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DISCUSSION DRAFT ON THE PIPELINE SAFETY IMPROVEMENT ACT REAUTHORIZATION AND H.R. 5782, THE PIPELINE SAFETY IMPROVEMENT ACT OF 2006

HEARING

BEFORE THE

SUBCOMMITTEE ON ENEGY AND AIR QUALITY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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DISCUSSION DRAFT ON THE PIPELINE SAFETY IMPROVEMENT ACT REAUTHORIZATION AND H.R. 5782, THE PIPELINE SAFETY IMPROVEMENT ACT OF 2006

THURDAY, JULY 27, 2006

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

The subcommittee met, pursuant to notice, at 11:46 a.m., in Room 2322 of the Rayburn House Office Building, Hon. Ralph M. Hall (Chairman) presiding.

Members present: Representatives Shimkus, Sullivan, Murphy, Boucher, Green, and Hall.

Staff present: Tom Hassenboehler, Counsel; David McCarthy, Chief Counsel for Energy and Environment; Elizabeth Stack, Policy Coordinator; Peter Kielty, Legislative Clerk; Bruce Harris, Minority Professional Staff Member; and Sue Sheridan, Minority Senior Counsel.

MR. HALL. The hearing will come to order.

Without objection, the Chair will proceed pursuant to Committee rule 4E and recognize members for 3 minutes for opening statements. If they defer, this time will be added to their opening round of questions.

Today, we meet to discuss two bills relating to pipeline safety reauthorization, one being a committee discussion draft that was put together in a bipartisan fashion, and another, H.R. 5782, that was recently reported out of the Transportation Committee. Pipeline safety reauthorization is a priority for this committee to get done this year, and I am hopeful that our efforts are going to move this bill forward when we return from the August recess. Hopefully we will not only be fruitful in the House, but I also have hopes for the Senate.

The drafts that we are here to discuss today are, in my opinion, attempts to make improvements to an already fairly good product that was signed into law in 2002. In addition to it being a good product, I am happy to know that the Pipeline and Hazardous Materials Safety Administration, PHMSA, has succeeded in achieving nearly all of the mandates set forth in the Pipeline Safety Improvement Act of 2002, and

that the agency has done so in what I think is a timely manner. Because of this hard work, we have more information and statistics on causes of accidents, more information on integrity management, more information on what States are successfully doing to bring down damages from excavation, and more information on how PHMSA is working to complete upcoming regulations.

The committee discussion draft sets forth several new provisions that have been proposed by PHMSA, that pipeline industry safety advocates and the States, that reauthorizes the program through 2010, adds new one-call requirements for States to enforce, authorizes additional grants for States to set up damage prevention programs, requires the DOT to finalize regulations already underway concerning low-stress pipelines, addressing the Alaska BP incident, and further addressing enforcement transparency. In addition, the bill incorporates a proposal from Dr. Murphy to further enhance one-call requirements and emergency notification.

I am also glad to see that the draft addresses the 7-year gas transmission integrity management assessment interval. And I look forward to being updated for the record by GAO after the hearing on their continuing efforts to finalize their work in recommendations regarding the 7-year interval that we asked them to do in 2002. I look forward to hearing any comments or concerns about the drafts from the witnesses today in trying to address any outstanding issues before we introduce the bill when we return in September.

[The prepared statement of Hon. Ralph M. Hall follows:]

PREPARED STATEMENT OF THE HON. RALPH M. HALL, CHAIRMAN, SUBCOMMITTEE ON ENERGY AND AIR QUALITY

This hearing will come to order. Without objection, the Chair will proceed pursuant to Committee Rule 4(e) and recognize Members for 3 minutes for opening statements. If they defer, this time will be added to their opening round of questions. Today we meet to discuss two bills relating to pipeline safety reauthorization, one being a Committee discussion draft that was put together in a bipartisan fashion and another, HR 5782, that was recently reported out of the Transportation Committee. Pipeline safety reauthorization is a priority for this Committee to get done this year and I am hopeful that our efforts to move this bill forward when we return from August recess will not only be fruitful in the House but also the Senate.

The drafts that we are here to discuss today are, in my opinion, attempts to make improvements to an already pretty good product that was signed into law in 2002. In addition to it being a good product, I am happy to know that the Pipeline and Hazardous Materials Safety Administration or PHMSA (FIM-sa) has succeeded in achieving nearly all of the mandates set forth in the Pipeline Safety Improvement Act (PSIA) of 2002, and that the agency has done so in a timely manner. Because of this hard work, we have more information and statistics on causes of accidents, more information on integrity management, more information on what states are successfully doing to bring down

damages from excavation and more information on how the PHMSA (FIM-sa) is working to complete upcoming regulations.

The Committee discussion draft sets forth several new provisions that have been proposed by PHMSA (FIM-sa), the pipeline industry, safety advocates, and the states. It reauthorizes the program through 2010; adds new one call requirements for states to enforce; authorizes additional grants for states to set up damage prevention programs; requires the DOT to finalize regulations already underway concerning low stress pipelines, addressing the Alaska BP incident; and further addresses enforcement transparency. In addition, the bill incorporates a proposal from Mr. Murphy to further enhance one call requirements and emergency notification.

I am also glad to see that the draft addresses the 7 year gas transmission integrity management assessment interval, and I look forward to being updated for the record by GAO after the hearing on their continuing efforts to finalize their work and recommendations regarding the 7 year interval that we asked them to do in 2002.

I look forward to hearing the any comments or concerns about the drafts from the witnesses today and trying to address any outstanding issues before we introduce a bill when we return in September. At this point I recognize the Ranking Member of the Subcommittee, Mr. Boucher, for purposes of an opening statement.

MR. HALL. At this point, I recognize the Honorable Ranking Member of the Subcommittee, Mr. Boucher, for purposes of an opening statement.

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

I want to commend you for convening today's hearing on legislative proposals to reauthorize the Pipeline Safety Act. This issue is both important and timely.

In 2002, this committee worked in a bipartisan manner to achieve enactment of a consensus pipeline safety law. In April, this subcommittee conducted a hearing at which we gained valuable advice from interested parties about the effectiveness of the 2002 law as well as receiving suggestions from those witnesses for improvements that can now be made. Today, we focus on legislation that we believe builds on the success that has been demonstrated for the 2002 law and would make recommended improvements.

For example, the draft bill encourages States to develop strong excavation damage prevention programs as a condition of being certified by the U.S. Department of Transportation to regulate and enforce within their State's pipeline safety standards. The draft specifies that the State programs should include the nine components which are largely recognized as the formula for the most successful prevention programs. The bill further incentivizes the development of a vigorous damage prevention program by creating a new grant program for States which fully develop and implement a damage prevention program, including these nine elements.

These provisions are designed to encourage widespread implementation of damage prevention programs, such as the one that has been successfully deployed in my home State of Virginia. Since

implementation of its program, Virginia has witnessed a dramatic reduction in the incidents of damage caused by excavation, and we think it is appropriate to encourage other States to adopt programs that are modeled on that very successful experience.

In addition, I was pleased that the 2002 law included a section authorizing technical assistance grants for communities, but I was somewhat disappointed to note that no grants have been awarded through that program by the Department of Transportation. I continue to think that providing assistance to local communities for technical assistance on local pipeline issues is a necessity, and I am pleased that the draft bill includes a provision that would require the Department of Transportation to publish criteria for the grants and to award at least three demonstration program grants. These requirements are in furtherance of the intent of our 2002 law and will ensure that the Technical Assistance Grant Program is, in fact, utilized.

One item, which is not contained within the draft but which I would like to see included as our bill moves forward, is a provision relating to the implementation of an Integrity Management Plan for natural gas distribution lines. During a hearing before this subcommittee 2 years ago, a Department of Transportation official testified that the Department was planning to develop such a plan for distribution lines, which account for more than 85 percent of all natural gas pipelines nationwide, but at that time, the idea of a comprehensive Integrity Management Plan for those distribution systems was merely a recommendation.

I am pleased that the Office of Pipeline Safety is moving ahead with the establishment of an Integrity Management Plan for these critical distribution lines and that OPS expects to publish a distribution integrity management rule in early 2007. This effort marks the first comprehensive and consensus-based attempt to develop an Integrity Management Plan for natural gas distribution lines, and I commend this effort. What I would like to see is a provision included in the bill that simply sets a deadline for the establishment of this rule so as to ensure that the progress that has been made to date continues.

There are other areas that I would hope to hear more about from our witnesses this morning. For example, the recent failure and subsequent crude oil leak from a low-pressure transmission line in Alaska highlights the need for regulation of low-pressure pipelines. And the draft legislation contains a provision that would require that minimum standards be established for regulation of those lines. I applaud that provision.

The consensus 2002 Act has produced positive results with an increased emphasis on safety and on accident prevention, both by the agencies of enforcement and by the industry. The discussion draft that is

before us today builds upon that success, and I look forward to a continuation of the bipartisan effort that we have on this committee that has produced that discussion draft as we proceed in September to approval of this bill in subcommittee and hopefully rapid approval of the measure in the House as well.

Thank you very much, Mr. Chairman, for scheduling a timely hearing.

I look forward to hearing from the witnesses.

MR. HALL. I thank you, Mr. Boucher.

The Chair recognizes the gentleman from Pennsylvania, Dr. Murphy.

MR. MURPHY. Thank you, Mr. Chairman.

We have a lot to hear about with the complex but valuable bill, and I will leave some of those things to more in the category of listening to the comments to be made.

But I would like to say this.

I came before this committee 2 years ago with some ideas to help protect our communities and increase pipeline safety for the sake of our homes and our families. I came with a personal story that affected a family in my district. I went and I visited their home. I met with their children. They came to me not for themselves but with the idea of preventing families around this country from having tragedies or problems that potentially could come with pipeline problems. We were able to work out a method that is in this bill that simply responds in an efficient way with any potential emergency situations that will prevent potential problems from becoming tragic problems.

And I want to thank you, Mr. Chairman, for listening, you and your staff. I am very grateful, but more importantly, the family is grateful and our Nation's families are grateful and our Nation's communities are grateful for some of the elements in this bill, which will increase pipeline safety.

I thank you, and I yield back.

MR. HALL. Thank you, Dr. Murphy.

The gentleman from Texas, Mr. Green.

MR. GREEN. Thank you, Mr. Chairman, and I will ask unanimous consent to place my full statement in the record.

I want to welcome Admiral Barrett. Thank you for your previous service with the Coast Guard and also now at DOT. I have a district in Houston in the petrochemical area, and we have pipelines everywhere. We also have a lot of Coast Guard personnel in the Houston ship channel. And compared to 4 years ago, this legislation is much easier to deal with. Those of us who have lived and worked along pipelines for our whole lives, obviously, want the safety, but we also know we need new product.

So Mr. Chairman, I will yield back my time, and again ask that my statement be placed in the record, because I look forward to the testimony today and the markup on this hopefully in September.

MR. HALL. Without objection it will be placed into the record.

Mr. Boucher.

MR. BOUCHER. Mr. Chairman, I ask unanimous consent that Ranking Member Dingell's statement be placed in the record.

MR. HALL. Without objection it will be placed in the record.

[The prepared statement of Hon. John Dingell follows:]

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

Mr. Chairman, thank you for holding this important hearing today. I want to also thank Chairman Barton for his contributions, as well. I believe this discussion draft is a good first step towards reauthorizing our pipeline safety laws and I hope that we can continue to work together as these bills move forward.

One of the reasons that the discussion on reauthorization has been so civil this year is that we did so much hard work in writing the 2002 Pipeline Safety Act. It represented hard-fought compromises, both in this Committee and with our colleagues on the Committee on Transportation and Infrastructure. It made substantial improvements in the law that have yielded tangible benefits. For example, the requirement for natural gas transmission operators to conduct baseline assessments of their pipelines has been praised for helping detect and repair pipeline anomalies before they turn deadly. The establishment and continued promotion of a three-digit nationwide number that can be used prior to excavation activities will help us to prevent one of the leading causes of pipeline accidents.

While this discussion draft does not make sweeping changes to our work from 2002, it does offer some modest and important improvements, including the following:

Enforcement transparency: The Department of Transportation's (DOT) enforcement of pipeline safety regulations has long been a concern of mine. In the past, a lack of clarity and direction characterized the Department's approach to enforcement, an assessment supported by the Government Accountability Office (GAO) in its 2004 report entitled "Management of the Office of Pipeline Safety's Enforcement Program Needs Further Strengthening." Although the GAO reports that the situation has improved, my concerns remained as recently as this March, when Ranking Member Boucher and I sent a letter to DOT on its enforcement strategy. I believe the transparency requirement in the draft will benefit all parties involved in pipeline safety, be they energy companies or safety advocates, who want to understand how DOT is applying its enforcement authority. In addition, DOT's enforcement authority is enhanced in several other important areas such as one-call and integrity management.

Low-Stress Pipelines: When a British Petroleum (BP) pipeline ruptured in March of this year, spilling over 250,000 gallons of crude oil on Alaska's North Slope, the long-held conventional wisdom that "low-stress" equaled "no-risk" was turned on its head. Investigative work by the Democratic staff of the Committee has shown that a lack of oversight by the company and a lack of regulation by DOT contributed to this situation. The requirement in the discussion draft that DOT issue minimum operating standards for low-stress lines will begin to address this issue. Whether that will resolve the problem remains to be seen, but I can assure my colleagues that I will be keeping a close eye on the situation.

Damage Prevention Programs: One of the leading causes of pipeline accidents and damage is the direct result of errors made in excavation. The discussion draft addresses this issue by encouraging States to develop their own damage prevention programs and by awarding grant money to those States that take action.

In sum, Mr. Chairman, I believe we are on the path to producing good legislation and I look forward to the testimony of the witnesses here today.

MR. HALL. The Chair recognizes Mr. Sullivan from Oklahoma.

MR. SULLIVAN. Thank you, Mr. Chairman, for holding this important hearing today on the draft bill and Pipeline Safety Improvement Act Reauthorization and H.R. 5782, the Pipeline Safety Improvement Act of 2006.

I am also pleased to welcome Mr. Timothy C. Felt, the President and CEO of Explorer Pipeline Company in Tulsa, Oklahoma, who is testifying on the second panel on behalf of the Association of Oil Pipelines.

Explorer Pipeline operates a 1,400 mile pipeline system that transports gasoline, diesel fuel, and jet fuel from the Gulf Coast to the Midwest, serving Tulsa, Houston, Dallas, Fort Worth, St. Louis, and Chicago.

Nearly half a million miles of crude oil, petroleum products, and natural gas transmission pipelines cross the United States. These pipelines are vital to U.S. energy supply, and have important links to other infrastructure. The 107th Congress passed the Pipeline Safety Improvement Act to improve pipeline safety and security practices and to provide Federal oversight of pipeline operators' security programs and to provide for pipeline safety education programs.

The pipeline industry and the Department of Transportation have cooperated to achieve significant improvement in pipeline safety, and this improvement is demonstrated by the industry's record. I am glad that Mr. Felt is here to share his insight in pipeline safety.

Thank you, again, for holding this important hearing, Mr. Chairman.

MR. HALL. I thank you.

[Additional statements submitted for the record follows:]

PREPARED STATEMENT OF THE HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you, Mr. Chairman, for holding this hearing on the Committee's discussion draft on pipeline safety reauthorization and the Transportation Committee's recently reported bill, HR 5782. Continuing the Committee's tradition regarding this Act, the Subcommittee has worked in bipartisan fashion to put together this draft. I hope that after this hearing we will introduce a bill and move to markup soon after Congress returns in September.

Reauthorization of the Pipeline Safety Improvement Act is an important effort that should be completed this year, and I am hopeful that our friends in the other body share our desire to enact this legislation.

The draft we are discussing today incorporates several new provisions and amendments to the existing law that have been proposed by various stakeholders, including the Administration, industry, and safety advocates. It also incorporates some legislative language that was introduced by Mr. Murphy.

The bill strengthens state one-call requirements for excavation damage, provides new authority and grant money to the states to develop their own damage prevention programs modeled after the successful programs already in place, and puts some sunshine on enforcement actions.

The draft also addresses the pending GAO study and the seven year reassessment interval, as well as addresses a clarification in the law to direct-sales laterals. I thank the witness for appearing before the Subcommittee today and I look forward to hearing their comments and testimony. I yield back the balance of my time.

PREPARED STATEMENT OF THE HON. MICHAEL G. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you, Mr. Chairman for holding this important hearing.

When our constituents think of the movement of products and goods across the country -- most of them think about large trucks on the highway carrying everything from ice cream to new cars.

Some think of the railroads and others think about the barges that traverse the Mississippi. But few think of the interstate transmission pipelines that transport huge volumes of crude oil, refined products including gasoline and natural gas; unless something goes wrong.

Congress last updated the federal pipeline safety law in 2002. Among other things, the bill required operators of regulated gas pipelines in densely populated areas to conduct risk analysis and periodic inspections, and to strengthen public education regarding pipeline safety.

The good news is that the provisions adopted as part of this legislation are working -- safety has improved and lives have been saved. But we can always do better, and I am hopeful that this year's reauthorization will yield continued improvements in safety.

I am looking forward to hearing from the witnesses today about the discussion draft before us today, as well as H.R. 5782, considered by the Transportation and Infrastructure committee last week.

With that, Mr. Chairman, I yield back.

MR. HALL. And I apologize to our witnesses and to those in attendance, and I thank Mr. Boucher for allowing us to delay this hearing. We had what was termed an emergency calling of one of the parties here in Congress that Mr. Boucher was not a member of, and he allowed me to go. But we are sorry for the delay.

But let's get underway. Admiral Barrett, we are honored to recognize you from, the Pipeline Hazardous Materials Administration, the Department of Transportation. If you could, summarize, and we will get around to getting into your statement with the question-and-answer period, if you don't mind.

Thank you, sir.

STATEMENTS HON. THOMAS J. BARRETT, ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION; AND HON. DONALD L. MASON, COMMISSIONER, PUBLIC UTILITIES COMMISSION OF OHIO, ON BEHALF OF NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

ADMIRAL BARRETT. Mr. Chairman, thank you, and Ranking Member Boucher, and members of the committee.

I appreciate the opportunity to discuss your draft proposal to reauthorize the pipeline safety program.

Mr. Chairman, I also truly appreciate your leadership and the subcommittee's stewardship on pipeline safety. I am pleased to provide my first testimony before this subcommittee on ways to improve an already forward-leaning and positive program and build upon the progress that has been made to date. And frankly, that has been achieved, I believe, because of the cooperation and leadership by the Congress, the Administration, the Pipeline Safety Administration, and also the pipeline industry, States and local authorities, the public, and the first responder community working together effectively toward a common goal.

I also want to thank and acknowledge Ms. Stacey Gerard, who is with me here this morning. She has been instrumental in moving the agency forward on these programs over the last several years since 2002. And I would also like to note that I have just appointed her to be the Assistant Administrator of the Office of Pipeline Safety and Hazardous Materials and the Chief Safety Officer on a permanent basis.

So Stacey, thank you. And she is here this morning.

And with her is Dr. Ted Wilke, who will step up and become the Acting Chief of the Office of Pipeline Safety. And Dr. Wilke is also here this morning.

The Department and PHMSA are committed, like you, to strengthening the pipeline safety program. We welcome your very strong proposal and its key concepts, and I believe they will clearly help us reach our goal of eliminating pipeline incidents and providing a foundation for energy transportation infrastructure needs and also the economic growth that our country depends on. And reauthorization now will help us achieve that.

The 2002 reauthorization, which you sponsored and the President signed into law, introduced the Integrity Management Program, a key concept and a key component of a systems-based approach to managing

and reducing pipeline risks. In turn, as you noted, we have seen a steady decline in the number of pipeline accidents that cause serious harm to people or our environment, and we need to stay the course and step up our efforts as we look to achieve further success in this area.

