice of Probable Violation and Proposed Civil Penalty (Notice) to both Olympic and Equilon Pipeline Company LLC (Equilon) based on regulations issued pursuant to the Pipeline Safety Act in 49 C.F.R. Parts 195 and 199. The Notice proposed a civil penalty of $3,050,000 to resolve OPS' administrative penalty claims. Both Olympic and Equilon contested the penalty determination and invoked an administrative procedure that still is pending. Debtor's liability and the award of penalty will be determined in the administrative proceeding." (Page 3)

Is the administrative procedure referred to above still pending? If not, what was the result? If so, does OPS intend to pursue the full amount of the penalty announced on June 2, 2000. If not, why not? Did OPS consider referring collection of this penalty to the Department of Justice?

4) On March 19, 2002, then-Administrator Ellen Engleman testified before the Subcommittee on Energy and Air Quality at a hearing entitled "Reauthorization of the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act." In both her oral and written testimony, Ms. Engleman stated "We [RSPA] have proposed $9 million in civil penalties in the last 18 months, and processed six times the number of cases in the year 2001 over the previous year."

This statement would appear to include the proposed penalty in the Carlsbad case. Please detail the fines that comprise the amount of the $9 million figure cited by Ms. Engleman. I am very concerned with the possibility that OPS cited these figures in Congressional testimony as proof of its effectiveness and has since failed to collect the penalties that comprise this amount.

The Office of Pipeline Safety has a troubled history with regard to fulfilling its responsibilities, a tendency that Associate Administrator Stacy Gerard has worked to improve over the last few years. I would be disappointed to see these good efforts tarnished by incomplete enforcement of two of the most high-profile tragedies involving pipelines.

I would appreciate your response to these questions no later than Thursday, March 4, 2004. If you have any questions please contact me or have your staff contact Bruce Harris of the Committee on Energy and Commerce Democratic staff at 202-226-3400.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER
COMMITTEE ON ENERGY AND COMMERCE

cc: The Honorable Stacey Gerard
Associate Administrator, Office of Pipeline Safety

U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

MAR 17 2004

The Honorable John D. Dingell
Ranking Member, Committee
on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Dingell:

Thank you for your letter, dated February 20, seeking specific information about the collection of civil penalties by the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety. Your letter focused on three main topics: the two enforcement actions arising from the tragic events in Bellingham, Washington, and Carlsbad, New Mexico, and the basis for testimony that RSPA had increased its use of civil penalties.

We share your interest ensuring prompt and appropriate enforcement actions for the two catastrophic pipeline failures. In both cases, RSPA commenced investigations immediately. Both accidents caused an immense amount of human suffering. We hope our enforcement efforts in these cases will reduce the likelihood of similar tragedies in the future.

Within a year of the respective accidents, RSPA had issued Notices of Probable Violation (NOPV) indicating the violations that were believed to have occurred and proposing penalty amounts. After receiving an NOPV, a respondent may respond in writing, or request a hearing, or do both. The objective of the process is to arrive at a determination of the facts and to allow full consideration of the factors that go into determining the penalty amount. RSPA's administrative enforcement process has worked well in requiring pipeline operators to undertake corrective and remedial actions that cost the companies millions of dollars and in assessing civil penalties in relatively modest amounts. For example, using the administrative process, RSPA was able to compel the pipeline companies to undertake very costly corrective action programs following the Carlsbad and Bellingham accidents. (In the Bellingham case, those actions are estimated to have cost more than $50 million.)

The administrative penalty enforcement process has been a very effective enforcement tool, particularly in routine cases in which the penalties need not be large. For the most egregious cases, it can be more effective to pursue punitive enforcement through a criminal prosecution, a civil enforcement action, or both. Congress recognized as much with the enactment of the Pipeline Safety Improvement Act of 2002, which enables the United States to seek civil penalties in a judicial action in federal district court. The availability of judicial action may have a great impact on violators and regulated community. Together with the already-existing criminal and administrative enforcement options, this civil authority provides an important new enforcement tool.

RSPA exercised this new authority for the first time with respect to the case arising out of the accident in Carlsbad, New Mexico. On December 18, 2003, RSPA requested that the Department of Justice (DOJ) institute a civil proceeding against the El Paso Energy Pipeline Group to enforce pipeline safety regulations and assess civil penalties. That referral is under review at the Justice Department.

In the Bellingham case, RSPA was part of a broader Federal enforcement effort that focused on both of the companies involved – Shell Pipeline Co. (formerly Equilon) and Olympic Pipeline Co. RSPA began to develop an administrative penalty case shortly after the accident. At about the same time, DOJ and DOT began developing a criminal case under the pipeline safety law; and DOJ and the Environmental Protection Agency began developing a civil case under the Clean Water Act. In May of 2002, before RSPA could schedule a hearing on the NOPV, the United States Attorney's office asked RSPA to defer administrative action pending resolution of the criminal case. In order to avoid interfering with the criminal case, RSPA stayed its prosecution of the administrative penalty case. RSPA nevertheless continued working to require the companies to undertake corrective and remedial actions. RSPA also worked cooperatively with the Justice Department and the Environmental Protection Agency to prosecute the criminal and civil enforcement cases. The State of Washington also participated in these efforts.

The results of the coordinated efforts of these agencies are nothing short of extraordinary. In all, the Federal enforcement effort secured fines and injunctive relief totaling well over $100 million. The companies were convicted of felony charges under the Pipeline Safety regulations, and misdemeanor charges under the Clean Water Act. In addition to criminal fines totaling $21 million, and in civil penalties totaling $15 million (half of which will be paid to the State of Washington), the effort secured more than $75 million in injunctive relief in the civil judicial action and millions of dollars worth of corrective action obtained through RSPA's administrative case. These results represent a truly impressive enforcement outcome that RSPA, EPA, and DOJ can be proud of.

In light of the magnitude of the government's enforcement achievements in the Bellingham matter – penalties and injunctive relief well over $100 million – it is unlikely that pursuing the last increment of an additional $3 million penalty would appreciably increase the deterrent effect of the enforcement action. Such an action would not make the people of Washington State any safer and it would prevent RSPA from providing an equivalent level of safety for citizens in other parts of the country. Nevertheless, RSPA filed a proof of claim for the full amount of the proposed penalty with the Olympic bankruptcy court. And in December 2003, RSPA issued a consent order against Shell for $250,000, which was paid in full in January of 2004. Further enforcement action could arguably be seen as excessive at a time when RSPA's finite resources can be better devoted to other matters.

Finally, you asked for a detailed breakdown of the $9 million in proposed penalties that former Administrator Engleman cited in her testimony before the Subcommittee on Energy and Air Quality on March 19, 2002. At that time, RSPA's pipeline enforcement database showed that OPS had issued 61 Notices of Probable Violation with proposed civil penalties totaling $9,069,700 for the period between January 1, 2000 and March 6, 2002. Upon reviewing the information to confirm that testimony, we discovered duplicate records of two enforcement cases. As corrected, the database shows that OPS issued 59 Notices of Probable Violation with proposed civil penalties totaling $8,969,700 for the period between January 1, 2000 and March 6, 2002.

If I can provide further information or assistance, please feel free to call me or James Wiggins, Director of Policy and Program Support, at 202-366-4381.

Sincerely yours,

Samuel G. Bonasso
Deputy Administrator

Mr. SHIMKUS. You all are dismissed.

We would like to welcome our second panel and move expeditiously to gather testimony. Your full statements will be submitted for the record. If you could summarize? You have 5 minutes to do so.

First, we would like to welcome Mr. Earl Fischer, Senior Vice President, Utility Operations for Atmos Energy Corporation of Dallas, Texas. Mr. Fischer, welcome, and we await your testimony.

STATEMENTS OF EARL FISCHER, SENIOR VICE PRESIDENT, UTILITY OPERATIONS, ATMOS ENERGY CORPORATION; BARRY PEARL, PRESIDENT AND CEO, TEPPCO PARTNERS, L.P., ON BEHALF OF ASSOCIATION OF OIL PIPE LINES AND THE AMERICAN PETROLEUM INSTITUTE; BREEAN BEGGS, EXECUTIVE DIRECTOR, CENTER FOR JUSTICE, ON BEHALF OF PIPELINE SAFETY TRUST; PAUL D. KOONCE, CHIEF EXECUTIVE OFFICER, DOMINION ENERGY, ON BEHALF OF INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA; AND ROBERT KIPP, EXECUTIVE DIRECTOR, COMMON GROUND ALLIANCE

Mr. FISCHER. Thank you. Good afternoon, Mr. Chairman and members of the committee. My name is Earl Fischer, and I am Senior Vice President, Utility Operations of Atmos Energy Corporation.

Atmos Energy is one of the largest pure natural gas distributors in the United States delivering natural gas to about 1.7 million residential, commercial, industrial, and public authority customers. Our regulated utility services are provided to more than 1,000 small and medium-sized communities across 12 States.

I am here testifying today on behalf of the American Gas Association and the American Public Gas Association. I hope that my testimony today will provide for a better understanding of how distribution systems work and how the implementation of the Pipeline Safety Improvement Act of 2002 affects us.

Let me begin by commending Congress for passing a fair and a balanced pipeline safety bill in 2002. The House Energy and Commerce Committee had a very significant role seeing that the bill went through. I and both of our trade associations thank the committee members for their commitment and their leadership.

Gas distribution utilities like Atmos are the last critical link in the natural gas delivery chain. To most customers, utilities are the face of the industry. We are the meter at the house. We interact daily with our customers and the public in the areas that we serve.

Over the last 17 years, the amount of natural gas traveling through distribution pipelines has increased by almost a third and more than 650,000 miles of pipeline had been added to the system. Yet, the number of reportable incidents on distribution pipelines has decreased by 25 percent.

To properly compare natural gas distribution accident statistics to other pipeline accident statistics, the data must be reduced to a common basis. One would not compare the number of auto traffic accidents with airline accident deaths without first reducing this to a statistics per vehicle miles. And it's the same with pipelines.

Over the last 18 years, the number of fatalities and injuries associated with distribution pipelines per 100,000 miles is less than 45 percent of the total of all pipelines.

Natural gas distribution pipelines are thoroughly regulated. As part of an agreement with the Federal Government and most States, State pipeline safety authorities have primary responsibilities to regulate natural gas utilities and intrastate pipeline companies. In return, State governments have to adopt as minimum standards the Federal set of standards promulgated by the Department of Transportation.

Distribution systems are constructed in configurations that look like a network or a webbing, use followed diameter, thicker walled pipe, and operate in high-density population areas at much lower volumes and pressures, always using odorized natural gas so leaks can be readily smelled and detected.

Under individual authorizations by their States, most companies have been already addressing the integrity of distribution systems on risk-based prioritization schedules. This has been taking place for at least 2 decades and covers programs that allow the operator to ensure distribution pipelines remain safe and reliable by using customer dollars in the most efficient manner.

So what has occurred since the implementation of the Pipeline Safety Improvement Act of 2002? The United States, DOT, Office of Pipeline Safety, and industry have diligently worked to address much of the scrutiny that arose during the debate of the 2002 bill.

To their credit, OPS has dealt with the vast majority of this backlog and is moving expeditiously to address the congressional mandates. At least 12 separate new regulatory mandates and initiatives to address distribution systems are now in progress.

In view of the span of time allowed us at this hearing on pipeline safety, allow me to highlight five points that illustrate the progress made with a more complete list being contained in the written testimony.

Point No. 1, the programs required by the Pipeline Safety Act are well underway. Many gas pipeline operators have already begun implementing the integrity rule. And all operators are required to begin assessments by the June deadline just past. Approximately 30,000 miles of gas transmission lines operated by gas distribution utilities will have to be assessed under this rule at the cost of $3 billion in 20 years. At the same time, we must maintain an uninterruptable gas supply to our customers.

Point No. 2, we must expedite the environmental permitting process. We need a more efficient process that will not allow one agency to prohibit a citizen from taking an action required by another agency. Our members estimate they must perform about 110,000 integrity inspections requiring excavation on intrastate pipelines over the next 7 years. There are good options under existing environmental laws for ensuring environmental protection in a way that is less process-intensive. We have been pleased to see significant progress since the Senate hearing in mid June.

Our point No. 3, as in the past, we urge Congress to focus attention on excavation damage prevention for injuries, fatalities, property loss, and disruption of services continue to occur due to acci-

dental strikes of underground facilities during excavation, drilling, and boring.

Annual gas distribution incident statistics from the DOT data base show a clear correlation between the level of construction activity and the number of incidents. Year after year third party damage by outside excavators cause over 60 percent of the total ruptures on utilities and the vast majority of injuries and fatalities.

Many third party damage events cannot be prevented by the actions of the gas operator alone, no matter how diligent, resourceful, or technically well-equipped he is. This is where damage prevention organizations like the Common Ground Alliance prove to be the most effective.

Point four, I am pleased to report that the American Gas Foundation with AGA and APGA and State and Federal regulator involvement——

Mr. SHIMKUS. Excuse me, sir. Since you have constituents in my district, I will let you rapidly finish. But if you would do so, we can get along to our other panelists.

Mr. FISCHER. Thank you, sir.

Point five is a plea for specific time to measure the results. And we are underway with our implementation process. We think it would be premature to currently draw conclusions on the results of any of these programs, which have also resulted in a substantial number of regulatory mandates.

Public safety is the top priority of natural gas utilities. And we are spending about $6.4 billion to comply with Federal and State regulations, which also includes a $3.2 billion expenditure that is voluntary by the operators alone.

Thank you for providing the opportunity to present our views on this very important matter.

[The prepared statement of Earl Fischer follows:]

PREPARED STATEMENT OF EARL FISCHER, SENIOR VICE PRESIDENT, UTILITY OPERATIONS, ATMOS ENERGY CORPORATION ON BEHALF OF THE AMERICAN GAS ASSOCIATION AND HE AMERICAN PUBLIC GAS ASSOCIATION

Good morning, Mr. Chairman and members of the Committee. I am pleased to appear before you today and wish to thank the Committee for calling this hearing on the important topic of pipeline safety. My name is Earl Fischer. I am Senior Vice President, Utility Operations of Atmos Energy Corporation. Atmos Energy is one of the largest pure natural gas distributors in the United States, delivering natural gas to about 1.7 million residential, commercial, and industrial and public-authority customers. Our regulated utility services are provided to more than 1,000 small and medium-size communities in 12 states.

I am here testifying today on behalf of the American Gas Association (AGA) and the American Public Gas Association (APGA). The American Gas Association represents 192 local energy utility companies that deliver natural gas to more than 53 million homes, businesses and industries throughout the United States. AGA member companies account for roughly 83 percent of all natural gas delivered by—the nation's local natural gas distribution companies. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates.

The American Public Gas Association is the national, non-profit association of publicly owned natural gas distribution systems. APGA was formed in 1961, as a non-profit and non-partisan organization, and currently has 606 members in 36 states. Overall, there are 949 municipally owned systems in the U.S. serving nearly five million customers. Publicly owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They

include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

Natural gas meets one-fourth of the United States' energy needs. I am pleased to appear here today and hope that my testimony will provide you with a better understanding of how distribution systems work and how the implementation of the Pipeline Safety Improvement Act of 2002 affects us.

AGA, APGA and its members commend Congress for ensuring that the safety bill passed in 2002. The legislation that was finally passed in the final days of the 104th Congress was a balanced, fair bill and will bring yet further safety improvements. This Committee had a significant role seeing that the bill went through and I and the industry thank you for your commitment and leadership.

We would also like to commend the U.S. Department of Transportation Office of Pipeline Safety (OPS) for diligently working to lay to rest numerous criticisms that arose during the debate on the 2002 bill. OPS was criticized by Congress, the National Transportation Safety Board, DOT's Inspector General and members of the public for failing to expeditiously address numerous congressional mandates and safety recommendations. To its credit, OPS has dealt with the vast majority of this backlog and is moving efficiently and effectively, and often in consultation with all affected stakeholders, to address the mandates in the Pipeline Safety Improvement Act of 2002.

Gas Distribution Utilities Serve The Customer

Gas distribution utilities, also known as local distribution companies (LDCs) are the last, critical link in the natural gas delivery chain. To most customers, utilities are the "face of the industry." Our customers see our name on their bills, our trucks in the streets and our company sponsorship of many civic initiatives. We live in the communities we serve and interact daily with our customers. Consequently, we take very seriously the responsibility of continuing to deliver natural gas to our communities safely, reliably and affordably.

Natural Gas Utilities Are Committed to Safety

Safety is a top priority, a source of pride and a matter of corporate policy for every company. These policies are carried out in specific and unique ways. Each company employs safety professionals, provides on-going employee evaluation and safety training, conducts rigorous system inspections, testing, and maintenance, repair and replacement programs, distributes public safety information, and complies with a wide range of federal and state safety regulations and requirements. Individual company efforts are supplemented by collaborative activities in the safety committees of regional and national trade organizations.

Our industry's commitment to safety is borne out each year through the National Transportation Safety Board's annual statistics. Delivery of energy by pipeline is consistently the safest mode of energy transportation. Natural gas utilities are dedicated to seeing this continue. Over the last 17 years, the amount of natural gas traveling through distribution pipelines has increased by almost a third and more than 650,000 miles of pipeline have been added to the system—yet the number of reportable incidents on distribution pipelines has decreased by 25 percent. This is a remarkable achievement, one that AGA and APGA attribute to the industry's overarching commitment to safety.

To help to put the safety record of different categories of pipelines into perspective, it's important in the first place to compare the accident data on a common basis. For example, calculations of vehicular transportation accidents use vehicle-miles or passenger-miles traveled to make valid comparisons. For natural gas pipelines, calculations should be done using total miles of installed pipeline for a given category, such as transmission or distribution lines.

When measured by total installed miles per pipeline category using DOT statistics over the last 10 years (1994-2003), it is clear that gas distribution systems have fewer fatalities and injuries per mile than all other pipeline categories combined. In fact, natural gas distribution lines have 46 deaths and injuries per 100,000 miles for distribution compared to 49 deaths and injuries for *all the other pipeline categories combined.*

Every distribution system operator can attest that natural gas distribution pipelines are thoroughly regulated—by state and federal safety authorities. State pipeline safety authorities have *primary* responsibility to regulate natural gas utilities and intrastate pipeline companies, as part of an agreement with the federal government. State governments then must adopt as their minimum standards the federal safety standards promulgated by the DOT. In exchange, DOT reimburses the state for up to 50 percent of its pipeline safety enforcement costs. Clearly, Congress's actions make a strong impact on state regulations and our companies.

In addition, some states choose to impose more stringent requirements than the federal code, thus addressing specific concerns or conditions in their territory. The role of state commissions in setting pipeline safety requirements and verifying an enforcing compliance of distribution operators cannot be overemphasized.

Under individual authorizations by the state, most companies have been addressing the integrity of distribution systems on a risk-based prioritization schedule. This includes leak management programs and repair-replace decisions and processes that allow the operator to ensure distribution pipelines remain safe and reliable, while using ratepayer funds in the most efficient manner. This has been taking place for at least two decades and is further improving as technology and materials developments allow more sophisticated decision-making processes as well as longer life, stronger materials.

Maps of all pipelines are already available from the operator upon request by the jurisdictional state authority. Gas utilities typically provide their maps on request to key constituencies, such as emergency responders, city planners, law enforcement officials, one-call centers and residents. This is an effective system that works well for all concerned. Individual states are best positioned to determine if any additional maps or utility records should be publicly provided, but certainly a centralized database for hundreds of thousands of distribution system maps kept by federal Office of Pipeline Safety would do little to improve state oversight of an operator's system.

The Difference in "Pipelines"

While many may unintentionally link all "pipelines" together, there are indeed significant differences between the liquid transmission systems, natural gas transmission systems and natural gas distribution systems. Each industry faces different challenges, operating conditions and consequences of incidents.

Interstate transmission systems are typically made up of long runs of generally straight pipelines occasionally crossing high-density population areas. These systems feature large diameter pipe and are operated at high volumes and high pressures. Distribution systems, in contrast, are constructed in configurations that look like a network or web, and use smaller diameter pipe. Because distribution systems are usually located in more populated areas, they are required to operate at much lower volumes and pressures, often feature thicker-walled pipe and always carry odorized gas that can be readily smelled even if a small leak occurs. .

It should be noted that many distribution companies also own and operate transmission pipeline segments within their systems.

Federal regulations recognize the differences between these three types of pipelines, and different sets of rules have been created for each. 49 CFR Part 192 sets out the regulations for natural gas transmission and distribution and the rules discriminate between the two, while 49 CFR Part 195 sets out the regulations for liquid transmission lines.

Status of Implementing the Pipeline Safety Improvement Act of 2002

Since the Pipeline Safety Improvement Act of 2002 was signed into law on December 17, 2002, many programs have been launched to specifically address implementation of the law's mandates and further safety enhancements of gas transmission and distribution systems. For gas transmission systems, integrity management for gas transmission pipelines has been the most notable of the 2002 legislative mandates. However, the law has resulted in a substantial number of significant regulatory mandates, initiatives and voluntary programs for distribution systems.

A. Federal Regulatory Mandates

The 2002 regulatory mandates affecting distribution systems include:

- Direct assessment standards development
- Environmental repair permit streamlining
- One-call 3-digit number rulemaking
- Right-of-way population encroachment study
- Operator qualification standard development
- Public awareness communication effectiveness rulemaking
- Infrastructure R&D grants program

1. Integrity Management Rule for Natural Gas Transmission

OPS issued the integrity management rule for natural gas transmission lines on December 12, 2003. The rule requires natural gas transmission pipeline operators to conduct periodic inspections in "high consequence areas", which for natural gas pipelines are generally high-density population areas.

The nature of utility-owned transmission requires that over 50 percent of the lines under the integrity management rule be inspected using direct assessment methods. Direct assessment is an alternative to internal inspection (smart pigging) or pres-

sure testing. It comprises a variety of screening and examination techniques to locate and identify potential problems in the pipeline. The anomalies located by direct assessment usually involve corrosion of the pipeline. Corrosion is the second leading cause of gas pipeline failures.

The direct assessment process entails performing two non-invasive complementary indirect exams of the section of the pipeline targeted by engineering analysis and predictions on that section. Typical indirect exams involve different approaches in measuring electrical values, so that any variations along the pipeline can give an indication of the locations where possible anomalies might be present. They may also involve checking for corrosion inside the pipe at preset sampling locations. The pipeline is then excavated at the previously identified locations, examined and repaired if necessary. The results are compared with predictions, becoming part of a learning curve about the condition of the pipeline and facilitating future direct assessments of similar sections of pipeline.

Direct assessment is estimated to cost between $7,000 and $15,000 per mile of pipeline examined, not including any necessary excavations. The latter can cost from $2,500 to $250,000 per excavation, depending on location.

Many gas pipeline operators have already begun implementing the integrity rule and many more will be ready to begin assessments by the deadline on June 17, 2004. Approximately 30,000 miles of gas transmission operated by gas distribution utilities will have to be assessed under this rule. In the aggregate, for gas distribution utilities, estimated costs of compliance with this rule will exceed $3 billion in 20 years, not including integrity management pass-through costs from their gas transmission suppliers upstream, repairs, modifications, and changes in operations that may be necessary to maintain the reliability of gas supply in the face of large scale pipeline inspections and testing.

2. Direct Assessment Standards Development

The 2002 pipeline safety legislation also required that the DOT issue regulations prescribing standards for inspection of a pipeline facility by direct assessment. Such standards have been prescribed for external corrosion and are now being developed for internal corrosion and for stress corrosion cracking. The standards body leading this effort is the National Association of Corrosion Engineers (NACE). These standards will also be applicable to distribution pipelines.

3. Expedite Permit Streamlining: Timely Repairs vs. Permit Delays

In the Pipeline Safety Improvement Act of 2002, Congress wisely recognized that it would be poor government for one agency to prohibit or prevent a citizen from taking an action that is specifically required by another agency—and even worse government to then penalize that citizen. And yet, this is what could happen if a federal environmental agency fails to take timely action on a permit application for a pipeline safety repair, so that work cannot begin and end by the deadline set by the natural gas IMP rule. Under that rule, integrity repairs must be completed either (1) immediately, or (2) within one year after the discovery of an anomaly, depending on the type of defect involved. If a repair is not completed by the applicable deadline, the operator is required to reduce pressure and throughput on the affected pipeline by 20% until the repair can be completed. Utilities are justifiably concerned that widespread, long-term pressure reductions would restrict supply and drive prices up.

Our members estimate they must perform about *110,000 integrity inspections requiring excavation on intra-state pipelines (5 inspections per mile on average) over the next 7 years.* That means there will be about 15,000 inspections per year requiring a test hole. Although we have made our best estimates, we do not yet know what percentage of these will require further excavation to repair the line. The vast majority of them will not result in repairs or replacement of pipe but *most* will require permits. The bottom line is that there are too many of these projects to use the traditional, time consuming process for obtaining individual permits for each and every site. Congress wisely recognized the importance of this public safety work and therefore directed federal agencies to develop a streamlined process to ensure that permits are given in time to allow timely repairs.

We need a more efficient process. Please note that we do *not* advocate changing underlying environmental standards or requirements. Our concerns are purely with the process. We only ask that the agencies work together in a seamless, efficient and coordinated way so that this important public safety work can start and finish on time.