The Pipeline Safety Improvement Act of 2006 will be another important milestone for the safety program. Based on the data we have and experience under the 2002 law, the proposal places more emphasis on damage prevention, enhancing State program oversight of distribution pipelines, and clarifies our responsibility and emergency waiver authority during natural disasters and other emergencies.

Managing pipeline safety based on system risk clearly suggests we must minimize damage to pipelines associated with construction damage. Several States, including Virginia, as Mr. Boucher noted, and Minnesota, have led the way in developing strong damage prevention programs, and we have seen up to 50 percent reductions in damages to pipelines from construction-related activities. We would expect similar results from other States if we can ensure our State partners have more resources and authority and share responsibility with us in getting this job done. The committee's proposal recognizes this need and adopts important concepts, which the Administration forwarded, including new civil enforcement authority, incentive for States to improve their programs, technology grants to advance the safety and efficiency of the one-call notification process, and more funding for State programs.

State partners oversee over 90 percent of operator compliance with pipeline safety regulations. This proposal would also raise the cap on grants provided to State agencies over 6 years from 50 percent to 80 percent to offset the increasing costs of the programs they execute consistent with the programs of the Department. We, frankly, need them, and they need our help to be more effective.

We also learned a great deal from last year's devastating Gulf Coast storms on the vulnerabilities that exist within the pipeline infrastructure to natural and manmade disasters. The Administration's proposal provides specific authority for emergency waivers when necessary to help operators anticipate or respond expeditiously to national or regional disasters at the earliest possible time. We believe this can help minimize pipeline safety disruption while maintaining safe operations.

And like you, Mr. Chairman, I strongly favor a systems-based approach to assessing and managing risk, especially as risks to large infrastructure systems, like pipelines, change over time. And an effective systems risk management approach, which this subcommittee helped devise, is getting positive results. Integrity Management Programs focus operators on making the best use of information as it

becomes available. This is a dynamic process to enable an operator to deploy attention and resources against the greatest risks, the worst first.

Reliance on stipulated retesting intervals, as established in the current law, seems a disincentive to continuous evaluation and adjustment of a dynamic systems approach, in effect, a whole health review of pipeline systems. Our goal should be to regularly and systematically utilize the most current information about the system so that they can be maintained to operate in the best condition for the longest amount of time.

These reauthorization concepts have been generally supported across our stakeholder communities, including the Federal and State family, and we are pleased to see many of the same priorities reflected in the committee's draft.

Mr. Chairman, like you, Acting Secretary of Transportation, Maria Cino, and PHMSA are wholly dedicated to ensuring the safe operation of our pipeline transportation system under both normal and emergent conditions. We understand how important this is to the safety and security of our citizens and the continued growth of America's economy.

Thank you very much. I would be pleased to answer any questions and ask that my full statement be inserted in the record.

[The prepared statement of Hon. Thomas J. Barrett follows:]

PREPARED STATEMENT OF THE HON. THOMAS J. BARRETT, ADMINISTRATOR, PIPELINE AND HAZARDOUS MATERIALS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

I. INTRODUCTION

Chairman Hall, Ranking Member Boucher, members of the Subcommittee, thank you for the invitation to appear to discuss your draft proposal to reauthorize the pipeline safety program. I appreciate the Subcommittee's stewardship on pipeline safety and I am pleased to provide my first testimony before this subcommittee on ways to improve an already forward leaning safety program, and to build upon PHMSA's progress to date.

I believe your proposal embodies key concepts that will help us reach our goal of eliminating pipeline safety incidents and provide a foundation for the energy transportation infrastructure we need to continue our strong economic growth into the future.

Americans depend on pipeline transportation for the safe movement of critical energy supplies. This dependence makes it crucial to keep the system safe and reliable. Over 97 percent of the nation's transportation energy needs are met by petroleum products, and 64 percent of these energy products are moved through America's pipeline networks. The system is near capacity all the time. In times of emergencies, this lack of redundancy and system capacity makes it important for PHMSA to work along with our state partners to assure that energy product transportation is not interrupted. In the years to come, we hope to contribute to increasing the resiliency of this infrastructure.

"The Pipeline Safety Improvement Act of 2002" which you sponsored and the President signed into law was a most important milestone. The Act reinforced the importance of integrity management, operator qualification, public education, research, mapping, construction damage prevention and other initiatives, including one national number for One-Call. Most importantly in my view, the Act set the stage in law for a

systems approach to managing and reducing pipeline risks. Over the past five years we have seen a steady decline in the leading causes of pipeline failures and the serious accidents in which people are injured or the environment is harmed. We need to stay the course and step up our efforts.

In the past few years, PHMSA has taken a hard look at incidents, their causes and what can be done to prevent them. One thing is crystal clear-the leading cause of incidents in which people are hurt or killed is construction-related damage causing an immediate rupture or damage which later grows to failure. This occurs most often on the distribution systems which run through the neighborhoods where people live and work. This part of the pipeline system, the distribution network, is almost entirely under the jurisdiction of states, our foremost partners in pipeline safety.

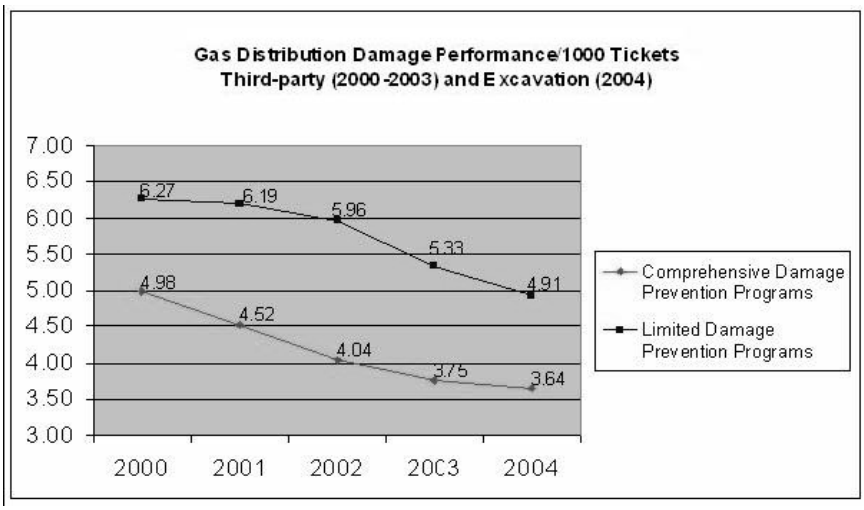
II. ADMINISTRATION PROPOSAL

The Secretary of Transportation recently submitted to Congress the Administration's legislative proposal to reauthorize and improve pipeline safety and protection for the environment, and also to enhance infrastructure reliability. The proposal, the "Pipeline Safety and Reliability Improvement Act of 2006" looks to build on our progress in achieving the mandates of the 2002 Act by placing more emphasis on damage prevention, enhancing state programs' oversight of pipelines, and clarifying our responsibilities and emergency waiver authority during natural disasters and other emergencies.

Managing pipeline safety based on system risk clearly suggests we must minimize damage to pipelines associated with construction-damage. Construction damage is almost always preventable and we have worked to find practices that will eliminate this problem. The challenge is managing this activity without damaging a very crowded underground infrastructure – one that gets more crowded every day, not just with pipelines but new telecommunications, electric, water and sewer, and other infrastructure.

Several states including Virginia and Minnesota have led the way with strong damage prevention programs and seen up to 50% reductions in this type of damage. We need to prioritize the resources for pipeline safety to be sure that our state partners have more resources to share responsibility with us in getting this job done. The Committee's proposal recognizes this need by adopting important concepts which the Administration forwarded, including new civil enforcement authority, incentives for states to improve their damage prevention programs, technology grants to advance the safety and efficiency of the one call notification process, and more funding for state pipeline safety programs.

The following chart from a PHMSA report gives a picture of the progress possible with a strong enforcement program. There are degrees of success with enforcement and two model states, Virginia and Minnesota both have fewer than 3 damages per 1,000 one call tickets by enforcing the practice of calling before digging.



Our proposal addresses this concern by establishing a state grant program to provide more incentives to states to develop effective damage prevention programs. State agencies and PHMSA would also gain authority to conduct civil enforcement actions against anyone who fails to contact "One-Call" prior to digging, with our focus being on state enforcement.

Ensuring the safety of 2.3 million miles of pipelines is an enormous task. Our state partners oversee 90 percent of operator compliance with pipeline safety regulations. We seek to raise the cap on grants provided to state pipeline agencies over 6 years from 50 percent to 80 percent to offset the increasing cost of the programs they execute, consistent with the programs of the Department. State agencies do utilize PHMSA's national regulatory pipeline safety standards to inspect the majority of the pipeline infrastructure and we increasingly invest in state training and decision support as we function as a coordinated workforce. We need them and they need our help to be most effective.

Last year's devastating Gulf Coast storms also taught us lessons about the vulnerability of pipelines to natural and man-made disasters. In the wake of last years storms, PHMSA's inspectors deployed to State emergency operations centers, operator control rooms, and to critical pumping stations across Louisiana and Mississippi to monitor operator efforts to work to keep energy moving without standard electric power.

To assist with recovery of the pipeline infrastructure during future emergency events, the Administration's proposal provides for specific regulatory authority to use emergency waivers when necessary to help operators anticipate or respond expeditiously to national or regional disasters at the earliest possible time. We believe this can help to minimize pipeline system disruption while maintaining safe operations.

Like you, I strongly favor a systems-based approach to assessing and managing risk, especially as the risks to large infrastructure systems like pipelines often change over time. I expect to see an effective systems risk management approach, which this subcommittee helped devise, getting positive results for pipeline safety. The integrity management program has focused operators on making the best use of information as it becomes available. But this must be a dynamic process in which the operator is able to deploy attention and resources against the greatest risks, worst first. Reliance on stipulated retesting intervals, as established in current law, is inconsistent with a systems approach and a disincentive to continuous reevaluation and readjustment.

Reliance on stipulated retesting intervals as established in current law seems a disincentive to the continuous evaluation and readjustment of a dynamic systems approach. It is a basic element of an ongoing "whole-health" review of a pipeline system. The goal is to regularly and systematically utilize the most current information about the pipeline system so that it may be maintained to operate safely in the best condition for the longest amount of time.

These reauthorization concepts have been generally supported across our stakeholder community, including the federal and state family, and we are pleased to see many of the same priorities reflected in the Committee's proposal.

III. CONCLUSION

I assure the members of this Subcommittee, that the Administration, Acting Secretary Cino, and the dedicated men and women of PHMSA share your strong commitment to improving safety, reliability, and public confidence in our Nation's pipeline infrastructure.

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

Thank you.

I would be pleased to answer any questions you may have.

MR. HALL. Thank you, sir.

We have a vote on, and we would like to go ahead and let Mr. Mason give his 5-minute presentation, if you would, and then we will recess for probably 20 minutes. We have two votes: a 15-minute vote and a 5-minute vote. We will probably be back in 30 minutes when we leave.

All right. I recognize you for your preliminary statement.

Thank you.

COMMISSIONER MASON. Thank you, Mr. Chairman, Ranking Member Boucher, and members of the subcommittee.

I am Don Mason, Public Utilities Commissioner, State of Ohio, but I am also here to represent the National Association of Regulatory Utility Commissioners where I am the Chairman of the Gas Committee. And we prepared our testimony in conjunction with NAPSR, which is the National Association of Pipeline Safety Representatives, which are people who actually have their boots on the ground doing the inspection of the pipe.

Again, NARUC is a quasi-governmental, non-profit organization as well as NAPSR, so we do; in fact, represent the State partnership to the Federal agencies.

I will focus in on the four key points we would like to bring to the table at this point. We do strongly support the funding provisions found in the discussion draft, and we appreciate the efforts to up the funding to 80 percent for State funding, but we do remind all that in all likelihood, the actual funding is probably going to be around 55 percent when all is said and done with regard to how much the States end up spending. The States are still a major partner in our endeavors.

But State pipeline safety program funding is heavily dependent upon PHMSA's proper sharing of the user fees. State pipeline safety programs represent approximately 80 percent of the Federal/State inspector workforce that oversees pipeline inspections nationwide, as also indicated by the Admiral. Without adequate funding, States would not be able to conduct the required inspections of the existing pipeline facilities or new pipeline construction projects, and we do hope there are new projects helping to bring more competitive cost natural gas to the market.

I will just briefly touch upon the issue of certification. We do have some concerns in the way the certification language could possibly be read, not that it is necessarily being read this way, but we want to ensure that the States have flexibility in moving forward aggressively, even though they may not, in fact, meet all nine conditions as indicated. The theory being is that those might be some of the States we want to help move forward eventually hitting all nine elements.

Also, it is key to say that it is our understanding that the intent of the subsections 601 through 604 in H.R. 5782, when taken together, give the Secretary the discretion to make damage prevention program grants to States not only to support an existing damage prevention program, but also to provide an incentive to improve programs that currently may not be able to meet all of the elements outlined in legislation. However, with additional assistance, we think we can implement and maintain effective programs as contemplated by the bill.

And moving on to, perhaps, the fourth point, I would like to say, are damage prevention grants. Our last concern is contained in the draft discussion, as well as H.R. 5782. There is prohibition against lobbying, which we, of course, understand, but there is presently a prohibition against using funding for litigation. And we might remind that one of the elements is having civil penalties in place. So basically, to have civil penalties in place, but not allow funding of litigation, actually is discouraging and perhaps may be construed to be an unfunded mandate. Additionally, I think those in the Congress recognize that if we have the authority to have civil penalties, there will be a percent of the population out there that will, in fact, litigate. So we do need to be armed when we go against them.

That will be my summary, and I am available, of course, after the break, Mr. Chairman and Members of Congress.

[The prepared statement of Commissioner Donald L. Mason follows:]

PREPARED STATEMENT OF THE HON. DONALD L. MASON, COMMISSIONER, PUBLIC UTILITIES COMMISSION OF OHIO, ON BEHALF OF NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

- Grant funding must increase to meet resource requirements of State pipeline safety programs. States strongly support the provisions found in both the Discussion Draft and HR 5782 that would provide up to 80% funding for State pipeline safety programs.
- The language amending Section 60105(b)(4) as proposed in both the Discussion Draft and HR 5782 will encourage the States to establish effective damage prevention programs without creating a certification criteria that a State may not be able to meet due to reasons outside the control of the State's pipeline safety agency. We believe that the language contained in the Discussion Draft is more beneficial to the State programs.
- States should be able to access damage prevention program grants to begin, maintain and/or improve their damage prevention programs.
- States should be able to use grants for litigation. States are mandated in both the Discussion Draft and HR 5782 to use civil penalties, if necessary, therefore litigation could be necessary as well.

Good Morning Mr. Chairman, Ranking Member Boucher and Members of the Subcommittee.

I am Donald L. Mason, a commissioner at the Public Utilities Commission of Ohio (PUCO). I have served in that capacity since 1998. I also serve as the Chair of the Committee on Gas for the National Association of Regulatory Utility Commissioners (NARUC). As Chairman of the NARUC Committee on Gas, I am testifying today on behalf of that organization and the National Association of Pipeline Safety Representatives (NAPSR). In addition, my testimony reflects my own views and those of the PUCO. On behalf of NARUC, NAPSR and the PUCO, I very much appreciate the opportunity to appear before you this morning.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Its membership includes the State public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. NARUC's members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory. NAPSR is a non-profit organization of State pipeline safety directors, mangers, inspectors and technical personnel who serve to support, encourage, develop and enhance pipeline safety.

We greatly appreciate your efforts, Mr. Chairman, as well as the members and staff of the Subcommittee on Energy and Air Quality, to make this legislation helpful and useful to the State agencies that are charged with ensuring the public safety with regard to pipelines. Additionally, we greatly appreciate the efforts of your colleagues and staff on the Transportation and Infrastructure Committee for their assistance to the States. Today, I would like to bring your attention to four issues found in both the Discussion Draft and HR 5782.

1. Funding

States strongly support the provisions found in both the Discussion Draft and HR 5782 that would provide up to 80% funding for State pipeline safety programs. The rapid expansion of federal pipeline safety initiatives in recent years (such as operator qualification, public awareness, integrity management, homeland security) has greatly increased the cost and resource demands of State participation. However, the grants authorized to be appropriated under both the Discussion Draft and HR 5782 are not adequate to move the States anywhere close to the 80 percent, even by 2010 or 2012. As an example, if the States' pipeline safety costs remain the same as the amount projected for 2006, even the 2010 authorization for pipeline safety ($25,855,000 - $2,000,000) is only 54.8% of the cost of the State pipeline safety programs.

State pipeline safety program funding is heavily dependent upon Pipeline Hazardous Material Safety Administration (PHMSA) proper sharing of these user fees. State pipeline safety programs represent approximately 80 percent of the federal/State inspector work force that oversees pipelines nationwide. Without adequate funding, States will not be able to conduct the required inspections of the existing pipeline facilities or new pipeline construction projects, and encourage compliance with new and existing safety regulations. Grant funds are an effective way to leverage resources and increase total inspection capability since States match or exceed federal funding provided for pipeline safety.

2. Certification

The language amending Section 60105(b)(4) as proposed in both the Discussion Draft and HR 5782 will encourage the States to establish effective damage prevention programs without creating a certification criteria that a State may not be able to meet due to reasons outside the control of the State's pipeline safety agency. The States agree that this is necessary language to include in this legislation and we support the provisions found in both the Discussion Draft and HR 5782, however we believe that the language contained in the Discussion Draft is more beneficial to the State programs.

3. State Damage Prevention Programs

It is our understanding that the intent of subsections (a)(2), (c), and (e) of Section 60134 of HR 5782, taken together, gives the Secretary the discretion to make damage prevention program grants to States not only to support an existing damage prevention program but also to provide an incentive to improve a program that currently may not be able to meet all elements outlined in the legislation; however, with additional assistance can attain and maintain an effective program as contemplated in the bill. Additionally, it is our understanding that the intent of subsection (c) of Section 60134 of the Discussion Draft is to provide the Secretary with the same discretion found in HR 5782 and outlined above.

Provided our interpretation of the language found in the referenced sections and subsections is correct, we believe that both bills are moving in the right direction. However, we also believe that both bills, with regard to the damage prevention program grants, contain a large degree of ambiguity and therefore leave much up to the interpretation of these subsections.

If the intent is indeed to enable the States to receive damage prevention program grants so that their programs can meet and exceed all the Damage Prevention Program Elements, we would suggest that language be added to both measures that clearly state that the States shall receive damage prevention program grants for the purpose of meeting, maintaining, or exceeding any or all the Damage Prevention Program Elements, thereby encouraging the States to work to establish the effective damage prevention programs envisioned by the Discussion Draft and HR 5782.

We bring this issue to your attention because it is our opinion that under the Discussion Draft language and HR 5782 an argument can be made that a State must be found to have an effective program in order to be awarded a grant. Therefore, a State that has implemented some, but not all, of the effective program elements may not be eligible to obtain grant support for action it is currently taking, or for improving its existing program. If the intent of this legislation is to encourage States to adopt effective damage prevention programs, it seems counterproductive for States that have progressed in that area, or that could make progress if funds were available, to be ineligible for any funding at all.

4. Damage Prevention Grants to States

Our last concern is contained in both the Discussion Draft and HR 5782. Subsection 60134(c)(2) APPLICATION of the Discussion Draft a and subsection 60134(g) NONAPPLICABILITY OF LIMITATION of HR 5782 both stipulate that damage prevention grant funds cannot be used for lobbying or in direct support of litigation. The Lobbying prohibition is understandable; however, "litigation" could include State enforcement actions or State defense of actions taken under its damage prevention program. Additionally, under the Damage Prevention Program Elements in element seven of both pieces of legislation, the language makes reference to the fact that in order for a State to have a "effective" program, the program must include "…the use of civil penalties…." If the State authority is mandated under federal law to enforce states' damage prevention laws which could include civil penalties, it must be contemplated that these penalties may be appealed and that the State would need to litigate. We therefore respectfully suggest that "in direct support of litigation" be deleted, or the intent of this language clarified.