Interstate natural gas pipelines get their permits through an integrated Federal Energy Regulatory Commission (FERC) certification process and environmental review under the National Environmental Policy Act (NEPA). In December 2002,

FERC and other federal agencies entered into a Memorandum of Understanding (MOU) to coordinate and accelerate the way in which they process permits for the construction of new interstate natural gas pipelines. The 2002 MOU also covers permits for maintenance and repairs of interstate pipelines, so it has been interpreted to help streamline permits for repairs under the IMP Rule. Although AGA is pleased because some AGA members operate interstate pipelines, the 2002 FERC MOU does not cover integrity repairs on intra-state pipelines because they are not certificated by FERC.

The final Pipeline Repair Streamlining MOU specifically addresses the need to expedite integrity repairs that must be done "immediately" under the IMP Rule. We are pleased that the MOU sets out the general framework for authorizing other repairs to proceed without site-specific permits, provided certain conditions are met.

As I testified last month, we were concerned that the MOU contains no details regarding how this will work. Instead, the MOU delegates this difficult and essential task to a work group within the White House Interagency Taskforce. This group has little time remaining to develop a working process to streamline repair permits. Our members are on a tight schedule for beginning their integrity testing and first phase of repairs, and they will need timely authorization to begin this important public safety work.

We are pleased that in the last three weeks, the interagency work group has made significant progress toward streamlining the permit process. The group has sought broad input from experts in the field to solicit ideas for creative "outside the box" solutions. They are considering some good options for ensuring environmental protection in a way that is less process-intense, acting within the authority the agencies have under existing environmental laws.

The work group now plans to have a workable process in place by October 1, 2004 to ensure that timely permits can be obtained for the integrity testing and repairs that must be done in the next 18 months. AGA applauds this goal and the work group's energy, creativity and determination to protect both the environment and public safety.

4. Digit Number for One-Call Systems

Congress has required the Federal Communications Commission to issue a rule that provides a toll-free 3-digit number that excavators and the public can use to easily connect to the appropriate one call center. One-call centers are designed to have personnel dispatched to the excavation site to have underground facilities—natural gas lines, petroleum and product lines, fiber optics, telephone, electricity, water and sewer lines—to avoid them being damaged. An easily remembered, easily advertised 3 digit number will increase the use of these vital services and therefore help avoid unnecessary accidents. The Federal Communications Commission just issued a proposed rule mandating the establishment of the 3-digit number.

The leading cause of accidents on distribution pipelines comes from excavators unintentionally striking our lines. It is known as excavation damage, also commonly called "third-party damage." Year after year, these strikes cause over 60 percent of the total ruptures on utilities *and the vast majority of injuries and fatalities.*

Preventing third-party damage is the single greatest safety goal of the natural gas distribution industry. For a single cause to be the source of almost 60 percent of all incidents is simply unacceptable. As we have done numerous times in the past, and continue to do so, we strongly urge Congress to focus attention on excavation damage prevention.

A generation ago, gas, water and sewer lines were the primary underground facilities in our nation's communities. Today, with the addition of telecommunications, electric and other facilities located underground, our gas distribution pipelines are more at risk than before. Annual distribution incident statistics for the past 10 years show a clear and distinct correlation between trends in the level of construction activity and the number of incidents. If construction-related damage incidents are removed from the statistics, leaving only *non*-excavation damage incidents, it's clear that excavation damage incidents are on the increase, while the number of other incidents has remained relatively stable.

Integrity programs such as the natural gas transmission pipeline integrity rule are better designed to address static and time-dependent factors affecting pipelines, rather than to *prevent* random factors such excavation damage. The latter can be due to a number of causes, many of which cannot be mitigated by the actions of the gas operator alone no matter how diligent, resourceful, or technically well equipped.

We are continually urging states to require government agencies and their contractors to participate in One-Call programs. This would help eliminate some exemptions some state agencies currently have in several states from participation in

One-Call. The Pipeline Safety Improvement Act of 2002 helped address this critical problem by clarifying that state departments of transportation should participate. However, there still is nothing to *compel* them to do so. Needless accidents continue to occur. Injuries, fatalities, property loss and disruption of services could be reduced with better use of One-Call centers and recommended practices for damage prevention.

We are also continually urging gas companies to join the Common Ground Alliance damage prevention organization, which is working with a multitude of stakeholders in developing approaches to preventing and mitigating excavation damage.

5. Right-of-Way Encroachment Study

The 2002 pipeline safety legislation directed DOT to work with the Federal Energy Regulatory Commission and other federal and state agencies to study the difficult problem of encroachment on pipeline rights-of-way and to report to Congress regarding proposed recommendations for improvements. DOT contracted with the National Academy of Sciences (NAS) Transportation Research Board (TRB) to study encroachment and prepare the report to Congress. Encroachment occurs where buildings and structures are placed on or very near the "no build zones" that a pipeline right-of-way represents. This is especially a problem where cities and towns expand and ultimately push up to a pipeline location that was rural when built.

Last Monday, July 19, 2004, the NAS published a report concluding that OPS should work with a broad based stakeholder organization to develop risk-informed land use guidance for activities and construction near existing and future transmission pipelines. The report suggests using an entity similar to the Common Ground Alliance, which was formed to reach broad stakeholder consensus on best practices for preventing third party damage to pipelines and supported in part through federal appropriations. Of course, this new initiative will also require funding and resources through the appropriations process.

We hope that the Committee will work with OPS and industry to make progress in addressing this encroachment problem.

6. Operator Qualification Standards

In compliance with the 2002 legislative mandate, the OPS is leading development of a standard (ASME B31Q) for pipeline operations personnel qualification programs. This is another standard that has required significant AGA and APGA member involvement in handling both training and operational aspects. The standard is still being developed and its completion is slated for the end of this year.

7. Public Awareness Communication Effectiveness

OPS is working with stakeholders from the liquids and gas industries to define what would be required to evaluate effectiveness of operator communication programs. OPS is also separately working with the states to define regulatory requirements that will cover gas utilities. AGA and APGA members have been involved via a task group to highlight the fact that flexibility is needed to avoid duplication of communication efforts already being carried out by gas utilities in their respective service territories at the local levels.

8. Infrastructure Research and Development Grants

Congress significantly increased the authorization for OPS' pipeline safety research and development program to $10 million per year for four years. As OPS receives its funding primarily through user fees assessed on pipelines, these monies will likely be routinely provided. The Pipeline Safety Act of 2002 also sought to coordinate the efforts of OPS with those of the Department of Energy. Generally OPS focuses on those technologies that represent near-term development for field applications and the agency also provides matching dollars to the recipients.

With the increase in inspections and repairs and the expanding use of natural gas, better ways to do the job need to be found. Industry typically cannot provide all that is needed for R&D due to the nature of the rate framework. The natural gas surcharge that the FERC allowed for many years ends this year on August 1st. FERC is considering an alternative proposal. AGA is also pursuing legislation that would establish a collaborative research program. AGA *and APGA are hopeful that either the regulatory or legislative R&D funding proposal will become a reality. Either would solidify industry contributions to research.* However, additional contributions for R&D are needed and AGA and APGA would welcome the opportunity to discuss with Committee members and staff the gas supply, transmission, distribution and utilization research that could be accomplished with increased public funding.

B. Additional Federal Regulatory Initiatives

Current federal regulatory initiatives for distribution systems include:

- Operator qualification rule revision
- Public communications standard development
- Better crisis communication
- Excess flow valve installation
- Operator safety performance metrics

1. *Operator Qualification Rule Revision*

To comply with NTSB recommendations, OPS expects to revise the operator qualification rule to include greater specificity. This has required significant AGA and APGA member involvement to ensure our members' concerns are taken into account. AGA and APGA believe reasonable additional requirements are being developed to adequately address the NTSB concerns and will soon become part of the revised rule.

2. Public Communications Standard Development

A public communications standard (API Recommended Practice 1162) designed to address a variety of audiences has been completed under the American Petroleum Institute (API) banner, with input from industry and the regulatory community. It will be referenced by OPS via rulemaking on public education and communications.

3. *Better Crisis Communication* OPS is working with stakeholders to define guidelines for operators to follow in issuing communications in the event of involvement in an accident involving pipelines. The most recent one occurred on a gasoline pipeline in Tucson, AZ and sparked high-profile public hearings. Distribution utilities are engaged in deliberations with the other stakeholders to ensure concerns for gas utility communications are addressed.

4. *Excess Flow Valve Installation*

In response to an NTSB recommendation and more recently, public testimony, OPS is reconsidering whether to mandate the installation of excess flow valves on service lines. Cost-benefit studies performed to date by OPS do not adequately justify the nationwide installation of these devices on a mandatory basis unless some shaky, easily refutable assumptions are made. Mandated installation would pose a potential major added burden on AGA and APGA members that elect not to install such devices, but instead notify customers and install such devices upon request from the customer.

5. *Operator Safety Performance Metrics*

OPS continues to look for ways to more clearly demonstrate the effectiveness of their safety programs. To this end, the agency is seeking to further improve and increase the gathering of safety performance data from operators. Federal regulators are contemplating further changes in operator reports to DOT that will also cover distribution systems. The distribution utilities remain committed to develop reasonable safety performance measurements with OPS and other stakeholders.

C. Voluntary Industry Programs

Voluntary industry programs involving distribution utilities include:

1. A government-industry group examining existing regulations and practices addressing distribution system integrity in an effort to identify needed enhancements. Along with APGA, many AGA member companies are participating in this study, which is supported by the American Gas Foundation.
2. In response to an NTSB recommendation, numerous gas distribution utilities have been collecting data on the performance of plastic pipe since January 2001. Government and industry stakeholders convene periodically to examine the data for areas of concern.
3. Continued participation in the Common Ground Alliance to promote infrastructure damage prevention through added best practices by all stakeholders, education of excavators, research and damage data collection.

LDCs comply with a regulatory program that devotes stringent attention to design, construction, testing, maintenance, operation, replacement, inspection and monitoring practices. We continually refine our safety practices. Natural gas utilities spend an estimated $6.4 billion each year in safety-related activities and this figure will significantly increase once the legislative mandates adopted to date are implemented fully. Historically, approximately half of this amount is spent in compliance with federal and state regulations. The other half is spent, as part of our companies' voluntary commitment to ensure that our systems are safe and that the communities we serve are protected and products delivered.

Summary

In summary, many programs are under way to address implementation of the legislative mandates of 2002. They must be given sufficient time to allow verification of their effectiveness. We believe it would be premature to currently draw conclusions on the results or consequences of any of these programs. Furthermore, in view of the growing need for energy to support continued economic growth, legislative decisions on pipeline safety should support or be consistent with the needed growth in the energy delivery infrastructure.

The natural gas utility industry is proud of its safety record. Natural gas has become the recognized fuel of choice by citizens, businesses and the federal government.

Public safety is the top priority of natural gas utilities. We invite you to visit our facilities and observe for yourselves our employees' dedication to safety. We are committed to continue our efforts to operate safe and reliable systems and to strengthen One-Call laws and systems in every state.

Thank you for providing the opportunity to present our views on the important matter of pipeline safety. We look forward to working with federal, state and local authorities and representatives, as well as within our industry, to achieve the highest possible level of public and employee safety.

Mr. SHIMKUS. Thank you very much.

Now I would like to recognize Mr. Barry Pearl, President and CEO of TEPPCO Partners, Houston, Texas. Welcome, sir. You have 5 minutes.

STATEMENT OF BARRY PEARL

Mr. PEARL. Thank you, Mr. Chairman. I am Barry Pearl, President and CEO of TEPPCO Partners, L.P. and Chairman of the Association of Oil Pipe Lines. I appreciate this opportunity to appear before the subcommittee today on behalf of AOPL and the pipeline members of the American Petroleum Institute.

These organizations represent more than 50 pipeline companies that transport the vast majority of our Nation's liquid petroleum, including crude oil, gasoline, diesel jet fuel, propane, and petrochemicals.

My company, TEPPCO Partners, L.P., owns and operates more than 11,600 miles of pipelines in 16 States. Our operations include one of the largest common carrier pipelines in the United States transporting refined products and liquefied petroleum gases from the Gulf Coast to markets in the Midwest and Northeast as well as crude oil, petrochemicals, and natural gas gathering.

I have provided my full statement and attachments. And I ask that these be included in the record of this hearing. I would like to summarize that material for you.

It has been 1½ years since the enactment of the Pipeline Safety Improvement Act of 2002. On behalf of the members of AOPL and APL, I wish to thank the members of this subcommittee for passing this very important legislation.

As the subcommittee reviews the current state of pipeline safety, there are a few points I would like to emphasize. First, there is a growing recognition that the oil pipeline infrastructure is critical to the American economy. We are committed to improving pipeline safety while ensuring that essential energy supplies can be delivered to that infrastructure.

Second, there has been tremendous progress in pipeline safety because of the PSIA.

Third, many of the initiatives of the PSIA are being implemented in a more than satisfactory manner, an honor ahead of schedule.

However, one important initiative, pipeline repair permit streamlining, progress has been disappointing.

Finally, the Department of Transportation is considering a new organizational structure for the pipeline safety program. We urge the subcommittee to insist that any changes made to the program improve the program and enhance its effectiveness.

Let me briefly address each of these points in turn. One-half of total U.S. energy supply comes from petroleum, with 95 percent of the energy that powers transportation derived from petroleum.

Pipelines are the only reasonable way to supply large quantities of petroleum to most of the Nation's consuming regions. For example, two-thirds of the ton miles of domestic petroleum transportation are provided by pipelines. Pipelines do so efficiently and cost-effectively, typically at 2 to 3 cents per gallon for the pipeline transportation cost charge to deliver petroleum to any part of the U.S.

Oil pipelines are common carriers whose interstate rates are controlled by the Federal Energy Regulatory Commission, an agency under the jurisdiction of this subcommittee. Pipelines' business activities are generally limited to transportation and storage services. We don't own or profit from the sale of the fuels that we transport.

The oil pipeline infrastructure is crucial to the American energy supply and the stewardship of this critical National asset is the joint responsibility of the industry I represent, the DOT, and Congress. Oil pipeline operators have been subject to the OPS integrity management regulations since March 2001, before enactment of the PSIA.

Our members will complete the required baseline testing of the first 50 percent highest risk segments of our systems prior to September 30 this year. OPS has inspected each of these operators under these regulations at least twice, an initial quick hit inspection and a subsequent full inspection, in this proceeding with the second round of full inspections.

I would like to share some of our industry's experience with OPS programs. I believe it will be instructive to the subcommittee in its review.

The oil pipeline integrity management program is generating safety benefits that significantly exceed anything anticipated when the program was designed. Let me explain in a little bit more detail.

In 2002, OPS estimated that approximately 22 percent of the pipeline segments in the National oil pipeline network could affect a high-consequence area and, therefore, that operators in the aggregate would be required to test and protect 22 percent of the National system.

When the oil pipeline operators analyzed the high-consequence areas, we actually identified that we would have about twice as many segments. Forty-three percent of the pipeline network Nationally could affect an HCA. So the anticipated benefits appear to be twice as large as originally estimated, but, in fact, the benefits will actually be significantly larger than that.

Because of the way we do internal inspections, it is estimated that we are actually going to be inspecting 82 percent of the oil

pipeline infrastructure, a much more significant number than 22 percent.

Another important factor is that repairs being made exceed regulatory requirements. Operators are finding and repairing many conditions in need of repair and many less serious conditions that are found near defects.

For every condition repaired under the rule, approximately six other conditions are excavated and evaluated. Operators are fixing what they find, often going beyond requirements of the law.

Industry is stepping up to the significant cost burden resulting from these programs. The benefits derived from the integrity management rule are much greater than originally estimated, but so are the costs. Costs per operator are often running at a rate of tens of millions of dollars per year, far more than originally anticipated. Operators have, nevertheless, moved aggressively to provide the resources needed to implement their integrity management programs.

By the way, flexible economic regulation of liquid pipelines by FERC has played an important role in providing the resources needed for public safety. And we urge this subcommittee in its oversight of FERC to ensure that liquid pipeline rate policies continue to allow strong support of pipeline safety.

Our program is not a prescriptive program. It's a mandatory program. The operator does have flexible under the program in designing and administering the plan for testing and repair subject to only periodic inspection reviews by OPS.

This partnership is proving enormously successful without prescriptive regulations, intrusive second-guessing of operator decisions, or aggressive enforcement with fines and penalties. The integrity management program is successful without restoring to the threat of punishment or the need for financial incentives because the program aligns the interests of the operator and the regulator to adopt the most effective and efficient preventive measures to keep the oil in the pipe.

Put simply, our industry's substantial investment in pipeline integrity and leak prevention is a sound one, providing long-term benefits to both pipeline operators and the public.

I just want to make a brief point supporting——

Mr. SHIMKUS. I hope you are close.

Mr. PEARL. Yes. I will just say that my written testimony pretty much is consistent with some of the points already made with respect to repair permit streamlining and the reorganization of DOT. And in the interest of time, I will stop right here.

[The prepared statement of Barry Pearl follows:]

PREPARED STATEMENT OF BARRY PEARL, PRESIDENT AND CEO, TEPPCO PARTNERS, L.P. ON BEHALF OF THE ASSOCIATION OIL PIPE LINES AND THE AMERICAN PETROLEUM INSTITUTE

INTRODUCTION

I am Barry Pearl, President and CEO of TEPPCO Partners, LP and Chairman of the Association of Oil Pipe Lines (AOPL). I am here to speak on behalf of AOPL and the pipeline members of the American Petroleum Institute (API). I appreciate this opportunity to appear before the Subcommittee today on behalf of the AOPL and API.

AOPL is an unincorporated trade association representing 50 interstate common carrier oil pipeline companies. AOPL members carry nearly 85% of the crude oil and refined petroleum products moved by pipeline in the United States. API represents over 400 companies involved in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining and marketing. Together, these two organizations represent the vast majority of the U.S. pipeline transporters of petroleum products.

TEPPCO Partners, L.P. is a publicly traded master limited partnership, listed on the New York Stock exchange under the symbol TPP. TEPPCO owns and operates more than 11,600 miles of pipeline in over 16 states. Our operations include one of the largest common carrier pipelines of refined petroleum products and liquefied petroleum gases in the United States; petrochemical and natural gas liquid pipelines; crude oil transportation, storage, gathering and marketing activities; and natural gas gathering systems. TEPPCO also owns 50% interests in Seaway Crude Pipeline Company, Centennial Pipeline LLC, and Mont Belvieu Storage Partners, L.P., and an undivided ownership interest in the Basin Pipeline. Texas Eastern Products Pipeline Company, LLC, an indirect wholly owned subsidiary of Duke Energy Field Services, LLC, is the general partner of TEPPCO Partners, L.P.

SUMMARY

It has been a year and a half since the enactment of the Pipeline Safety Improvement Act of 2002 (Public Law 107-355, the "PSIA"). On behalf of the members of AOPL and API, I wish to thank the Members of this Subcommittee for their leadership in passing that comprehensive and very important legislation.

As the Subcommittee reviews the current state of pipeline safety and the progress that has been made since the PSIA became effective, there are a few points that we would like to emphasize.

- First, there is a growing recognition of the importance of the oil pipeline infrastructure to the American economy and the interrelations between pipeline safety, pipeline economic regulation and the essential energy supplies delivered through that infrastructure.
- Second, there has been tremendous progress in pipeline safety because of the PSIA, but there has also been much progress because of actions undertaken by the industry and by the Office of Pipeline Safety, even before the PSIA was signed into law.
- Third, while many of the initiatives of the PSIA are being implemented in a satisfactory manner and on schedule, this is not universally the case. Congress's help is needed in ensuring that pipeline operators can obtain the permits required to carry out the repairs envisioned in the PSIA.
- The Department of Transportation is considering a reorganization that would affect the pipeline safety program. Any new organizational structure for the program should preserve the progress that has been made in elevating the importance of pipeline safety and empowering the federal role in ensuring the operation of an effective pipeline infrastructure.

THE ROLE OF PIPELINES IN PETROLEUM SUPPLY

About one-half of total U.S. energy supply comes from petroleum, with 95% of the energy that powers transportation derived from petroleum. Very few of the elements of the Nation's transportation system could operate without petroleum. Fully two-thirds of the ton-miles of domestic petroleum transportation are provided by pipeline. The total amount delivered by both crude oil and refined petroleum products pipelines is nearly twice the number of barrels of petroleum (14 billion) consumed annually in the United States.

The major alternatives to pipelines for delivery of petroleum are tank ship and barge, which require that the user be located adjacent to navigable water, and truck or rail, which are limited in very practical ways in the volume they can transport. In fact, pipelines are the only reasonable way to supply large quantities of petroleum to most of the nation's consuming regions. Pipelines do so efficiently and cost-effectively—typically at 2-3 cents per gallon for the pipeline transportation cost charged to deliver petroleum to any part of the United States.

Oil pipelines are common carriers whose rates are controlled by the Federal Energy Regulatory Commission. Pipelines only provide transportation. Our owners do not own or profit from the sale of the fuels they transport. Oil pipeline rates are not related to the price of the products that are transported. Oil pipelines move 17% of interstate ton-miles but only receive 2% of the total amount charged for interstate freight transportation, a bargain that American consumers have enjoyed for decades.

The oil pipeline infrastructure is crucial to American energy supply. The care and stewardship of this critical national asset is an appropriate public policy concern and an important joint responsibility of the industry I represent, the Department of Transportation and Congress.

I've included a report by Richard A. Rabinow entitled "The Liquid Pipeline Industry in the U.S.—Where It's Been and Where It's Going' prepared for AOPL that provides an overview of trends in the oil pipeline industry.

PROGRESS REPORT ON PIPELINE SAFETY: INTEGRITY MANAGEMENT

Companies represented by AOPL and API operate 85 percent of the nation's oil pipeline infrastructure. Since March 2001, these operators have been subject to a mandatory federal pipeline safety integrity management rule (Title 49, section 95.452) administered by the Department of Transportation's Office of Pipeline Safety. The oil pipeline industry's experience with pipeline integrity management preceded the enactment of the Pipeline Safety Improvement Act of 2002. Our operators will complete the required 50 percent of their baseline testing of the highest risk segments prior to the September 30, 2004 midpoint deadline set by the integrity management regulations. OPS has inspected the performance of each of these operators under these regulations at least twice—an initial "quick hit' inspection and a subsequent full inspection—and is proceeding with the second round of full integrity inspections. We have experience with the program that will be instructive to the Subcommittee in its review.

The oil pipeline integrity management program is generating safety benefits that significantly exceed anything anticipated when the program was designed. To see how this is occurring, it is helpful to have a general understanding of how the integrity management program operates. The integrity management program requires integrity assessment, that is, regular safety testing with an internal inspection device (a—smart pig"), hydrostatic pressure or other equivalent means, and enhanced protections for those segments of pipe that "could affect' a "high consequence area." A "high consequence area" (HCA) is a defined term in the regulations that means a commercially navigable waterway, a high population area or an area unusually sensitive to environmental damage. Such unusually sensitive areas are also defined in the regulations. Each operator must have a process to determine whether a segment of pipe "could affect' an HCA. The process must consider a range of factors, such as the terrain, the volume and type of oil in the pipe and the physical ways oil released from the segment of pipe might impact the HCA.

In 2000, OPS estimated that under the proposed integrity management system approximately 22 percent of the pipeline segments in the national oil pipeline network could affect an HCA and therefore that operators in aggregate would be required to assess and provide enhanced protection for 22 percent of the national system. In fact, when oil pipeline operators carried out their analyses of how many of their segments could affect the high consequence areas that were actually identified under the regulations, it turned out that almost twice as many segments, 43 percent of the pipeline network nationally, could affect an HCA. So the anticipated benefits in theory were nearly twice as large as originally estimated.

But in fact, our experience indicates that the actual benefits realized will be significantly larger than that. The predominant method of testing oil pipelines utilizes internal inspection devices. The ports at which these devices are inserted into and removed from a pipeline are fixed in the system. These locations were established prior to the advent of integrity management regulations and without regard for the location of HCAs. The internal inspection devices therefore travel between ports, generating information about all the segments between those ports, whether they affect an HCA or not. As a result, as shown in OPS inspections of operators' plans, it is estimated that integrity testing will cover approximately 82 percent of the nations' oil pipeline infrastructure. Thus the actual mileage tested is almost four times the original OPS estimate.

Operators are finding and repairing many conditions in need of repair and many less serious conditions that are found near defects. For every condition repaired under the rule, approximately six other conditions are excavated and evaluated. Operators are fixing what they find, often going beyond the requirements of the law. The largest cost to the operator is in the scheduling and renting of the internal inspection device, obtaining the permits and carrying out the excavation, so once the pipeline is uncovered, operators fix many conditions that might never have failed in the lifetime of the pipeline. This result is a huge additional benefit to pipeline safety that will reduce the risk of pipelines to the public far into the future.

Although benefits from the integrity management rule are much greater than originally estimated, so is the cost. Costs per operator are often running at a rate

of tens of millions of dollars per year, far more than originally anticipated and a substantial amount by any standard. Operators have nevertheless moved aggressively to provide the resources needed to implement integrity management.

INTEGRITY MANAGEMENT CONCLUSIONS

What are the lessons of this experience?

OPS's integrity management program, which relies on the initiative, judgment and priorities of individual pipeline operators, is producing major benefits for the public and the environment without prescriptive regulation. The program is a mandatory one, so operators must participate, must carry out regular testing of their pipelines and must act promptly to address risks. But the operator has flexibility under the program in designing and administering the plan for testing and repair subject only to periodic inspection reviews by OPS. This partnership is proving enormously successful without resort to prescriptive, detailed regulations, intrusive second-guessing of operator decisions or aggressive enforcement with fines and penalties. It is important to note that operators have been incurring the costs required to find the conditions that need repair, to make the repairs and to protect the lines for the future without specific assurance that these costs will be covered in the rates allowed by the Federal Energy Regulatory Commission. The integrity management program has been successful without resort to the threat of punishment or the need for financial incentives because the program aligns the interests of the operator and the regulator—to adopt the most effective and efficient preventative measures to keep the oil in the pipe. The recent spill and accident record of the pipeline industry (see charts) only underlines this success. Put simply, our industry's substantial investment in pipeline integrity and leak prevention is a sound one, providing long-term benefits to both pipeline operators and the public.

PIPELINE SAFETY: THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002 AND MORE

In the Pipeline Safety Improvement Act of 2002 Congress endorsed the integrity management approach to pipeline safety that OPS had been administering with the oil pipeline industry at the time of enactment and extended the integrity management concept to natural gas transmission pipelines. In addition, the PSIA contains important provisions:

- Coordinating permitting by federal agencies so that pipeline repairs can be carried out in a timely manner
- Strengthening the qualifications of pipeline personnel and contractors;
- Ensuring that pipeline operators are active in promoting public awareness of pipelines along pipeline rights of way
- Increasing OPS outreach to states and state regulators to assist with OPS activities
- Authorizing a promising research and development program to develop better pipeline safety technology
- Establishing a nationwide, toll-free three-digit telephone number to connect excavators to their local call-before-you-dig, one-call notification center
- Supporting a study of pipeline right of way encroachment issues through the Transportation Research Board of the National Academies of Science and Engineering
- Authorizing adequate funding for the operation of the Office of Pipeline Safety

In our view, the OPS has been very aggressive in seeking to implement these PSIA provisions and, with one exception that I will mention below, the progress achieved has been excellent. In addition, OPS has been responding to and satisfactorily addressing Congressional mandates from the time before the PSIA and outstanding National Transportation Safety Board, General Accounting Office and DOT Inspector General safety recommendations. Here the progress has been truly impressive. We anticipate that by the end of 2004 nearly all outstanding mandates and recommendations to the agency will have been appropriately addressed. Finally, OPS has been playing a very important role in assisting the pipeline industry and the Department of Homeland Security in developing a security program to protect critical pipeline infrastructure.

PIPELINE REPAIR PERMIT STREAMLINING

An important initiative of the PSIA that needs the Subcommittee's encouragement and oversight is the implementation of section 16, "Coordination of Environmental Reviews', which is concerned with expediting the repair of pipeline defects. Some limited progress has been made on implementing this section, but the largest

portion of the work remains to be done, and the deadlines for agency action under the provision have passed.

Under section 16, a federal Interagency Committee on Coordination of Environmental Reviews for Pipeline Repair Projects has completed a Memorandum of Understanding that lays the foundation for a federal pipeline repair permit streamlining process, but this MOU does not actually contain the provisions needed to effectuate the streamlining. Rather, it establishes a Working Group of federal agency personnel to develop a joint regulatory approach to streamlining (which may rely on existing regulations of the participating agencies or may recommend changes to certain regulations). A successful federal streamlining process will help with federal permitting and also provide a model for state and local permitting agencies to follow. Congressional hearings in June helped highlight the need for pipeline repair permit streamlining. I am happy to report that, since those hearings, representatives of liquid pipeline operators with experience in permitting pipeline repairs have been able to meet with the Working Group under the auspices of the White House Task Force on Energy Project Streamlining. We welcome the opportunity to provide information, observations and suggestions to the Working Group as it considers how to implement the goals of the MOU. We urge the Subcommittee to monitor the progress of the Working Group to ensure that progress continues.

A central theme of the PSIA is safety through prevention. The purpose of section 16 is to accelerate actions that prevent pipeline releases. OPS requires pipeline operators to investigate the condition of their pipelines on a regular basis and act within a time certain to repair any defects discovered that are judged to require repair. The more severe the defect, the shorter the timeframe required to make the repair. Pipeline repair will typically involve an excavation to uncover the buried pipe at the location of the defect on the pipeline right of way, and any such excavation in general requires a series of permits, some federal, some local, and most designed to protect the environment. The purpose of section 16 is to ensure that federal agencies involved in permitting for such excavations coordinate so that pipeline operators are allowed to make the repairs that are needed in the timeframes required by the regulations. The coordination envisioned would not affect existing environmental law, but might require some adjustments to the existing regulations of some of the environmental permitting agencies.

The goal of section 16 is to see that the priority on pipeline safety set by this Subcommittee and, through this Subcommittee, by the Congress as a whole is implemented and is not frustrated because, although defects are discovered in a timely fashion to prevent releases, the permitting delays block carrying out the repairs needed to effectuate this prevention. The purpose of section 16 is to ensure timely actions required by one federal agency, OPS, in the name of pipeline safety are not blocked by one or more other federal agencies that do not have pipeline safety as a priority.

Pipeline repair permitting delays can also have an impact on energy supply. When a pipeline defect cannot be repaired within the time limits set by OPS, the pipeline operator must reduce pipeline pressure, and therefore throughput, by an amount that depends on the suspected seriousness of the defect—a greater reduction for defects that are more likely to be severe, but the reduction is typically at least 20%. Many operators reduce pressure on discovery of a potential defect. Once the repair is complete the operator is allowed to return to normal throughput capacity.

THE NUMBER OF PIPELINE EXCAVATIONS IS LARGE NOW AND WILL BE MUCH LARGER IN THE FUTURE

Under OPS rules for oil pipeline operators, tens of thousands of potential defects are being discovered and repaired annually. As of December 31, 2003, the largest 47 oil pipeline operators have undergone inspection by OPS covering 97% of the mileage operated by these companies. These are the operators who eventually plan to include approximately 82% of their mileage in the mandatory testing program, even though strict requirements of the regulation would only require 43% of their mileage to be tested. According to OPS data as of the date of their respective first full inspections, these operators had carried out 4,344 time-sensitive repairs and 16,081 other repairs. Time sensitive repairs are those judged potentially serious enough that OPS regulations stipulate a repair deadline. These numbers underestimate the total volume of repairs prior to December 31, 2003 because they only include the repairs completed prior to each operator's particular inspection date, all of which occurred before December 31, 2003.

Completion of over 4,000 time-sensitive repairs is a success story of sorts, but it is not without some impact on the capacity of the Nation's petroleum delivery sys-

tem. Many of those repairs required pipeline pressure reductions until the repairs were completed. When a pipeline system operates at lowered pressure, its capacity is often reduced, increasing the likelihood of supply shortages, which generally puts upward pressure on petroleum prices. We do not know the extent to which the Nation's current oil pipeline capacity has been reduced because of pressure reductions occasioned by repairs.

There is also no assurance that the required federal, state and local permits for pipeline repair activity can be obtained in a timely way even when federal regulations set a clear deadline for completion of the repair. In the absence of full implementation of section 16 there is currently no organized process to streamline the pipeline repair permitting process to ensure that all involved are doing what they can to see that the Nation's fuel supply system is not limited by capacity restrictions. It seems to us that it would be prudent to put such a process in place, as the PSIA wisely requires.

We have been asked to forecast the magnitude of the permitting problems the pipeline industry will face in complying with OPS pipeline integrity management rules. We will try to respond. The oil pipeline integrity management regulations have been in effect since 2001, so our industry has some experience that can be used to try to answer this question.

One thing is clear: the "where' and "when' associated with complex permitting problems is inherently uncertain. It depends on where the apparent defects show up in testing, and that cannot be known in advance. While the industry has much experience with pipeline repairs that predates the pipeline integrity regulations, the sheer number of tests and repairs being executed and the existence of mandatory federal time deadlines for completing particular repairs are unprecedented in the industry. We are learning as we go along.

An anecdote: a pipeline operator recently completed an internal inspection of a segment of pipe that produced approximately 100 potential repairs that under OPS rules appear to require completion in 180 days. The operator estimates that more than half of the required excavations for repair can be carried out routinely and another 40 can be carried out with the use of an Army Corps of Engineers Nationwide Permit. However, there are 3-5 excavations needed in locations that that will be difficult to permit in a timely manner, which may result in the operator being unable to complete the repairs within the required regulatory deadline. So a large number of repairs will be made without special permitting concerns and a significant number of additional repairs can probably be made because of a pre-existing federal permit-streamlining program. However, this entire pipeline segment may nevertheless be required to operate at reduced pressure because of a few situations for which there is no process in place to ensure the operator can obtain the necessary federal permits that will meet the federal repair deadline.

The burden on federal, state and local permitting agencies will increase as the OPS program of integrity management for natural gas transmission pipelines takes hold and as state integrity management programs for intrastate pipelines that mimic the federal program are implemented.

RECOMMENDATIONS ON PIPELINE REPAIR PERMIT STREAMLINING

The pipeline industry has several recommendations that we believe would foster progress towards effective pipeline repair permit streamlining:

- Agree to allow representatives of the pipeline industry who are experts in pipeline repair permitting to continue to meet with the Working Group to serve as a resource in providing information about what is likely to be useful in expediting pipeline repairs.
- Work with industry to develop a set of pre-approved pipeline repair site access, use and restoration Best Management Practices such that a commitment by an operator to adhere in good faith to such BMPs would result in expedited permission to access repair sites to carry out the repair from any of the signatory agencies either through use of that agency's emergency procedures or another approach that allows the repair to be completed within the timeframes specified by DOT regulation.
- Commitment to use pre approved BMPs should result in a presumption of compliance by the operator with the requirements of the BMPs and a presumption that actions beyond restoration to pre-construction condition will not be required if BMPs are followed.
- BMPs should be habitat-specific rather than species-specific so that multiple species protection can be obtained within a single umbrella BMP.
- Coordinate multi-agency response to requests for permits such that involved agencies operate in parallel or in concert to issue all required permissions (not just

that of certain agencies) to the operator in a timely fashion to allow the repair to be completed within the timeframes specified by DOT regulation. To the extent possible the permitting process should be consolidated to limit to one the number of permits required (a consolidated permit). A process is needed to ensure that federal agencies are aware of the relationships in permitting pipeline repairs among federal, state and local requirements and can act accordingly to achieve the goal of section 16.

- With respect to compliance with the Endangered Species Act, establish an agreement between the Department of Transportation and the Department of the Interior under which DOT will voluntarily assume the role of default coordinator, or a "nexus' by any other name, for pipeline repairs in those cases where no other federal agency is available or able to act as the federal nexus for ESA consultation. This agreement would stipulate that DOT's voluntary participation in a coordination role for pipeline repairs does not mean that ordering or providing for pipeline repairs through regulation is a federal action subject to the ESA or the National Environmental Policy Act.

The federal government and the pipeline industry should be natural partners in seeing that the OPS integrity management program succeeds. The pipeline safety goals of the industry and the government are entirely aligned in this program. Done properly, pipeline repair permit streamlining will help significantly to ensure the success of this program, while reducing the burden on federal, state and local permitting agencies and allowing these agencies to focus resources on much more serious environmental problems. Done properly, pipeline repair permit streamlining will ensure the safety and reliability of the nation's pipeline infrastructure. Done properly, pipeline repair permit streamlining will reduce the risk of higher fuel prices to the Nation's consumers.

The oil pipeline industry stands ready to work with the Interagency Committee and the Working Group to provide the information and any other assistance needed to carry out the intent of section 16 of the PSIA.

ORGANIZATION FOR PIPELINE SAFETY

In December 2003 we were informed that the Department of Transportation intended to propose a reorganization as a part of the FY 2005 budget. As part of this proposal, the Research and Special Programs Administration, which houses the Office of Pipeline Safety, would be abolished and reinvented as the Research and Technology Innovation Administration, an entity built around the Department's Volpe Research Center and devoted to transportation research and development. As a consequence, the Office of Pipeline Safety (and other "special programs' in the former RSPA) would be left without a home in the Department. The Secretary's proposed solution for the OPS would be to transfer the pipeline safety program to the Federal Railroad Administration, an existing DOT administration governing a mode judged to be most similar to pipelines.

The oil pipeline industry and the members of AOPL and API have great appreciation for all that has been done to improve the programs of the Department of Transportation, including the pipeline safety program. However, our members' reaction to the proposal to place the pipeline safety program under the Federal Railroad Administration was uniformly negative.

There has been a sea change in pipeline safety in the last several years, and the federal pipeline safety program has gained impressive and much-needed momentum. The quality and credibility of the program administered by the Office of Pipeline Safety has been immeasurably strengthened, and this strengthening is both recognized and augmented by Congress' unanimous enactment of the PSIA. OPS's successes have been accomplished through the hard work and creativity of its employees and particularly because of its very effective leadership during this period. We feel very strongly that this progress must continue. We have come a long way in pipeline safety, but we still have much further to go.

We believe the proposal to place OPS in the FRA, if implemented, would inevitably disrupt the momentum OPS has worked so hard to create in the past several years. The period required to re-establish this momentum can't be known for sure, but we believe it would be measured in years, not months. This would be much more than a loss for OPS. It would be a loss for Congress, the public and for pipeline safety.

HR 4277

We were very pleased to see the introduction by the Chairman of the House Transportation and Infrastructure Committee, Rep. Don Young (R-AK), of H.R. 4277, the Pipeline Safety Administration Establishment Act. This legislation would

establish an independent pipeline safety administration with the Department of Transportation with minimal disruption of OPS activities.

Our support for the legislation is based first of all on its merits. As I have testified, we believe the federal pipeline safety program has become much stronger and more effective in recent years and the importance of the program and the infrastructure it oversees has received greater recognition than in the past. The federal pipeline safety program deserves greater organizational recognition in the Department that befits its importance to the Nation.

We also welcome Chairman Young's initiative in introducing H.R. 4277 because it provides a significant alternative to the proposal to place the pipeline safety under the Federal Railroad Administration. The five associations that represent the Nations' oil and natural gas pipelines recently expressed our views on H.R. 4277 and the proposal in a joint letter to Chairman Young. I have provided a copy of that letter for the Subcommittee's records. We are encouraged by signs that the DOT may be reconsidering its plans for the pipeline safety program under any reorganization of the Department. We urge Congress to fully participate in deliberations about the future organization for this program.

The tests for any new organizational structure for the federal pipeline safety program are whether it strengthens the program, whether it helps make the program more effective and credible and whether it will further the hard work ahead to continue the progress the program has made. We plan to judge any proposal for structuring the pipeline safety program based on these tests.

The oil pipeline industry supports competent, effective, and credible federal pipeline safety regulation. The nature of the commodities carried in oil pipelines and the level of public confidence pipeline operators are able to inspire mean some level of oversight is inevitable. Public confidence in the safety of pipelines, and our ability to continue to operate pipelines with the public's trust depends on the perception and the reality of competent oversight. The interstate character of the pipeline business and, indeed, the interstate character of the pipeline facilities themselves, require that the federal government have the primary responsibility for this oversight. We therefore strongly believe that pipeline safety oversight should be housed in the U.S. Department of Transportation. If the structure governing the pipeline safety program within DOT has to change, we would urge Congress to very carefully consider the impact of the change on stature of the program and the implications for the highly important service pipelines provide to the Nation.

The PSIA set an ambitious but highly appropriate course for the federal pipeline safety program. H.R. 4277 opens the dialogue on the proper organizational structure to complement and facilitate the success of that program. The pipeline members of AOPL and API look forward to working with Congress as this dialogue moves ahead.

CONCLUSION

Thank you for the opportunity to testify before the Subcommittee on these important matters. Congress's work product, the PSIA, is in our view a significant success, but all those interested in pipeline safety have much work ahead of us if we are to fully achieve the purposes of this very important legislation. Our industry pledges to seek alignment with the OPS to the maximum extent practicable in this important task.

We need help from Congress to ensure that a key section of the legislation, section 16, relating to pipeline repair permit streamlining, achieves the full intent of Congress and is effective in fostering a safer and more reliable pipeline infrastructure. We also ask that the Congress carefully consider the issue of the proper organizational structure within the Department of Transportation for the federal pipeline safety program, an issue that has been raised by the proposed reorganization of the Department and by the legislation introduced by Chairman Young.

Thank you very much.

May 20, 2004

The Honorable DON YOUNG
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

DEAR CHAIRMAN YOUNG: On behalf of the natural gas and petroleum pipeline industries, we want to thank you for introducing H.R. 4277, the "Pipeline Safety Administration Establishment Act." We believe this legislation helps ensure the contin-

ued improvement and effectiveness of the Office of Pipeline Safety (OPS) within the Department of Transportation (DOT).

The members of our associations are united in our concern about the ramifications of DOT's draft reorganization plan announced by Secretary Mineta in December of 2003. While the announcement focused on the benefits of organizing DOT's research and development functions within a single administration, the secretary also proposed merging the Federal Railroad Administration (FRA) and OPS. We believe this merger would be detrimental to the mission and the performance of OPS. Therefore, we oppose such a merger.

The Office of Pipeline Safety has made great strides in improving its effectiveness over the last five years. It has successfully completed a number of critical rulemakings, including ones regarding hazardous liquid and natural gas pipeline integrity. OPS also has made outstanding progress both in fulfilling its Congressional mandates and in implementing DOT Inspector General and National Transportation Safety Board recommendations. OPS is not broken by any measure, and that is why we are concerned about the implications of DOT's proposed reorganization.

Your legislation gives OPS the autonomy and accountability it needs to fulfill its mandate to protect the public. If DOT attempts to proceed with a reorganization plan that includes merging OPS with FRA, we strongly encourage your committee to hold a hearing that will allow for a full and open discussion among all stakeholders.

We support your efforts to strengthen the Department of Transportation's pipeline safety program and look forward to working with you in that regard. Thank you once again for introducing H.R. 4277. If there is anything further we can do to assist you in your efforts, please do not hesitate to contact us.

Sincerely,

RED CAVANEY
President and CEO, American Petroleum Institute

BENJAMIN S. COOPER
Executive Director, Association Oil Pipe Lines

BERT KALISCH
President and CEO, American Public Gas Association

DAVID PARKER,
President and CEO, American Gas Association

DONALD F. SANTA, JR.
President, Interstate Natural Gas Association of America

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

Project Overview: A crude oil pipeline comes from offshore Louisiana through environmentally sensitive areas of Breton Sound into a terminal on the Mississippi River. The majority of the line runs off-shore in Federal and State Waters. The permitting process is completed through either the MMS for federal water, or the Louisiana Department of Natural Resources—Coastal Management Division (CMD) for State waters/land.

This permitting was fairly straightforward. The Original Corps of Engineers permit maintenance clause allowed us to do most of the work without having to consult other agencies. For those locations that were not covered, the permitting needed to follow the normal process which took seven months, much of this was the operators pre-work required for offshore repairs. Also, the LDWF required an oyster assessment.

Permitting Overview: The "smart pig" inspection identified several locations that needed to be repaired under the PIM rule. Pipeline operating pressure was reduced to allow additional time to complete the repairs. It is very difficult to do work off-shore "immediately" because of the availability of off shore equipment necessary to make repairs Most of the sites used the existing Corps of Engineers permit that included a maintenance clause to do the work. The Corps of Engineers and CMD recognize the maintenance clause as a valid permit. However, one site was in the marsh/land and needed to be fully permitted through the CMD. Below is the timeframe that occurred for the

Coastal Zone permitting:

- 1/6/2003—Immediate repair discovery date
- 1/8/2002—Reduced pipeline operating pressure

- 5/14/2003—Submitted application packages to federal, state and local environmental regulatory agencies. This took time due to the evaluation of offshore repair options, locating the anomalies and the pre-application work that needed to be completed.
- 6/11/2003—Oyster Assessment received from assessor
- 6/13/2003—Approval received from LDWF for work in oyster seed grounds
- 7/2/2003—Final permit letter received. Application sent to Plaquemines Parish for approval
- 7/25/2003—Final Parish permit received

In addition, an oyster assessment was required for the work that was done in Breton Sound. Breton Sound is a State protected oyster seed ground. Prior to any work being done, the assessment had to be completed, and reviewed by Louisiana Department of Wildlife and Fisheries (LDWF)

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

Project Overview: In California, a pipeline company operates a refined petroleum products pipeline system that traverses environmentally sensitive habitat including freshwater and saltwater wetlands, tidally influenced marshland, and habitat supporting several federally- and state-listed plant and animal species. The permitting process is complicated by various work windows that prevent or limit maintenance activities during specific times of the year along the pipeline right-of-way (e.g., seasonal flooding conditions, breeding and nesting seasons for listed species, etc.).

This project required a pressure reduction on a branch of the pipeline for nine months due to both Federal and State permitting requirements. As stated below though, we were fortunate to be able to obtain the permits within nine months and to make the repairs within the time windows allotted for the refuge and for the nesting periods. We have added expensive drag-reducing agent to the pipeline to attempt to meet shipping requirements and have had to limit throughputs in the summer months due to the lower pressure.

A major concern is that the main, trunk line of this pipeline is due for a smart pig run this month. The majority of this pipeline also runs through major Federal and State endangered species areas. A pressure reduction on that section of pipeline could cause serious consequences to the gasoline supply.

Permitting Overview: A recent pipeline "smart pig" inspection survey identified 2 pipe anomalies that required repair within 60-days and triggered agency consultation and permitting due to their locations in sensitive habitats. Once discovery was declared on August 6th, 2003 and we realized that this permitting effort needed to be undertaken we reduced the pressure in the pipeline. This permitting effort, which took approximately nine months to complete, has recently been concluded and has thus far included the following federal and state agencies:

- Army Corp of Engineers (ACOE)—San Francisco District;
- California Regional Water Quality Control Board (RWQCB)—San Francisco Bay Region & Central Valley Region;
- U.S. Fish and Wildlife Service (USFWS)—Sacramento Branch;
- California Department of Fish and Game (CDFG); and
- San Francisco Bay Conservation and Development Commission (BCDC).

As indicated above, consultation with multiple regional branches of the same agency has been required for a single project. Applications were initially submitted to the Federal agencies in November of 2003 for the permits. State agencies cannot process permit applications until the Federal permits are issued, therefore applications for the State Permits were submitted upon receipt of the Federal Permits. We were able to expedite the process by asking the Federal agencies to fax us the completed permits. We used to the faxed copies to apply to the State thereby saving a few days instead of waiting for the mailed copies. Following is a comprehensive list of all the permit applications submitted:

- 2 ACOE Section 404 Pre-construction Notifications under Nationwide Permit 3 and 33;
- 2 RWQCB 401 Water Quality Certifications triggered by the 404 process;
- 2 Endangered Species Act (ESA), Section 7 biological consultations with the USFWS;
- 2 CDFG Consistency Determinations for impacts to California Fully Protected Species listed under the California Endangered Species Act (CESA); and
- BCDC permit waiver pursuant to Section 29508 of the Suisan Marsh Preservation Act.

All agency branches have responded in the standard amount of time with the requested permit or waiver. These repairs required a cutout of the pipe so to reduce the risk entailed with a pipeline cutout it was decided to take on both repairs at the same time.

One of the repair locations is located within a CDFG State Game Refuge. The refuge is on a seasonal schedule of hunting seasons and flooding to facilitate waterfowl nesting. The refuge manager has provided two construction windows to conduct repairs; a two-week window in October and a one-month window in June. The seasons begin with Elk hunting from July until September, after which there is about a two-week repair window, followed by flooding of the entire area to support waterfowl hunting. Waterfowl hunting season is followed by waterfowl nesting season. After nesting season the ponds are allowed to drain and dry. The refuge manager then opens the area up for our repairs again in June. Consequently there is a one-month window to complete repairs. All permitting agencies explained to us that they could not complete permitting in time to meet this 2-week window, therefore a significant effort was put into front-end loading to expedite the permit process to ensure permitting was completed in time for the second window afforded us by the refuge.

Both repair sites provide habitat for species that are not only listed under the ESA, but also under the CESA. For projects that can affect species listed under both acts, the USFWS issued BO must be submitted to the CDFG for a Consistency Determination. Furthermore, some species are listed as fully protected under CESA so no take can be authorized by the CDFG. For the two repairs in question, three different fully protected species under CESA were involved.

For the first repair site, surveys for the species of concern, California Clapper Rails and Black Rails, yielded no evidence of the species. No nests were located and no birds were heard calling during the surveys. Therefore, the CDFG concluded that take of these species would not occur and consistency was granted.

However, for the second repair site, CDFG found the BO to be inconsistent with CESA. The BO requires that in areas with more than 50% pickleweed coverage, traps must be set and any Salt Marsh Harvest Mouse captured must be relocated. However, the mouse is fully-protected under CESA, therefore under California law trapping of the mice is not allowed. Through numerous discussions with both agencies and on-site inspections a compromise was reached. As long as the repair site did not have pickleweed coverage of 50% and we were able to identify an access route that avoided areas of 50% pickleweed cover then the repair could proceed. Fortunately the repair area was not covered by 50% pickleweed, but if the repair been located 300 feet upstream of the actual repair we may not have been able to complete the repair as the pipeline ROW is completely covered by pickleweed. The pickleweed growth prevented us from using the preferred access route as it is the most direct route, but we were able to work out an access route allow the refuge levees that avoided areas of pickleweed coverage.

The pipeline repairs have been scheduled and should be completed by mid-June, but if the biological surveys of the repair areas had indicated presence of the fully protected species we would not have been able to complete at least one of the repairs within one year from when we dropped pressure. The protected rail's nesting season runs from approximately mid-March to mid-August. All BO's are written such that if rails are present then work cannot occur until after mid-August. Our discovery date was August 6th, so had rails been present we would not have been able to conduct the repairs until after the one-year deadline passed. In the other case, we are not sure we could have completed the repair and still been in compliance with the CESA if the repair site had been covered with pickleweed.