Mr. Chairman, that concludes my remarks and I am available to answer any questions that you or the Subcommittee members may have. Thank you again for that opportunity to appear before you today.

MR. HALL. All right. Thank you very much.

We will take a break now. We will pick up again at, say, 12:30.

[Recess.]

MR. HALL. All right. We will get underway.

I have some questions now, if you gentlemen would.

And without objection, we will put into the record the Pipeline Safety Improvement Act Reauthorization Statement from the National Utility Contractor Association.

Without objection, it is admitted.

[The information follows:]

Advancing the water, sewer, gas and telecommunications construction industries

July 26, 2006

Pipeline Safety Improvement Act Reauthorization and H.R. 5782, the Pipeline Safety Improvement Act of 2006 – Comments by the National Utility Contractors Association

The National Utility Contractors Association (NUCA)—which represents thousands of underground utility contractors who provide the materials and workforce to build and maintain our nation's network of water, sewer, gas, telecommunications and construction site development industries—is supportive of the U.S. Department of Transportation's pipeline safety program and works closely with the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Today the Subcommittee on Energy and Air Quality will discuss legislation (HR 5782) that would reauthorize PHMSA's pipeline safety program. NUCA asks that you consider the following legislative provisions while you work on this important legislation.

1. Federal Role in Damage Prevention Enforcement
   NUCA does not believe that a federal role in enforcement of state one-call and damage prevention laws is necessary. However, if Congress intends to push forward with the inclusion of a federal enforcement role, NUCA strongly encourages lawmakers to do so with a balanced approach that addresses the responsibilities of both excavators and owners/operators.

   Damage prevention is a *shared* responsibility. NUCA promotes safe digging practices for excavators, including calling the one-call center, waiting the required time before excavating and digging with care. It also strongly encourages pipeline owners/operators to fulfill their responsibility by accurately locating and marking their pipeline facilities in a timely fashion. *Both* parties must fulfill their obligations if pipeline damage is to be prevented. Any new legislation should reflect that.

   Additionally, NUCA believes that including a criminal penalty provision for any person who excavates without calling the one-call center is misguided and ultimately unenforceable. Homeowners excavate regularly and should not be subject to jail time because they are not aware of their one-call responsibilities.

2. Support for the Common Ground Alliance (CGA)
   NUCA is an active member of the CGA, an organization made up of all stakeholders in the damage prevention process, including excavators, underground facility operators, locators, one-call centers and all levels of government. The Pipeline Safety Improvement Act of 2002 included authorization of federal funding for the CGA, and that funding has been well spent. Those resources have helped the CGA develop a comprehensive damage data system and create more than 40 CGA "Regional Partners" that promote CGA Best Practices at the local level.

NATIONAL UTILITY CONTRACTORS ASSOCIATION

4301 North Fairfax Drive • Suite 360 • Arlington, Virginia 22203-1627 • Phone: 703-358-9300 • Fax: 703-358-9307 • www.nuca.com

Additionally, the funding in the previous Act assisted in the establishment of a nationwide, three digit number (811) that will enable excavators to quickly connect with their one-call centers. Therefore, continued financial support of the CGA is needed to ensure the organization's success in helping prevent pipeline damage. We specifically ask that an additional $1 million be allocated so that the CGA can conduct an 811 educational campaign.

3. Support for Technical Development Grants
NUCA supports the use of federal resources for the development of technologies that will facilitate the prevention of pipeline damage—e.g., wireless and global positioning technologies that could enhance the ability of excavators to communicate with facility operators and one-call centers. These grants would be distributed by PHMSA through cooperative agreements to trade associations, academic institutions and other research organizations.

NUCA believes pipeline safety reauthorization is needed this year, and we encourage you to consider these provisions as you move forward with this legislation. If you have any questions, please call NUCA at (703) 358-9300. We thank you for your consideration.

Regards,

Jim Stutler, President

MR. HALL. And the statement of Steven Sandhur, CEO on behalf of the American General Contractors, offered for the record.

Without objection, it is entered into the record.

[The information follows:]

Statement of

Stephen E. Sandherr, CEO

on behalf of
The Associated General Contractors of America

Presented to the

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Air Quality

For a hearing on

Pipeline Safety Improvement Act Reauthorization and H.R. 5782, the Pipeline Safety Improvement Act of 2006

July 27, 2006

Building Your Quality of Life

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 32,000 firms, including 7,000 of America's leading general contractors, and over 12,000 specialty-contracting firms. Over 13,000 service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
2300 Wilson Boulevard, Suite 400 • Arlington, VA 22201 • Phone: (703) 548-3118 • FAX: (703) 548-3119

On behalf of the Associated General Contractors of America (AGC), I appreciate the opportunity to comment on H. R. 5782, the Pipeline Safety Improvement Act of 2006. AGC is especially concerned about the section creating a new permanent federal one-call enforcement program. While this provision may be good to encourage the few states that do not have strong one-call laws that include enforcement and civil penalties, it takes a step back from the progress we have made to ensure a strong partnership for damage prevention. The success of the Common Ground Alliance and the successful records of state one-call laws comes from the participation of the construction industry, the locating industry and the underground facility owners in a true partnership committed to damage prevention.

AGC believes that federal enforcement provisions in both the administration's proposal and in the Energy and Commerce draft focus solely on the contractor and do not further the partnership that we have been committed to for the last eight years. We strongly believe that to improve safety in this area, the subcommittee should modify the draft to ensure that all owner/operators, locating personnel, and excavators share equally in the responsibility for facility integrity, and most importantly public and worker safety. Absent this focus in the enforcement language, the successful partnership may begin to falter.

AGC also believes that a permanent federal program is unnecessary. AGC and the Common Ground Alliance both support the premise that the best place for enforcement decisions to be made is in the states themselves. The federal government should encourage states to adopt policies and procedures that promote effective one-call programs, then withdraw and allow the states to operate and enforce them.

AGC is proud of our history as a construction industry sponsor of the Common Ground Alliance (CGA). AGC believes that in the spirit of "shared responsibility," a concept promoted by the CGA, owner/operators and locating personnel must be held to just as high a standard as excavators for damage prevention process enforcement to be equitable. States such as Virginia and Minnesota have demonstrated that enforcement works—when it is equally applied to all stakeholders to the damage prevention process across the board. We are pleased that these state's one call programs were used as models for the nine points listed in the administrations proposal, the Transportation and Infrastructure Committee's bill and the Energy and Commerce Committee's current draft.

AGC supports Best Practices as outlined by the CGA. AGC members call before they dig; wait the required amount of time for utilities to locate and mark their facilities; dig with care; and so much more. It is just as important, if not more so, that utilities respond in a timely manner and that locators mark the facilities clearly and accurately as prescribed by law.

The Commonwealth of Virginia provides an excellent example of how an effective program operates. They enjoy a successful partnership between the excavators, the facility owners, the locators and the state. One of their hallmarks is strict enforcement – across all stakeholder groups. Clearly, no one wants to cause damage. Criminal

penalties are not appropriate for any stakeholder be they a locator, utility owner, professional excavator or a private citizen operating in good faith. They should not be included in any reauthorization of the Pipeline Safety Act. Civil penalties, however, send a strong message that stakeholders must operate in a responsible, safe manner.

In any reauthorizing legislation, AGC encourages inclusion of the "nine points" of an effective one-call program modeled on the Virginia example. Virginia has data from 1996 to 2005 indicating a 60 percent increase in one-call excavation notices while documenting a 50 percent reduction in excavation damage to gas pipelines. The Commonwealth attributes this reduction to its nine point program. If the federal government wants to get involved it should encourage states to adopt systems like the one in Virginia which has enjoyed great success.

AGC also urges the subcommittee to include authorizations for funding for the Common Ground Alliance, promotion of 811 three-digit nationwide dialing for one-call (which goes on line in 2007), and for Technology Development Grants to enhance locating technologies and render underground utilities more locatable. These programs are critical to getting universal adoption of our common best practices.

Again, AGC encourages the subcommittee to promote successful damage prevention programs. But the most important lesson we have learned from our successful efforts in the Common Ground Alliance are that these laws must take into account the entire damage prevention process, not simply focus on the excavator. AGC encourages leveling the playing field between stakeholders—easing the inequitable burden included in the draft bill which currently lies primarily with the excavator when it should recognize that to be successful these programs must recognize the role that all parties have in public and worker safety, facility integrity and damage prevention.

Again, thank you for the opportunity to comment on this important issue. I look forward to working with the subcommittee to enact meaningful and fair legislation reauthorizing the Pipeline Safety Improvement Act.

Thank you.

MR. HALL. At this time, we will start visiting with you gentlemen about your opening statements.

Admiral, with your background as a risk manager from the first order of the United States Coast Guard, can you lend us some of your experience regarding managing pipeline safety based on system risk and how this risk system lends its application to the current 7-year reassessment interval under discussion?

ADMIRAL BARRETT. Thank you, Mr. Chairman.

As you know, with your experience, these pipeline systems are very long-life systems. They are going to be in place for 10, 20, 30, 40, or even 50 years. And approaching risk management from a systems perspective allows you to concentrate on the most serious risks, which is always essential. And one of the issues you have on long-lived systems is those risks change over time. They can change because of the nature of the product that goes through the system. They can change from just fatigue. They can change from development coming in around the lines.

But fundamentally, the risk profile may change. And an effective system risk management perspective is dynamic. It has to constantly reassess and direct its attention at the most serious concerns at any point in time. And I frankly believe a fixed interval mandate for re-inspection, as it is in the law now, at a fixed point in time, detracts from that systematic, continuous updating type of thing. You may have a need to re-inspect in 2 or 3 years, based on certain conditions. On other lines or in other segments, frankly, you may not need to do it for 10 or 15 years, depending on what your current information is showing you.

And the other thing, aside from the changing conditions, fundamentally, there is only so much time and attention and resources that you can direct at issues. You always want to direct it at the most important ones, and putting it against something that may not be the most important, frankly, I think just takes your eye off the ball. That is a general perspective, sir.

MR. HALL. Could you explain the current draft? It contains a deadline for low-stress pipelines, like the BP line that was involved in an accident up on the North Slope a few weeks back, and I understand there was a public meeting on this proposed rule. When will that be released for comment, if you can tell us? And can you describe for us how the meeting went and what issues were raised?

ADMIRAL BARRETT. Sure. We had a public hearing to address regulation, or potential regulation, of low-stress lines. We are actively working on a Notice of Proposed Rulemaking that we would expect to have out early this fall. It would address situations like the BP lines and other low-stress lines. Our approach would look at things like corrosion control, damage prevention programs, operator qualifications, the types of things integrity assessments, integrity management that go to an overall systems look at these things and bring them under the Federal umbrella. And I think you will see better results, particularly in areas where, again, there are unusually sensitive areas or high-consequence areas where the risks from low-pressure lines, although they are lower than they are with other types of lines, frankly are just simply not going to be acceptable anymore. This was an issue the Administration and the agency was working on. It was not, unfortunately, at the top of our list prior to the BP incident, but it is clear we need to move that forward quickly, and we are doing so, sir.

MR. HALL. What other issues were raised, then, and discarded or considered and accepted?

ADMIRAL BARRETT. In terms of the hearing or in terms of the low-pressure lines?

MR. HALL. The hearing.

ADMIRAL BARRETT. I think we covered many of the items that we are talking about in the reauthorization, the types of approaches we are taking here with respect to damage prevention programs, with respect to the technical criteria for integrity assessment, operator qualifications and a broad range of technical issues getting at some of the corrosion control issues, pretty broad-ranging set of topics, of which low pressure was just one.

MR. HALL. I thank you.

Mr. Mason, regarding the certification of State programs that are encouraging and promoting effective State damage-prevention programs and the actual awarding of grant money, the States that have effective State damage prevention programs, why should we, as Congress, authorize additional money for grant programs to States that might not be engaged in an effective damage prevention program, and there are some?

COMMISSIONER MASON. Thank you, Mr. Chairman.

What it goes to the heart of is some States may not presently have all nine elements, but may be working towards it. As many Members of Congress know, who may have been State legislators in the past, many State general assemblies meet every other year for a limited time period, and so it might take a period of a couple biannual budgets of that State government in order to get them to a stage where they actually meet all nine elements. And what we would like to see is the discretion in the Department that they can evaluate if that agency is headed in the right direction, perhaps has language proposed or is introduced that, again, is taking the agency towards having all nine elements. Therefore the Secretary would have that discretion of giving grants in that case. But if it is absolutely in place, you must have these nine before you get one dollar, that is almost like saying if you are a sinner, you are not allowed into church.

I thought I would throw that in there.

ADMIRAL BARRETT. Mr. Chairman, I agree with that, by the way.

MR. HALL. We had a preacher one time that said he had good news and bad news for us. He said, "The good news is, there is enough money in the church right now to pay off all of our debt. The bad news is, it is still in your pockets."

All right. My time is up. I recognize Mr. Boucher.

MR. BOUCHER. Why thank you, Mr. Chairman.

Mr. Mason, if a State can show that it is well on the way toward implementing the nine-point program, what does that mean? If you are going to implement something, why not just do all nine points and have that done at the outset? And then you could comply with the bright-line standard that says no money unless you have done it. I mean, we know it

works. We know what they are. What is wrong with simply saying, "Go on and do it, if you want the funds."?

COMMISSIONER MASON. Congressman, I represent 50 State commissions and 50 State pipeline administrations in today's testimony, and I think everybody has their heart in the right place and is focused on this, but again, when they go back to their general assemblies, sometimes they get more authority in order to actually have all nine elements, they are competing against everything from healthcare costs to education to transportation within their own State general assembly's time. And so, again, they might be headed in the right direction, they just might not be there yet.

MR. BOUCHER. You are saying there are some States that might not have adequate statutory authority to implement by rulemaking the nine-point program and they would have to get the statute amended to do that, and that necessarily takes time.

COMMISSIONER MASON. Yes, sir.

MR. BOUCHER. That is the source of your suggestion?

COMMISSIONER MASON. Yes, sir.

MR. BOUCHER. Okay. Mr. Barrett, do you have anything to add to that?

ADMIRAL BARRETT. No, sir. I agree it is an issue and one we should address.

MR. BOUCHER. Mr. Barrett, let me ask you this question.

The Administration had proposed to us that we include a change in the pipeline safety law regarding safety orders. And you may notice that our bill incorporates your recommendation. We have a provision in our bill that very closely reflects what you had suggested. Could you please tell us why the Administration needs this authority and how you would implement the authority and what kind of context would it be applied? And the reason I ask you this is because some of our witnesses will testify later in opposition to this and will say that it is overly broad and that, just to quote one of the witnesses, it "would eliminate the due process benefit by practically abolishing any threshold or burden of proof for DOT in triggering a safety order." So I would like to give you an opportunity to respond to that criticism before it is formally lodged with us.

ADMIRAL BARRETT. Thank you, sir. As you know, the 2002 Act actually has a provision that would allow us to issue this type of order and really does not have much in the way of criteria for it. And our intent, frankly, was to provide a little more due process in that to allow people to come in. And the type of order we are talking about here is where there is not an imminent hazard yet. There is not a good long-term solution in place. Something needs to be done within some

responsible timeline: 60 days or 6 months or what have you. And these are safety-related conditions that we are talking about, not just anything. But clearly our intent is to do that in a way that is tied to a specific concern that is identified as a safety-related problem on a particular line and to issue an order that the operator or the industry can come in and get an opportunity to contest before we would put something out firmly. And that dialogue process, my experience has been, frankly, wrings out most of the problems in terms of the agency doing something untoward or, I don't want to say irresponsible, but whimsical, if you will. And I think that our intent was to actually tighten the process up, because there is authority in the existing law, and we would like to be a little more specific and provide for that opportunity for due process a little more, quite frankly.

MR. BOUCHER. Okay. Thank you.

Two other questions to you.

With respect to the Technical Assistance Grant provision, you may have noted, from my opening statement, that I was a major proponent of including the opportunity for Technical Assistance Grants in 2002 and have some measure of disappointment that grants have not been made. Not only have grants not been made, but your office has not actually published the criteria that would be utilized in determining the kinds of grants that would be made, giving guidance to applicants as to how their applications should be structured. Can you talk a little bit about your intention in terms of publishing the criteria that would govern the grant-making process for the Technical Assistance Grants?

ADMIRAL BARRETT. I think we would have no problem with identifying those criteria a little more clearly so that people know what we are about.

MR. BOUCHER. Would you publish a set of guidelines?

ADMIRAL BARRETT. I would have no objection to doing that, a broad set of guidelines. Yes, sir.

MR. BOUCHER. So the answer is yes?

ADMIRAL BARRETT. Yes, sir.

MR. BOUCHER. All right. Thank you.

Can you give us a timeframe within which you might be able to do that?

ADMIRAL BARRETT. I could, but I don't want to speculate here.

MR. BOUCHER. You could, but you would rather not.

ADMIRAL BARRETT. I think responsibly, we are probably talking 3 to 6 months. That would be about the timeline we would be looking at there.

MR. BOUCHER. That is great. We will start the clock.

ADMIRAL BARRETT. Yes, sir. We have no problem with that.

MR. BOUCHER. All right. Thank you.

Second question.

I know that you have a rulemaking underway with respect to Integrity Management Plans for natural gas distribution lines. This is a provision that we strongly support, and we have duly noted your progress in this regard and commend you for it. My question to you is this. Would you be able to accept, would you be amenable to a reasonable deadline contained in the statute by which your rulemaking would have to be completed? And we could talk with you about what a reasonable amount of time is and reflect that, but would such a deadline in the statute be acceptable to you?

ADMIRAL BARRETT. Under the conditions you raise there, that we would work to get something that takes into account the type of process we have to deal with, no, sir, I would have no objection to that.

MR. BOUCHER. Thank you very much.

Mr. Chairman, that concludes my questions.

MR. HALL. The Chair recognizes Mr. Sullivan.

MR. SULLIVAN. Thank you, Mr. Chairman.

Admiral, how does the PHMSA envision the enforcement transparency authority to work that is contained in this discussion draft? Would allowing companies who are parties to the enforcement action to also post their side of the story be something you are open to? Would a rulemaking be appropriate to make sure due process and ongoing dispute resolution processes are not compromised?

ADMIRAL BARRETT. Sir, I think that is two different pieces. One, I am an absolute proponent of transparency in the enforcement process and generally. And I would tell you quite frankly, I believe that transparency breeds self-corrective behavior. I think most people out there, in this industry in particular, are generally trying to do the right thing, and so are we, and so are the other folks involved in this process. And so the more transparent we are about this, I think the less, frankly, we have to regulate. The more you get consensus standards, the more you get agreed-to practices. So I absolutely would have no problem whatsoever with doing this in a way that allows industry to come in with their position or their statement or their response on some process or some action that we are taking.

In terms of the second half of your question, I am sensitive. There is a formal process involved when we assess or take a penalty action of some type. There is opportunity for notice and a hearing and stuff like that. And many times, for example, there are settlement discussions or agreements that we look to reach. And we, obviously, would have to have measures in place to protect the ability to do that in a way that is fair to everybody. But in terms of the generic type of information we are

posting and allowing people to put their side or their comment up, I have absolutely no problem at all with that. I would encourage it, quite frankly.

MR. SULLIVAN. Thank you, sir.

MR. HALL. All right. Do you have follow-up questions? I have no follow-up questions.

ADMIRAL BARRETT. Thank you, sir.

MR. HALL. Thank you very much, and thank you for the time, preparation, time you have attended, and the time it takes away from you. I appreciate both of you, and I thank you very much.

ADMIRAL BARRETT. Thank you, Mr. Chairman, and I look forward to continuing to work with the committee.

MR. HALL. Yes, sir.

ADMIRAL BARRETT. Thank you, sir.

MR. HALL. If we have the second panel: Ronald Jibson, Jeryl Mohn, Timothy Felt, and Lois Epstein.