Permitting Timeline for Refuge Repair:

- August 6, 2003—Discovery date and pressure reduction.
- November 30, 2003—Submitted USACE Permit. Permit preparation time included threatened and endangered species identification as well as agency front end loading and consultation.
- December 12, 2003—USACE requested consultation (2 weeks)
- March 2, 2004—Received the USFWS biological opinion (BO) (2-½ months which is record time). BO gave us authority to trap and move the endangered Salt Marsh Harvest Mouse
- April 21, 2004—Received CA Dept F&G letter disagreeing with USFWS BO. CESA does now allow us to trap and remove the mouse.
- Late May—Received CDFG's "oral guidance" for repair due to access and repair site not containing significant amount of mouse habitat.
- June 1, 2004—Mobilized for repair within June 1—July 1 access window.

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

The Integrity Management Rule requires certain pipeline defects repaired within specific timelines. If these timelines cannot be met, a 20% operating pressure reduction must be taken until the defect is repaired or the system is otherwise modified to allow continued safe operation. In certain markets, this reduction in operating pressure can potentially reduce supply by more than 200,000 barrels per day (nearly one million gallons per day) having significant impacts on supply. In the fourth quarter of 2003 when distillate demand to the northeast is high, a pipeline repair could not be made within the 180-day time frame forcing a 20% pressure reduction on the pipeline. Within two weeks it became apparent that supplies to New York markets could be jeopardized. Numerous reasons attributed to the repair not being completed in the 180 days. One of which was permitting that eventually took 18 months and significant resources to obtain the proper permit for the appropriate repair method needed to complete the repair. Acquisition of the final permit that provided a practicable repair solution required a five month period and involved extensive lobbying of twelve Federal, State, and local environmental agencies, the Goverernor's office, and other resource stakeholders and interest groups.

In the meantime, other system changes were made to allow continued operation at normal operating pressures. In absence of these solutions, shortages in jet fuel to key northeast airports as well as significant shortages of heating oil to northeast markets were probable. Furthermore, operation of refineries in the Gulf Coast and at least one additional pipeline in the northeast would have been impacted.

Near misses such as the one described above underline the need for permit streamlining. Coordination is necessary among pipeline operators, federal, state and local permitting agencies and the OPS. The Pipeline Safety Improvement Act was meant to protect public safety and the environment. Through permit streamlining, the intent of the Act and all stakeholders' objectives will be met along with timely repairs to pipelines, protection of the environment, and maintaining stability in fuel markets.

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

Early 2002, a deformation with metal loss was identified on a pipe; under the IMP rule, this is an immediate condition. The geographical location of the pipe is within a large wetland complex and within the boundaries of a State Game Area which is managed by the Michigan Department of Natural Resources.

It was determined that this condition met the requirements of a Safety Related Condition as stated in 49 CFR 195.55 due to its location within an HCA. As such, operating pressure on the system was reduced by 20% and a SRC Report was filed with OPS five days after discovery.

Excavation and repair of this condition required a Land and Water Management (LWM) Permit which is a joint permitting process between the USACE and Michigan DEQ for Clean Water Act Section 404/401 impacts. A Special Use Permit was needed from Michigan DNR for working within the State Game Area. A Soil and Erosion Control Permit from the Muskegon County Department of Public Works was also required.

The unusual site conditions presented some challenges for accessing and dewatering the repair area since it was located in the middle of the expansion wetland and under approximately 4 ft. of water. It took several days to finalize the repair methodology which was needed prior to submitting the permit applications.

Once repair plans had been finalized, LWM permit applications were simultaneously submitted to the USACE and MDEQ 34 days after the initial find. Approximately one month (28 days) later, both agencies requested additional repair drawings. The drawings were provided to both agencies within 10 days of their request. The issuance of LWM permit approval was finally received 76 days after the initial discovery and 43 days after the application was submitted. 13 days after issuance of the LWM, authorization was received from the USACE under Nationwide Permit 12.

An attempt to investigate and repair the condition ensued 110 days after discovery, but because of the depth of the water and substrate, the work could not be executed in the manner authorized under the above reference permits.

A revised repair methodology was submitted to USACE and MDEQ 4 days later, requesting that the previously issued permits be modified to allow for the new construction techniques. MDEQ responded to this permit amendment request exactly

one month later, via letter authorization. Similarly, the USACE responded 37 days after the revised request was submitted, by authorizing the work under Nationwide Permit 33. The repairs were finally completed 237 days after the discovery; more than six months after permitting efforts were initiated.

It should be noted that only the USACE and MDEQ permit authorizations were difficult to obtain. The Special Use Permit and the Soil Erosion Control Permit were both obtained within only days after applications for these permits were filed.

Reducing the pressure on this system has the net effect of removing 7,600 barrels/day of refined products from the market. Had this situation occurred in June, 2000, it would have further exacerbated the supply issue that was occurring in the State of Michigan at that time.

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

A 20 inch diameter products pipeline was scheduled to undergo an in-line inspection in accordance with DOT's Integrity Management Rule. The inspection on this system was scheduled such that the operator would expect to receive the tool data during June 2004.

A portion of the subject pipeline system traverses the Louisiana Coastal Management Zone which is under the jurisdiction of the Louisiana Department of Natural Resources, Coastal Management Division (CMD). Other agencies with jurisdiction over the pipeline's inspection include the US Army Corps of Engineers (USACE) and the Parish Coastal Zone Management Committee.

In anticipation of the upcoming inspection, the operator filed an application with the CMD for an "Area Permit." The Area Permit is a relatively new permitting process utilized by the CMD (it was promulgated in October 2003) and is supposedly a streamlined process for allowing more timely pipeline repairs. The intent behind the Area Permit is to function as a general permit for the entire pipeline system within the Coastal Zone; however, the Area Permit does not authorize individual IMP repairs. Individual repairs are not authorized until the operator has provided the agency with site specific information about each repair location. The CMD suggests that once an operator has received Area Permit approval, individual IMP repairs can be authorized very quickly once the operator has provided the site specific information.

During early coordination with the CMD, the agency advised that they would be coordinating their review and approval of the Area Permit application in conjunction with the USACE. In fact, the operator was instructed to complete the USACE's standard permit application form (Form 4345) as part of the application package. However, during later discussions with the USACE, the operator learned that the USACE does not recognize the Area Permit as a valid permitting mechanism.

Despite the efforts in Louisiana to streamline the permitting process for IMP repairs, the Area Permit process seems to need further refinement in order to be truly valuable to pipeline operators. First, the CMD needs to understand that in the event of immediate conditions, there is often very little time to prepare the necessary site specific information including taking photos of the repair locations, generating maps of repair locations, etc. and get this information submitted to the CMD prior to initiating any repair activities. The impacts caused by IMP repairs, even in environmentally sensitive areas such as the Coastal Zone, are general minor and temporary in nature and should not warrant such extensive review.

Secondly, there appears to be a disconnect between the CMD and the USACE regarding the validity of the Area Permit process. Better coordination between these two agencies could result in the development of one permitting process that would address impacts caused by IMP repairs to "waters of the US" as well as impacts to the Coastal Zone.

Due to the uncertainty of being able to effect repairs, should the circumstance arise, the operator has temporarily postponed an In-line Inspection (but will still meet the regulatory deadline) of this system in order to get the permits in place. If the permits are not obtained by the regulatory deadline, and the operator is forced to shut down the system after conducting the In-line Inspection (and unable to effect repairs in a timely manner), there could be a potential loss of motor fuel supply to the Southeast/East Coast of up to 9,800,000 gallons per day. That could equate to (assuming 25 gallons of motor fuel are used to fill up an average vehicle) 392,000 vehicles per day that could be forced to look elsewhere for fuel, if it were available.

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

Project Overview: In California, a pipeline company initiated a project in 2002 to conduct investigations of anomalies identified during a pipeline "smart pig" inspection survey run in 2001 that identified over 45 anomalies. The pipeline traverses environmentally sensitive habitat including freshwater wetlands, tidally influenced marshland, and habitat supporting several federally- and state-listed plant and animal species. The permitting process is complicated by various work windows that prevent or limit maintenance activities during specific times of the year along the pipeline right-of-way (e.g., seasonal flooding conditions, breeding and nesting seasons for listed species, etc.). These anomaly dig locations were similar to digs pursued in 2001 from a 1999 "smart pig" survey that took 14 months to process the permits.

Overview of Permitting Process: The project took 10 months to permit. Permitting involved four different federal and state regulatory agencies. The U.S. Army Corps of Engineers (ACOE) was the lead agency for permitting. They were involved because the dig locations were located within "waters of the United States." The U.S. Fish and Wildlife Service (USFWS) were also involved due to the potential presence of the federally protected species including endangered vernal pool tadpole shrimp, the threatened vernal pool fairy shrimp, the threatened giant garter snake, the endangered salt marsh harvest mouse, the endangered California clapper rail, the threatened Sacramento splittail, and the threatened Delta smelt. California agencies involved were the California Regional Water Quality Control Board (RWQCB) and the San Francisco Bay Conservation and Development Commission (BCDC).

Applications for digs indicated by the inspections were submitted in August 2002 for the following permits:

- ACOE Section 404 Pre-construction Notifications under Nationwide Permit 3;
- RWQCB 401 Water Quality Certifications triggered by the 404 process;
- Endangered Species Act (ESA), Section 7 biological consultation with the USFWS; and
- BCDC permit waiver pursuant to Section 29508 of the Suisan Marsh Preservation Act.

After the notification was submitted to the ACOE, the ACOE waited until May 2003 to send its letter to the USFWS to initiate the Section 7 consultation in May 2003. Fortunately, the applicant t had been working with USFWS for months preceding the May 2003 letter from ACOE. Only because work was initiate and pursued by the operator on parallel tracks could final permits be issued in June 2003.

Approximately 70 permit conditions were included in the four permits. Permit conditions addressed the following general areas:

- Protecting soil and water from contamination during repair activities;
- Protection of the federally protected species during construction;
- Restoration of the areas to pre-construction conditions; and
- Mitigation for the impacts to species and habitat.

Lessons Learned from Case Study: There are a number of ways to improve the permitting process. Ten months is too long to permit relatively straightforward pipeline repair activity. It is not possible to meet the OPS rule repair time limit (e.g. immediate to 6 months) at locations where environmental permitting (with its extensive agency interactions) is required.

Ways to streamline the permitting process include:

- Streamlining the ACOE permitting process to expedite pipeline repairs while protecting the environment. Agency pre-review and approval of relatively routine activities prior to their commencement is not necessary. An alternative approach is to develop a set of Best Management Practices (BMPs) to protect the environment during repair activities, possibly similar to a Habitat Conservation plan or a nationwide Permit, that includes all jurisdictional agencies. Repair activities that use these BMPs would no require prior review and approval.
- ACOE permitting in states such as California is sequential, i.e. the ACOE reviews, then request consultation with the USFWS. Each agency approves a permit before they pass the ball to the next regulatory agency. Instead there should be a parallel review process. For projects that do not qualify to use BMPs, OPS could act as a n ombudsman to resolve permitting issues among the various agencies and improve the safety of pipeline.
- Alternatively, for projects that require agency review, a site-specific plan for conducting the pipeline repair could be developed and submitted to the appropriate agencies for their review. If agencies did not respond after an appropriate inter-

val consistent with time requirements in the 2001 OPS IMP rule the repair project could proceed under the "safe harbor" of the conditions proposed in the applications.

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

Situation involves replacement of a line with dents. A series of dents are located on one piece of pipe in the middle of the pipeline crossing of the Delaware River. We ran in-line inspection tools and found the dents.

The situation prohibits repair in place so we will have to drill and pull into place a new pipeline segment across the Delaware River, from New Jersey to Pennsylvania shores, in the Philadelphia area.

This requires permits from the Core of Engineers, Fish and Game Commission, Commonwealth of Pennsylvania, State of New Jersey, local township(s), and the Philadelphia Airport. The permitting process (preparation, submittals, administration and technical reviews, revisions, final approval, etc.) takes more than one year to complete, of which 240 days alone are required for administrative and technical reviews.

In accordance with OPS Integrity Management regulations, we reduced the pipeline operating pressure once. Since further remedial action is required if we cannot complete repairs within 365 days, we have had to reduce the pressure again, while in the process of obtaining all of the above mentioned permits and completing the pipeline replacement.

PIPELINE INTEGRITY MANAGEMENT PROGRAM

CASE STUDY SUPPORTING A STREAMLINED PERMITTING PROCESS

Project Overview: In California, a pipeline company operates a crude oil pipeline system that traverses environmentally sensitive habitat including freshwater wetlands, waters of the US, and habitat supporting several federally- and state-listed plant and animal species. The permitting process is complicated by various work windows that prevent or limit maintenance activities during specific times of the year along the pipeline right-of-way (e.g., seasonal flooding conditions, breeding and nesting seasons for listed species, etc.)

It took nearly one year for us to make the necessary repairs on this pipeline, mostly due to Federal ESA permitting issues (approximately 6 months to obtain the biological opinion). During this timeframe the pressure was reduced on our pipeline. It took three months to permit and repair our immediate repair and one year to permit and repair the remaining 60 and 180 day repairs. We were fortunate that there were not CESA fully protected species on the repair locations. If there were, we may not have been able to make those repairs due to the inability to "take" these species under state law.

Permitting Overview: A pipeline "smart pig" inspection survey identified over 15 pipe anomalies that required immediate-, 60- and 180-day repairs. The locations of the repairs triggered agency consultation and permitting due to their locations in sensitive habitats. Once it was determined that the repairs needed to be conducted in sensitive areas, the operating pressure of the pipeline was reduced.

At the request of the USFWS the project was broken up into two permitting repair projects; one for an immediate repair and a programmatic approach for the remainder of the repairs. The immediate repair permitting effort took approximately three months to complete. The programmatic approach progressed for approximately 3 months before we were informed by the USFWS that we could not complete the permitting before the one-year deadline from discovery. At this point the USFWS instructed us to attempt to permit the most critical sites in order to meet the one-year deadline. The mini-programmatic permitting effort required approximately an additional three months to complete and resulted in an 81-page Biological Opinion. The permitting efforts included the following federal and state agencies:

- Army Corp of Engineers (ACOE)—Sacramento Valley District;
- California Regional Water Quality Control Board (RWQCB)—San Francisco Bay Region & Central Valley Region;
- U.S. Fish and Wildlife Service (USFWS)—Sacramento Branch; and
- California Department of Fish and Game (CDFG).

As indicated above, consultation with multiple regional branches of the same agency has been required for a single project. The following permits were applied for in order to complete the repairs:

- 2 ACOE Section 404 Pre-construction Notifications under Nationwide Permit 3;

- 2 RWQCB 401 Water Quality Certifications triggered by the 404 process;
- 2 Endangered Species Act (ESA), Section 7 biological consultations with the USFWS; and
- 2 CDFG Consistency Determinations for the USFWS BOs.

All the repair sites provide habitat for species that are not only listed under the ESA, but also under the CESA. For projects that can affect species listed under both acts, the USFWS issued BO must be submitted to the CDFG for a Consistency Determination. Furthermore, one of the species, the blunt-nosed leopard lizard (BNLL) is listed as fully protected under CESA so no take can be authorized by the CDFG. However, the CDFG concluded that these repairs would not result in take of the BNLL, so consistency was granted.

Mr. SHIMKUS. Thank you. And I appreciate that.

Now I would like to recognize Mr. Breean Beggs, Executive Director of the Center for Justice. You are recognized for 5 minutes, sir. Welcome.

STATEMENT OF BREEAN BEGGS

Mr. BEGGS. Thank you, Mr. Chairman.

I am testifying today on behalf of the Pipeline Safety Trust. I am a member of the board of directors of that organization. You are probably familiar that it was created from the families of the victims of the Bellingham pipeline accident.

The goal is simply to prevent any future pipeline failures that are caused by failure to inspect, failure to repair, and failure to replace pipelines. While there are other causes for pipeline explosions, there should never be another one based on that.

If we were going to look at what this committee and the OPS could do to improve the chances of that becoming a reality, the No. 1 success so far since 2002 and the No. 1 success in the future is mandating testing of pipelines and the repair of them and, if necessary, the replacement of them.

So far according to the Department of Transportation report that we heard about, they have inspected about 6 percent of the liquid fuel pipelines. And they have already come up with 1,200 direct threats that needed to be repaired immediately, including 20,000 that could be repaired over time. That is just 6 percent. Although it is too soon to tell, the more pipelines that are inspected, the safer we are going to be.

I appreciate Mr. Pearl's testimony that the industry is now looking at possibly 82 percent, but the Pipeline Safety Trust is, of course, not going to rest until they do 100 percent.

The second thing about OPS that the Pipeline Safety Trust would like to emphasize is a change in enforcement moving to a proactive, rather than to fix it after it is broken, method. I think the industry is recognizing that these explosions and failures are quite expensive. The economic damage alone from Bellingham was between $600 and $700 million, not counting the pain and suffering in the community and all of that. That could have been prevented with just a fraction of spending, and it could have been planned.

The beauty of requiring testing and regulating proactively is that the company can build it into the rate structure. And the good companies can rest assured that the companies that might be willing to cut corners are not going to be able to do so, in the overall will cost us far less for energy and the disruptions will be less.

One of the other things that we would really like this committee to move forward on in OPS is community right-to-know regulations. In the early stages of the Pipeline Safety Improvement Act, there were community right-to-know measures. Those dropped out at the end of the day, probably because we were a little close to September 11. But what the Pipeline Safety Trust would ask the industry and OPS and this committee is to help us get the information out about what testing has been done, what safety measures have been taken, and which haven't. We are uniquely set up to be a clearinghouse for that information. And we look forward to assisting local communities that don't have that expertise in doing that.

I will touch briefly on the technical assistant grants. We stand ready both to apply for those but, more importantly, to help smaller communities who haven't yet experienced such a crisis apply for those grants so they can make sure that their pipelines are as safe as possible.

We would like OPS to be more proactive in their enforcement and collection of civil fines. We think it is important that when they identify a substantial deviation from safety regulations, that they promptly and fairly enforce that with appropriate civil fines so that operators will know that they will be punished, not just for causing a horrible explosion but also for creating a culture where that might arise.

The Bellingham explosion fine proposed initially was over $3 million. To date, only $250,000 has been collected. And that was from Equilon. While there have been some obstacles to getting money from Olympic due to a bankruptcy proceeding, that has only been going for a year.

In our communication with OPS and in the correspondence I reviewed from members of this committee with OPS, OPS has not definitely stated that it is going to try and collect that fine. We think, certainly in cases where there is a horrible loss of life, they should be collected, but, more importantly, operators should know that if they fail to abide by the standards, there will be appropriate civil fines.

My last point is simply this. You would expect that when a pipeline explosion happened, that the natural economies would cause companies to lose quite a bit of money and pay for the damages, but many pipeline operators have taken a legal loophole and created separate entities that own the structure that insulate their owners, which are often larger companies, from any type of liability. And, thus, Olympic Pipeline is a good example.

They are now in bankruptcy. Their owner, which is BP, is shielded from liability. And, in fact, there won't be sufficient resources to pay all of the bills that are going to come due. So we would ask that the committee at least consider financial responsibility requirements similar to the liquid natural gas facility.

Thank you for your time. The Pipeline Safety Trust looks forward to continuing to work with operators and OPS and this committee to make our energy distribution system much safer.

[The prepared statement of Breean Beggs follows:]

PREPARED STATEMENT OF BREEAN BEGGS, BOARD OF DIRECTORS, PIPELINE SAFETY TRUST

Good morning. My name is Breean Beggs and I am a member of the Board of Directors for the Pipeline Safety Trust. The Pipeline Safety Trust is a non-profit corporation formed by victims of the 1999 Bellingham Pipeline tragedy to protect communities throughout the United States from unsafe pipelines and unsafe management of those pipelines.

Five years ago last month, the Olympic Pipeline burst into a salmon stream running through Bellingham's most pristine park and exploded. In a flash, three youngsters were killed, a salmon stream that runs through the heart of Bellingham was dead, and our community was sent into a deep sense of loss and mourning. The horrendous death and damage was caused by negligence, poor management, poor agency oversight and almost nonexistent regulations. Out of that sadness came a community wide awareness of pipeline safety inadequacies, and a commitment to improving pipeline safety nationwide. Because of our community's commitment local, state, and national pipeline safety laws have been passed, and the Office of Pipeline Safety has significantly increased their rulemaking efforts.

The Pipeline Safety Trust came into being a little over a year ago because of Bellingham's efforts, and as part of the court settlement with Equilon Pipe Line Company over the 1999 Olympic Pipeline explosion. After investigating this tragedy the U.S. Justice Department recognized the need for an independent organization, that would provide informed comment and advice to both pipeline companies and government regulators; and, would provide the public with an independent clearinghouse of pipeline safety information. The federal trial court agreed with the Justice Department's recommendation and awarded the Pipeline Safety Trust $4 million which was used as an initial endowment for the long-term continuation of the Trust's mission.

The vision of the Pipeline Safety Trust is simple. We believe that communities should feel safe when pipelines run through them, and trust that their government is proactively working to prevent pipeline hazards. We believe that the communities who have the most to lose if a pipeline fails should be included in discussions of how better to prevent pipeline failures. And we believe that only when trusted partnerships between pipeline companies, government, communities, and safety advocates are formed, will pipelines truly be safer.

In my testimony this morning I will cover:

- The consequences of unsafe pipelines
- The need to address shortcomings of the Pipeline Safety Act of 2002
- Further pipeline safety issues that still need to be addressed.

CONSEQUENCES OF UNSAFE PIPELINES

In Bellingham we learned first hand the worst consequences of not properly maintaining, testing and regulating pipelines. Three of our young people died. Human death and injury is often the driving force behind pipeline safety improvements. This makes sense when you consider that according to the Office of Pipeline Safety in the past 20 years 397 people have died and 1850 people have been injured in pipeline accidents nationwide. But death and injury is only one measure of the adequacy of our pipeline safety system.

During the same twenty year period the Office of Pipeline Safety (OPS) reports more than $1.5 billion in property loss from pipeline accidents, and many believe that this number is significantly under-reported. OPS also reports nearly 76 million gallons of liquid petroleum products were lost into the environment during this same period. This figure is also under-reported since spills of less than 2100 gallons did not even need to be reported until the passage of the 2002 Pipeline Safety Act. These spills represent potentially catastrophic damages to private and public water systems, wetlands and other surface and ground waters. The total costs of these damages are unknown, but clearly substantial.

In recent years the economic costs of pipeline distribution disruptions have also been recognized. In Washington State, ARCO estimated that the cost of alternative transportation for fuel during the Olympic Pipe Line shutdown was an additional $500 million. In Arizona, California, and Michigan, which have all had recent distribution problems due to pipeline failures, the cost of gasoline often rose by more than $1/gallon. Multiply these temporary increases by the number of drivers forced to pay these higher prices and you find another hidden cost of the lack of pipeline safety in the hundreds of millions of dollars. After the El Paso Pipeline explosion that killed an entire family of twelve near Carlsbad, New Mexico, the Federal Energy Regulatory Commission stated that the Carlsbad accident "contributed significantly" to the California energy crisis and OPS estimated that impact at $17.5 mil-

lion a day. Since that pipeline was shut down for nearly a year this amounts to an additional $6 billion in damages due to the failure of a single pipeline.

So while death and injury may still be the most powerful reason to care about the safety of our nations pipelines, we also need to recognize that billions of dollars of economic disruptions and increased fuel prices are being passed on to consumers by pipeline companies that have failed to ensure the integrity of their pipelines. If even a small portion of this money had been spent to test and repair these pipelines before they failed, these economic consequences would not have occurred, and people would still be alive and uninjured.

SHORTCOMINGS OF THE PIPELINE SAFETY ACT OF 2002

The Pipeline Safety Act of 2002 provided many clear enhancements to pipeline safety regulations, including increased fines, operator training requirements, whistleblower protections, and increased funding for the OPS. To build on this progress the following provisions of the 2002 Act need to be re-examined.

Integrity Management of Gas Transmission Lines—One of the most important rules issued as a result of the 2002 Act, was the natural gas transmission pipeline integrity management rule published in December of 2003. This rule was a good first step, but in our opinion does not go far enough, or fast enough, to ensure the integrity of a majority of the gas transmission lines in the system. Because the Act only requires integrity assessments in High Density Population Areas, and because OPS's definition of such areas only includes an estimated 7% of the total mileage of gas transmission lines, only a small percentage of pipelines will ever be tested. To illustrate, pipeline inspection will not be required under OPS's definition of High Consequence Areas where the Carlsbad, New Mexico pipeline ruptured, killed twelve people and ultimately cost consumers $17.5 million dollars a day. This lack of requirement for assessment amounts to an endorsement of the integrity management technique of finding problems by waiting for leaks and explosions, and seems to promote a policy choice that ambushes consumers and businesses with unexpected costs rather than incorporating the cost of inspected, dependable pipelines into the rate structure.

To make matters worse the Act gives companies up to 10 years to test only seven percent of their pipelines. We hope that you will take a look at this serious flaw in the 2002 Act and move forward in requiring testing of all pipelines.