All right. We have Mr. Jibson, Vice President of Operations, Questar Gas Company on behalf of the American Gas Association. We recognize you for 5 minutes. If you would, summarize, and then we will ask you questions.

Thank you, sir.

STATEMENTS OF RONALD W. JIBSON, VICE PRESIDENT, OPERATIONS, QUESTAR GAS COMPANY, ON BEHALF OF AMERICAN GAS ASSOCIATION; JERYL MOHN, SENIOR VICE PRESIDENT; OPERATIONS AND ENGINEERING, PANHANDLE ENERGY, ON BEHALF OF INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA; TIMOTHY C. FELT, PRESIDENT & CEO, EXPLORER PIPELINE COMPANY, ON BEHALF OF ASSOCIATION OF OIL PIPE LINES; AND LOIS N. EPSTEIN, P.E., SENIOR ENGINEER, OIL AND GAS INDUSTRY SPECIALIST, COOK INLETKEEPER, ON BEHALF OF PIPELINE SAFETY TRUST

MR. JIBSON. Thank you, Mr. Chairman, and good morning.

I would like to thank the committee for convening this hearing on this important topic of pipeline safety. My name is Ron Jibson. I am Vice President of Operations at Questar Gas Company. Questar Gas provides natural gas service to approximately 850,000 customers in Utah, southwestern Wyoming, and a small portion of southeastern Idaho.

I am testifying today on behalf of the American Gas Association, or AGA, and also the American Public Gas Association, or APGA.

Together, AGA and APGA represent more than 850 local natural gas utilities serving almost 56 million customers nationwide.

I would like to begin my testimony by first commending the committee, in particular Chairman Hall and Ranking Member Boucher and their staffs, as well as Congressmen Barton and Ranking Member Dingell, for putting together what we believe is overall a good legislative proposal. We believe the draft bill represents a positive first step and provides good foundation for moving the ball forward on pipeline safety.

In our opinion, the 2002 Act has been working well, and only minor adjustments should be considered at this point, with one possible exception. Our companies have identified one major area that we believe requires considerable improvement, that area being excavation damage prevention.

Congressional attention to more effective State excavation damage programs can and will result in real measurable decreases in the number of instances occurring on natural gas distribution pipelines each year. Excavation damage is the single cause of a majority of natural gas distribution pipeline incidents, and we are very pleased that the committee's draft addresses this very important issue.

What are some of the facts about most gas distribution safety incidents?

During last week's Transportation and Infrastructure Committee's markup of H.R. 5782, two members of the committee stated that between 2002 and 2005, the greatest number of pipeline incidents occurred in the Nation's gas distribution systems and that such incidents were on the increase. Any conclusions on relative safety between gas distribution, gas distribution on hazardous liquid pipelines must be tempered by the fact that distribution has almost four times the miles of pipe as both gas transmission and liquids combined.

Where do these distribution incidents come from?

Really, there are two types of incidents that involve natural gas distribution systems, and we have got charts depicting this. I think also in your packet, but first of all, there are those incidents that are caused by factors the pipeline operator, to some extent, have control, such as improper welds, material defects, incorrect operation, corrosion, or excavation damage by a utility contractor; and secondly, those caused by external forces, which are due to factors the pipeline has little or limited ability to control. Those would be cases such as excavation damage by a third party, earth movement, floods, vandalism, structure fires, and lightening.

The term excavation, as I have used it here today, is intended to include demolition, excavation, tunneling, or construction activities as presented in the bill being considered today by this committee.

[Chart.]

As you can see by the blue area in the chart, utilities do a very good job at minimizing instances that they have control over. The record shows that between 2002 and 2005, 82 percent of all reported instances were the result of excavation damage by a third party or other factors the utility company has little control over. In many cases, the typical little- or no-control area involves a party outside the jurisdiction of authorities overseeing pipeline safety.

[Chart.]

Furthermore, as shown in the second chart, you can see that during the same 4-year period, instances due to third-party excavation more than doubled. Excavation damage thus represents the single greatest threat to distribution system safety, reliability, and integrity.

Efforts by the Common Ground Alliance damage prevention organization and the nationwide education program on the three-digit, one-call, 8-1-1 dialing system to prevent excavation damage are great steps in the right direction, but more is needed.

AGA and APGA support the proposal before the committee to outline the required nine elements of an effective State damage prevention program in the legislation and to provide for additional funding for State implementation of the program.

Just a couple of other quick issues I would like to highlight for the committee.

First of all, funding for one-call grants and the Common Ground Alliance. AGA and APGA urge Congress to provide continued funding authority over the upcoming reauthorization period for grants to States to support one-call programs and the Common Ground Alliance.

In regards to instant response protocols, AGA and APGA also commend this committee for including language within the draft bill to establish protocols for post-incident activity. The language requiring a call to the operator any time a pipeline is damaged, regardless of severity, is a critically-important addition to the bill. Likewise, the requirement to call 9-1-1 and the utility operator whenever the substance being carried by the pipeline is escaping from the pipeline is a positive addition and consistent with current best practices established by consensus of all stakeholders in the Common Ground Alliance.

It is important that calls to 9-1-1 and the resulting mobilization of extremely busy emergency response personnel occur only when a substance is escaping from the pipeline. In those situations, as well as when a pipeline is damaged without leakage, a call to the owner-operator of the pipeline will also help more quickly and effectively mitigate potential hazard.

Regarding the issue of safety orders, we are pleased to see that the committee recognizes the importance of being accorded due process with regards to safety orders. However, it is important that there is some definitive guidance on when such a safety order is warranted.

Regarding enforcement transparency, we support the idea of transparency so long as the normal due process is preserved and confidentiality during negotiation and settlement of individual cases is protected.

Regarding transmission integrity assessment reassessment time interval, we are pleased that the committee recognizes the importance of letting the U.S. Government Accountability Office complete its report. It is our hope that in evaluating the appropriateness of the 7-year inspection, the GAO will cover all of the pertinent facts and then, based on the facts, Congress will consider allowing the Secretary of Transportation to change the interval or pursue another remedy. This will allow operators to continue to deliver natural gas safely and affordably.

In summary, AGA and APGA believe that congressional passage of pipeline safety reauthorization this year will result in timely and significant distribution system safety improvements. We commend the committee for putting together a solid discussion draft to address this important issue and commit to working with you to secure passage of this final bill this year.

The members of AGA and APGA emphatically support the recommendation that Congress enact legislation that gives States an incentive to adopt stronger damage prevention programs.

Thank you for the opportunity to appear today.

[The prepared statement of Ronald W. Jibson follows:]

PREPARED STATEMENT OF RONALD W. JIBSON, VICE PRESIDENT, OPERATIONS, QUESTAR GAS COMPANY, ON BEHALF OF AMERICAN GAS ASSOCIATION

I would like to thank the Committee for convening this hearing on the important topic of pipeline safety. My name is Ron Jibson. I am Vice President of Operations at Questar Gas Company. Questar Gas provides retail natural gas-distribution service to more than 800,000 customers in Utah, southwestern Wyoming and a small portion of southeastern Idaho.

I am testifying on behalf of the American Gas Association (AGA) and the American Public Gas Association (APGA). AGA represents 197 local energy utility companies that deliver natural gas to more than 56 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.

APGA 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 655 members in 36 states. Overall, there are approximately 950 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.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) and the industry have made significant progress on the initiatives mandated by the 2002 pipeline safety act.

In our opinion only minor adjustments should be considered at this point, with one exception: Our companies have identified one major area we believe requires considerable improvement: excavation damage prevention. Congressional attention to more effective state excavation damage programs can, and will, result in real, measurable decreases in the number of incidents occurring on natural gas distribution pipelines each year. Excavation damage is the single cause of a majority of natural gas distribution pipeline incidents.

Distribution pipelines are operated by natural gas utilities, sometimes called "local distribution companies" or LDCs. The gas utility's distribution pipes are the last, critical link in the natural gas delivery chain. Gas distribution utilities bring natural gas service to customers' front doors. To most customers, their local 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 and with the state regulators who oversee pipeline safety. Consequently, we take very seriously the responsibility of continuing to deliver natural gas to our communities safely, reliably and affordably.

Our industry's commitment to safety is borne out each year through the federal Bureau of Transportation Statistics' annual figures comparing modes of transportation. Indeed, delivery of energy by pipeline is consistently the safest mode of energy transportation.

The Difference in "Pipelines"

Understandably, most customers link all "pipelines" together, however there are indeed significant differences between the liquid transmission systems, natural gas transmission systems and the natural gas distribution systems operated by local gas utilities. Each type of pipeline system faces different challenges, operating conditions and consequences of incidents.

Interstate transmission systems are generally made up of long, straight runs of large diameter steel pipelines, operated at high volumes and high pressures. These larger transmission lines feed natural gas to the gas distribution utility systems.

Gas distribution utility systems, in contrast, are configured like spider webs, operate at much lower volumes and pressures and always carry gas that has been odorized for easy leak detection. Distribution pipeline systems exist in populated areas, which are predominantly urban or suburban.

Distribution pipelines are generally smaller in diameter (as small as 1/2 inch), operate at pressures ranging upward from under one pound per square inch, and are constructed of several kinds of materials including a large amount (over 40 percent) of non-corroding plastic pipe. Distribution pipelines also have frequent branch connections, since most customers require individual service lines. Most distribution systems are located under streets, roads, and sidewalks and when working on them, care must be taken not to unnecessarily disrupt the flow of traffic and of commerce. Because distribution pipelines provide a direct feed to customers, the use of in-pipe inspection tools usually requires natural gas service to customers to be interrupted for a period of time.

Federal regulations recognize the differences between these 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 pipelines and the rules discriminate between the two, while 49 CFR Part 195 sets out the regulations for liquid transmission lines.

Regulatory Authority

As part of an agreement with the federal government, in most states, state pipeline safety authorities have primary responsibility to regulate natural gas utilities as well as intrastate pipeline companies. However, state governments are encouraged to adopt as minimum standards the federal safety standards promulgated by the U.S. Department of Transportation (DOT.) In exchange, presently DOT reimburses the state for up to 50% of its pipeline safety enforcement costs. Therefore, the actions of Congress affect state regulations and our companies. The states may also choose to adopt standards that are more stringent than the federal ones, and many have done so. Questar and many other distribution system operators report being in close contact with state pipeline safety inspectors. As a result of these interactions, distribution operator facilities are subject to more frequent and closer inspections than required by the pipeline safety regulations.

Natural Gas Utilities Are Committed to Safety

Our commitment to safety extends beyond government oversight. Indeed, safety is our 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. Examples of these groups include the American Gas Association, the American Public Gas Association and the Interstate Natural Gas Association of America.

We continually refine our safety practices. Natural gas utilities spend an estimated $6.4 billion each year in safety-related activities. Approximately half of this money 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.

What Are The Facts About Most Gas Distribution Safety Incidents?

During last week's Transportation and infrastructure Committee's mark-up of H.R. 5782, two members of the committee stated that between 2002 and 2005 the greatest number of pipeline incidents occurred in the nation's gas distribution systems, and that such incidents were on the increase. For clarification sake, I would like to qualify this statement. Any conclusions on relative safety between gas distribution, gas transmission and hazardous liquids must be tempered by the fact that distribution has almost 4 times the miles of pipe than gas transmission and liquids combined

So, where do these distribution incidents come from?

There are two kinds of incidents involving natural gas distribution systems, depicted in the attached chart titled: "Most Distribution Incidents Caused by External Forces": (1) Those caused by factors the pipeline operator can to some extent control, such as improper welds, material defects, incorrect operation, corrosion or excavation damage by a utility contractor; and (2) those caused by External Forces, which are due to factors the

pipeline has little or limited ability to control, such as excavation damage by a third party, earth movement, structure fires, floods, vandalism and lightning.

The term "excavation" is intended to include demolition, excavation, tunneling or construction activities as presented in the bill being considered today by this committee.

As you can see by the blue area in the chart, utilities do a good job in minimizing incidents that they can control.

The record shows that between 2002 and 2005, 82 percent of all reported incidents were the result of excavation damage by a third party or other factors the utility company had little or no control over. In many cases, the typical "little or no control" incident involves a party outside the jurisdiction of authorities overseeing pipeline safety.

Furthermore, as shown by the second attached chart titled: "Incidents Caused by Excavators Have More than Doubled Since 2002", during the same four-year period, incidents due to 3rd party excavation more than doubled. Excavation damage thus represents the single greatest threat to distribution system safety, reliability and integrity.

Efforts by the Common Ground Alliance (CGA) damage prevention organization and the nationwide education program on the three-digit One Call 811 dialing to prevent excavation damage are steps in the right direction. But more is needed.

AGA and APGA support the proposal before this committee to outline the required nine elements of an effective state damage prevention program in the legislation and to provide for additional funding for state implementation of the program. Data from the last five years demonstrates that states that have stringent enforcement programs experienced a much lower rate of excavation damage to pipeline facilities than states that do not have stringent enforcement powers.

AGA and APGA urge Congress to provide continued funding authority over the upcoming reauthorization period for grants to the CGA and to the states to support One Call programs.

The statistics are clear. Excavation damage prevention presents the single greatest opportunity for distribution safety enhancements, and we urge Congress to take decisive action on this front.

AGA and APGA also commend this committee for including language within its draft bill to address the issue raised by Congressman Murphy during an earlier pipeline safety oversight hearing, regarding establishing protocols for post-incident activity. The language requiring a call to the operator anytime a pipeline is damaged, regardless of severity is a critically important addition to the bill. Likewise, the requirement to call 911 and the facility operator whenever the substance being carried by the pipeline is escaping from the pipeline is a positive addition, and consistent with a current best practice established by consensus of all stakeholders in the CGA. It is important that calls to 911 and the resulting mobilization of extremely busy emergency response personnel, occur only when the substance is escaping from the pipeline. In those situations, as well as when a pipeline is damaged without leakage, a call to the owner or operator of the pipeline will also help more quickly and effectively mitigate the potential hazard.

Gas Transmission Integrity Reassessment Time Interval

It is our hope that in evaluating the appropriateness of the 7-year re-inspection requirement, the U.S. Government Accountability Office (GAO) will uncover all of the pertinent facts and, that based on the GAO findings, Congress will consider options for allowing the Secretary of Transportation to change the interval, consistent with the GAO findings. This will allow operators to continue to deliver natural gas safely and affordably. Consequently, AGA and APGA support the provision for the seven-year re-inspection proposed in the committee's draft bill.

Summary

AGA and APGA believe that Congressional passage of pipeline safety reauthorization this year will result in timely and significant distribution system safety improvements.

The members of AGA and APGA emphatically support the recommendation that Congress enact legislation that gives states an incentive to adopt stronger damage prevention programs. We look forward to working with you to secure passage of legislation this year.

MR. HALL. Thank you, Mr. Jibson.

Mr. Mohn, we recognize you for 5 minutes. Stay as close as you can. Thank you.

MR. MOHN. I will do so.

Thank you, Mr. Chairman.

Good afternoon. I am Jeryl Mohn from Panhandle Energy.

Today, I am speaking on behalf of the Interstate Natural Gas Association of America, or INGAA. INGAA is the trade association that represents virtually all of the interstate and interprovincial natural gas pipelines in North America.

In April, I testified before the subcommittee on progress being made in gas transmission integrity management programs, and I suggested some relatively modest improvements in the current Federal Pipeline Safety Program. Today, I will focus my comments on a few of the specific legislative proposals that you are considering.

The first item is the 7-year reassessment interval for gas transmission pipelines. I testified in April that the 7-year interval was not based upon any engineering or risk analysis, but rather a compromise between House and Senate negotiators. In reaching this agreement in 2002, however, Congress recognized and required that GAO prepare an analysis on the reassessment interval in time for you to consider options for this year's reauthorization.

INGAA has been one of the stakeholders working with GAO over the last year to develop this report. However, we understand that it will be released after the August congressional recess. We don't know precisely what GAO will say, but our impression in talking to them is that they will indeed recommend to Congress that DOT be directed to develop an alternative to the 7-year mandate that instead employs best engineering practices. The committee discussion draft includes a placeholder provision on this issue requiring the DOT send Congress any legislative recommendation once the GAO report is complete. This provision does not otherwise change the reassessment interval, however.

Mr. Chairman, we appreciate that the discussion draft references this issue; however, the provision does not direct DOT to make any further change without further congressional action. Absent the reauthorization

bill before us today, such additional action would be unlikely for another 4 years.

Therefore, we ask that the subcommittee do as I believe you intend to do and collect the views of GAO prior to marking up a bill. If GAO views support of such an action, we urge you to adopt the provision that has already been recommended by DOT as recognized in H.R. 5678. This would keep the 7-year reassessment interval in place unless or until DOT completes the rulemaking on an alternative based on technical data, risk factors, and engineering analysis.

Another issue I would like to address is the regulation of pipelines we call direct sales laterals. A direct sales lateral is typically short in length, connecting one of our interstate pipelines to a large single customer, such as a power plant or industrial facility. Under current law, these lines are regulated for safety purposes at the State level even though they are owned by interstate pipeline to which they are connected. A Federal agency, namely FERC, already has Federal authority to regulate these direct sales laterals for economic purposes. We believe Congress should also clarify that these laterals be regulated by DOT in the same way other interstate pipeline facilities are conducted. This would provide consistent regulation for all of the pipeline facilities owned by our interstate systems. The discussion draft does make this change, which has also been recommended by DOT, and we certainly appreciate that and endorse that provision.

And last, Mr. Chairman, but not least, I want to focus on damage prevention. Mr. Jibson did a good job in explaining to you the exposure faced by distribution companies. For gas transmission companies, it is not much different.

In 1998, this committee approved legislation that was part of the T-21 highway bill to encourage improvement in State damage prevention programs. The programs are often referred to as one-call or call-before-you-dig programs. The 1998 legislation accomplished a great deal to enable improvement in these programs, but we believe now is the time for another substantial improvement. INGAA strongly supports the damage prevention provisions proposed by DOT that are incorporated in the discussion draft. The development of national standards, along with modest grant funds for States that meet those standards, is an excellent proposal. You heard testimony in April to support our belief that these efforts will result in reducing a significant number of accidents.

My written testimony includes some additional comments on several other issues, and, Mr. Chairman, I would be happy to answer further questions for you at the appropriate time.

[The prepared statement of Jeryl L. Mohn follows:]

PREPARED STATEMENT OF JERYL L. MOHN, SENIOR VICE PRESIDENT, OPERATIONS AND ENGINEERING, PANHANDLE ENERGY, ON BEHALF OF INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Mr. Chairman and Members of the Subcommittee:

Good morning. My name is Jeryl Mohn, and I am Senior Vice President of Operations and Engineering for Panhandle 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 United States through a network of approximately 200,000 miles of transmission pipeline. These transmission pipelines are analogous to the interstate highway system – in other words, large capacity systems spanning multiple states or regions.

Panhandle Energy, headquartered in Houston, Texas, is a subsidiary of the Southern Union Company and owns or holds a major ownership interest in five interstate pipelines and a liquefied natural gas import terminal. Our pipelines serve a significant share of markets in the Midwest, the Southwest including California, and Florida. In addition, our Trunkline LNG terminal in Lake Charles, Louisiana is one of the nation's largest LNG import facilities.

Mr. Chairman, I submitted extensive testimony in April on the reauthorization of the Pipeline Safety Act, including information on the natural gas transmission Integrity Management Program (IMP) and the safety of gas pipelines. My comments today will focus on several specific legislative proposals, but I would refer the Committee back to my earlier testimony for more general background on this topic.

REASSESSMENT INTERVALS

As you know, the Pipeline Safety Improvements Act of 2002 mandated a natural gas transmission integrity management program pursuant to which the industry would undertake a 10-year baseline inspection program to ensure the safety of all gas transmission pipeline segments located in populated areas. Three years into this program, the inspections are progressing well, and the industry is generally on track for meeting the 10-year baseline requirement.

The 2002 Act also included the requirement that these pipeline segments be reassessed every seven years thereafter. It is fair to say that the seven-year number was not based on any engineering analysis; instead, it represented a political compromise between the Senate position favoring five-year re-assessment interval and the House position favoring a 10 -year interval. Sixty years of operational experience in pipeline industry strongly suggested that, for most pipelines, anything shorter than ten years was both unnecessary and a waste of resources. Nonetheless, Congress settled on the seven-year interval as a compromise between the two positions. In recognition of this, however, the 2002 Act also required the Government Accountability Office to analyze the re-assessment question and to report to the Congress in time for the next reauthorization debate.

Mr. Chairman, that debate is today. The GAO has been working on a report for almost a year now, and we understand that it will be completed soon – probably by the middle of September. The Administration's bill (HR 5678) already includes a provision addressing the issue by retaining the seven-year requirement unless and until the Department of Transportation promulgates an alternative requirement based on engineering and risk analysis. INGAA strongly supports this provision.

Why not just stick with the current requirement for another reauthorization period? There are several reasons for a change now. First, the DOT has interpreted the seven-year reassessment requirement to begin after each individual segment is first inspected, rather than once the 10 -year baseline period is complete. This means that segments first

inspected in years 2003, 2004 and 2005 must be reassessed in years 2010 through 2012, while the first battery of baseline inspections is still ongoing. This overlap of baseline inspections and re-inspections could create pipeline capacity constraints that would have the potential to result in higher natural gas prices for American consumers than would otherwise be the case. Inspection and maintenance work reduces pipeline operational capacity, and some inspections even require complete system shutdowns for weeks at a time. Getting these requirements right, so that inspection work is rational and justified, is critical to minimizing the likelihood of gas supply problems attributable to integrity management work.

Next, the internal pipeline inspections covered in the IMP program primarily addresses one type of pipeline integrity threat – corrosion. Corrosion causes about 25 percent of all gas transmission lines accidents. While this is the largest single cause of accidents on gas transmission pipelines, it is not the only cause. For example, excavation damage is the leading cause of accidents associated with fatalities and injuries. Focusing scarce resources on a single cause of accidents, without looking at other areas where other safety improvements can be made, will not provide the best level of overall safety.

Finally, there is the one-size-fits-all nature of the current seven-year requirement. The best method for improving safety, however, is to weigh risks and prioritize work based on those potential risks. Some pipeline segments may, in fact, need to be inspected more often than every seven years due to their inherent risk, while others do not need to be re-inspected for 10 to 15 years (once the baseline is complete) due to their low risk. We will end up with an even safer pipeline system if the focus is on reducing risks to the public, rather than just compliance with a mandated set of requirements that may bear little relation to actual risk.

The Committee's Discussion Draft includes a "placeholder" provision on this issue, wherein the Secretary of Transportation would be required to report back to Congress with any legislative recommendations once the GAO report is complete. We would simply note that the Secretary has already provided a legislative recommendation on this matter, which is included in HR 5678. The placeholder provision in the discussion draft would not allow the Secretary to initiate any change in the seven-year requirement without further action by Congress – action that would be unlikely to occur again for the next four years. INGAA therefore urges the Committee to adopt the provision from HR 5678, which allows the Secretary to initiate a rulemaking on this matter and make a change based upon "technical data, risk factors, and engineering analyses."

DIRECT SALES LATERALS

As part of its earlier testimony, INGAA provided the Committee with a history on the safety regulation of direct sales laterals. Suffice it to say here that continued state regulation of sales laterals owned by interstate pipelines is anachronistic and unnecessary. It also diverts resources away from what should be the states' primary focus on intrastate pipeline facilities, including distribution lines.

The Discussion Draft includes a provision to move the safety regulation of direct sales lateral pipelines owned by interstate pipelines from states to the Pipeline and Hazardous Materials Safety Administration within DOT. This would be consistent with the existing economic regulation of these pipelines at the federal level. The Federal Energy Regulatory Commission regulates a direct sales lateral owned by an interstate pipeline as a part of the interstate pipeline, a result that is backed by judicial precedent. There is no legitimate reason why safety regulation should be treated any differently. States that are "interstate agents" on behalf of DOT would be able to oversee and audit the regulation of direct sales laterals owned by an interstate pipeline as part of the interstate agent function.

The language in the Discussion Draft does not affect direct sales laterals owned either by a customer (such as a power plant or factory) or by an intrastate pipeline. These direct sales laterals still would be regulated by the states.

INGAA strongly supports the provisions in the discussion draft and in the Administration bill on this matter.

OTHER ISSUES IN HR 5782 AND THE DISCUSSION DRAFT

One-Call Civil Enforcement

One-call damage prevention systems are created, and managed, at the state level. INGAA believes that enforcement of these state programs, including civil penalty enforcement, should also be at the state level. Consequently, INGAA has some concern about the federal Department of Transportation enforcing state one-call laws. Damage prevention requires cooperation between both underground utility owners and excavators. Enforcement is best handled by the regulator that has responsibility for administering the one-call programs, i.e., the state regulators, so that enforcement strategy can be coordinated achieving the private sector participation and cooperation that is essential for success.

If Congress feels strongly about civil penalties for one-call enforcement, then we urge you to review the approach taken by the Transportation and Infrastructure Committee, whereby federal enforcement would only be permitted in those states that have not adopted civil penalty authority on their own. We believe the end-goal should be effective state enforcement of one-call laws, not the preemption of state one-call law enforcement by the federal government.

State Damage Prevention Programs

The goals behind this program – the further improvement in state damage prevention laws – have been an INGAA priority for many years. From the standpoint of reducing pipeline accidents, this is the single most important issue in the 2006 reauthorization bill. INGAA strongly supports this provision.

Grants to States and State Pipeline Safety Grants

These two provisions provide additional federal grant funds to the states, for both improving state one-call programs and assisting in the regulation and enforcement of safety standards for intrastate pipelines and natural gas distribution lines.

Natural gas and hazardous liquid transmission lines are under federal safety jurisdiction while natural gas distribution lines (LDCs) and intrastate pipelines are under state jurisdiction. Transmission line operators – and only transmission line operators – pay the annual user fees to PHMSA that fund the federal pipeline safety program and all of the associated grants to the states.

HR 5782 and the Discussion Draft both anticipate significant increases in grants to the states. Still, based on the current regime for collecting user fees, federally-regulated pipelines would fund an increasing share of the cost of regulating of <u>intrastate</u> pipelines at the state level. This would include the costs of developing and implementing the Distribution Integrity Management Program, which is focused on reducing accidents involving state-regulated gas distribution lines.

INGAA accepts the premise that transmission line operators should contribute to the cost of programs the directly benefit transmission lines, such as the damage prevention program. INGAA also believes that distribution line operators should contribute a fair share of the cost of this program as well, because a national damage prevention initiative would be a central part of the distribution integrity management program. If Congress increases the matching funds for state pipeline safety grants as well, from "up to 50 percent" to "up to 80 percent," distribution operators regulated by the states should also help to offset the additional cost of these grants. There is no justifiable reason why

interstate transmission pipeline operators – regulated at the federal level – should continue to subsidize state-regulated entities. DOT should consider a new user fee formula that includes gas distribution lines in federal user fee collections, and if necessary, Congress should authorize user fees to be collected from distribution operators.

Safety Orders

Both the Discussion Draft and the Administration Bill propose modifying the existing statute with respect to the issuance of safety orders. The first change to existing law would be a requirement that any safety orders be issued only after notice and opportunity for a hearing. This is an excellent change that INGAA supports. The provision, however, also would expand the conditions for which a safety order could be issued from the current "potential safety-related condition" to "any condition that could affect public safety, property, or the environment." This would be an overly-broad expansion of authority. The considerations in (2) are also vague and overly-broad, except for (2)(A), which is specific and understandable. A standard that could lead to shutting down a pipeline delivering energy on a real-time basis to millions of consumers must be specific in order to avoid unnecessary (and to consumers, costly) disruptions.

Technical Assistance Grants

This provision in the Discussion Draft extends the authorization of the "technical assistance grant to communities" that was part of the 2002 Act. INGAA supports this provision, with a request that pipeline operators also be eligible for grants to fund activities that an operator might undertake to educate local communities about pipelines or improve safety communications targeted at communities located near pipelines. Such education and/or communication efforts would be consistent with the spirit of what was authorized in 2002.

Enforcement Transparency

INGAA generally supports increased enforcement transparency, and therefore supports this provision, with the following suggestions. First, we believe that companies involved in enforcement proceedings should be allowed to provide information "telling their side of the story" to DOT for inclusion in any electronic posting. This would be optional, but it would possibly provide a more balanced view of a pending action. In addition, we urge the Committee to include language protecting due process and the confidentiality of parties engaged in settlement proceedings.

INCIDENT REPORTING

INGAA would like to highlight one final issue that is not part of either bill, but that was raised in its earlier testimony. This is the manner in which accident data is collected for natural gas transmission lines. The current criteria result in an inaccurate measure of accidents on natural gas transmission pipelines and thereby provide the Congress and the public with a misleading impression about accident trends.

The tally of natural gas transmission accidents reported by DOT annually is based on the number of "reportable incidents." "Reportable incidents" are defined as those which: 1) cause a fatality, 2) cause an injury, or 3) result in property damage of $50,000 or more. These criteria create a misleading impression, because the **value of property damage includes the dollar value of the natural gas lost as a result of the accident**.

During the last six years, natural gas commodity prices have increased more than 300 percent. Prices that were approximately $2 per mcf in 2000 now fluctuate between $5.50 and $10 per mcf. These higher natural gas commodity prices, which are a function of market forces, have greatly increased the number of "reportable incidents" for gas transmission lines, since the $50,000 threshold has remained constant. This is skewing

accident data and giving the impression that accidents are increasing, when in fact they are not. Accident criteria and subsequent data analyses and conclusions should not be based on the market price of natural gas, which in recent years has been extremely volatile. Instead, such data should be based on a constant measurement, such as the volume of gas lost, etc. We ask that the Committee consider a requirement that DOT initiate a rulemaking to change the criteria for property damage.

CONCLUSION

Mr. Chairman, I again want to thank you for the opportunity to testify today. INGAA hopes the Committee marks up this legislation soon, so that a final bill can be enacted before the adjournment of the 109th Congress. We stand ready to work with you on completion of a bill in 2006.

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Summary of Testimony

INGAA appreciates the opportunity to testify on reauthorization of the Pipeline Safety Act. We support the timely reauthorization of the Act, and want to provide some specific comments on the key bills that have been introduced. Our recommendations for legislation to reauthorize the Act in 2006 include:

- Re-examination of the seven-year reassessment interval that was part of the gas integrity management requirement in the 2002 legislation. We recommend a reassessment interval based on scientific and/or engineering criteria. The provision contained in the Administration bill (HR 5678) accomplishes this objective and has INGAA's support.
- Incentives to further improve state damage prevention programs nationwide.
- Amend the definition of "direct sales lateral" pipelines in the Pipeline Safety Act to make those owned by interstate pipelines jurisdictional to federal, rather than state, oversight.
- Amend natural gas transmission accident reporting criteria to remove the linkage to the cost of natural gas lost, since this value fluctuates significantly over time and therefore provides misleading data.

MR. HALL. Well, thank you, sir.
Mr. Felt.

MR. FELT. Mr. Chairman, members of the subcommittee, my name is Tim Felt. I am President and CEO of Explorer Pipeline Company headquartered in Tulsa, Oklahoma.

As Mr. Sullivan graciously acknowledged earlier, Explorer operates 1,400 miles of petroleum products pipeline, serving 16 States extending from the Gulf Coast throughout the Midwestern United States.

I appreciate the opportunity to appear today on behalf of API and AOPL. Together, API and AOPL represent the companies responsible for the vast majority of U.S. oil pipeline transportation.

I will summarize my written testimony and ask that the full text and attachments be included in the record of this hearing for the subcommittee's consideration.

Mr. Chairman, the Pipeline Safety Improvement Act of 2002 is a success. Industry and DOT have cooperated to achieve significant improvement in pipeline safety, and this improvement is demonstrated by our industry's record. This record is reflected on the charts that accompany my testimony.

The oil pipeline industry plans to invest over $1 billion in pipeline safety improvements over the next 5 years. Because of this, it is very important that Congress reauthorize the DOT Pipeline Safety Program in 2006 to send a clear signal that these investments are appropriate and DOT is on the right track in implementing the Pipeline Safety Improvement Act of 2002.

We suggest extending the Act at least 5 years to guarantee as much certainty as possible to DOT, the affected industry, and the public regarding the rules governing the safety oversight of our national pipeline infrastructure.

The prospects for a single, widely-supported pipeline safety reauthorization bill are excellent. The three proposals before us have a number of elements in common and address, for the most part, the same issues. The parties with an interest in pipeline safety ought to be able to work together to achieve a compromise that has very broad support. Our goal of passage of legislation this year is within reach.

In these short remarks, I will only address the key provisions of these various proposals. We urge the Energy and Commerce Committee to act promptly on these issues, reconcile any differences of the Transportation and Infrastructure Committee's version, and move to passage by the full House.

At the center of both bills are similar provisions that will strengthen enforcement of State laws designed to prevent underground damage. All include a comprehensive list of the elements, including effective enforcement, that characterize successful State underground damage prevention programs. We strongly support these provisions and urge the

committees to build the final legislative product around underground damage prevention.

I serve on the Common Ground Alliance as a Board Member for the oil pipeline industry. The CGA is one of the best things that has happened to pipeline safety in many years. CGA provides a forum to work underground damage prevention issues that simply don't exist anywhere else. One of CGA's current roles is to lead the public awareness campaign to promote use of the nationwide, toll-free, 8-1-1 telephone number for one-call notification. It actually originated in this committee and then became required by the 2002 Act. We believe the legislation you are considering should reauthorize Section 6105 of Title 49, which authorizes funds that could be used to support CGA and the 8-1-1 campaign.

As Mr. Boucher mentioned earlier, I would like to address the provision that modifies DOT's current authority to issue mandatory orders to pipeline operators.

Current law allows DOT to issue a safety order to an individual operator in situations that appear to require action, but do not rise to the level of danger implied in a hazardous facility designation. As we understand it, the intent is to provide DOT with an enforcement tool with a lower threshold that would not require DOT to first declare that an operator's facility is or would be hazardous before actions would be required of the operator that could be documented in the public record. The discussion draft adds to current law a welcome notice requirement and opportunity for a hearing at DOT before any such safety order could be issued. However, the draft goes on, in effect, to eliminate this due process benefit by practically abolishing any threshold or burden of proof for DOT in triggering a safety order.

The Secretary of Transportation may order an operator to make possibly extensive expenditures on all or a portion of the operator's system to address any condition that poses a risk based on any factors the Secretary considers appropriate.

We appreciate DOT's desire to develop an enforcement tool to document and address situations where DOT and the operator can identify conditions that are not yet severe, but may become so. However, the proposal in the discussion draft goes too far in the direction of preventing the possibility of arbitrary action against an individual operator who has violated no DOT regulation. Under these provisions, an operator would be virtually powerless to contest effectively any DOT requirement to make what the operator believes an unnecessary expenditure of scarce resources to address questionable risks.

We would like to work with this subcommittee to develop a provision that provides Mr. Barrett and the DOT what it needs in terms

of documentation of its interactions with operators about needed safety improvements, but which contains the proper protections to ensure that all actions ordered, in fact, are justified, prudent, and represent real safety improvements.

In summary, current pipeline safety law is working, and working very well. Improvements can be made, particularly in strengthening the underground damage prevention, but fundamental changes are not needed. The legislative proposals before the House all seek to make improvements in the fundamentally-sound DOT Pipeline Safety Program based on the Pipeline Safety Improvement Act of 2002. We need to move promptly to agree on the improvements that can gain broad support and incorporate these improvements into a Pipeline Safety Reauthorization Bill that can be enacted this year.

The oil pipeline industry stands ready to help in any way we can to achieve this worthy goal.

Thank you.

[The prepared statement of Timothy C. Felt follows:]

PREPARED STATEMENT OF TIMOTHY C. FELT, PRESIDENT & CEO, EXPLORER PIPELINE COMPANY, ON BEHALF OF ASSOCIATION OF OIL PIPE LINES

Mr. Chairman, Members of the Subcommittee, my name is Tim Felt. I am President and CEO of Explorer Pipeline, headquartered in Tulsa, Oklahoma. Explorer operates 1,400 miles of petroleum products pipeline serving 16 states extending from the Gulf Coast throughout the mid-western United States.

I am a member of the API Pipeline Committee, vice-chairman and treasurer elect of the Association of Oil Pipe Lines, and the board member representing the oil pipeline industry's interests in the Common Ground Alliance, a voluntary, private sector organization composed of the key stakeholders in the prevention of excavation damage to underground facilities. I appreciate the opportunity to appear today on behalf of API and AOPL. Together, API and AOPL represent the companies responsible for the vast majority of U.S. oil pipeline transportation.

As the Subcommittee reviews the current state of pipeline safety and the progress that has been made since the 2002 Act, these are the main points I would like to emphasize:

- The Pipeline Safety Improvement Act of 2002 is a success. Industry and DOT have cooperated to achieve significant improvement in pipeline safety, and this improvement is demonstrated by our industry's record. This record is reflected on the charts that accompany my testimony.
- The oil pipeline industry is making the investments that are required to fully comply with the law and in many cases to exceed the law's requirements. The oil pipeline industry plans to invest over $1 billion in pipeline safety improvements over the next five years. Because of this it is very important that Congress reauthorize the DOT pipeline safety program in 2006 to send a clear signal that these investments are appropriate and DOT is on the right track in implementing the 2002 Act.
- There are three principal legislative proposals to discuss, and, the prospects for a single, widely-supported bill are excellent. Earlier this year, the Bush Administration transmitted proposed reauthorization legislation, introduced as

> HR 5678. Last week the Transportation and Infrastructure Committee unanimously reported HR 5782, a bill that our industry can wholeheartedly support. HR 5782 has been re-referred to the Energy and Commerce Committee, which last week released its own discussion draft for comment. These proposals have a number of elements in common and address, for the most part, the same issues. The parties with an interest in pipeline safety and pipeline infrastructure ought to be able to work together to achieve a compromise that has very broad support. Our goal of passage of legislation this year is within reach.

My testimony will discuss the provisions of these various proposals that we think need the most focus in working towards this compromise. We urge the Energy and Commerce Committee to act promptly to mark up HR 5782, reconcile any differences with the Transportation and Infrastructure Committee's version and move to passage by the full House.

The Role of Pipelines in Petroleum Supply

As we begin discussion of pipeline safety legislation, it is useful to remind the Subcommittee of the role oil pipelines play in energy supply. An understanding of this role leads to appreciation of the need for effective and workable policies to provide the certainty that this key part of the petroleum distribution system can carry out its role efficiently and safely.

About 40 percent of the total U.S. energy supply comes from petroleum, but the transportation sector depends on petroleum for 96 percent of its energy. Two-thirds of domestic crude oil and refined products transportation is provided by pipeline. Pipelines do this safely and efficiently. The cost to transport a gallon of petroleum by pipeline is very low, typically 2-3 cents per gallon. Transportation in the US would quickly come to a halt without pipelines to deliver crude oil to refineries and petroleum fuels to consumers in various parts of the country.

Oil pipelines are common carriers whose rates are controlled by the Federal Energy Regulatory Commission. Oil pipeline income is driven only by the volume transported and does not depend on the price of the products transported. In fact, high oil prices have a negative impact on oil pipeline income by raising power costs and reducing demand for petroleum.

Progress in Pipeline Safety

Oil pipeline operators have been subject to the DOT's pipeline integrity management regulations since March 2001, before enactment of the 2002 Act. DOT's inspections of operators' plans show that integrity testing will eventually cover approximately 82 percent of the nation's oil pipeline infrastructure. The oil pipeline industry is past the halfway point in the implementation of integrity management. Large oil pipeline operators (greater than 500 miles of pipeline) completed the required 50 percent of their baseline testing of the highest risk segments prior to the September 30, 2004 deadline set by the regulations. DOT has audited each of these operators under these regulations at least two times – an initial "quick hit" audit and one subsequent full audit. Many are involved in a third audit cycle. Although operating under a different deadline, similar progress towards their requirements has been achieved by the small operators.