Another concern in the integrity management section of the 2002 Pipeline Safety Act was the inclusion of the unproven and undefined method of "direct assessment," as an alternative to the well documented assessment methods of internal inspection and pressure testing, We hope that Congress will continue to provide oversight of the development and efficacy of "direct assessment."

Strict liability—The 2002 Act did increase fines for pipeline accidents, but those fines were left to the discretion of the Office of Pipeline Safety. Often times the fine amounts announced by the OPS are never collected or negotiated down significantly. If Congress implemented a strict liability formula for penalties based on the volume spilled, companies would have a greater incentive to avoid spills and neither OPS or the company would have to spend resources arguing over the amount of the fine.

Community Right To Know—Many of the early versions of the 2002 Act included sections to help ensure that local communities and citizens would have easy access to information to allow them to judge for themselves the safety of the pipelines that run through their communities. This information would include things like spill and accident records, integrity management plans, frequency of testing, descriptions of what the testing found, descriptions of what was done about problems found, whether operators had been trained, whether emergency response plans were in place for local communities, etc. Unfortunately, these sections were removed after the 9/11 tragedy for fear of providing terrorists information about the country's pipeline infrastructure. We hope that Congress will now move forward and include such Community Right To Know information into pipeline safety laws, since the above information would be of no use to terrorists, but would be of significant use to communities trying to assess their own safety and shine the light of day on any problems with the overall system of pipeline safety.

Technical Assistance Grants—Section 9 of the 2002 Act provided for technical assistance grants to communities for "engineering and other scientific analysis of pipeline safety issues, including the promotion of public participation in official proceedings conducted under this chapter." Unfortunately to date the OPS has not developed the competitive procedures required to award these grants, and Congress has therefore not provided the appropriations to fund them. We hope that Congress will require the OPS to develop the needed procedures to award these grants by a

date certain, and then provide the funding to allow communities around the country to better understand some of the pipeline problems in their midst.

FURTHER PIPELINE SAFETY ISSUES THAT STILL NEED TO BE ADDRESSED

Integrity Management of Liquid Transmission Lines—Many of the same problems already stated above for natural gas transmission lines also apply to the rules for liquid pipelines. Only those sections of pipelines in High Consequence Areas are required to be assessed, and by some estimates this amounts to less than 10% of the total mileage. According to testimony by the Inspector General of the Department of Transportation given in June, with only 16% of the required mileage tested over 1200 "integrity threats" requiring immediate repair were found. Extrapolating this to the rest of the liquid transmission pipeline mileage indicates that there may be more than 7500 "integrity threats" needing immediate repair. Because of the narrow definition of High Consequence Areas, many of them will not be found in a planned methodical fashion by inspection and repair. Instead, they will be discovered the hard way—by endangering communities with pipeline failures and abruptly depriving downstream communities of their energy supplies. Congress needs to address why there is no urgent requirement to find and remedy these immediate threats as soon as possible.

Gathering Lines and Shut Off Valves—Congress has previously mandated regulations for gathering lines, and shut off valves for oil and gas lines, but so far OPS has not developed these rules.

One Call Systems—Many states provide no penalties for those who do not use the one call system to have pipelines located before they dig in the area of a pipeline. Horror stories abound of near misses caused by contractors and individuals who are willing to take the chance of digging near pipelines without formally locating them due to time constraints or ignorance. One reason that they take this risk is that they know that there is no penalty unless they hit something. We are not aware of any studies on this issue, but there is some anecdotal evidence that states with penalties for digging before you call for a location have fewer near misses and pipeline strikes. A definitive study of whether penalties do deter digging without using the one call system is needed. If the findings indicate an adequate decrease in pipeline damage and near misses in states with such penalties, then OPS should encourage or require such penalties nationwide.

Leak Detection—Many leaks, and even some ruptures, in liquid pipelines go undetected for too long. Leak detection performance standards for liquid transmission pipelines need to be developed to ensure that leaks of a particular size are discovered rapidly.

State Pre-emption—Current pipeline safety law prevents states from regulating and enforcing violations on interstate pipelines even if such regulation would improve public safety and/or environmental protection and would not affect interstate commerce. There are numerous areas of oversight and regulation where states might want to exceed federal requirements to enhance pipeline safety, and would not compromise a company's ability to operate its pipelines smoothly and safely. Congress needs to affirmatively act to allow states to use the unique knowledge they have to protect their citizens.

Financial responsibility requirements for pipeline corporations—Large corporations can shield themselves from liability for poor safety practices through certain strategies, such as holding assets that may generate liability (e.g., pipelines) in subsidiaries or as shares of separate corporations. As part of this strategy, the parent corporation drastically undercapitalizes its subsidiary. In the case of pipelines, this is common. It is not unusual for a pipeline company to be capitalized by virtually 100% debt, lent by the large corporate shareholders. In fact,—a similar strategy was used by the owners of Bellingham's Olympic Pipeline. In a major spill like Bellingham, the undercapitalized pipeline company is forced into bankruptcy when the owners decline to provide further financing. In the usual bankruptcy, the shareholders lose the company assets to the debt holders, but in this case, those are the same entities. Bankruptcy presents no meaningful threat to these shareholders but it does allow pipeline companies to avoid financial consequences for inadequate safety measures. Congress should impose financial responsibility requirements for pipelines as it already does for liquefied natural gas facilities.

Enforcement—The Pipeline Safety Trust and other members of the Bellingham community are very concerned that the OPS has been unwilling to date to collect significant fines for violations of OPS regulations from the tragedies in Bellingham and Carlsbad. OPS often touts large proposed fines, but historically they have collected little if any of the money. The public has no evidence that the increased pen-

alties contained in Section 8 of the 2002 Act are being used by OPS to send a message to pipeline operators that violations are both unacceptable and costly.

The U.S. General Accounting Office (GAO) is expected to release a report on OPS' enforcement record. We hope this report will take a look at the large difference between fines that the OPS proposes versus the actual fines they collect. Preliminary testimony on the GAO report in June seemed to emphasize the difference between assessed fines and collected fines, which for the most part are nearly the same thing. The real mystery lies between the initial proposal of fine amounts and the amount actually collected. Why is this difference so great? Is OPS in error in their initial proposed fines? Are they negotiating fines down because they are understaffed for this task? Are they reducing fines because they fear legal fights with pipeline operators? Or, are they simply not committed to enforcing the law as enacted by this Committee and the Congress. These are the types of questions that we hope the GAO report will address. If it does not, we hope that Congress will ask them to expand their report to do so. We also believe that proposed fines, the company's response to the proposed fines, and information describing how the assessed fine was reached needs to be public throughout the process. OPS currently does not make such information public despite Freedom of Information Act Requests by organizations, like the Pipeline Safety Trust, that share the same mission of pipeline safety.

Current OPS enforcement actions appear to be mostly reactive to pipeline accidents rather than proactively preventing them. The agency needs to adopt a an enforcement strategy that would include fines to companies found to be operating pipelines in ways that could result in serious spills or explosions regardless of whether or not they occur. Only through well publicized and rigorous preventative enforcement will some within the industry begin to spend sufficient money on prevention instead of relying on insurance and bankruptcy to deal with any significant damages caused by a pipeline failure.

Thank you for this opportunity to testify. Please feel free to contact the Pipeline Safety Trust at any time.

Mr. SHIMKUS. Thank you.

Now because of the order of the publication in the hearing paper, we are going to go to Mr. Koonce, Chief Executive Officer, Dominion Energy, from Richmond. Welcome, sir. You are recognized for 5 minutes.

STATEMENT OF PAUL D. KOONCE

Mr. KOONCE. Thank you, sir.

Just a bit about Dominion, Dominion is headquartered in Richmond, Virginia. We are the largest fully integrated energy company in North America. We operate about 25,000 megawatts of electric generation. We produce natural gas and oil from about 6.4 TCF of crude reserves. And we drilled more wells last year in the United States than any E&P company, including the majors.

We serve 5 million regulated retail customers through five distribution companies. And through my segment of Dominion, we operate over 14,000 miles of electric and natural gas transmission facilities. We operate the Nation's largest underground natural gas storage complex. And we also operate the Nation's most active LNG important terminal at Cove Point, Maryland.

In the interest of time, I am not going to read my prepared remarks. Let me just make a couple of observations. One is the Office of Pipeline Safety and the Interstate Natural Gas Association of America have been very busy. I am here today testifying on their behalf.

INGAA represents members that operate over 180,000 miles of interstate natural gas pipeline. We transport 90 percent of the natural gas consumed in the United States. And natural gas represents 25 percent of the primary energy consumed. Linking the

producing basins to the markets I think is of interest to everyone and doing that safely and reliably.

Throughout 2003, working with OPS, INGAA members have been working to draft a pipeline integrity management rule that we think is effective and technically based. This year every pipeline company will have to submit an integrity management plan, but not only that. They will have to begin direct assessments no later than June of this year. So work is already underway to directly inspect the high-consequence pipeline areas where we operate.

Much more will be done than just inspect the high-consequence areas. Because of the most efficient nature of performing the inspection, the end-line devices, which we refer to as smart pigs, have to be introduced into the pipeline system at compressor station locations. Those compressor station locations are 75 to 100 miles apart. So while we may just have 2 or 3 miles of high-consequence area, we will actually inspect 100 miles or more. So many times the miles required will actually be inspected and remediated.

Second, the industry is focused on security, both at the pipelines that we operate and the LNG terminals. Plans have been developed based on guidelines that have been published by DOT as it relates to pipelines and regulations as it relates to LNG facilities.

Field audits are underway. In fact, we are meeting with the Department of Transportation and the Homeland Security Department to review our security and our counter-threat contingencies. DOE is modeling the effect of disruptions to energy infrastructure around the Nation. And our industry is working with them on how we can mitigate those effects.

Finally, the third observation and last that we would like to make is to comment on the administration's proposal to move the Office of Pipeline Safety to the Federal Railroad Administration. We as an industry respect the secretary's desire to organize his agency as he desires. However, we are very concerned about the vital loss of line of sight our industry and this Congress has with OPS.

In fact, INGAA supports the creation of a new pipeline safety administration within DOT as proposed by House Transportation and Infrastructure Chairman Don Young. We think the line of sight that we have with OPS and with this Congress is vital.

Thank you.

[The prepared statement of Paul D. Koonce follows:]

PREPARED STATEMENT OF PAUL D. KOONCE, CHIEF EXECUTIVE OFFICER, DOMINION ENERGY ON BEHALF OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Mr. Chairman and Members of the Subcommittee: Good morning. My name is Paul Koonce and I am Chief Executive Officer of Dominion Energy. I am testifying today on behalf of the Interstate Natural Gas Association of America (INGAA). INGAA represents the interstate and interprovencial natural gas pipeline industry in North America. INGAA's members transport over 90 percent of the natural gas consumed in the U.S., through an 180,000-mile pipeline network.

Dominion, headquartered in Richmond, Virginia, is one of the nation's largest producers of energy. Dominion's portfolio consists of nearly 24,000 megawatts of electric power transmitted over more than 6,000 miles of transmission lines, 6.3 trillion cubic feet equivalent of natural gas reserves, 7,900 miles of natural gas pipeline and the nation's largest natural gas storage system with more than 960 billion cubic feet of storage capacity. Dominion also serves 5 million electric and natural gas retail customers in nine states.

The North American pipeline network provides the indispensable link between natural gas supply and the local distribution companies that serve retail customers. Natural gas represents 25 percent of the primary energy consumed annually in the United States, a contribution second only to petroleum and exceeding that of coal. Consequently, the natural gas pipeline delivery network is a critical part of the nation's infrastructure.

This is why the safe and reliable operation of these pipeline systems is so important. Because the natural gas pipeline network is essentially a "just-in-time" delivery system, with limited storage capability, customers large and small depend on reliable around-the-clock service. And of course, the public wants to know that these pipeline systems crisscrossing the nation and serving their communities are safe. Mr. Chairman, these pipeline systems are safe—the safest mode of transportation in the country—and working together the pipeline industry and the Office of Pipeline Safety are making this valuable network even more safe and secure.

PROGRESS AT THE OFFICE OF PIPELINE SAFETY

Since this Subcommittee last debated the issue of pipeline safety, several years ago, a great deal of progress has been made at the Department of Transportation's Office of Pipeline Safety (OPS). As recently as five years ago, many in Congress and in the public at large were saying that the OPS was an agency of sub-standard performance. The General Accounting Office cited the backlog of unfinished, congressionally mandated rulemakings, the numerous DOT Inspector General recommendations that had not been implemented, and the poor acceptance rate for National Transportation Safety Board (NTSB) recommendations. For years, the OPS had the lowest acceptance rate of any modal office at DOT for NTSB safety recommendations, at about 69 percent. Take a look at what has happened since that time. The OPS now has the second-highest acceptance rate for NTSB safety recommendations, right behind the Highway Safety Administration, at 86 percent. The backlog of unfinished, congressionally mandated rulemakings is virtually gone, and by any measure, OPS has made great strides in improving its effectiveness.

Perhaps the most important accomplishment by the OPS since the passage of the Pipeline Safety Improvement Act of 2002 is the completion of the natural gas pipeline integrity management rule. This rule, required by the 2002 Act, took the better part of 2003 to develop before its final issuance in December. When the Notice of Proposed Rulemaking was released to the public in early 2003, the INGAA membership had a great deal of concern about its focus, its effectiveness, and workability. However, the OPS took our concerns about the proposed rule seriously, and worked with our industry in developing a final rule that remains true to the mandate from Congress, and does so in a way that is technically-based, practical and effective.

INGAA made a commitment to assist OPS in accomplishing these goals in 1999. We have followed through on our commitments to help OPS accomplish their goals. INGAA believes that all of this work on the part of OPS has made the agency a more effective safety regulator. Enforcement has improved. Public education and communications efforts have improved. Audit and inspection activity is more focused and effective. All this should translate into Congress and the public having more faith in the safety and reliability of the natural gas pipeline infrastructure.

WHAT THE PIPELINE INDUSTRY IS DOING TO IMPLEMENT THE NEW INTEGRITY RULE

The pipeline industry has been working hard too. As the nation increases its demand for natural gas, more pipeline capacity is needed to deliver additional supplies to growing markets. Whenever a new pipeline is proposed, or an existing pipeline proposes an expansion, communities and citizen groups raise the issue of safety. These communities and groups often have significant influence in the approval process, and therefore their concerns need to be taken seriously. In order for our industry to meet its objectives for serving a growing natural gas market, we also need to reassure the public that pipelines are a safe mode for energy transportation.

Recent accident statistics are worth examination. For the years 2002 and 2003, there were no fatalities or injuries associated with accidents on interstate natural gas pipelines located in "high consequence areas," or the areas with higher population near a pipeline. There were four accidents during this period that resulted in injuries to one pipeline employee and three pipeline contractors, but these occurred on natural gas pipeline segments located in rural areas; i.e., not high consequence areas. Three incidents did occur on interstate natural gas pipelines in high consequence areas during 2002 and 2003, but these did not result in either a fatality or an injury, and were therefore only reported to OPS because the damage costs (including the cost of natural gas lost) exceeded $50,000.

The new natural gas pipeline integrity rule has been a significant area of focus for the industry. Let me assure the Subcommittee that we are not resting on our existing safety record. Over a dozen consensus standards have been completed, or are near completion, to support this rule, and have been supported by multimillion dollar collaborative research programs.

The Pipeline Safety Improvement Act requires each natural gas pipeline operator to conduct a risk analysis and develop an integrity management plan for pipeline in high consequence areas by December 17th of this year. However, the law also required operators to begin integrity assessments on their pipelines by June 17th of this year. The "highest priority" fifty percent of an operator's high consequence areas (based on the risk analysis) must complete a baseline integrity assessment within five years of enactment (December 17th, 2007), with the remaining fifty percent to be completed within ten years of enactment (December 17th, 2012).

This integrity assessment work is already well underway. INGAA has surveyed its membership to measure the amount of inspection activity taking place. One respondent's answers are illustrative of the larger group. This pipeline has about 5900 miles of transmission pipeline, of which about 200 miles is located in high consequence areas (HCAs). To date, about ten miles of these HCAs have completed a baseline assessment, but as a function of inspecting these ten miles of HCAs, the operator has had to also inspect 250 miles of non-HCA pipe adjacent to those sections.

The reason for these assessments going beyond the HCA requirement is simple. The vast majority of our pipelines are going to be inspected with internal inspection devices, commonly referred to as "smart pigs." Special launcher and receiver facilities have to be constructed to both introduce a smart pig into a pipeline, and remove it at some point downstream. The most practical place (and often, the only place) to construct these launcher/receiver facilities are at compressor stations, which are typically located about 75 to 100 miles apart along a pipeline. The pipeline segment between compressor stations may have a few, discrete miles of HCAs, but in order to inspect the five or six miles of HCA pipe, the entire 75 to 100 mile segment between the stations will be inspected by the smart pig. INGAA estimates that about 6 percent of total natural gas transmission pipeline mileage is actually located in HCAs, but in order to assess the integrity of this 6 percent of pipeline mileage, about 60 to 70 percent of total interstate pipeline mileage will have to be inspected.

Mr. Chairman, I would like to provide the Subcommittee with another example to illustrate my point. One INGAA member company is in the process of modifying a 58-mile section of pipeline so that internal inspection devices can be employed for integrity assessments. Since this pipeline was originally constructed in the mid-1950s, before the advent of smart pigs, it was not engineered to accommodate these devices. The pipeline operator has already identified 14 HCAs along this 58-mile segment, for a total HCA length of 8.74 miles. In order to assess the HCA portions of the pipe, pig launchers and receivers must be installed, and several valves will need to be replaced. The estimated modification costs for this one segment are $5.1 million, and the estimated integrity assessment and repair costs are $640,000. The work on this pipeline segment started last month, and is expected to last five months.

ONE IMPORTANT CONCERN

The scope of the integrity assessment work to be done over the next eight years gives the INGAA membership some pause for concern. This is due to the fact that a significant number of pipeline segments will have to be removed from service in order to prepare for and perform assessments and any resulting repairs. This unprecedented integrity program will almost certainly affect natural gas deliverability and delivered natural gas commodity prices. The effect could be compounded because, coincidentally, the integrity assessments are happening during what will likely be a protracted period of tight natural gas supplies.

In past years, pipelines were able to perform most maintenance and repair activities during the warm months of the year, when natural gas demand was relatively low. During these periods of low seasonal demand, the natural gas pipeline network could more readily handle system downtime. Few, if any, customers were impacted in terms of service disruptions or higher natural gas commodity prices.

In today's natural gas market, however, demand not only peaks during the cold winter months, but also during hot summer months, due to the increased use of natural gas to generate electricity. This means that there are fewer weeks of the year when maintenance and repair can take place without impacting customers in some manner.

In 2002, the INGAA Foundation prepared an economic analysis of these pipeline capacity reductions, and their effects on consumer prices. The report [1] looked at anticipated pipeline inspection scenarios under an integrity management program, based in large part on how long the industry would be given to perform a baseline assessment. For a ten-year baseline period (i.e., the one ultimately adopted by Congress), the report estimated increased consumer natural gas prices of about $1 billion per year for the first ten years. Please note that these costs are not associated with the actual cost of inspections and repair activities, even though these costs will also be significant. Rather, the study looked only at the "costs to consumers due to deliverability constraints" and their effect on the natural gas commodity markets downstream.

One way these unintentional price spikes can be minimized is by allowing for the coordination of inspection and repair activities among various competing pipeline operators. Unfortunately, the task of coordination is a daunting task. Presently the amount of parties involved and anti-trust law currently restrict such coordination. In the absence of such coordination, however, it is possible and even likely that multiple pipelines serving a given market could be down for inspection/repair at the same time, causing significant price increases and even service disruptions for that market. INGAA urges Congress to consider an anti-trust waiver for coordination of pipeline integrity assessment and repair activities.

We also want to join with others in urging the various federal and state agencies involved in permitting pipeline inspection and repair activities to do so on a coordinated and expedited basis. We anticipate that our industry will be required to make significant modifications to our pipeline facilities over the next eight years, in order to accommodate internal inspection devices. The construction of smart pig launchers and receivers, for example, as well as replacing pipeline bends, segments and valves that cannot accept internal inspection devices may require permits from federal and state authorities. The interstate natural gas pipeline members of INGAA are regulated economically by the Federal Energy Regulatory Commission (FERC). The FERC must approve the construction of any new interstate natural gas pipeline, or any major expansion or modification (in excess of a certain dollar amount) of an existing interstate natural gas pipeline. The FERC has also accepted the primary role for the enforcement of the National Environmental Policy Act (NEPA) as it relates to pipeline construction and the resulting effects on the environment. In 2002, the FERC lead an effort to create and sign a Memorandum of Understanding (MOU) between all of the federal agencies associated with any permitting activities for pipelines, such as the Corps of Engineers, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service. This MOU commits the signatory agencies to concurrent review of a pipeline construction application, such that agencies can work together rather than at cross-purposes, thus saving time and effort. We are hopeful that this MOU can also be applied to integrity management-related activities. It should be noted, however, that this MOU does not include participation by state agencies. These state agencies are often the most intransigent in terms of approving permits on a timely basis. Once again, a signal from Congress as to the importance of approving these permits in a timely manner will be critical to the success of the Pipeline Safety Improvement Act of 2002.

THE PROPOSED MERGER OF THE OPS AND THE FEDERAL RAILROAD ADMINISTRATION

Before concluding, INGAA would like to provide some comments to the Subcommittee on the proposed merger of the Office of Pipeline Safety and the Federal Railroad Administration (FRA). The Secretary of Transportation announced his intent to move forward with this idea as part of an overall vision to gather the various research functions at DOT and place them under one authority. OPS is currently a part of the Research and Special Programs Administration (RSPA), which the Secretary envisions would be restructured in order to accept all transportation research-related activities from the various modal administrations. Since the OPS is a regulatory body, it would not fit within the new RSPA, and thus the proposal to move it to FRA.

INGAA does not have a quarrel with the Secretary regarding his vision for transportation research. Our concern is that the OPS would lose its focus and effectiveness if it were to be subsumed into the much larger FRA. As you have already heard, OPS has made great strides in improving its performance over the last five years. Much of that success is related to the fact that it has been able to act quickly and decisively in improving its programs and enforcement activities. It would indeed

[1] "Consumer Effects of the Anticipated Integrity Rule for High Consequence Areas," prepared for the INGAA Foundation by Energy and Environmental Analysis, Inc., February, 2002.

be a shame if, after having worked so hard to gain back its credibility, OPS were to lose it once again by getting lost in a large and unfamiliar bureaucracy.

Rather than merging with the FRA, INGAA supports the creation of a new Pipeline Safety Administration at DOT. House Transportation and Infrastructure Chairman Don Young introduced legislation (H.R. 4277) last month to create a separate pipeline safety entity at DOT, and we strongly support his efforts.

SECURITY ISSUES

I also want to briefly mention pipeline security matters. Because natural gas pipelines are a part of the nation's critical infrastructure, INGAA and its members have been working with numerous federal and state agencies in developing heightened security procedures. The Department of Homeland Security is now verifying these procedures through audits. A key part of this exercise is contingency planning for response and recovery should an incident occur. Along with the Department of Energy, we are modeling the effect and response to possible attacks/outages on key pipeline systems. We also are encouraging participation by the operators of other parts of the infrastructure so that we can appreciate better the interdependencies within our national infrastructure and plan for how best to restore service in the event of an emergency.

CONCLUSION

Let me thank you once again, Mr. Chairman, for allowing me to testify today. Safety is of paramount importance to our industry, and we believe that it is our obligation to work with Congress and the OPS to maintain and improve the safe, reliable operation of our pipelines in the years ahead. I would be happy to answer any questions you or the Subcommittee members might have.

Mr. SHIMKUS. Thank you. And now I would like to recognize Mr. Robert Kipp, Executive Director of Common Ground Alliance from Alexandria, Virginia. Welcome. You are recognized for 5 minutes.

STATEMENT OF ROBERT KIPP

Mr. KIPP. Mr. Chairman, members of the committee, my name is Bob Kipp. I am the Executive Director of the CGA, an alliance of 15 stakeholder groups created on September 19, 2000, Common Ground Alliance, a nonprofit organization dedicated to shared responsibility in damage prevention of underground facilities.

In my comments today, I would like to focus on four key areas. First is NTSB recommendations to RSPA and the Office of Pipeline Safety. The CGA comprises members from 15 stakeholder groups. They are gas, oil, road builders, excavators, one-call systems, locators, engineers, regulators, insurance, electric, telcom, fencing contractors, equipment manufacturers, railroad, and public works.

When the CGA makes a recommendation to the Office of Pipeline Safety, or any other government or private body, all 15 stakeholder groups have unanimously agreed to the wording in those recommendations. We believe this to be a very powerful statement.

Our recommendations are not those of any one industry but those of a group of industries with the belief that damage to our infrastructure is a shared responsibility.

In the past 3 years, we have undertaken the review of nine NTSB recommendations to RSPA and OPS, six dating back to 1997. We have resolved eight of these nine to the complete satisfaction of RSPA and the NTSB, and expect to close the last recommendation in the next year or so.

Our more than 1,100 members, of whom some 300 are currently working on 6 committees and numerous subcommittees, volunteer their time and their traveling expenses to work through the issues and recommendations.

The second issue is regional CGAs. Like many other programs, much of the success and payoff is derived from the buy-in at local levels. Since last meeting with you in 2002, we succeeded in partnering with 22 regional CGAs covering most or all of 19 different States. Representatives from these 22 regional CGAs meet 3 times a year to discuss issues, problems, initiatives, and solutions to problems.