Operators are repairing conditions in need of repair and less serious conditions that are found in the course of investigating defects. Operators are fixing what they find, often going beyond the requirements of the law.

Improved spill record

As a result of this program, the oil pipeline spill record has improved dramatically in the last five years, as the exhibits show. The data for these exhibits comes from a voluntary industry program that since 1999 has collected extensive data on oil pipeline performance. These figures represent line pipe releases, which are those that occur outside the company's facilities and are the releases most likely to impact the public and the environment.

The trend is down for each cause category. The number of total releases dropped 51 percent, releases due to corrosion dropped 67 percent, and releases due to operator error dropped by 63 percent. Finally, releases from third party damage from excavation dropped 37 percent.

The safety improvement has been dramatic even though the data only covers half the 7-year baseline assessment period for oil pipelines. We expect this trend to continue as we complete the first full cycle and begin the reassessment intervals. This provides a clear indication that the federal pipeline safety program is working.

This background underscores the importance of using this reauthorization cycle to endorse and, where appropriate, strengthen DOT's current pipeline safety program.

Legislation

The legislative proposals under consideration in the House – HR 5678, HR 5782 and the Energy and Commerce discussion draft – all assume continuation of this good program and seek to make it better. I would like to highlight the provisions of these proposals that we believe are the most significant and deserve the most attention by the Subcommittee.

Underground Damage Prevention

Pipeline releases caused by excavation damage are the most traumatic, the largest, and are the most likely to threaten the public and the environment. At the center of HR 5678, HR 5782 and the discussion draft are similar provisions that will strengthen enforcement of state laws designed to prevent underground damage, and all include a comprehensive list of the elements, including effective enforcement, that characterize successful state underground damage prevention programs. These elements were developed with the assistance of the Common Ground Alliance. We strongly support these provisions and urge the committees to build their final legislative product around underground damage prevention.

HR 5678, HR 5782 and the discussion draft all make it a federal crime to ignore state underground damage prevention laws. We believe this expression of the seriousness the federal government attaches to damage prevention is one of the most important safety advances proposed in these bills. HR 5782 structures this authority to encourage states to become effective in enforcing their damage prevention laws. Effective state enforcement of these laws is the most efficient approach to damage prevention and ought to be the goal of federal policy. We urge the Subcommittee to give serious consideration to directing DOT to forgo federal action where DOT determines state laws are being adequately enforced.

There are three distinct steps in damage prevention: notification, prompt and accurate marking, and careful digging with due regard for the markings. HR 5782 and the discussion draft both provide for a balanced federal enforcement impact on the damage prevention process in the sense that both create, with slightly different drafting solutions, a federal cause of action against an operator who fails to respond to a location request or fails to accurately mark the location of a pipeline as well as against an excavator who fails to notify the one-call system or disregards location information or markings. We support this balance.

Common Ground Alliance

As noted at the beginning of my testimony, I serve as the Common Ground Alliance Board member for the oil pipeline industry. The CGA is one of the best things that has happened in pipeline safety in many years. Industry stakeholders support the CGA financially and in return receive value that couldn't be purchased. CGA provides a forum to work underground damage prevention issues that simply doesn't exist anywhere else. DOT and other federal agencies with an interest in the underground infrastructure receive value as well, because CGA brings solutions to the table instead of problems. One of CGA's current roles is to lead the public awareness campaign to promote use of the nationwide, toll-free 811 telephone number for one-call notification that was required by the 2002 Act. We believe the legislation you are considering should reauthorize section 6105 of title 49, which authorizes funds that could be used to support CGA and its 811 campaign.

Low Stress Pipelines

Earlier this year there was a significant leak from a BP Alaska crude oil pipeline on the North Slope operating at or less than 20% of specified minimum yield strength -- low stress. Crude oil from this release covered an approximately two-acre area. Based on API's Pipeline Performance Tracking System, our industry's internal data library on oil pipeline spills, this leak is a statistical anomaly in its size and is not at all typical of releases from low stress pipelines. Nevertheless, this leak shows that anomalies do occur and must be considered in managing the risks pipelines present. That pipeline was regulated by the Alaska Department of Environmental Conservation at the time of the accident but was exempt from DOT oversight because it was operating at low stress, did not cross a navigable waterway, was in a rural area and did not transport highly volatile liquids.

HR 5782 and the discussion draft both direct DOT to develop regulations to address low stress pipelines by a date certain. We support these provisions. Each allows DOT the flexibility to craft regulation that addresses risks appropriately. Pipelines operated at low stress are inherently less risky relative to the high stress transmission lines that are the proper principal focus of DOT's pipeline safety program. We would recommend that DOT's regulation of low stress pipelines

- apply to low stress pipelines carrying high volume, as in the case of the line on the North Slope that leaked,
- follow the DOT's consistent risk-based policy of focusing an appropriate level of protection on areas where the consequences of a spill are high,
- choose measures of protection that address the actual risks presented and
- take care to balance costs and benefits.

We have provided DOT with an outline describing a structure for regulating low stress pipelines. DOT can put low stress pipeline regulations in place using elements its successful integrity management regulations, and has begun the administrative process to do this. Existing legislative authority is adequate, but the setting of a date for completion of the process in legislation will ensure all interested parties that DOT will act in a timely manner.

Safety Orders

The Subcommittee draft contains a provision similar to one in the Administration's bill, HR 5678, that modifies DOT's current authority to issue mandatory orders to pipeline operators. Subsection (l) was added to section 60117 of title 49 by the Pipeline Safety Improvement Act of 2002 to allow DOT to issue a "safety order" to an individual operator in situations that appear to require action, but do not rise to the level of danger implied in a "hazardous facility" designation under section 60112, the principal authority

available to DOT to order actions by an operator. The intent in 2002, as we understand it, was to provide DOT with an enforcement tool with a lower threshold that would not require DOT to first declare that an operator's facility "is or would be hazardous" before actions would be required of the operator that could be documented in the public record.

The discussion draft and HR 5678 both add to section 60117(l) a welcome notice requirement and opportunity for a hearing at DOT before any order could be issued. Ensuring a modicum of due process addresses a significant omission in the 2002 Act. However, both provisions go on, in effect, to eliminate the due process benefit by practically abolishing any threshold or burden of proof for DOT in triggering a safety order. The Secretary of Transportation may order an operator to make possibly extensive expenditures on all or a portion of the operator's system to address "any condition that poses a risk" based on any "factors the Secretary considers appropriate".

We appreciate DOT's desire to develop an enforcement tool to document and address situations where DOT and the operator can identify conditions that are not yet severe but may become so. However, the proposal in HR 5678 and the discussion draft goes too far in the direction of permitting the possibility of arbitrary action against an individual operator who has violated no DOT regulation. Under these provisions an operator would be virtually powerless to contest effectively any DOT requirement to make what the operator believes to be unnecessary expenditures of scarce resources to address questionable risks.

We would like to work with the Subcommittee to develop a provision that provides DOT what it needs in terms of documentation of its interactions with operators about needed safety improvements, but which contains the proper protections to ensure that any actions ordered in fact are justified, prudent and represent real safety improvements. We would also want to be sure that such orders to individual operators do not become a substitute for appropriately crafted regulations that apply to all operators.

Enforcement Transparency

Section 2(j) of the discussion draft requires DOT to post on a website monthly information about pipeline enforcement actions taken by the Secretary or the Pipeline and Hazardous Materials Safety Administration. Enforcement information is made publicly available by DOT for other modes regulated by the Department. We have no objection to this proposal as long as the normal due process and confidentiality attaching to negotiation and settlement of cases is preserved.

Other Provisions

My comments today have not addressed every provision of every proposal. Most of the provisions I have not discussed appear acceptable or do not directly affect the oil pipeline industry. We will continue to analyze the legislation and make our views available to those working on the legislation. The oil pipeline industry wants to work constructively with Congress, DOT and interested parties to achieve a compromise among the various legislative approaches that are offered that can achieve the broadest possible support. Our goal should be enactment of a bill this year that will reauthorize the pipeline safety program for several years – we suggest at least 5 years -- to guarantee as much certainty as possible to DOT, the affected industry and the public regarding the rules governing the safety oversight of our national pipeline infrastructure. That goal is within our reach if we all can continue to work together.

Closing

In summary, current pipeline safety law is working, and working very well. Improvements can be made, particularly in strengthening underground damage prevention, but fundamental changes are not needed. The legislative proposals before the House all seek to make improvements in the fundamentally sound DOT pipeline

safety program based on the Pipeline Safety Improvement Act of 2002. We need to move promptly to agree on the improvements that can gain broad support and incorporate these improvements in a pipeline safety reauthorization bill that can be enacted this year. The oil pipeline industry stands ready to help in any way we can in the achievement of this worthy goal.

This concludes my remarks, I will be happy to respond to questions.

MR. HALL. Thank you.

Ms. Epstein, we recognize you for 5 minutes.

MS. EPSTEIN. Thank you, Chairman Hall, Mr. Boucher, and other members of the subcommittee.

My name is Lois Epstein, and I am an Alaska and Maryland licensed engineer, and an oil and gas industry specialist with Cook Inletkeeper in Anchorage, Alaska, and a consultant to the Bellingham-based Pipeline Safety Trust.

My testimony today reflects both Cook Inletkeeper and the Pipeline Safety Trust's views.

My background in pipeline safety includes membership since 1995 on the U.S. Department of Transportation's Technical Hazardous Liquid Pipeline Safety Standards Committee and testifying before Congress in 1999, 2002, 2004, and 2006 on pipeline safety.

The safety and environmental constituents I represent commend the committee staff from both parties for an excellent discussion draft which should, with a minor change in the enforcement transparency section, proceed toward swift passage at the committee level and in the U.S. House of Representatives. These organizations are particularly supportive of the provisions in the discussion draft addressing technical assistance grants, enforcement, and enforcement transparency, and low-stress pipeline regulation, though we are disappointed that the bill does not include a mandate for public dissemination of pipeline maps.

Section 2(i) of the discussion draft reauthorizes a provision of the Pipeline Safety Improvement Act of 2002 on technical assistance grants, which has not been implemented by PHMSA to date, and which is the number-one priority of the safety and environmental protection communities in this bill. This provision, when implemented, will promote better technical policy decisions and will increase communication between diverse members of the public, governmental decision makers, and members of the pipeline industry. Technical assistance grants will allow members of the public to hire independent experts to explain, analyze, and interpret operator and policy-related data.

The language of Section 2(i) of the discussion draft ensures that there will be at least three demonstration grants not exceeding $25,000 for the purpose of demonstrating and evaluating the utility of grants under this

section. And the language ensures broad dissemination of the grant's technical findings. Both organizations are confident that there will be widespread support for continuing these grants, which is why we are not concerned that there likely will be only three demonstration grants with a maximum value of $25,000 per grant, as compared to the $50,000 per grant and an open-ended number of grants allowed in the 2002 statute.

Both organizations support the provisions of the discussion draft granting PHMSA additional enforcement authorities. Section 2(e) covering safety orders and Section 2(f) covering integrity program enforcement.

The enforcement transparency provision, Section 2(j) of the discussion draft, is a strong step forward. To date, PHMSA has not provided timely information to the public, State, local government, or industry on its enforcement activities. To ensure greater trust in this Nation's pipeline safety programs, it is important for stakeholders to be aware of the enforcement activities taking place by having the Federal government post the enforcement documents it issues, such as orders, letters, and any applicable industry responses to those documents.

Enforcement transparency begins when enforcement actions are first proposed, continues with regular updates for each stage of the process as developments occur, and ends when cases are closed. The discussion draft language is close to this concept, but needs to make clear that PHMSA would make enforcement information available as cases progress, not only when cases are finalized.

The organizations I represent today support regulating low-stress pipelines to prevent releases to the environment, such as this winter's release of approximately 200,000 gallons of crude oil from a BP low-stress transmission line on the North Slope of Alaska. Regulation of low-stress pipelines should be based on the data compiled by PHMSA and others, and regulatory definitions and thresholds should not be set by Congress.

Both organizations support the language of Section 2(k) of the discussion draft, which gives PHMSA the discretion it needs to develop a technically-sound rule, which by the way, H.R. 5782 does not do because of its specificity.

We also support Sections 2(a) through 2(d), 2(h), 2(k), and 2(l) of the discussion draft and the 4-year reauthorization period.

In areas where H.R. 5782 differs from the discussion draft, the organizations provide the following comments.

On Section 2, covering damage prevention and State damage prevention programs, based on our contacts with State pipeline safety regulators, both organizations prefer the language in the discussion draft to the language in H.R. 5782.

On Section 3, covering the distribution integrity management program rulemaking issue, both organizations support the 1-year rulemaking deadline and accept the language contained in Section 2(e) on standards for distribution integrity management programs.

On Section 4, covering pipeline control management, both organizations support the Section 4(a) language requiring standards to reduce the risks associated with human factors, including fatigue.

On Section 7, covering standards to implement NTSB recommendations, both organizations support inclusion of the three mandates to PHMSA to develop new regulatory standards. In addition, we support and have been working to ensure that PHMSA implements NTSB recommendation P-05, which would require "computer-based leak detection systems on all lines unless engineering analysis determines that such a system is not necessary." This important recommendation should not be ignored by Congress and PHMSA.

Thank you very much for your interest in pipeline safety and environmental protection. Please feel free to contact me or Carl Weimer of the Pipeline Safety Trust at any time.

[The prepared statement of Lois N. Epstein, P.E. follows:]

PREPARED STATEMENT OF LOIS N. EPSTEIN, P.E., SENIOR ENGINEER, OIL AND GAS INDUSTRY SPECIALIST, COOK INLETKEEPER, ON BEHALF OF PIPELINE SAFETY TRUST

The Discussion Draft

Cook Inletkeeper and the Pipeline Safety Trust are particularly supportive of the provisions in the Discussion Draft addressing Technical Assistance Grants, Enforcement and Enforcement Transparency, and Low-Stress Pipeline Regulation. The Technical Assistance Grants provision is the number one priority of the safety and environmental protection communities. On enforcement transparency, Congress needs to direct the Pipeline and Hazardous Materials Safety Administration (PHMSA) to provide all official documentation to the public from the start of enforcement actions until cases are closed. With respect to low-stress pipeline regulation, the Discussion Draft language gives PHMSA the discretion it needs to develop a technically-sound rule (which H.R. 5782 does not).

H.R. 5782

Cook Inletkeeper and the Pipeline Safety Trust prefer the language in the Discussion Draft to the language in H.R. 5782 on damage prevention and state damage prevention programs, and H.R. 5782 does not contain important provisions covering Technical Assistance Grants and Enforcement and Enforcement Transparency. Both organizations support the one year rulemaking deadline for distribution integrity management programs and the Section 4 language on reducing the risks associated with human factors.

Both Cook Inletkeeper and the Pipeline Safety Trust support a four-year reauthorization period.

Good morning. My name is Lois Epstein and I am an Alaska- and Maryland-licensed engineer and an oil and gas industry specialist with Cook Inletkeeper in Anchorage, Alaska. Cook Inletkeeper is a nonprofit, membership organization dedicated

to protecting Alaska's 47,000 square mile Cook Inlet watershed, and a member of the Waterkeeper Alliance of 150+ organizations headed by Bobby Kennedy, Jr. My background in pipeline safety includes membership since 1995 on the U.S. Department of Transportation's Technical Hazardous Liquid Pipeline Safety Standards Committee which oversees the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) oil pipeline activities and rule development, testifying before Congress in 1999, 2002, 2004, and 2006 on pipeline safety, and researching and analyzing the performance of Cook Inlet's 1000+ miles of pipeline infrastructure by pipeline operator and type.[1] I have worked on environmental and safety issues for over 20 years for two private consultants, the U.S. Environmental Protection Agency, Environmental Defense, and Cook Inletkeeper.

Additionally, I am a part-time consultant for the Pipeline Safety Trust, located in Bellingham, Washington, and my testimony today reflects both Cook Inletkeeper and the Pipeline Safety Trust's views. The Pipeline Safety Trust came into being after the 1999 Olympic Pipe Line tragedy in Bellingham, Washington which left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption to the region. After investigating this tragedy, the U.S. Department of Justice (DOJ) recognized the need for an independent organization which 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 DOJ's recommendation and awarded the Pipeline Safety Trust $4 million that was used as an initial endowment for the long-term continuation of the Trust's mission.

For more details on many of the issues discussed below, please see my U.S. House of Representatives testimony on March 16, 2006 before the Highway, Transit, and Pipelines Subcommittee of the Committee on Transportation and Infrastructure and on April 27, 2006 before the Subcommittee on Energy and Air Quality of the Committee on Energy and Commerce.

The Discussion Draft

The safety and environmental protection constituents I represent commend the committee staff from both parties for an excellent Discussion Draft which should – with a minor change – proceed toward swift passage at the committee level and in the U.S. House of Representatives. The organizations I represent are particularly supportive of the provisions in the Discussion Draft addressing Technical Assistance Grants, Enforcement and Enforcement Transparency, and Low-Stress Pipeline Regulation. I first will discuss these provisions, then will cover other provisions of the Discussion Draft, and last will address H.R. 5782 – the bill marked-up on July 19 in the Committee on Transportation and Infrastructure of the U.S. House of Representatives.

Technical Assistance Grants. Section 2(i) of the Discussion Draft reauthorizes a provision of the Pipeline Safety Improvement Act of 2002 which has not been implemented to date and which is the number one priority of the safety and environmental protection communities. This provision, when implemented, will promote better technical and policy decisions, and will increase communication between diverse members of the public, governmental decision-makers, and members of the pipeline industry. These technical assistance grants will allow members of the public to hire independent experts to explain, analyze, and interpret technical data.

The grants can be used to: 1) analyze operator-reported data on integrity management (e.g., to compare operations of similar pipelines), 2) interpret (for the public) operator studies on right-of-way selection and operational decisions, 3) assist

[1] See *Lurking Below: Oil and Gas Pipeline Problems in the Cook Inlet Watershed*, 28 pp. plus appendices, 2002, and follow-up reports in 2003 and 2005. www.inletkeeper.org/pipelines.htm

community organizations and local governments to comment on regulations or industry standards in areas where they wouldn't otherwise have the resources to do so, and 4) provide effective public input to government and industry in ways not now foreseeable. Examples of public organizations that could benefit from such grants include the Washington City and County Pipeline Safety Consortium and the Kentucky Pipeline Safety Advisory Committee, which each formed after major pipeline failures and include a broad spectrum of stakeholders interested in ways to avoid additional pipeline accidents in their states. Note that the 2002 statute requires that these grants not be used for lobbying or in direct support of litigation.

The language of Section 2(i) of the Discussion Draft ensures that there will be at least three demonstration grants not exceeding $25,000 "for the purpose of demonstrating and evaluating the utility of grants under this section" and ensures broad dissemination of the grant's technical findings. Both organizations I represent are confident that there will be widespread support for continuing these grants, which is why these organizations are not concerned that there likely will be only three demonstration grants with a maximum value of $25,000 – as compared to the $50,000 allowed in the 2002 statute and an unspecified number of grants – during this reauthorization period.

Enforcement and Enforcement Transparency. Both of the organizations I represent support the provisions in the Discussion Draft granting PHMSA additional enforcement authorities – Section 2(e) covering Safety Orders and Section 2(f) covering Integrity Program Enforcement.

The Enforcement Transparency provision, Section 2(j) of the Discussion Draft, is a strong step forward. To date, PHMSA has not provided timely information to the public, state and local government, or industry on its enforcement activities. To ensure greater trust in this nation's pipeline safety programs, it is important for stakeholders to be aware of the enforcement activities taking place by having the federal government post the enforcement documents it issues (e.g., orders and letters) and any applicable industry responses to those documents. Enforcement transparency begins when enforcement actions are first proposed, continues with regular updates for each stage of the process as developments occur, and ends when cases are closed. Our organizations ask that the subcommittee make the following minor wording change (or equivalent) to Section 2(j)(1)(a) of the Discussion Draft to make it clear the intent of this section:

> (a) IN GENERAL.—Not later than 12 months after the date of enactment of this section, the Secretary shall begin to provide a monthly **s**ummary to the public of all gas and hazardous liquid pipeline enforcement actions taken by the Secretary or the Pipeline and Hazardous Materials Safety Administration, **from the time enforcement actions are proposed until enforcement actions are finalized**. Each summary shall include information on the operator involved in the enforcement activity, the type of violation that necessitated the enforcement activity, the penalty or penalties proposed, **any changes in status since the previous summary**, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate.

Low-Stress Pipeline Regulation. The organizations I represent support regulating low-stress pipelines to prevent releases to the environment such as this winter's release of approximately 200,000 gallons of crude oil from a BP low-stress transmission pipeline on the North Slope of Alaska. Regulation of low-stress pipelines should be based on the data compiled by PHMSA and others, and regulatory definitions and thresholds should not be set by Congress. Both organizations support the language of Section 2(k) of the Discussion Draft, which gives PHMSA the discretion it needs to develop a technically-sound rule (which H.R. 5782 does not do).

Other Provisions of the Discussion Draft. The organizations I represent support the following provisions of the Discussion Draft:

- One Call Civil Enforcement (Section 2(a)),
- State Damage Prevention Programs (Section 2(b)),
- State Pipeline Safety Grants (Section 2(c)),
- Damage Prevention Technology Development (Section 2(d)),
- Seven Year Reinspection (Section 2(h)), since this section incorporates the findings of the upcoming Comptroller General report into policy-making as our organizations testified previously should be done,
- Cost Reimbursements, covering Design Reviews (Section 2(k)),
- Direct Line Sales (Section 2(l)), and
- The Four-Year Reauthorization period (Section 3).

H.R. 5782

In areas where H.R. 5782 differs from the Discussion Draft, the organizations I represent provide the following comments:

On Section 2 covering damage prevention and state damage prevention programs, based on our contacts with state pipeline safety regulators, both organizations prefer the language in the Discussion Draft to the language in H.R. 5782. Most notably, in section (b) of both draft bills, the Discussion Draft language "*encouraging and promoting* the establishment of a [state] program designed to prevent damage" (emphasis added) is far superior to H.R. 5782's language, i.e., the state "*has agreed to take actions toward* establishing a program designed to prevent damage" (emphasis added), because the former allow allows federal funding to continue prior to passage of state legislation.

On Section 3 covering the distribution integrity management program rulemaking issues, both organizations support the one year rulemaking deadline and accept the language contained in Section 2(e) on standards for Distribution Integrity Management Programs.

On Section 4 covering pipeline control management, both organizations support the Section 4(a) language requiring standards to reduce the risks associated with human factors, including fatigue.

On Section 5 covering low-stress pipelines, both organizations believe the language contained in H.R. 5782 unnecessarily and inappropriately limits PHMSA's technical discretion in low-stress pipeline rulemaking. This language limits regulation of currently-unregulated low-stress pipelines to certain locations (despite the need for at least corrosion prevention for <u>all</u> currently-unregulated low-stress pipelines) and sets the minimum diameter for PHMSA-regulated low-stress pipelines. Such language intrudes upon PHMSA's ability to regulate pipelines based on technical data. As discussed above, the language in the Discussion Draft on low-stress pipelines provides PHMSA with needed discretion for its regulatory decisions.

On Section 6 covering appropriations, as noted above, both organizations support a four-year reauthorization period.

On Section 7 covering standards to implement National Transportation Safety Board (NTSB) recommendations, both organizations support inclusion of the three mandates to PHMSA to develop new regulatory standards (NTSB recommendations P-05-1, 2, and 3). In addition, both organizations support – and have been working to ensure that – PHMSA implements NTSB recommendation P-05-5 which would require "computer-based leak detection systems on all lines unless engineering analysis determines that such a system is not necessary." This important recommendation should not be ignored by Congress and PHMSA.

Last, disappointingly, H.R. 5782 does not address Technical Assistance Grants and Enforcement and Enforcement Transparency, which are high priorities for safety and environmental protection organizations.

Thank you very much for your interest in pipeline safety and environmental protection. Please feel free to contact me or Carl Weimer of the Pipeline Safety Trust at any time with your questions or comments.

MR. HALL. Thank you very much.

All right. That concludes their opening statements.

Mr. Mohn, can you explain the process operators undergo when applying industry science and risk-based best practices to their own monitoring of their pipelines for reassessment intervals, both before the 7-year requirement and after the 7-year requirement?

MR. MOHN. I would be happy to.

In fact, there is a framework that was developed in a consensus standard following the 2002 Act in the regulatory framework put in place by OPS that is our guide in doing so. That guide broadly defines threats to our pipeline anywhere from internal to external corrosion to metallurgy issues to damage from third parties and forces us to go through an analysis, making an assessment of how we are going to mitigate each one of those threats. Then, as we look at all of our thousands of miles of pipelines, we develop a relative risk ranking, if you will, as to those pipelines that have the greatest probability of a failure and then apply appropriate mitigative measures. For external corrosion, we will use and do extensively use, smart pigs to assess metal loss and then remediate any unacceptable wall loss, again, in a very prescriptive process that is defined in the consensus standard we call B-31-8. It is an ANSI standard.

The way we would conduct the analysis if we didn't have the 7-year prescriptive standard, will again be guided by whatever standard is put in place by PHMSA. I would expect, again, a similar rigorous, risk-based process where we assess each threat and determine what the mitigated measures are and the timeframe within which we would apply those mitigative measures.

I would just note that we have said many times in our testimony, and you heard Admiral Barrett say again today, that there are some pipes that, because of specific circumstances, that we do assess more frequently. We have some pipes today that we assess every 3 years, some pipes we assess every 5 years in applying the current B-31-8 standards.

MR. HALL. Mr. Jibson, how do utilities respond when notified of damage to pipelines? And how prompt is that response? And how does mandating utility notification of pipeline damage help ensure better pipeline safety, if it does?

MR. JIBSON. Yes. First of all, the first question in regards to your question--

MR. HALL. How do you respond?

MR. JIBSON. Okay. On the response, we have right now a system where we have 24/7 dispatching, emergency numbers that are posted on all of our pipelines and available. That information comes into us. We immediately have people who respond to those emergencies, and we get out on them. Different States have different requirements. In our particular State, we have a requirement where we respond within 1 hour of that emergency call. Now that is what we consider actually getting to the site and taking care of the immediate danger. We also have relationships with our local authorities, the emergency response groups, who know where to call and immediately take care of some of the initial dangers of having the public in a safe situation so that we can go in and then rectify the problem and take care of that immediately.

Enhanced procedures, as we talked about with the 9-1-1 call, we believe that will only enhance our ability to respond to safety issues. The 9-1-1 call is very imperative, especially if there would be substance escaping from the pipeline. In the cases where there is not an actual release of the substance from the pipeline, we feel like the 9-1-1 call may not be necessary, but it does not alleviate the need for the call to come into the operator. And any enhanced enforcement or enhanced provisions that would facilitate us getting the calls sooner and more directly would certainly help us in the safety issue.

MR. HALL. My time is up.

The Chair recognizes Mr. Boucher.

MR. BOUCHER. Well, thank you, Mr. Chairman. And I want to thank each of our witnesses for being here today. This is a hearing where I think we have had reflected on both panels a very broad consensus, that the discussion draft moves in the right direction and should be moved forward from this subcommittee for further legislative consideration. And, Mr. Chairman, I would very much hope that we could do that early in the month of September.

Let me just ask a couple of questions focused on the discussion draft, and this would be for each of you.

One of the major subjects we are addressing is excavation damage prevention. Would you agree that the provisions in the discussion draft would effectively discourage that damage by setting in place a program that would be designed to prevent it? So this can be a very short answer, hopefully, because I do have some follow-ups for each of you with regards to the effectiveness of our excavation damage prevention measures.

MR. JIBSON. I think I could answer very quickly that yes, we certainly agree that the bill would enhance that. I think we would just rely on experience with what has taken place in Virginia, Minnesota, Georgia, Tennessee, and others who have enhanced programs. The

numbers don't lie. It has proven to be a very effective program, and I think that we would see that throughout the United States.

MR. BOUCHER. All right.

Mr. Mohn?

MR. MOHN. I would simply say yes, I agree with Mr. Jibson.

MR. BOUCHER. All right. Thank you.

Mr. Felt?

MR. FELT. We strongly support the provisions. Thank you.

MR. BOUCHER. Thank you.

Ms. Epstein?

MS. EPSTEIN. Yes.

MR. BOUCHER. Excellent. You are all terrific witnesses.

We have heard a recommendation from the representative of NARUC this afternoon that a modification be made in the discussion draft to the rather firm tie between grants that would be to the benefit of the States and the presence in those States of the excavation damage prevention safety guidelines, this nine-point program. And the draft basically says you have to have the guidelines in place before the grants can be provided. The representative from NARUC said, well, it may take some time for us to get our State legislative bodies to give us the statutory authority necessary in order to be able to implement the nine-point program, and therefore, once we have demonstrated that we are really trying hard, maybe we should get the grant. My initial response to that, although I didn't say this to our representative when he was here, but I will say it now, is that it seems to me that we ought to keep this firm tie in place and require that the program actually be implemented before the money is provided. Let that be an incentive. And perhaps the award of this money could be used as leverage by the regulatory agency in order to get the State legislature to grant the authority to implement the rules much more quickly.

So you have heard what he said. You have heard what I have had to say. What do you think?

MR. MOHN. I would be glad to go first.

We all use performance incentives with our children and in our businesses that are financially based. The production of results and the award of those financial incentives should follow in that order. So I personally believe, and I think generally if you look at the way our company and most of our interstate companies administer those programs, once results are produced, the reward or the acknowledgement of that and the award of the grant in this case should be made.

MR. BOUCHER. So you would agree with me?

MR. MOHN. Yes.

MR. BOUCHER. Thank you.

Mr. Jibson?

MR. JIBSON. Very quickly, I believe that the success of any program is inherent on the participation and support of all of the stakeholders involved. The nine-point program involves many stakeholders, and I think that I would agree with Mr. Mohn that the incentives are certainly there to have the components in place at the time of receiving the funding, but maybe there is some middle ground, and I will take maybe a middle-road position here, because I believe that we do need some funding to assist in getting the nine points going and get those in place in many States.

MR. BOUCHER. Well, now there is other funding that flows that could be used for that purpose.

MR. JIBSON. Right. And maybe that is that middle area. Maybe that could be channeled that way and this be specific for--

MR. BOUCHER. That could be done at the discretion of the State, if they choose to do so.

MR. JIBSON. Right. I agree the incentive is there, but I also agree that some States will need that supportive funding from some mechanism.

MR. BOUCHER. All right. All right. That is a carefully calibrated statement.

Mr. Felt?

MR. FELT. Sir, I guess I am not familiar with all of the intricacies that the 50 States have to deal with, and I might defer to your judgment on that aspect of it. But I would say that anything we can do to get the damage prevention programs installed at the highest level as soon as possible benefits any operator and the public, in general, I would wholeheartedly support that.

MR. BOUCHER. Thank you. That is very diplomatic, also.

Ms. Epstein?

MS. EPSTEIN. I have communicated with several of those States on this exact question, and actually, I think they have made a persuasive case to me, and these are some very dedicated pipeline safety officials, that the language in the discussion draft, which was discussed with these State officials, where it talks about encouraging and promoting the establishment of a State program, is far superior to the language in H.R. 5782 where the State has already agreed to take actions, for the reasons that we heard today that why delay and, as you said, there could be some way of providing some of the funding. And the States have agreed that it is something to strive towards, but things sometimes happen slower at the legislative level and at the appropriations level as well than they can always hope for.

MR. BOUCHER. Right. So the financial reward should follow the complete performance?

MS. EPSTEIN. That is right.

MR. BOUCHER. Thank you.

Those are all of the questions I have, Mr. Chairman.

I want to thank these witnesses. And again, I would hope that we could move to markup at the earliest possible time.

MR. HALL. You liked these witnesses, didn't you?

MR. BOUCHER. I did. I thought they were great.

MR. HALL. You like witnesses that agree with you, don't you, Mr. Boucher?

MR. BOUCHER. I vastly prefer those, yes.

MR. HALL. Well, they did a good job.

MR. BOUCHER. They did.

MR. HALL. The Chair recognizes Mr. Sullivan.

MR. SULLIVAN. Thank you, Mr. Chairman.

This is for Mr. Felt from Tulsa. This is our other West Point guy right here.

You state in your testimony that your industry supports the low-stress transmission deadline required in the base text. How has your industry been engaged on the issue since the BP incident and at the public meeting PHMSA had to discuss the rule?

MR. FELT. I am not sure what our involvement was at the public meeting, but I do know that the industry, as a whole, has got a team of people working together to try to come up with a provision that will be fair to the industry and also be fair to the Government and to the public. So we have got an active team that is working with the Government on that.

MR. SULLIVAN. Okay. And one more question.

Your testimony raised some concern with the safety orders language in the discussion draft and the scope that it is intended to cover. Can you further explain what type of new authorities, if any, you think would be appropriate? And do you think a rulemaking process would help address some of these concerns? Would a consent-based process be more appropriate here?

MR. FELT. I am not sure what you mean by the consent-based process, sir.

MR. SULLIVAN. Which one do you think would be better?

MR. FELT. I guess we feel like we could work with the DOT in the language that they need to get the tools that they need in place. When Mr. Barrett testified, he talked about it being focused on safety, and we agree with that. We thought that maybe the language that was in there opened it a little bit too broadly. I am not opposed to the order, so if they

feel that that is necessary, I mean, it is already in there. We just want to make sure that the boundaries are clear and that the protections are in place. And so our industry is having discussions with PHMSA on working out the differences that we can both support. So I think we are on our way to getting there.

MR. SULLIVAN. Okay. Well, thank you very much.

MR. HALL. Mr. Shimkus, the Chair recognizes you for 5 minutes.

MR. SHIMKUS. Mr. Chairman, I don't have any questions at this time.

MR. HALL. Well, you might submit them later.

All right. Do you have any second questions? You got such good answers before, you don't want to ruin your record now.

MR. BOUCHER. No.

MR. HALL. Well, you have been a really good panel and a very informative group, and we thank you. And thank you for the time it took.

And don't have any dismay over the fact that there are so many empty chairs here. This is probably the last day we will be here for the next 4 or 5 weeks, and there is a lot to do, and they are doing things. But each one of them has someone here that is better for them to hear it than it is for us, because they do most of the work. It will also be submitted to everybody, copies of your testimony. It is not wasted on empty chairs, and we want to really thank you for it.

All right. Is there anything further for the good of the committee? If not, we are adjourned.

[Whereupon, at 1:45 p.m., the subcommittee was adjourned.]

SUBMISSION FOR THE RECORD OF KATHERINE SIGGERUD, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, House of Representatives

Submitted August 4, 2006

GAS PIPELINE SAFETY

Views on Proposed Legislation to Reauthorize Pipeline Safety Provisions

Statement for the Record by
Katherine Siggerud, Director
Physical Infrastructure Issues

GAO-06-1027T

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Highlights

Highlights of GAO-06-1027T, a testimony before the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

The Pipeline Safety Improvement Act of 2002 established a risk-based program for gas transmission pipelines—termed integrity management—which requires pipeline operators to identify areas where the consequences of a pipeline incident would be the greatest, such as highly populated areas. Operators must assess pipelines in these areas for safety threats (such as corrosion), repair or replace defective segments, and reassess their pipelines at least every 7 years. Under the Pipeline and Hazardous Materials Safety Administration's (PHMSA) regulations, operators must reassess their pipelines for corrosion at least every 7 years and for all safety threats at least every 10, 15, or 20 years. State pipeline safety agencies that assist PHMSA are eligible to receive matching funds up to 50 percent of the cost of their pipeline safety programs.

This statement is based on ongoing work for this Subcommittee and for others. It focuses on three areas germane to current legislative reauthorization proposals: (1) an overall assessment of the integrity management program, (2) the 7-year reassessment requirement, and (3) provisions to increase state pipeline safety grants. GAO contacted more than 50 pipeline operators and a broad range of stakeholders and surveyed state pipeline agencies. GAO also reviewed PHMSA and industry guidance and reviewed PHMSA pipeline performance data.

www.gao.gov/cgi-bin/getrpt?GAO-06-1027T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov.

August 4, 2006

GAS PIPELINE SAFETY

Views on Proposed Legislation to Reauthorize Pipeline Safety Provisions

What GAO Found

While the gas integrity management program is still being implemented, early indications show that the program benefits pipeline safety. For example, the condition of transmission pipelines is improving as operators assess and repair their pipelines. As of December 31, 2005 (latest data available), 33 percent of the pipelines in highly populated or frequently used areas had been assessed and over 2,300 repairs had been completed. In addition, we estimate that up to 68 percent of the population that lives close to natural gas transmission pipelines is located in highly populated areas and is expected to receive additional protection as a result of improved pipeline safety. Furthermore, despite some uncertainty on the part of operators over the program's documentation requirements, operators, gas pipeline industry representatives, state pipeline officials, and safety advocate representatives all agree that the program enhances public safety, citing operators' improved knowledge of the threats to their pipelines as the primary benefit.

Although periodic reassessments of pipeline threats are beneficial, the 7-year reassessment requirement appears to be conservative. Through December 2005, 76 percent of the operators (182 of 241) reporting baseline assessment activity to PHMSA reported that their pipelines were in good condition, requiring only minor repairs. Most of the problems found were concentrated in just 7 pipelines. These results are encouraging, since operators are required to assess their riskiest segments first and operators are required to repair defects, making them safer before reassessments begin toward the end of the decade. There have been no deaths or injuries from corrosion related pipeline incidents over the past 5-1/2 years. An alternative approach is to permit pipeline operators to reassess their pipeline segments at intervals based on technical data, risk factors, and engineering analyses. Such an approach is consistent with the overall philosophy of the 2002 act and would meet its safety objectives. Under this approach, operators could reassess their pipelines at intervals longer than 7 years only if operators can adequately demonstrate that corrosion will not become a threat within the chosen time intervals. Otherwise, the reassessment must occur more frequently. As a safeguard to ensure that operators have identified threats facing these pipeline segments and have determined appropriate reassessment intervals, PHMSA and state regulatory agencies are already conducting integrity management inspections of operators. They plan to inspect most operators' integrity management activities by 2009.

The provision to increase the cap on pipeline safety grants to states appears reasonable given that states' workloads are expanding, but funding sources and oversight of states' expanded activities would need to be addressed in order to ensure that the increased grants are appropriately carried out. PHMSA has identified several potential funding sources, such as reprioritizing the agency's budget and increasing pipeline user fees. For oversight, PHMSA anticipates integrating states' expanded activities into the agency's current oversight approach that relies on annual reports from states and field evaluations.

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to assist the Subcommittee in its efforts to reauthorize the Pipeline Safety Improvement Act of 2002, which strengthened federal pipeline safety programs and enforcement, state oversight of pipeline operators, and public education on pipeline safety. This statement is based on the preliminary results of our ongoing work for this Subcommittee and others on aspects of the integrity management program for gas transmission pipelines established under the 2002 act.[1] We appeared before this subcommittee in April to discuss these topics.[2] This statement focuses on three areas that are related to the Subcommittee's July 20, 2006, draft bill; H.R. 5782, as introduced; and the administration's pipeline reauthorization, introduced as H.R. 5678. These three areas are (1) an overall assessment of the integrity management program, (2) the 7-year reassessment requirement, and (3) provisions to increase state pipeline safety grants.