The third item is damaging information reporting tool, known as DIRT. CGA has worked with the Utility Notification Center of Colorado to develop a data-gathering system to provide statistical analysis of damages and the root cause of damage to our underground infrastructure. As a result of State law, the UNCC has been gathering data on all damages to the infrastructure in the State of Colorado since 2001 and publishing these results on an annual basis.

Our data committee has worked with the UNCC to enhance the system and make it easy to use. And the committee is now in the process of trialing the system with over 30 CGA corporate members from the State of Connecticut. We would like to thank Linda Kelly, the Utilities Commissioner of Connecticut, for providing Connecticut's State damage information to our system.

The National Association of State Fire Marshals is working with us to encourage States to collect damage data and have this damage data uploaded to the DIRT system. Did you know that in 2002, there were 12,000 damages to underground facilities in Colorado; 39 percent of the damages were caused by people who did not call before digging; nearly 60 percent of these damages were to communications facilities, and 27 percent to gas lines; in those instances where people did call before digging, incorrect locating accounted for more than 20 percent of the damages, and that excavation damage where locates were correct accounted for more than 50 percent of the damages; in 15 percent of all damages, landscaping was a primary function being performed at the time the damage occurred? Colorado's tremendous statistics do enable them to address problem areas.

The point here is not to point fingers at any one group. The stakeholders in Colorado have damage data to enable them to address their issues. Most other States aren't as fortunate and don't have the data to enable them to identify problem areas.

A number of State regulators are currently considering damage data within their jurisdictions. We hope that those States consider adopting some of the practices in Colorado, Connecticut, and other States and consider utilizing the CGA system in order to have one uniform actionable National data base. The CGA is hopeful that the system will be used by all stakeholders on a Nationwide basis in order to help enable all of us to develop plans to reduce the approximately 400,000 damages Nationwide.

Last point, three-digit dialing. Your committee is amazing. I met with you March 19, 2002 and asked that you consider the implementation of a 3-digit number for access to our Nation's 62 one-call centers. Some 9 months later, on December 17, 2002, President George Bush signed into law the Pipeline Safety Improvement Act.

Included in this act were the words, "Within 1 year after the date of enactment of this act, the Secretary of Transportation shall,

in conjunction with the Federal Communications Commission, facility operators, excavators, and one-call notification system operators, provide for the establishment of a three-digit Nationwide toll-free number system to be used by State one-call notification systems."

We support the implementation of any three-digit number deemed appropriate by the FCC. We also support the continued use of #344 in the wireless community. We cannot support the use of a shared dual-use three-digit number.

The CGA estimates that the 62 one-call center currently receives 15 million calls annually. We also estimate that 40 percent of the damages to bird facilities were caused by those who did not call before digging. The potential incoming call volume to one-call centers over the next few years could well exceed 20 million. Adding an additional interface to callers could discourage the use of the service and reduce the effectiveness and purpose of the 62 centers.

On the last point, on the 10-digit number being proposed by some people who opposed the 3-digit number, it just simply won't work. Our call centers have 10-digit numbers today and see no advantage to changing from one 10-digit number to another one.

Having been in the telecom industry, I know the advantage of an easy-to-remember three-digit number. That is why telecom uses 411 for directory assistance and 611 for repair. It is the CGA's hope that a one-call center three-digit number will reduce the need for people to call 611 by assisting in reducing the estimated annual 200,000-plus damages to communications facilities in the country.

Our letter to the FCC goes on to say the stakeholder groups represented by the CGA believe that the rapid implementation of this new three-digit number will help reduce facilities and injuries to Americans who excavate and also help reduce the estimated 400,000 damages to our infrastructure each year.

Last, damage prevention is truly a shared responsibility. No one industry should be singled out in general discussion of incidences. The CGA believes that stakeholders working together at both the National and regional levels will make a difference.

Thank you for the opportunity to testify today.

[The prepared statement of Robert Kipp follows:]

PREPARED STATEMENT OF ROBERT KIPP, EXECUTIVE DIRECTOR, COMMON GROUND ALLIANCE

Good afternoon, Mr. Chairman and members of the Committee. My name is Robert Kipp and I am the Executive Director of the Common Ground Alliance (CGA). I am pleased to appear before you today to represent the CGA.

Background: The Common Ground Alliance is a nonprofit organization dedicated to shared responsibility in the damage prevention of underground facilities. The Common Ground Alliance was created just over three years ago at the completion of the "Common Ground Study of One-Call Systems and Damage Prevention Best Practices." This landmark study, sponsored by the U.S. Department of Transportation Office of Pipeline Safety, was completed in 1999 by 161 experts from the damage prevention stakeholder community.

The "Common Ground Study" began with a public meeting in Arlington, VA in August 1998. The study was prepared in accordance with, and at the direction and authorization of the Transport Equity Act for the 21st Century signed into law June 9, 1998 that authorized the Department of Transportation to undertake a study of damage prevention practices associated with existing one-call notification systems. Participants in the study represented the following stakeholder groups: oil; gas; telecommunications; railroads; utilities; cable TV; one-call systems and centers; excavation; locators; equipment manufacturers; design engineers; regulators; federal,

state, and local government. The Common Ground Study concluded on June 30, 1999 with the publication of the "Common Ground Study of One-Call Systems and Damage Prevention Best Practices."

At the conclusion of the study, the Damage Prevention Path Forward initiative led to the development of the nonprofit organization now recognized as the Common Ground Alliance (CGA). The CGA's first Board of Directors' meeting was held September 19, 2000. Building on the spirit of shared responsibility resulting from the Common Ground Study, the purpose of the CGA is to ensure public safety, environmental protection, and the integrity of services by promoting effective damage prevention practices. The CGA works to prevent damage to the underground infrastructure by:

- fostering a sense of shared responsibility for the protection of underground facilities;
- supporting research;
- developing and conducting public awareness and education programs;
- identifying and disseminating the stakeholder best practices such as those embodied in the Common Ground Study; and
- serving as a clearinghouse for damage data collection, analysis and dissemination.

The CGA now counts more than 1,150 individuals representing 15 stakeholder groups and over 130 member organizations. Each of the 15 stakeholder groups has one seat on the CGA Board of Directors, regardless of membership representation or financial participation. CGA members populate the organization's six working committees: Best Practices, Research & Development, Educational Programs, Data Reporting & Evaluation, Marketing, Membership, & Communications and the One Call Center Education Committee.

In addition to increasing our membership by some 60% since last meeting with you, we have added a board seat to represent the American Fence Association and its members. The association estimates that fencing contractors dig some 120,000,000 holes per year and are excited to be represented within the CGA to ensure they too can help contribute to the damage prevention initiatives of the CGA.

In December of 2003, the CGA welcomed the One Call Systems International group and their members to the CGA in the capacity of an education committee. The One Call Center organization was instrumental in the development of our Best Practices, active throughout the association, and the front line in damage prevention initiatives. The inclusion of this group in the CGA was an inevitable and a welcome addition to our association.

WORKING COMMITTEES

The CGA working committee guidelines include:

- All stakeholders are welcomed and encouraged to participate in the Committees' work efforts.
- Committee members represent the knowledge, concerns and interests of their constituents.
- A "primary" member is identified within each Committee for each particular stakeholder group as the spokesperson for consensus decisions.

A. Best Practices Committee

To promote damage prevention, it is important that all stakeholders implement the damage prevention Best Practices currently identified in the Common Ground Study Report, as applicable to each stakeholder group. The Best Practices Committee focuses on identifying those Best Practices that are appropriate for each stakeholder group, gauging current levels of implementation and use of those Best Practices, and encouraging and promoting increased implementation of the Best Practices.

B. Research and Development Committee

The Research & Development Committee's primary role is to promote damage prevention research and development and serve as a clearing house for gathering and disseminating information on new damage prevention technologies and practices. The Research and Development Committee seeks to identify new technologies and existing technologies that can be adapted to damage prevention.

C. Educational Programs Committee

The Educational Programs Committee develops and communicates public stakeholder awareness and educational programs. These programs and products focus on the best practices and the theme of damage prevention. The Committee looks at existing damage prevention education programs to identify opportunities where the

CGA can have significant impact in furthering the reach and effectiveness of those programs, and the Committee develops new educational messages and items.

D. Data Reporting and Evaluation Committee

The Data Reporting & Evaluation Committee looks at currently available damage data, the gaps where additional data reporting and evaluation is needed, and how such data for various underground infrastructure components can best be gathered and published. Reporting and evaluation of damage data is important to: measure effectiveness of damage prevention groups; develop programs and actions that can effectively address root causes of damages; assess the risks and benefits of different damage prevention practices being implemented by various stakeholders; and assess the need for and benefits of education and training programs.

E. Marketing, Membership, & Communication Committee

The CGA Marketing, Membership, & Communications Committee (MM&C) pursues opportunities where it can best promote the organization to increase sponsorship and membership. The Committee is also dedicated to the adoption of the Best Practices and promotion of damage prevention at the local level, and the committee has developed the CGA's Regional Partner Program to further this effort.

F. One Call Center Education Committee

The purpose of One-Call Systems International (OCSI) is to promote facility damage prevention and infrastructure protection through education, guidance and assistance to one call centers internationally.

ACTIVITIES

A. NTSB RECOMMENDATIONS

In July of 2001, the Office of Pipeline safety requested CGA's assistance in resolving and responding to a number of outstanding National Transportation Safety Board recommendations. In the past 3 years the CGA contributed to the closing of 8 of 9 NTSB recommendations. The ninth recommendation was directed to the CGA in 2003 and is currently in committee. The 8 recommendations deemed "Closed—Acceptable" by the NTSB are as follows;

NTSB Recommendation P-00-01

- Resulting from the NTSB report, "*Natural Gas Pipeline Rupture and Subsequent Explosion, St. Cloud, Minnesota, December 11, 1998*"—a review of safety recommendations regarding the use of E-911 when excavation damage occurs for inclusion to CGA Best Practices. As a result of this report, the Office of Pipeline Safety requested that the CGA review the existing Best Practice and determine if the NTSB recommendation P-00-1 should be included as a "New Best Practice."
- The recommendation from the NTSB report read: "To advise excavators to call "911" if the damage to the pipeline results in a release of gas or other hazardous substance or potentially endangers life, health or property."
- Prior to the Recommendation the Best Practice on this issue left it to the excavator to determine if the release of gas or hazardous substance posed a danger, and if so, to determine if 911 should be called.

  The CGA Best Practices Committee reviewed the recommendation and unanimously approved a change to the Best Practice to reflect the following:

  Practice Statement (Best Practices Committee Approved by Consensus 11/27/01)

  "If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the excavator responsible immediately notifies 911 and the facility owner/operator."
- Following additional language approved by Board on September 27, 2002 (TR 2001—2B):

  "The excavator takes reasonable measures to protect themselves and those in immediate danger, general public, property, and the environment until the facility owner/operator or emergency responders have arrived and completed their assessment."

NTSB Recommendation P-01-01

Following a natural gas explosion in South Riding, Virginia (Loudoun County), which resulted in one death, a number of injuries, and damage to a number of homes, the NTSB recommended that a Best Practice be developed regarding minimum separation of electric and plastic gas pipes in common trenches.

- Following wording approved as a CGA Best Practice by Board on September 25, 2003:
  "When installing new direct buried supply facilities in a common trench, a minimum of 12 inch radial separation should be maintained between supply facilities such as steam lines, plastic gas lines, other fuel lines, and direct buried electrical supply lines. If 12 inches separation cannot be feasibly attained at the time of installation, then mitigating measures should be taken to protect lines against damage that might result from proximity to other structures. Examples may include the use of insulators, casing, shields or spacers. If there is a conflict among any of the applicable regulations or standards regarding minimum separation, the most stringent should be applied."

NTSB Recommendation P-97-16,17 & 18

- P-97-16: Sponsor independent testing of locator equipment performance under a variety of field conditions.
- P-97-17: Develop uniform certification criteria for locator equipment.
- P-97-18: Review State requirements for location accuracy and hand dig tolerance zones and applicability.

The Research and Development Committee of the CGA addressed the above recommendations in 2 reports filed with the Office of Pipeline Safety in 2003. These reports were subsequently forwarded to the NTSB. The 3 recommendations were closed-acceptable by the NTSB.

NTSB Recommendation P-97-22, 23 & 24

- P-97-22: In conjunction with the American Public Works Association (APWA), develop a plan for collecting excavation damage exposure data.
- P-97-23: Work with the one-call systems to implement the plan outlined in P-97-22 to ensure that excavation damage data are being consistently collected.
- P-97-24: Use the excavation damage exposure data outlined in P-97-22 in the periodic assessments of the effectiveness of State excavation damage prevention programs described in Recommendation P-97-15.

The CGA has worked with the Utility Notification Center of Colorado to develop a Data gathering system to provide statistical analysis of damages and the root causes of damage to our underground infrastructure.

As a result of State Law, the UNCC has been gathering data on all damages to the underground infrastructure in the State of Colorado since 2001, and publishing these results on an annual basis. Our Data committee has worked with the UNCC to enhance the system and make it easy to use, and the committee is now in the process of trialing the system with over 30 CGA corporate members.

NTSB Recommendation P-98-25

- P-98-25: Require pipeline system operators to precisely locate and place permanent markers at sites where their gas and hazardous liquid pipelines cross navigable waterways.

The recommendation, received by the CGA in 2003 is in committee and resolution is expected within the year.

B. BEST PRACTICES

During the past two years the Best Practices Committee has reviewed over thirty practice proposals, developed and approved three new practices, and finalized an updated publication of the best practices.

- The committee receives new practice proposals from CGA members and industry representatives throughout the year. The committee is dedicated to following a process for review and approval of these practices that meet the "consensus" standards set by the CGA to ensure agreement by all stakeholder groups.
- The committee approved a practice in 2004 relating to the separation of gas and electric utilities that assisted with the closure of NTSB recommendation P-01-01. The closure of P-01-01 followed the committee's assistance with the 2001 closure of P-00-01. The committee also approved a practice relating to quality assurance programs for locating and marking of facilities.
- The latest version of the practices, Best Practices Version 1.0, was published in December 2003 and has been distributed at over 100 industry events and has reached well over 10,000 stakeholders.

New Practices (Reference):

Approved by CGA Board—March 26, 2004

- Practice Statement: *Underground facility owners/operators have a Quality Assurance program in place for monitoring the locating and marking of facilities.*
- Practice Description: *The process of conducting audits for locates is a critical component to the protection of underground facilities. The recommended components included in the description were assembled from multiple sources and are meant to provide general guidelines for auditing the work of locators.*

Approved by CGA Board—September 26, 2004

- Practice Statement: When installing new direct buried supply facilities in a common trench, a minimum of 12 inch radial separation should be maintained between supply facilities such as steam lines, plastic gas lines, other fuel lines, and direct buried electrical supply lines. If 12 inches separation cannot be feasibly attained at the time of installation, then mitigating measures should be taken to protect lines against damage that might result from proximity to other structures. Examples may include the use of insulators, casing, shields or spacers. If there is a conflict among any of the applicable regulations or standards regarding minimum separation, the most stringent should be applied.

C. EDUCATIONAL PROGRAMS

The Educational Programs Committee develops and communicates public stakeholder awareness and educational programs. These programs and products focus on the best practices and the theme of damage prevention. The Committee looks at existing damage prevention education programs to identify opportunities where the CGA can have significant impact in furthering the reach and effectiveness of those programs, and the Committee develops new educational messages and items.

The CGA directed an OPS sponsored survey, which determined awareness levels of various population segments with respect to underground facilities. With the findings in hand, the CGA embarked on an educational campaign targeting the agricultural community. With funding from OPS in the form of a cooperative agreement, the CGA developed a radio and print campaign targeted to this community. Materials developed for this campaign, (radio public service announcements and print media), have been made available to our members and are being utilized by some of these members in their educational campaigns.

Our Educational Programs Committee has developed the outline of the substantial awareness campaign in anticipation of the announcement of a 3-Digit number for One Call Centers. The CGA has also published "Best Practices Version 1.0" for distribution to all CGA members and regional partners in 2003. As of July 14, 2004, more than 10,000 copies have been distributed. Version 2.0 which will include best practices developed in 2004 is scheduled for print and distribution later this year.

D. DAMAGE INFORMATION REPORTING TOOL

Though addressed earlier in the CGA has worked with the Utility Notification Center of Colorado to develop a Data gathering system to provide statistical analysis of damages and the root causes of damage to our underground infrastructure. As a result of State Law, the UNCC have been gathering data on all damages to the underground infrastructure in the State of Colorado since 2001, and publishing these results on an annual basis. Our Data committee has worked with the UNCC to enhance the system, make it easy to use, and is now in the process of trialing the system with some 30 CGA corporate members.

The CGA is hopeful that this system will be used by all stakeholders on a nationwide basis, in order to help the industry gather the statistical data that will enable us to develop plans to help us reduce the approximately 400,000 damages nationwide.

Many companies are reluctant to utilize the system or upload their data into the CGA Damage Information Reporting Tool (D.I.R.T.). Some of the concerns expressed by those who would utilize this system revolve around the information being used in litigation against those who provide the data, being used by competitors should the security of the data be compromised.

A number of state regulators are currently considering gathering damage data within their jurisdictions. We hope that those states considering adopting some of the practices in Colorado, Connecticut and other states, consider utilizing the CGA system in order to have one uniform, actionable national database.

E. REGIONAL PARTNERS

In 2002, it was proposed that the CGA accept petitions from regional groups as "partners" to the CGA. With assistance from OPS, the CGA Regional Partner Program was implemented in 2002 and has since grown to 22 partners. The first annual Regional Partner meeting was held December 3, 2003, bringing representatives of all CGA regional partner programs together to develop a program roadmap.

The Regional CGA's include: Alberta Utility Coordinating Council; Blue Stakes of Utah; Central Texas DPC; Denver Metropolitan; El Paso County (Colorado); Georgia Utilities Coordinating Council; Greater Columbus DPC; Greater Toledo DPC; Greater Youngstown DPC; Miami Valley DPC (Ohio); Michigan Damage Prevention Board; Minnesota Utility Alliance; Missouri Common Ground; Northeast Illinois DPC; Northwest Region CGA; Oklahoma CGA; Ontario Region CGA; Quebec Regional CGA; Tennessee DPC; Utilities Council of Northern Ohio; Western Region CGA; and Wisconsin Underground Contractors Association.

F. 3-DIGIT-DIALING

On December 17, 2002, President George W. Bush signed into law the "Pipeline Safety Improvement act of 2002." Included in this Act was the following provision:

"*Within 1 year after the date of the enactment of this Act, the Secretary of Transportation shall, in conjunction with the Federal Communications Commission, facility operators, excavators, and one-call notification system operators, provide for the establishment of a 3-digit nationwide toll-free telephone number system to be used by State one-call notification systems.*"

Subsequent to the Act, the F.C.C. began looking into the logistics of implementing this provision. Following a number of technical meetings of telecom personnel, public hearings, and no doubt, internal meetings on the matter, the F.C.C. addressed this issue at a public meeting on May 13, 2004. A Notice of Proposed Rulemaking followed shortly thereafter, with publication in the June 8, 2004 Federal Register. On all matters related to this issue, the F.C.C. requested responses by July 8, 2004, and replies to these by July 23, 2004. I am certain that the F.C.C. will move expeditiously to determine which 3 digit number to implement, and determine an aggressive timeline for its implementation.

Following is the text contained in the CGA response to the F.C.C.

We would like to congratulate the Commission on their willingness and desire to move expeditiously towards assigning and implementing a nationwide 3 digit number for access to our nation's 62 One Call centers.

In addition to being in the best interest of our nation, implementing a nationwide 3 digit telephone number is required by the Public Law 107-355, the Pipeline Safety Improvement Act of 2002. This act was signed into law by President Bush on December 17, 2002.

As previously stated in our letter dated November 4, 2003, the Common Ground Alliance (CGA) and the 15 stakeholder groups represented by the CGA will support the implementation of any 3 digit number deemed appropriate by the FCC.

We also support the continued use of "#344" in the wireless community, in addition to the 3 digit number chosen by the FCC. We believe this number should be available as an alternative to the new 3 digit number for as long as the wireless community chooses to support this number. The wireless community deserves to be recognized and congratulated for their leadership in the movement to provide abbreviated dialing to their users in order to reduce damages to underground infrastructure, personal injuries, and deaths.

We can not support the use of a shared (dual use), 3 digit number. The CGA estimates that the 62 One Call centers currently receive 15,000,000 calls annually. We also estimate that some 40% of damages to buried utilities were caused by those who did not call before digging. The potential incoming call volume to One Call centers over the next few years could well exceed 20 million. Adding an additional interface to callers could discourage the use of the service and reduce the effectiveness and purpose of the 62 centers.

We also can not support the use of a 10 digit number. One Call centers currently have 10 digit numbers. Converting to a new number would not benefit the country and would be rejected by most, if not all of the centers. Public Law (PL) 107-355 clearly mandated a 3 digit number be implemented.

Paragraph 16 of the Federal Register states in part that "When a caller dials the abbreviated dialing code, the carriers would translate the abbreviated dialing code into the appropriate toll-free or local number." This is an important aspect of the process. In locations such as Arizona, the One Call center (Arizona Blue Stake) receives nearly 50% of its calls through the local 7 digit number. To

translate all of the 3 digit calls to a toll free 10 digit number would add an unnecessary cost burden to this center.

We congratulate and thank the Honorable Chris John for introducing and sponsoring 3digit dialing as a provision to the "Pipeline Safety Improvement Act of 2002." We congratulate the commissioners on their unanimous support of this endeavor. In his statement Commissioner Michael J. Copps states:

"The very first sentence of the Communications Act states that the Act was written to make "available . . . a rapid, efficient, Nation-wide and world-wide telecommunications service . . . for the purpose of promoting safety of life and property through the use of wire and radio communication." So our charge and authority are clear. Now the need is to move ahead expeditiously—to ensure that excavators everywhere can dig safely and avoid disrupting the nation's essential services."

The 15 stakeholder groups represented by the CGA believe that the rapid implementation of this new 3 digit number will help reduce fatalities and injuries to Americans who excavate and also help reduce the estimated 400,000 damages to our infrastructure each year.

CLOSING

When preparing for this testimony, I reviewed the Closing remarks in the March 19, 2002 testimony. Other than changing one name the comments remain the same. The Common Ground Alliance is a true member-driven organization. Members from the 15 stakeholder groups work together to determine direction and problem-solve, making the CGA a truly unique forum. We would not exist without the immense dedication and effort of our members as well as the financial and logistical support of Mr. Sam Bonasso (RSPA) and Ms. Stacey Gerard (OPS).

Our greatest strengths can be summarized as follows:

When the CGA proposes a policy, solution or response to a government or corporate body, the wording of such a proposal has been agreed to by primary members representing every stakeholder group within the CGA. The receiving body of a CGA proposal knows that no one industry has a vested interest, and that all stakeholder groups agree with the content and wording of such a proposal.

In addition, the CGA has brought together industry leaders on a National basis to work together and help fund the Alliance in its effort to reduce damage to our nation's underground infrastructure.

Lastly, in addition to all of the wonderful accomplishments in education, best practice development, data gathering, and research and development, the CGA is now reaching for and succeeding in bringing together stakeholders at a local level. We believe it to be successful, and we must continue to encourage and promote communication, problem resolution, and the adoption of the Best Practices within local communities as well as on a national level.

Mr. HALL. Thank you.

I guess the questioning period will start now. How much time am I allowed? I will take 5 minutes. I will recognize myself for 5 minutes.

Mr. Fischer, where is home for you?

Mr. FISCHER. Dallas, Texas.

Mr. HALL. Not from up in Cook County and that area?

Mr. FISCHER. No. I've lived in Dallas about 5 years now.

Mr. HALL. Your testimony states, "When measured by total installed miles per pipeline category using DOT statistics over the last 10 years, it is clear that gas distribution systems have fewer fatalities and injuries per mile than all of the other pipeline categories combined."

The inspector general's testimony states, "Over the last 10 years, natural gas distribution pipelines have experienced over 4 times the number of fatalities and more than 3 and a half times the number of injuries than the combined total of 43 fatalities and 178 injuries for hazardous liquid and natural gas transportation pipelines."

How do you reconcile the two statements?

Mr. FISCHER. Having not had access to the latter, I am going on the statistics gathered by the American Gas Association on distribution systems, sir.

Mr. HALL. You don't know what they relied on in their testimony?

Mr. FISCHER. No, I don't, but I would be glad to submit that.

Mr. HALL. Okay. If you can, that would be fine. Let me ask you further. Your testimony notes that over 60 percent of the total ruptures on pipelines is caused by third party damage.

Mr. FISCHER. Yes, sir.

Mr. HALL. Who causes the other 40 percent?

Mr. FISCHER. I guess it is a multi combination of things, Mr. Chairman. Again, we have relied heavily on the third call party system to get this number of accidents down, but they are probably mostly corrosion, I would have to think. External corrosion-type leaks that have been undetected would make up a majority of that.

Mr. HALL. I thank you.

Mr. Pearl, in your testimony when discussing the pipeline repair permit streamlining, you stated, and I quote, "The purpose of section 16 is to ensure timely actions required by one Federal agency, OPS, in the name of pipeline safety are not blocked by one or more other Federal agencies that do not have pipeline safety as a priority." But the purpose of that was to ensure timely action in the name of pipeline safety, that they're not blocked by one or more.

Do you know why the other agencies would either block or delay actions on permits necessary for pipeline repairs?

Mr. PEARL. Well, I don't think various agencies or stakeholders are blocking permits to cause more accidents. It's just they get hung up in their own parochial areas. The net effect is for delays.

Mr. HALL. And as such, they block or delay action on permits?

Mr. PEARL. Yes. And that's the end result of that. I think we provided in our testimony several cases where companies were not able to comply with the time lines required by OPS because of permitting delays.

Mr. HALL. I might have missed that. Are you aware of any specific examples? I thought you said you noted some in your testimony. I don't remember seeing that, but it could surely be in there.

Mr. PEARL. These weren't spills. These were permit or repair delays caused by the inability to get permits. Fortunately, there hasn't been a major incident where a spill has directly been related to delayed permitting.

However, I think the oft noted Kinder Morgan incident in San Francisco, there they were doing more than just repairing the pipeline. They were rerouting it. But the 3-year delay, had there been more timely permitting, that spill clearly would not have occurred because you had new pipe in in a less sensitive area.

Mr. HALL. Can you give me specific examples of where timely actions were required by a Federal agency and they were blocked by other Federal agencies?

Mr. PEARL. Yes. As I mentioned, we filed eight of those in my written testimony. I can refer to those if you would like.

Mr. HALL. No. Just tell me where they are, and I will look for them.

Mr. PEARL. Well, I am aware of at least one in California.

Mr. HALL. No. I mean in your testimony, what pages?

Mr. PEARL. I think it is filed as a supplement.

Mr. HALL. Okay. Well, that is the reason.

Mr. PEARL. Yes. There are several. There is one in the Delaware River. There is one in California. There are eight in total that we filed.

Mr. HALL. Do you know of any examples in which a pipeline repair was held up waiting for permits and a release occurred?

Mr. PEARL. No. I would say the one that would be the most related to that would be the Kinder Morgan case, where it was more than just permitting they were doing.

Mr. HALL. All right. I thank you. My time has expired. I recognize Mr. Boucher, the gentleman from Virginia.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. And I want to join with you in thanking each of these witnesses for sharing their views with us on what I think is a very timely subject.

Mr. Fischer, I would like to pose a question to you. You might pull that microphone over in front of you. We can hear you better when you do that. Thank you.

You heard the Inspector General Mr. Mead testify on the previous panel that in his view, the integrity management plans that now apply to transmission lines should also apply to natural gas distribution lines. And I know that the foundation associated with the American Gas Association is examining that question.

Mr. FISCHER. Right, sir.

Mr. BOUCHER. My understanding is the foundation will release a report on its conclusions sometime later this year.

Mr. FISCHER. That's correct, sir.

Mr. BOUCHER. Would you care to preview some of the considerations the foundation has undertaken and perhaps give us a sense of what its conclusions may be on that subject?

Mr. FISCHER. I really don't have a sense of conclusion because I think the debate is going on, even among the organizations that are participating, to arrive at a good consensus on that.

I did think the Inspector General was certainly correct in saying that yes, we need to turn now and look at distribution lines certainly, but to impose the same system on—and I'm trying to capture some of the consensus of the debate that is going on—to impose those regulations on distribution lines when it is an entirely different type of system, not long cross-country lines, a network, a web, a tie-in, something that smart pigging cannot go in is almost an impossible situation in our end of the business.

However, we do not want to give out any sense of an image of not wanting good integrity on our pipelines. We are very much engaged, if you will, through State jurisdictions now, routine inspections, priority grading systems, mandated inspections from State regulators. And what we would like to see is a collaborative process among all of these organizations to find out what does work in distribution systems.

I would very much encourage some of the things that you named while you were addressing the first panel that really would be probably instrumental in bringing some of these accident situations down. That is supporting a one-call system to continue our operator

qualification requirements that come under pipeline integrity management but to look now at the next phase of education of those operators.

So there are many things we can do. It's just to superimpose one upon the other probably would not be the solution.

Mr. BOUCHER. Well, let me make a suggestion. I appreciate that answer. And I understand your reluctance today to prejudge what your foundation's report is going to say, but let me make a recommendation.

I think it would be in your industry's interest to come forward with an affirmative recommendation for the application of integrity management plans to distribution lines bearing in mind that a different kind of integrity management plan would be required for distribution lines than are required for transmission lines.

Mr. FISCHER. Yes, sir.

Mr. BOUCHER. Your diameters are thinner. There are more curves, I am sure, than distribution lines than there are in transmission lines. The physical characteristics of these lines would necessitate a different set of integrity management plans and perhaps the use of different technologies in order to do sensing of the line itself.

I tried to ask Mr. Mead if he had some suggestions for what the elements of integrity management plans might be for distribution lines, as distinct from transmission lines, and he offered a few, including pressure sensing and other kinds of observation.

I think in order to move the subject forward, it would be extremely helpful if your foundation's report when it is issued later this year lists some of the things that it would be appropriate to include in integrity management plans as applied to distribution lines. And I very much look forward to seeing that report.

I know Mr. Mead has recommended that the Office of Pipeline Safety provide a formal response to the Congress by March of next year. I hope the office will do that. Perhaps, Mr. Chairman, at the appropriate time next year, we could have another hearing that addresses the recommendations of your foundation, the response of the Office of Pipeline Safety, and the views of other witnesses concerning that matter. And I want to thank you Mr. Fischer for your answer.

In the couple of seconds that I have—did you want to say something?

Mr. FISCHER. No, no. Just I think that is right on target. And I hope we do get the invitation to come back as we wrap that up. And we can add specificity to it. Thank you.

Mr. BOUCHER. Thank you.

In the brief time I have remaining, which is now 1 second, I would like to ask Mr. Koonce if Dominion is planning to build on the success that your company has enjoyed in operating your Cove Point liquified natural gas importation facility by examining the possibility of building additional LNG facilities in other locations.

Mr. KOONCE. We are looking at the opportunity of additional LNG import facilities throughout the Eastern seaboard, where we operate. But, really, our first mission has been to bring the facility, which was mothballed for in excess of 30 years, back to commercial operation. We did that last August.

We recently announced an expansion of the Cove Point facility doubling in size, our partner in that being the State Oil Company in Norway. So we are most right now immediately focused on doing the environmental work, the pre-site work to bring that additional supply into the region in a timely fashion.

Now, looking at other opportunities up and down the Eastern seaboard, we believe there are a couple of other opportunities where expansion may go forward. Whether there is Dominion directly participating in that expansion or other members of the industry I think the business case will vet that out.

Mr. BOUCHER. Thank you very much, Mr. Koonce. Thank you, Mr. Chairman.

Mr. HALL. Thank you, Mr. Boucher.

The Chair recognizes the gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

This is a good hearing. I always like to wrap it around the whole energy debate and comprehensive energy plan because when we piecemeal things, we see the trees and we are not seeing the forest.

The reality is, as we said in the refinery discussions of last week, I mentioned that a company was just ecstatic that they wanted to pipe Western heavy Canadian crude from western Canada all the way down to the Gulf Coast, to crack it there because of our inability to build refineries in this country shows the importance of pipelines.

Another company talked to me about in the debate on the LNG they're excited about building an LNG facility I think in the Bahamas in which they will because of the inability to cite LNG facilities in the United States. And then they will pipe the natural gas to Florida. Again highlighting the importance of pipelines today and pipelines in the future, if we don't build refineries, if we don't place LNG facilities, pipelines are only going to take an ever-increasing role. So this is important to discuss.

My father-in-law was a microwave technician to help build the Alaskan pipeline. So he was in the telecommunications era. That is really past its operational design—I wouldn't want to say past its use, but they projected 25 or 30 years. I don't have its stats before me, but now it's fulfilled its longevity, and it is still operating, as are numerous things that we build and operate in this country, which brings the debate on how long things that we build withstand and last and how do you maintain them and how do you inspect them and the like, 60 percent being third party intrusions, 40 percent being probably corrosion and natural aging. So it's a debate as to how do we check them.

Now, what I have learned in the hearing is about the famous pig and its ability being placed in the compressing stations of 75 to 100 miles apart, probably mostly not in the transmission system primarily because of the size and the distribution system, as the ranking member said, having additional challenges because of the curves and the like.

I think the public wants to do all we can to ensure that we have safety, not just fear of the loss of life, which is a major concern, but, as I said in the opening statement, the disruption. I mean, if we are relying on imported oil or imported refined product or nat-

ural gas, any disruption of a pipeline facility will cause major economic challenges to this country.

The one question I have in Mr. Beggs' statement that "Large corporations can shield themselves from liability for poor safety practices through certain strategies, such as holding assets that may generate liability," Mr. Pearl, do you agree with that statement? And how many of the companies of your association practice that type of management?

Mr. PEARL. Well, I think it would be best if I first speak from personal experience. And I can talk a little broadly.

Mr. SHIMKUS. That's always great to do that.

Mr. PEARL. Yes. I have had the privilege of having leadership roles in three different pipelines companies. That whole notion just is not realistic from my vantage point. If my company has a spill, we are responsible. We clean it up. We pay whatever fines. We suffer the loss of business. We suffer the customer dissatisfaction.

So I think that though there may be some complications in a given case, the bottom line is pipeline companies are responsible for what they do. And they pay the bills associated with that. So we take this burden very seriously.

Mr. SHIMKUS. Thank you.

Mr. Beggs, what was the cause of the disruption? That was before my time. I don't really know the story.

Mr. BEGGS. Sure. Bellingham, there were several causes. They had smart pigged the Olympic pipeline. They knew there was a problem. There was some debate about whether it was caused by a bulldozer or not a few years earlier. They knew there was a problem. They were told they should fix it. They didn't fix it. They had a valve misfunction, shut down the pipeline, the increasing pressure blew out at that one point into a park and then exploded.

I would like to mention Olympic Pipeline is owned by BP, which has lots of money. Olympic's main asset is the pipeline. They don't have enough money to pay for the damage. And they are in bankruptcy.

Mr. SHIMKUS. Well, let me just follow up. Who has not been paid?

Mr. BEGGS. One, I don't think they have paid the fines that the government imposed on them. Two——

Mr. SHIMKUS. You don't think or you know? It is my impression that the victims were paid, the fines and penalties were paid. In fact, the Federal Government has settled. And that is the basis for your organization at the tune of $4 million.

Maybe you could help us. If there are any outstanding persons caused harm that have not been reconciled through this accident to get that for us because it is our understanding that everyone has been settled.

Mr. BEGGS. I think one way to clarify that is that there was both Equilon, which was helping the management, and Olympic. Equilon paid the majority of those fines. I'm 90 percent sure that Olympic itself has not paid its fines yet because they are in bankruptcy.

The biggest outstanding damage that hasn't been paid is actually another oil company, ARCO, who had to pay about $500 million

extra in alternative transportation. They have sued Olympic. Olympic went into bankruptcy to avoid having to pay ARCO.

There are other people with claims out there, but I would say the three families that lost their children, they have been paid. The park land has been retroed. I believe Equilon and Olympic have now settled up with each other. I am not sure of the details. But there is still a $500 million bill out there that hasn't been paid, and they are in bankruptcy.

Mr. SHIMKUS. Mr. Chairman, I know we are short for time, but I think Mr. Koonce wanted to respond to this line of questioning.

Mr. HALL. You went over your time sitting here as chairman. So I will grant you another 3 minutes.

Mr. SHIMKUS. Thank you. Just enough for Mr. Koonce to follow up. Thank you, Mr. Chairman.

Mr. KOONCE. Yes, sir. Thank you for the opportunity. Just to comment about the Bellingham accident, three officers have gone to jail as a result of the accident that occurred due to negligence.

So, in addition to there being tremendous financial deterrence, as he has described the bankruptcy, which is the ultimate financial deterrence, there is also criminal liability associated with failure to operate natural gas or oil pipelines in a safe manner. And I think that serves as the ultimate deterrent to responsible operation of these facilities.

Mr. SHIMKUS. I am not trying to get into a finger-pointing. The reality is we need these systems. They need to be safe. And people who are negligent need to be held accountable. And I think if that is our basis, I think we can move forward with any type of reforms.

Thank you, Mr. Chairman. I yield back.

Mr. HALL. Thank you.

The Chair recognizes the gentleman from Arizona, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman.

I want to begin, Mr. Pearl, with you and follow up on a line of questioning that the chairman had with regard to one agency trying to get a pipeline either repaired or perhaps installed and other Federal agencies delaying that process. There is reference to that in your testimony.

In other legislation; in fact, in the energy bill, which this committee cleared some time ago and which is languishing in the Senate, I was able to insert language making the DOE the lead agency for citing transmission lines. And if other Federal agencies had statutory authority to become involved in that process, DOE could then essentially set deadlines by which those other Federal agencies had to meet their responsibilities so that the agency in charge of that area—in this case, DOE, it was electricity we were talking about—would be able to essentially compel other Federal agencies or block other Federal agencies from delaying the process.

Is that something which you think needs to occur in this area or is that something which you think the law already provides in this area but it isn't working?

Mr. PEARL. Well, not being a lawyer, I won't comment on what the law provides. I would just from a practical standpoint. Although under previous questioning, really, fortunately, other than the Kinder Morgan situation that is certainly related to permitting where a spill could have been prevented in hindsight, we haven't

had a major issue yet with respect to complying with the OPS rules. I believe we have had a number of we will call them market near misses, where had we not had good cooperation with permitting, we would have had delays that you weren't going to compromise pipeline safety, but there would have been other issues involved.

In some of my prepared remarks, which I wasn't able to get through because of time, we had a situation last year where we found some anomalies in a pipe that serves 40 percent of New York's and Pennsylvania's propane supply.

Fortunately, we had good cooperation. We had a major repair situation under a reservoir. We got the permits quickly and were able to avoid a serious supply issue. That supply issue is not just economic. It would force product into less safe, less efficient modes of transportation.

So the issue of pipeline permit streamlining is one where to do the work required by DOT—and we are totally supportive of that as an industry. We just need to be able to make sure that we can get timely permits to get the job done, not only to make the pipes safe because that is obviously the first priority. You are not going to operate because of all of the other ramifications without it being safe but also to serve the overall——

Mr. SHADEGG. I would like to work with you and the industry. If similar legislation is needed here so that there is a lead agency that can, I would be happy to work with you.

Mr. PEARL. Certainly everybody would like to have one person, one agency that is responsible, that is accountable for getting the permits done.

Mr. SHADEGG. I am glad you mentioned Kinder Morgan.

I wanted to question the other panel. Unfortunately, I had to speak on the floor because Kinder Morgan has been deeply involved in the Arizona issue, where we had a gas pipeline a year ago go bad on us. And the price of gasoline in my community went to over $3 a gallon and caused a lot of disruption. We had an inadequate variety of supply coming into Arizona, putting us in a dismal spot.

Mr. Koonce, I want to ask you. In his testimony, Mr. Beggs says that only 7 percent of the total mileage of gas transmission lines will ever be tested under the integrity management rule. He cites OPS for that point.

Your testimony, however, says that effectively 60 or 70 percent will have to be tested. I would like to give you an opportunity to explain that difference.

Mr. KOONCE. Yes. I appreciate the opportunity to clarify. The way the integrity management plan is drafted, 100 percent of the high-consequence areas of a pipeline must be inspected. What I was alluding to as to what the industry will get is much more than that.

While that is the technical reading of the integrity management plan, by use of the smart pig device and the way that that is introduced into the system, we will, in essence, be inspecting hundreds of miles of pipe to get at the three or four miles of pipe that are within the high-consequence area.

As an example, my company, we have got about 3,500 miles of high-pressure long-line transmission system. But of that, about 300 miles are high-consequence areas. In order to get to the high-consequence areas, we will have to inspect essentially 100 percent of the 3,000 miles.

Mr. SHADEGG. Mr. Beggs, do you acknowledge that point?

Mr. BEGGS. Yes. Our point was simply the way the regulations only require 7 percent if the industry goes beyond the——

Mr. SHADEGG. I think that helps the committee understand the two different positions.

Mr. BEGGS. Yes.

Mr. SHADEGG. Mr. Koonce, I want to ask one more question of you. In your testimony, you talked about OPS and about not moving OPS. And you used the phrase "line of sight," "Congress' line of sight ability to be involved in this area." I am not sure I understand that reference, and I would appreciate an explanation.

Mr. KOONCE. Sure. This hearing as an example, to call this specific area of DOT before Congress to ask the hard questions about how are we doing on pipeline safety, we think is a good oversight. And I think keeping it where it is gives it that visibility and gives all of us the confidence that the Office of Pipeline Safety is doing the work that they need to do.

Mr. SHADEGG. And your concern is that if it were moved as proposed, we would lose that?

Mr. KOONCE. If we move it into a much larger agency, I will pose the question, will we lose that level of accountability that we have today?

Mr. SHADEGG. Fair enough. Thank you very much. Thank you, gentlemen, for your testimony.

Mr. HALL. Gentleman, we thank you very much for good testimony, good presentation, for your time. And because of the absence of some of the members of their necessity to be other places, we will leave open for them to write questions to you, if we might, and expect you to give us an answer within a couple of weeks. With unanimous consent, we will put that in the record.

And for Mr. Pearl's documents and materials, I ask unanimous consent that they be placed into the record. Is there objection?

[No response.]

Mr. HALL. Hearing none, so ordered.

We are adjourned.

[Whereupon, at 1:30 p.m., the foregoing matter was adjourned.]

United States General Accounting Office

GAO

Testimony

Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, House of Representatives

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PIPELINE SAFETY

Preliminary Information on the Office of Pipeline Safety's Actions to Strengthen Its Enforcement Program

Statement of Katherine Siggerud, Director
Physical Infrastructure Issues

GAO
Accountability * Integrity * Reliability

GAO-04-985T

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to participate in this hearing on progress made by the Office of Pipeline Safety (OPS) in implementing the provisions of the Pipeline Safety Improvement Act of 2002. The act strengthens federal pipeline safety programs, state oversight of pipeline operators, and public education on pipeline safety. My remarks center on work, required by the act, that we have almost completed on the effectiveness of OPS's enforcement strategy and its use of monetary sanctions (civil penalties) when safety problems are found. The act also requires that we report in 2006 on OPS's implementation of its risk-based safety program, called integrity management, and on a requirement that operators assess their facilities every 7 years for safety risks. We expect to begin work on these two topics next year.

OPS has been taking many steps to make pipeline transportation safer. A cornerstone to OPS's efforts over the past several years has been the agency's development and implementation of a risk-based approach that it believes will fundamentally improve the safety of pipeline transportation. This approach, called integrity management, requires interstate pipeline operators to identify and fix safety-related threats to their pipelines in areas where an accident could have the greatest consequences. OPS believes that this approach has more potential to improve safety than its traditional approach, which focused on enforcing compliance with safety standards regardless of the threat to pipeline safety. Officials have emphasized that integrity management, coupled with other initiatives, such as oversight of operators' programs to qualify employees to operate their pipelines, represents a systematic approach to overseeing and improving pipeline safety that will change the safety culture of the industry and drive down the number of accidents.

Now that its integrity management approach and other initiatives are substantially under way, OPS recognizes that it needs to turn its attention to the management of its enforcement program. Accordingly, my testimony today focuses on opportunities for improving aspects of OPS's enforcement program that should be useful to OPS as it decides how to proceed and to this subcommittee as it continues to exercise oversight.

My statement is based on the preliminary results of our ongoing work for the House Committee on Energy and Commerce and for others. As directed by the Pipeline Safety Improvement Act of 2002, we have been (1) evaluating the effectiveness of OPS's enforcement strategy and (2) examining OPS's assessment of monetary sanctions (called civil penalties) against interstate pipeline operators that violate federal pipeline safety rules. We expect to report on the results of our work on these and other issues in the next few days.

Our work is based on our review of laws, regulations, program guidance, and discussions with OPS officials and a broad range of stakeholders.[1] To evaluate the effectiveness of OPS's enforcement strategy, we determined the extent to which the agency's strategy incorporates three key elements of effective program management: clear program goals, a well-defined strategy for achieving goals, and measures of performance that are linked to program goals. We also examined how OPS proposed and assessed civil penalties from 1994 through 2003 and the extent to which pipeline operators have paid them.[2] Finally, we interviewed stakeholders on whether OPS's civil penalties help deter safety violations. As part of our work, we assessed internal controls and the reliability of the data elements needed for this engagement, and we determined that the data elements, with one exception, were sufficiently reliable for our purposes.[3] We performed our work in accordance with generally accepted government auditing standards.

In summary:

- The effectiveness of OPS's enforcement strategy cannot be evaluated because the agency has not incorporated three key elements of effective program management—clear program goals, a well-defined strategy for achieving those goals, and measures of performance that are linked to the program goals. Without these three key elements,

[1]These stakeholders represent industry trade associations, pipeline companies, federal enforcement agencies, state pipeline agencies and associations, pipeline safety advocacy groups, and pipeline insurers.
[2]Before OPS imposes a civil penalty, it issues a notice of probable violation to the pipeline operator that documents the alleged violation and identifies the proposed civil penalty amount. OPS then allows the operator to present additional evidence. Unless the proposed violation and penalty are withdrawn after this step, OPS issues a final order that requires the operator to pay the penalty (termed "assessed penalties").

OPS cannot determine whether recent and planned changes in its enforcement strategy are having or will have the desired effects on pipeline safety. Under a more aggressive enforcement strategy (termed "tough but fair") that OPS initiated in 2000, the agency is using the full range of its enforcement tools, rather than relying primarily as it did before on more lenient administrative actions, such as warning letters. However, OPS has not established goals that specify the intended results of this new strategy, developed a policy that describes the strategy and the strategy's contribution to pipeline safety, or put measures in place that would allow OPS to determine and demonstrate the effects of this strategy on pipeline safety. OPS is developing an enforcement policy that will help define its enforcement strategy and has taken some initial steps toward identifying new measures of enforcement performance. However, it does not anticipate finalizing this policy until sometime in 2005 and has not adopted key practices for achieving successful performance measurement systems, such as linking measures to program goals.

- OPS increased both the number and the size of the civil penalties it assessed in response to criticism that its enforcement activities were weak and ineffective. For example, from 2000 through 2003, following its decision to be tough but fair in assessing civil penalties, OPS assessed an average 22 penalties per year, compared with an average of 14 penalties per year from 1995 through 1999, when OPS's policy was to "partner" with industry, rather than primarily to enforce compliance. In addition, from 2000 through 2003, OPS assessed an average civil penalty of about $29,000, compared with an average of $18,000 from 1995 through 1999. Departmental data show that operators have paid 94 percent (202 of 216) of the civil penalties issued over the past 10 years. OPS assessed the penalty that it proposed 69 percent of the time (150 of 216 civil penalties). For the remaining 66 penalties, OPS reduced the assessments by about 37 percent—from a total of about $2.8 million to about $1.7 million. OPS's database does not provide summary information on why penalties are reduced. As a result, we are not able to provide information on the most common reasons why penalties were reduced.

[3]The data elements needed to determine when civil penalties were paid were, in our opinion, too unreliable to use to report on the timeliness of payments. This limitation did not create a major impediment to our reporting on

Civil penalties are one of several enforcement actions that OPS can take to increase compliance and represent about 14 percent of all enforcement actions taken over the past 10 years. Although OPS has increased both the number and the size of its civil penalties, it is not clear whether this action will help deter noncompliance with the agency's safety regulations. The pipeline safety stakeholders we spoke with expressed differing views on whether OPS's civil penalties deter noncompliance with the pipeline safety regulations. Some—such as pipeline industry officials—said that civil penalties of any size act as a deterrent, in part because they keep companies in the public eye. Others—such as pipeline safety advocacy groups—said that OPS's civil penalties are too small to deter noncompliance.

Background

Pipeline transportation for hazardous liquids and natural gas is the safest form of freight transportation.[4] By one measure, the annual number of accidents, the hazardous liquid pipeline industry's safety record has greatly improved over the past 10 years. (See fig. 1.) From 1994 through 2003, accidents on interstate hazardous liquid pipelines decreased by almost 49 percent from 245 in 1994 to 126 in 2003.[5] However, the industry's safety record for these pipelines has not improved for accidents with the greatest consequences—those resulting in a fatality, injury, or property damage totaling $50,000 or more—which we term serious accidents.[6] The number of serious accidents stayed about the same over the 10-year period—about 88 every year. The overall accident rate for hazardous liquid pipelines —which considers both the amounts of products and the distances shipped—decreased from about 0.41 accidents per billion ton-miles

OPS's use of civil penalties overall.

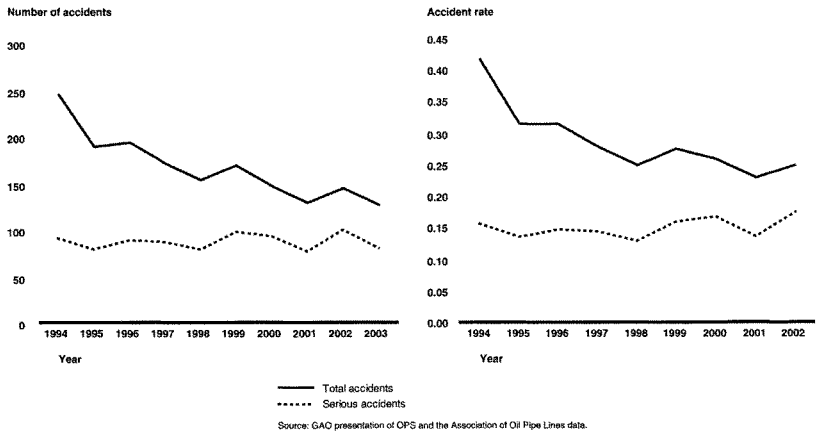
[4]Hazardous liquid pipelines carry products such as crude oil, diesel fuel, gasoline, jet fuel, anhydrous ammonia, and carbon dioxide.

[5]Until February 2002, OPS required pipeline operators to report incidents with gross product losses of 50 barrels or more. In February 2002, OPS reduced the reporting threshold to 5 barrels. To maintain consistency over the 10-year period on which we are reporting, we use the 50-barrel threshold for product losses after February 2002.

[6]OPS requires that operators of hazardous liquid and natural gas pipelines report accidents involving deaths, injuries, and $50,000 or more worth of property damage, among other things. We selected this indicator because these reporting requirements are common to both types of pipelines and because it reflects accidents with serious consequences.

shipped in 1994 to about 0.25 accidents per billion ton-miles shipped in 2002.[7] The accident rate for serious interstate hazardous liquid pipeline accidents stayed the same, averaging about 0.15 accidents per billion ton-miles shipped from 1994 through 2002.

Figure 1: Numbers of Accidents and Accident Rate for Interstate Hazardous Liquid Pipelines, 1994 through 2003



Notes: The hazardous liquid accident rate is expressed in terms of accidents per billion ton-miles of petroleum products shipped. Federal agencies and industry associations we contacted could not provide data on other hazardous liquids shipped.

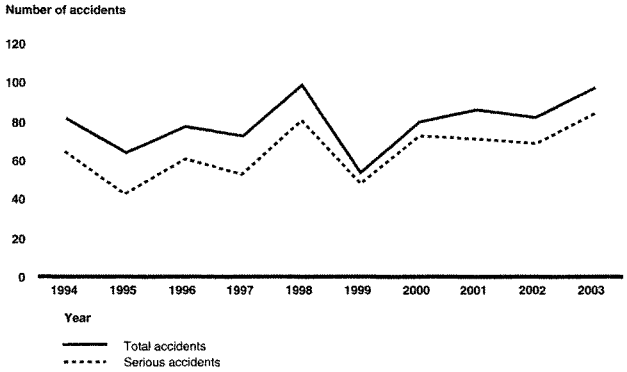
Aggregated industry data on the amounts of products shipped through hazardous liquid pipelines for 2003 are not available, so we do not present accident rate information for this year.

In contrast to the decreasing number of accidents overall for hazardous liquid pipelines, the annual number of accidents on interstate natural gas pipelines increased by almost 20 percent from 81 in 1994 to 97 in 2003. (See fig. 2.) The number of serious accidents on interstate natural gas pipelines also increased, from 64 in 1994 to 84 in 2003, though they have fluctuated considerably over this time. Information on accident rates for natural gas pipelines is not available because of the lack of data on the amount of natural gas shipped through pipelines.

[7]A ton-mile is 1 ton of a product shipped 1 mile. Aggregated industry data on the amounts of products shipped through hazardous liquid pipelines for 2003 are not available.

For both hazardous liquid and natural gas pipelines, the lack of improvement in the number of serious accidents may be due in part to the relatively small number of these accidents.

Figure 2: Number of Accidents on Interstate Natural Gas Pipelines, 1994 through 2003



Source: GAO presentation of OPS data.

Note: Data on the amounts of natural gas shipped through interstate pipelines are not available; these data are needed to calculate the accident rate.

OPS, within the Department of Transportation's Research and Special Programs Administration (RSPA), administers the national regulatory program to ensure the safe transportation of natural gas and hazardous liquids by pipeline. The office attempts to ensure the safe operation of pipelines through regulation, national consensus standards,[8] research, education (e.g., to prevent excavation-related damage), oversight of the industry through inspections, and enforcement when safety problems are found. The office uses a variety of enforcement tools, such as compliance orders and corrective action orders that require pipeline operators to correct safety violations, notices of amendment to remedy deficiencies in operators' procedures, administrative actions to address minor safety problems, and civil penalties. OPS is a small federal agency. In fiscal year 2003, OPS employed about 150 people, about half of whom were pipeline inspectors.

Before imposing a civil penalty on a pipeline operator, OPS issues a notice of probable violation that documents the alleged violation and a notice of proposed penalty that identifies the proposed civil penalty amount. Failure by an operator to inspect the pipeline for leaks or unsafe conditions is an example of a violation that may lead to a civil penalty. OPS then allows the operator to present evidence either in writing or at an informal hearing. Attorneys from RSPA's Office of Chief Counsel preside over these hearings. Following the operator's presentation, the civil penalty may be affirmed, reduced, or withdrawn. If the hearing officer determines that a violation did occur, the Office of Chief Counsel issues a final order that requires the operator to correct the safety violation (if a correction is needed) and pay the penalty (called the "assessed penalty"). The operator has 20 days after the final order is issued to pay the penalty. The Federal Aviation Administration (FAA) collects civil penalties for OPS.[9]

From 1992 through 2002, federal law allowed OPS to assess up to $25,000 for each day a violation continued, not to exceed $500,000 for any related series of violations. In December 2002, the Pipeline Safety Improvement Act increased these amounts to $100,000 and $1 million, respectively.

Key Management Elements Are Needed to Determine the Effectiveness of OPS's Enforcement Strategy

The effectiveness of OPS's enforcement strategy cannot be determined because OPS has not incorporated three key elements of effective program management—clear performance goals for the enforcement program, a fully defined strategy for achieving these goals, and performance measures linked to goals that would allow an assessment of the enforcement strategy's impact on pipeline safety.

OPS's Enforcement Strategy Has Been Evolving

[8]Standards are technical specifications that pertain to products and processes, such as the size, strength, or technical performance of a product. National consensus standards are developed by standard-setting entities, such as the American Society for Testing and Materials, on the basis of an industry consensus.
[9]To consolidate its accounting functions, in September 1993 RSPA began contracting with FAA to collect its accounts receivable, including civil penalties for OPS.

OPS's enforcement strategy has undergone significant changes in the last 5 years. Before 2000, the agency emphasized partnering with the pipeline industry to improve pipeline safety rather than punishing noncompliance. In 2000, in response to concerns that its enforcement was weak and ineffective, the agency decided to institute a "tough but fair" enforcement approach and to make greater use of all its enforcement tools, including larger and more frequent civil penalties.[10] In 2001, to further strengthen its enforcement, OPS began issuing more corrective action orders requiring operators to address safety problems that led or could lead to pipeline accidents. In 2002, OPS created a new Enforcement Office to focus more on enforcement and help ensure consistency in enforcement decisions. However, this new office is not yet fully staffed, and key positions remain vacant.

In 2002, OPS began to enforce its new integrity management and operator qualification standards in addition to its minimum safety standards. Initially, while operators were gaining experience with the new, complex integrity management standards, OPS primarily used notices of amendment, which require improvements in procedures, rather than stronger enforcement actions. Now that operators have this experience, OPS has begun to make greater use of civil penalties in enforcing these standards.

OPS has also recently begun to reengineer its enforcement program. Efforts are under way to develop a new enforcement policy and guidelines, develop a streamlined process for handling enforcement cases, modernize and integrate the agency's inspection and enforcement databases, and hire additional enforcement staff. However, as I will now discuss, OPS has not put in place key elements of effective management that would allow it to determine the impact of its evolving enforcement program on pipeline safety.

OPS Needs Goals for Its Enforcement Program

[10]For example, in May 2000, we reported that OPS had dramatically reduced its use of civil penalties and increased its use of administrative actions over the years without assessing the effects of these actions. See *Pipeline Safety: Office of Pipeline Safety Is Changing How It Oversees the Pipeline Industry*, GAO/RCED-00-128 (Washington, D.C.: May 15, 2000).

Although OPS has overall performance goals, it has not established specific goals for its enforcement program. According to OPS officials, the agency's enforcement program is designed to help achieve the agency's overall performance goals of (1) reducing the number of pipeline accidents by 5 percent annually and (2) reducing the amount of hazardous liquid spills by 6 percent annually.[11] Other agency efforts—including the development of a risk-based approach to finding and addressing significant threats to pipeline safety and of education to prevent excavation-related damage to pipelines—are also designed to help achieve these goals.

OPS's overall performance goals are useful because they identify the *end outcomes*, or ultimate results, that OPS seeks to achieve through all its efforts. However, OPS has not established performance goals that identify the *intermediate outcomes*, or direct results, that OPS seeks to achieve through its enforcement program. Intermediate outcomes show progress toward achieving end outcomes. For example, enforcement actions can result in improvements in pipeline operators' safety performance—an intermediate outcome that can then result in the end outcome of fewer pipeline accidents and spills. OPS is considering establishing a goal to reduce the time it takes the agency to issue final enforcement actions. While such a goal could help OPS improve the management of the enforcement program, it does not reflect the various intermediate outcomes the agency hopes to achieve through enforcement. Without clear goals for the enforcement program that specify intended intermediate outcomes, agency staff and external stakeholders may not be aware of what direct results OPS is seeking to achieve or how enforcement efforts contribute to pipeline safety.

OPS Needs to Fully Define Its Enforcement Strategy

OPS has not fully defined its strategy for using enforcement to achieve its overall performance goals. According to OPS officials, the agency's increased use of civil penalties and corrective action orders reflects a major change in its enforcement strategy. Although OPS began to implement these changes in 2000, it has not yet developed a policy that defines this new, more aggressive enforcement strategy or describes how it will contribute to the achievement of its

[11]OPS refers to the release of natural gas from a pipeline as an "incident" and a spill from a hazardous liquid pipeline as an "accident." For simplicity, this testimony refers to both as "accidents."

performance goals. In addition, OPS does not have up-to-date, detailed internal guidelines on the use of its enforcement tools that reflect its current strategy. Furthermore, although OPS began enforcing its integrity management standards in 2002 and received greater enforcement authority under the 2002 pipeline safety act, it does not yet have guidelines in place for enforcing these standards or implementing the new authority provided by the act.[12]

According to agency officials, OPS management communicates enforcement priorities and ensures consistency in enforcement decisions through frequent internal meetings and detailed inspection protocols and guidance. Agency officials recognize the need to develop an enforcement policy and up-to-date detailed enforcement guidelines and have been working to do so. To date, the agency has completed an initial set of enforcement guidelines for its operator qualification standards and has developed other draft guidelines. However, because of the complexity of the task, agency officials do not expect that the new enforcement policy and remaining guidelines will be finalized until sometime in 2005.

The development of an enforcement policy and guidelines should help define OPS's enforcement strategy; however, it is not clear whether this effort will link OPS's enforcement strategy with intermediate outcomes, since agency officials have not established performance goals specifically for their enforcement efforts. We have reported that such a link is important.[13]

OPS Needs Adequate Measures of the Effectiveness of Its Enforcement Strategy

According to OPS officials, the agency currently uses three performance measures and is considering three additional measures to determine the effectiveness of its enforcement activities and other oversight efforts. (See table 1.) The three current measures provide useful

[12]We have reported on challenges that OPS faces in enforcing its complex integrity management requirements consistently and effectively. See our August 2002 report, *Pipeline Safety and Security: Improved Workforce Planning and Communication Needed*, GAO-02-785 (Washington, D.C.: Aug. 26, 2002).
[13]See U.S. General Accounting Office, *Managing for Results: Strengthening Regulatory Agencies' Performance Management Practices*, GAO/GGD-00-10 (Washington, D.C.: Oct. 28, 1999); *Agency Performance Plans: Examples of Practices That Can Improve Usefulness to Decisionmakers*, GAO/GGD/AIMD-99-69 (Washington, D.C.: Feb. 26, 1999); and *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, GAO/GGD-10.1.20 (Washington, D.C., Apr. 1998).

information about the agency's overall efforts to improve pipeline safety, but do not clearly indicate the effectiveness of OPS's enforcement strategy because they do not measure the intermediate outcomes of enforcement actions that can contribute to pipeline safety, such as improved compliance. The three measures that OPS is considering could provide more information on the intermediate outcomes of the agency's enforcement strategy, such as the frequency of repeat violations and the number of repairs made in response to corrective action orders, as well as other aspects of program performance, such as the timeliness of enforcement actions.[14]

Table 1: Enforcement Program Performance Measures That OPS Currently Uses and Is Considering Developing

Measure	Examples
Measures OPS currently uses	
Achievement of agency performance goals	Annual numbers of natural gas and hazardous liquid pipeline accidents and tons of hazardous liquid materials spilled per million ton-miles shipped.
Inspection and enforcement activity	Number of inspections completed; hours per inspection; accident investigations; enforcement actions taken, by type; and average proposed civil penalty amounts.
Integrity management performance	Annual numbers of accidents in areas covered by integrity management standards and of actions by pipeline operators in response to these standards, such as repairs completed and miles of pipeline assessed.[a]
Measures OPS is considering developing	
Management of enforcement actions	The time taken to issue final enforcement actions, the extent to which penalty amounts are reduced, and the extent to which operators commit repeat violations.
Safety improvements ordered by OPS	Actions by pipeline operators in response to corrective action orders, including miles of pipeline assessed, defects discovered, repairs made, and selected costs incurred.
Results of integrity management and operator qualification inspections	The percentage of pipeline operators that did not meet certain requirements and the reduction in the number of operators with a particular deficiency.

Source: GAO analysis of OPS information.

[a]OPS started collecting some of these data in 2002 but does not anticipate obtaining all the information on an annual basis until 2005.

We have found that agencies that are successful in measuring performance strive to establish measures that demonstrate results, address important aspects of program performance, and

[14]In addition, measures of pipeline operator integrity management performance and of the results of integrity management and operator qualification inspections could provide information on the intermediate outcomes of these regulatory approaches.

provide useful information for decision-making.[15] While OPS's new measures may produce better information on the performance of its enforcement program than is currently available, OPS has not adopted key practices for achieving these characteristics of successful performance measurement systems:

- *Measures should demonstrate results (outcomes) that are directly linked to program goals.* Measures of program results can be used to hold agencies accountable for the performance of their programs and can facilitate congressional oversight. If OPS does not set clear goals that identify the desired results (intermediate outcomes) of enforcement, it may not choose the most appropriate performance measures. OPS officials acknowledge the importance of developing such goals and related measures but emphasize that the diversity of pipeline operations and the complexity of OPS's regulations make this a challenging task.[16]

- *Measures should address important aspects of program performance and take priorities into account.* An agency official told us that a key factor in choosing final measures would be the availability of supporting data. However, the most essential measures may require the development of new data. For example, OPS has developed databases that will track the status of safety issues identified in integrity management and operator qualification inspections, but it cannot centrally track the status of safety issues identified in enforcing its minimum safety standards. Agency officials told us that they are considering how to add this capability as part of an effort to modernize and integrate their inspection and enforcement databases.

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[15]See, for example, GAO/GGD/AIMD-99-69; *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996); and *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, GAO-03-143 (Washington, D.C.: Nov. 22, 2002).

[16]We have reported on the challenges faced by agencies in developing measures of program results and on their approaches for overcoming such challenges. See, in particular, GAO/GGD-00-10, *Managing for Results: Measuring Program Results That Are Under Limited Federal Control*, GAO/GGD-99-16 (Washington, D.C.: Dec. 11, 1998), and *Managing for Results: Regulatory Agencies Identified Significant Barriers to Focusing on Results*, GAO/GGD-97-83 (Washington, D.C.: June 24, 1997).

- *Measures should provide useful information for decision-making, including adjusting policies and priorities.*[17] OPS uses its current measures of enforcement performance in a number of ways, including monitoring pipeline operators' safety performance and planning inspections. While these uses are important, they are of limited help to OPS in making decisions about its enforcement strategy. OPS has acknowledged that it has not used performance measurement information in making decisions about its enforcement strategy. OPS has made progress in this area by identifying possible new measures of enforcement results (outcomes) and other aspects of program performance, such as indicators of the timeliness of enforcement actions, that may prove more useful for managing the enforcement program.

OPS Has Increased Its Use of Civil Penalties; the Effect on Deterrence Is Unclear

In 2000, in response to criticism that its enforcement activities were weak and ineffective, OPS increased both the number and the size of the civil monetary penalties it assessed.[18] Pipeline safety stakeholders expressed differing opinions about whether OPS's civil penalties are effective in deterring noncompliance with pipeline safety regulations.

OPS Now Assesses More and Larger Civil Penalties

OPS assessed more civil penalties during the past 4 years under its current "tough but fair" enforcement approach than it did in the previous 5 years, when it took a more lenient enforcement approach. (See fig. 3.) From 2000 through 2003, OPS assessed 88 civil penalties (22 per year on average) compared with 70 civil penalties from 1995 through 1999 (about 14 per year on average). For the first 5 months of 2004, OPS proposed 38 civil penalties. While

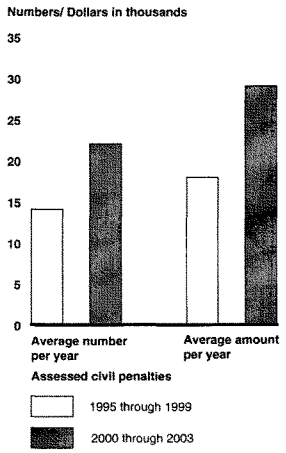
[17]See, for example, GAO/GGD-96-118 and U.S. General Accounting Office, *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, GAO-04-38 (Washington, D.C.: Mar. 10, 2004).

[18]The civil penalty results we present largely reflect OPS's enforcement of its minimum safety standards because integrity management enforcement did not begin until 2002.

Our results may differ from the results that OPS reports because our data are organized differently. OPS reports an action in the year in which it occurred. For example, OPS may propose a penalty in one year and assess it in another year. The data for this action would show up in different years. To better track the disposition of civil

the recent increase in the number and the size of civil penalties may reflect OPS's new "tough but fair" enforcement approach, other factors, such as more severe violations, may be contributing to the increase as well.

Figure 3: OPS's Use of Civil Penalties, 2000 through 2003, Compared with 1995 through 1999



Source: GAO analysis of OPS and FAA data.

Note: The amounts in this figure may not be comparable to the amounts that OPS reports. See footnote 18.

Overall, OPS does not use civil penalties extensively. Civil penalties represent about 14 percent (216 out of 1,530) of all enforcement actions taken over the past 10 years. OPS makes more extensive use of other types of enforcement actions that require pipeline operators to fix unsafe conditions and improve inadequate procedures, among other things. In contrast, civil penalties represent monetary sanctions for violating safety regulations but do not require safety improvements. OPS may increase its use of civil penalties as it begins to use them to a greater degree for violations of its integrity management standards.

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penalties, we associated assessed penalties and penalty amounts with the year in which they were proposed—even if the assessment occurred in a later year.

The average size of the civil penalties has increased. For example, from 1995 through 1999, the average assessed civil penalty was about $18,000.[19] From 2000 through 2003, the average assessed civil penalty increased by 62 percent to about $29,000.[20] Assessed penalty amounts ranged from $500 to $400,000.

In some instances, OPS reduces proposed civil penalties when it issues its final order. We found that penalties were reduced 31 percent of the time during the 10-year period covered by our work (66 of 216 instances). These penalties were reduced by about 37 percent (from a total of $2.8 million to $1.7 million). This analysis does not include the extraordinarily large penalty of $3.05 million that OPS proposed as a result of the Bellingham, Washington, accident because including it would have skewed our results by making the average penalty appear to be larger than it actually is.[21] OPS has assessed the operator $250,000 as of July 2004.[22] If we had included this penalty in our analysis we find that over this period OPS reduced total proposed penalties by about two-thirds, from about $5.8 million to about $2 million.

OPS's database does not provide summary information on why penalties are reduced. According to an OPS official, the agency reduces penalties when an operator presents evidence that the OPS inspector's finding is weak or wrong or when the pipeline's ownership changes during the period between the proposed and the assessed penalty. It was not practical for us to gather information on a large number of penalties that were reduced, but we did review several to determine the reasons for the reductions. OPS reduced one of the civil penalties we reviewed because the operator provided evidence that OPS inspectors had miscounted the number of pipeline valves that OPS said the operator had not inspected. Since the violation was not as severe as OPS had stated, OPS reduced the proposed penalty from $177,000 to

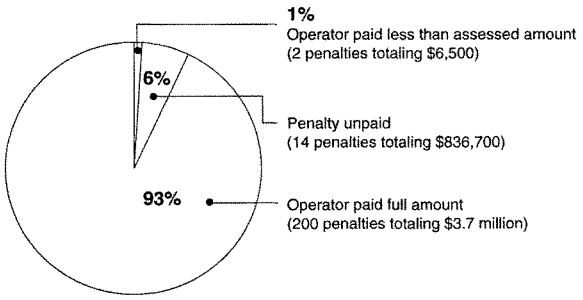
[19]All amounts are in current year dollars. Inflation was low during the 1995-2003 period. If the effects of inflation were considered, the average assessed penalty amount for 1995 through 1999 would be $21,000 and the average amount for 2000 through 2003 would be $30,000 (in 2003 dollars).
[20]The median civil penalty size for the 1995-1999 period was about $5,800 and the median size for the 2000-2003 period was $12,700.
[21]We also excluded from our analysis a proposed $2.5 million penalty resulting from the Carlsbad, New Mexico, accident. OPS had not assessed a penalty as of mid-July. RSPA has referred the penalty to the Department of Justice for judicial action.
[22]OPS proposed a $3.05 million penalty against Equilon Pipeline Company, LLC (Olympic Pipeline Company) for the Bellingham incident and later assessed Shell Pipeline Company (formerly Equilon) $250,000, which it collected. According to RSPA's Office of Chief Counsel, the penalty against Olympic Pipeline is still open, waiting for the company to come out of bankruptcy court.

$67,000. Because we reviewed only a small number of instances in which penalties were reduced, we cannot say whether these examples are typical.

Operators Paid Full Amounts of Most Civil Penalties

Of the 216 penalties that OPS assessed from 1994 through 2003, pipeline operators paid the full amount 93 percent of the time (200 instances) and reduced amounts 1 percent of the time (2 instances). (See fig. 4.) Fourteen penalties (6 percent) remain unpaid, totaling about $836,700 (or 18 percent of penalty amounts).

Figure 4: Number of Civil Penalties Paid, 1994 through 2003



Source: GAO analysis of OPS and FAA data.

In two instances, operators paid reduced amounts. We followed up on one of these assessed penalties. In this case, the operator requested that OPS reconsider the assessed civil penalty and OPS reduced it from $5,000 to $3,000 because the operator had a history of cooperation and OPS wanted to encourage future cooperation.

Neither FAA's nor OPS's data show why the 14 unpaid penalties have not been collected. From the information provided by both agencies, we determined that OPS closed 2 of the penalty cases without collecting the penalties, operators are appealing 5 penalties, OPS recently

assessed 3 penalties, and OPS acknowledged that 4 penalties (totaling $45,200) should have been collected.

The Effect of OPS's Larger Civil Penalties on Deterring Noncompliance Is Unclear

Although OPS has increased both the number and the size of the civil penalties it has imposed, the effect of this change on deterring noncompliance with safety regulations, if any, is not clear. The stakeholders we spoke with expressed differing views on whether the civil penalties deter noncompliance. The pipeline industry officials we contacted believed that, to a certain extent, OPS's civil penalties encourage pipeline operators to comply with pipeline safety regulations because they view all of OPS's enforcement actions as deterrents to noncompliance. However, some industry officials said that OPS's enforcement actions are not their primary motivation for safety. Instead, they said that pipeline operators are motivated to operate safely because they need to avoid any type of accident, incident, or OPS enforcement action that impedes the flow of products through the pipeline and hinders their ability to provide good service to their customers. Pipeline industry officials also said that they want to operate safely and avoid pipeline accidents because accidents generate negative publicity and may result in costly private litigation against the operator.

Most of the interstate agents, representatives of their associations, and insurance company officials expressed views similar to those of the pipeline industry officials, saying that they believe civil penalties deter operators' noncompliance with regulations to a certain extent.[23] However, a few disagreed with this point of view. For example, the state agency representatives and a local government official said that OPS's civil penalties are too small to be deterrents. Pipeline safety advocacy groups that we talked to also said that the civil penalty amounts OPS imposes are too small to have any deterrent effect on pipeline operators. As discussed earlier, for 2000 through 2003, the average assessed penalty was about $29,000.

[23]OPS has agreements with 11 state pipeline agencies, known as interstate agents, to help it inspect segments of interstate pipelines within these states' boundaries. However, OPS undertakes any enforcement actions identified through inspections conducted by interstate agents.

According to economic literature on deterrence, pipeline operators may be deterred if they expect a sanction, such as a civil penalty, to exceed any benefits of noncompliance.[24] Such benefits could, in some cases, be lower operating costs. The literature also recognizes that the negative consequences of noncompliance--such as those stemming from lawsuits, bad publicity, and the value of the product lost from accidents--can deter noncompliance along with regulatory agency oversight. Thus, for example, the expected costs of a legal settlement could overshadow the lower operating costs expected from noncompliance, and noncompliance might be deterred.

Mr. Chairman, this concludes my prepared statement. We expect to report more fully on these and other issues in our report that we expect to issue later this week. We also anticipate making recommendations to improve OPS's ability to demonstrate the effectiveness of its enforcement strategy and to improve OPS's and FAA's management controls over the collection of civil penalties. I would be pleased to respond to any questions that you or Members of the Subcommittee might have.

Contacts and Acknowledgments

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[24]Expected sanctions are the product of the sanction amount and the likelihood of being detected and sanctioned by that amount.