Our work is based on our review of laws, regulations, pipeline performance data, and other guidance from the federal regulator—the Pipeline and Hazardous Materials Safety Administration (PHMSA)—as well as discussions with a broad range of stakeholders, including industry trade associations, pipeline safety advocate groups, state pipeline agencies, pipeline inspection contractors, and consensus standards organizations.[3] We also reviewed industry consensus standards for maximum reassessment intervals developed by the American Society of Mechanical Engineers. In addition, we surveyed the 47 state pipeline agencies responsible for inspecting intrastate gas transmission pipeline operators on their plans for conducting inspections of operators' integrity

[1]Under integrity management, operators are required to develop programs to systematically assess and mitigate safety threats, such as leaks or ruptures, for the portions of their pipelines that are in highly populated or frequently used areas (such as parks). They must complete baseline assessments by 2012 and then reassess these pipeline segments every 7 years. Under PHMSA's regulations, operators must reassess their pipelines for corrosion at least every 7 years and for all time-dependent safety threats at least every 10, 15, or 20 years. Transmission pipelines transport gas products from sources to communities and are primarily interstate.

[2]GAO, *Gas Pipeline Safety: Preliminary Observations on the Implementation of the Integrity Management Program*, GAO-06-588T (Washington, D.C.: April 27, 2006).

[3]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 on the basis of an industry consensus.

management programs.[4] We also contacted 52 pipeline operators. These operators represent nearly 60 percent of the miles of pipeline assessed to date. We relied on pipeline operators' professional judgment in reporting on the conditions that they found during their assessments of safety threats. Because we used a non-probability method of selecting these operators, we cannot project our findings nationwide.[5] As part of our work, we assessed the internal controls and the reliability of the data elements needed for this engagement, and we determined that the data elements were sufficiently reliable for our purposes. We performed our work in accordance with generally accepted government auditing standards from August 2005 to July 2006.

In summary:

- While the gas integrity management program is still being implemented, early indications show that the program benefits pipeline safety, as intended by Congress. First, the condition of transmission pipelines is improving as operators complete their first round of pipeline assessments and make repairs. For example, 33 percent of the identified pipelines in highly populated or frequently used areas had been assessed and over 2,300 repairs had been completed as of December 31, 2005 (latest data available). In addition, we estimate that up to 68 percent of the population that lives close to natural gas transmission pipelines is located in highly populated areas and is expected to receive additional protection as a result of improved pipeline safety as operators complete their baseline assessments by December 2012, as required. Furthermore, despite some uncertainty on the part of operators over the program's documentation requirements, operators, gas pipeline industry representatives, state pipeline officials, and safety advocate representatives all agree that the program enhances public safety, citing operators' improved knowledge of the threats to their pipeline systems that stems from systematic assessments as the primary benefit of the program.

- Regarding the 7-year reassessment requirement, the draft Subcommittee bill would require the Secretary of Transportation to submit a legislative

[4]For the purpose of this statement, we treat the District of Columbia as a state pipeline agency.

[5]Results from nonprobability samples cannot be used to make inferences about a population because, in a nonprobability sample, some elements of the population being studied have no chance or have an unknown chance of being selected as part of the sample.

proposal after it receives our report on the subject. Our work, which is nearing completion, concludes that periodic reassessments are beneficial, but that the 7-year reassessment requirement appears to be conservative based on a number of factors. Among these are results of the baseline assessments conducted to date and the overall safety record of the gas transmission industry. In this regard, through December 2005, 76 percent of the operators (182 of 241) reporting baseline assessment activity reported to PHMSA that their pipelines were in good condition and free of major defects, requiring only minor repairs. Most of the 340 problems found were concentrated in just 7 pipelines, although it is not known how many of these problems were due to corrosion. (These assessments reported by the 241 operators covered about 6,700 miles, or about one-third of the nationwide total to be assessed by 2012.) These results are encouraging, since operators are required to assess their riskiest segments first. Furthermore, since operators are required to repair these pipelines, the overall safety and condition of the pipeline system should be improved before reassessments begin toward the end of the decade. Regarding safety, PHMSA data show corrosion incidents are relatively rare: over the past 5-1/2 years (from January 2001 through early July 2006), there were 26 corrosion-related incidents over the 295,000-mile transmission system per year, on average—none of which resulted in death or injury.[6]

- The administration's proposal would require the Secretary of Transportation to issue regulations basing reassessment intervals on technical data, risk factors, and engineering analyses. Based on our nearly completed work, we think that this approach is reasonable and would achieve the safety objectives of the 2002 act. It is also consistent with the overall philosophy of the integrity management legislation passed by the Congress in 2002. As discussed later in this statement, if PHMSA incorporates existing industry consensus standards for corrosion into its regulations, operators would be allowed to reassess their pipelines for time-dependent threats at least every 10, 15, or 20 years only if the operator can adequately demonstrate that corrosion will not become a threat within the chosen time interval. If not, then the reassessment must occur more frequently, perhaps at 7 or even fewer years. As a safeguard for ensuring that operators have identified threats facing pipeline segments and have determined appropriate reassessment intervals, PHMSA and state regulatory agencies are already conducting inspections. They plan to inspect most operators' integrity management activities by 2009.

[6]There have been two corrosion-related incidents in the last 10-1/2 years that have resulted in a death or injury. Neither occurred in a highly populated or frequently used area.

- The provision in the Subcommittee's draft bill to increase the cap on pipeline safety grants to states from 50 percent to 80 percent of the cost of their expanded pipeline safety programs appears reasonable given that states' workload is increasing to, among other activities, enforce integrity management requirements and damage prevention programs. However, if Congress approves this provision, two areas would need to be addressed to ensure that the increased grants are appropriately carried out: the source of funding for the increased grant amounts and oversight of the expanded state pipeline safety activities. According to PHMSA, the agency has identified funding options—including reprioritizing the agency's budget to channel funds from other activities (such as research) and increasing user fees charged to pipeline companies —but has not developed a specific plan for how to provide additional funds to states. PHMSA currently oversees state pipeline safety activities through annual reports from the states and field evaluations. According to PHMSA officials, expanded state pipeline safety agency activities would be included in PHMSA's oversight approach.

Background

The United States has a 295,000-mile network of natural gas transmission pipelines that are owned and operated by approximately 900 operators. These pipelines are important to the nation because they transport nearly all the natural gas used, which provides about a quarter of the nation's energy supply. Gas transmission pipelines typically move gas products over long distances from sources to communities and are primarily interstate. They generally deliver natural gas to local distribution pipelines, which distribute the gas to commercial and residential end-users. Local distribution companies may also operate small portions of transmission pipelines.

PHMSA administers the national regulatory program to ensure the safe transportation of natural gas and hazardous liquid by pipeline. In general, PHMSA retains full responsibility for inspecting and enforcing regulations on interstate pipelines, but it has arrangements with 48 states, the District of Columbia, and Puerto Rico to assist with overseeing intrastate pipelines. These states are currently authorized to receive reimbursement of up to 50 percent of the costs of their pipeline safety programs from PHMSA.

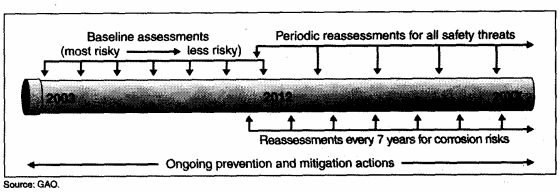
Traditionally, PHMSA has carried out its oversight role using minimum safety standards that were uniformly applied to all pipelines based on the "class location" of the pipeline. A pipeline's class location—based on factors such as population within 660 feet of the pipeline—determines the

applicable standards such as the thickness of the pipe required and the pressure at which it can operate. The Pipeline Safety Improvement Act of 2002 modified PHMSA's traditional oversight approach by supplementing the minimum standards with a risk-based program for gas transmission pipelines. This program—termed "integrity management"—requires gas transmission pipeline operators to assess and mitigate safety threats, such as leaks or ruptures due to incorrect operation or corrosion, to pipeline segments that are located in highly populated or frequently used areas, such as parks. Specifically, operators are required to perform baseline assessments on half of the pipeline mileage located in these areas by December 2007, and the remainder by December 2012. Those pipeline segments potentially facing the greatest risks of failure from leaks or ruptures are to be assessed first. As of December 2005 (latest data available), 447 gas pipeline operators reported to PHMSA that about 20,000 miles of their pipelines (about 7 percent of all gas transmission pipeline miles) lie in highly populated or frequently used areas. Individual operators reported that they have as many as about 1,600 miles and as few as 0.02 miles of pipeline in these areas.

The 2002 act also requires that operators reassess these pipeline segments for safety threats at least every 7 years. Under flexibility provided by the act, PHMSA requires that operators reassess these pipeline segments for corrosion damage at least every 7 years in its implementing regulations, because corrosion is the most frequent cause of failures that can occur over time.[7] (See fig. 1.) PHMSA's regulations also incorporated, as mandatory, voluntary industry consensus standards on maximum reassessment intervals into these regulations for other types of safety threats. The industry standards require that operators reassess gas pipelines at least every 10, 15, or 20 years for all safety threats depending primarily on the condition of the pipelines and the pressure under which they operate. If conditions warrant, reassessments must occur more frequently. In addition, operators must perform prevention and mitigation activities—such as monitoring their pipelines for excavation or corrosion damage—on a continuing basis.

[7]Other types of failures are independent of time, such as damage from cold weather, land movement, or incorrect operation.

Figure 1: Reassessments Every 7 Years for Corrosion Supplement Broader Periodic Reassessments



Source: GAO.

Note: Periodic reassessments occur at least every 10, 15, or 20 years. Both periodic and 7-year reassessments are supposed to occur more frequently if conditions warrant.

Gas Integrity Management Program Benefits Pipeline Safety

Operators are making good progress in assessing and repairing their pipelines, thereby improving the safety of their pipeline systems. As of December 2005, operators had assessed about 6,700 miles of their 20,000 miles—or about 33 percent—of pipelines located in highly populated or frequently used areas. This progress indicates that they are well on their way to meeting the requirement to conduct baseline assessments on 50 percent of their pipelines in these areas by December 2007. In addition to assessing their pipelines, operators are also making progress in fulfilling the requirement to repair problems found on their pipelines in highly populated or frequently used areas. In the 2 years that operators have reported the results of integrity management, they have completed 340 repairs that were immediately required and another 1,981 scheduled repairs in highly populated or frequently used areas.[8] While it is not possible to determine how many of these needed repairs would have been identified without integrity management, it is clear that the requirement to routinely assess pipelines enables operators to identify problems that may otherwise go undetected. Furthermore, the benefits of integrity management expand beyond highly populated or frequently used areas because a large number of operators are using internal inspection tools to assess their pipelines. These tools must be inserted and removed from the

[8]A repair must be made immediately when specific conditions are identified related to the strength of a pipeline such as, a dent with an indication of metal loss or cracking, or an anomaly judged to require immediate action. Scheduled repairs must be made within 1 year and generally include conditions where a dent has been identified but there is no indication of metal loss.

pipelines at designated locations that often run through other areas. Consequently, operators reported having assessed about 44,000 miles of pipelines located outside highly populated or frequently used areas, representing about 15 percent of all gas transmission pipelines. While operators are not required to report to PHMSA the results of these expanded assessments, operators we spoke with said that they plan to make necessary repairs identified through the assessments regardless of where they are identified.

We estimate that the integrity management program should offer additional safety benefits over the minimum safety standards for up to 68 percent of the population living close to gas transmission pipelines. This estimate corresponds with PHMSA's estimate of two-thirds of the population.

A number of representatives from pipeline industry organizations, state pipeline agencies, safety advocate groups, and operators that we contacted agree that integrity management benefits public safety because it requires all operators to systematically assess their pipelines to gain a comprehensive knowledge about the risks to their pipeline systems. Other benefits cited by operators include improved communications within their companies and more strategic resource allocation.

While the operators we contacted generally believe integrity management is beneficial, the program is not without its costs. For example, over half of the operators we spoke with said that they have hired additional staff or contractors as a result of the integrity management requirements. In addition, 19 of the operators we contacted (37 percent) were concerned about the level of documentation needed to support their gas integrity management programs. PHMSA requires operators to develop an integrity management program and provides a broad framework for the elements that should be included in the program. The regulations provide operators the flexibility to develop their programs to best suit their companies' needs, but each operator must develop and document specific policies and procedures to demonstrate its commitment to compliance with and implementation of the integrity management program. Operators may use existing policies and procedures if they meet the requirements of integrity management. In addition, an operator must document any decisions made related to integrity management to demonstrate that it understands the threats to their pipelines and is systematically managing their pipelines for these threats. While the operators we contacted generally agreed with the need to document their policies and procedures, some said that the detailed documentation required for every decision is very time consuming

and does not contribute to the safety of pipeline operations. In addition, a few operators expressed concern that they will not know if they have sufficient documentation until their programs have been inspected. Initial inspections of operators by PHMSA and state pipeline agencies have confirmed that some operators are experiencing difficulty with documentation but are generally doing well with assessments and repairs. According to PHMSA and state officials, as operators continue to develop and implement their integrity management programs and as they are provided feedback during inspections, the documentation issues identified during these initial inspections should be resolved.

Another concern raised by 33 (65 percent) of the operators is the requirement to reassess their pipelines for corrosion problems at least every 7 years. This issue is discussed in the following section.

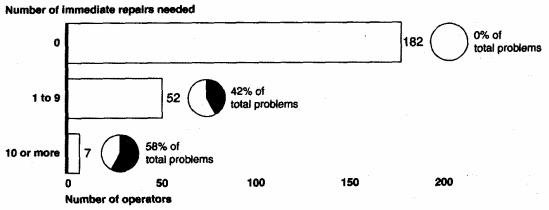
The 7-year Reassessment Requirement Appears to be Conservative

Periodic reassessments of pipeline threats are beneficial because threats—such as the corrosive nature of the gas being transported—can change over time. However, the findings from baseline assessments conducted to date and the generally safe condition of gas transmission pipelines leads us to conclude that the 7-year requirement appears to be conservative. Through December 2005 (latest data available), 76 percent of the operators (182 of 241) reporting baseline assessment activity to PHMSA told the agency that their pipelines were in good condition, free of major defects, and requiring only minor repairs.[9] (See fig. 2.) The remaining 59 operators found 340 problems requiring immediate repairs. About 60 percent of these problems occurred in seven operators' pipelines. Since PHMSA does not require that operators tell it the nature of the problems found, we do not know how many, if any, were due to corrosion. These assessments covered about 6,700 miles, or about one-third of the nationwide total to be assessed.[10]

[9]We contacted 52 operators about the results of their baseline assessments, and the results were largely consistent with the overall data reported to PHMSA.

[10]Another way to assess progress in completing baseline assessments and the effect of problems found would be to measure gas flows or pipeline capacity in those areas. This information is not readily available.

Figure 2: Most Operators Reported That Their Pipelines Are In Good Condition, as of December 2005



Source: GAO presentation of PHMSA data.

Note: Results of 241 operators that reported to PHMSA that they completed 6,700 miles of baseline assessments. Of those operators that reported no problems, 82 operate smaller pipeline systems (1-49 miles), 41 operate mid-sized pipeline systems (50-199 miles), and 59 operate larger pipeline systems (200 or more miles).

It is encouraging that the majority of operators nationwide reported that they found few or no problems requiring immediate repairs, because operators are supposed to assess pipeline segments facing the greatest risk of failure from leaks or ruptures first, as required by the 2002 act. In addition, since operators are required to identify and repair significant problems, the overall safety and condition of the pipeline system should be enhanced before reassessments begin toward the end of the decade.

Regarding the industry's overall safety record, over the past 5-1/2 years (from January 2001 through early July 2006), there were 143 corrosion-related incidents over the 295,000-mile transmission system (26 per year, on average)—none of which resulted in death or injury. Over the past 10-1/2 years, 12 people have died and 3 have been injured in two corrosion-related incidents.[11] Neither of these incidents occurred in a highly populated or frequently used area.

About 80 percent of the 52 operators that we contacted prefer that reassessment intervals be based on the condition and characteristics of

[11]All the fatalities and all but one of the injuries occurred in one incident. Over the same period, an average of 3 people have died and 8 people have been injured per year from all causes of natural gas transmission pipeline incidents.

the pipeline segment rather than on a prescriptive standard. About half of these operators (28) expressed a preference for the industry consensus standard developed by the American Society of Mechanical Engineers (ASME B31.8S-2004) for setting reassessment intervals for time-dependent threats because it incorporates a risk-based approach (for pipeline failure) and is based on science and engineering knowledge. This standard sets reassessment intervals at a maximum of 10 years for high-stress pipeline segments, 15 years for medium-stress segments, and 20 years for low-stress segments.[12] Maximum reassessment intervals, such as those in the industry consensus standard, incorporate such risk concepts as built-in safety factors (e.g., wall stress, test pressure, or predicted failure), conditions, and potential consequences of a pipeline incident on a segment-by-segment basis. The maximum intervals of 10, 15, and 20 years are based on worst-case corrosion growth rates.

Industry consensus standards allow for maximum reassessment intervals for time-dependent threats of 10, 15, or 20 years only if the operator can adequately demonstrate that corrosion will not become a threat within the chosen time interval. If not, then the reassessment must occur sooner, perhaps at 7 or even 5 or fewer years. Furthermore, according to industry consensus standards, it typically takes longer than the 10, 15, or 20 years specified in the standard for corrosion problems to result in a leak or rupture.

The industry consensus standards were developed in 2001 and updated in 2004 based on, among other things, the experience and expertise of engineers, contractors, operators, local distribution companies, and pipeline manufacturers; more than 20 technical studies conducted by the Gas Technology Institute, ranging from pipeline design factors to natural gas pipeline risk management; and other industry consensus standards including the National Association of Corrosion Engineers standards, on topics such as corrosion. Contributors have been practicing aspects of risk-based assessments successfully for over 10 years. The ASME standard serves as a foundation for nearly every section of PHMSA's integrity management regulations. The ASME standard was reviewed by the American National Standards Institute.[13] The Institute found that the

[12]Stress is measured in terms of operating pressure in relation to wall strength.

[13]The American National Standards Institute is a private, non-profit organization whose mission is to promote and facilitate voluntary consensus standards and promote their integrity. The Institute does not approve the technical merits of proposed national standards.

standard was developed in an environment of openness, balance, consensus, and due process and therefore approved it as an American National Standard.

While the mechanical engineering standards are voluntary for the industry, PHMSA incorporated them as mandatory in its gas transmission integrity management regulations. The mechanical engineering society's standard for setting reassessment intervals is not the only industry consensus standard in PHMSA's integrity management regulations. The regulations incorporate other industry consensus standards for assessing corrosion threats and for determining temporary reductions in operating pressure. In addition, it is federal policy to encourage the use of industry consensus standards: Congress expressed a preference for technical standards developed by consensus bodies over agency-unique standards in the National Technology Transfer and Advancement Act of 1995. The Office of Management and Budget's Circular A-119 provides guidance to federal agencies on the use of voluntary consensus standards, including the attributes that define such standards.

Of the 52 operators we contacted, 44 had undertaken baseline assessments, and 23 of these have calculated their own reassessment intervals.[14] Twenty of these 23 operators indicated that, based on the conditions they identified during their baseline assessments, they would reassess their pipelines at maximum intervals of 10, 15, or 20 years—as allowed by industry consensus standards—if the 7-year reassessment requirement were not in place. The remaining three operators told us that they would reassess their pipelines at intervals shorter than the industry consensus standards but longer than 7 years because of the condition of their pipelines. These results add weight to our assessment that the 7-year requirement appears to be conservative for most pipelines.

Safeguards Exist if an Alternative Standard for Corrosion Reassessments is Allowed

PHMSA and the state pipeline agencies plan to inspect all operators' compliance with integrity management reassessment requirements, among other things, to ensure that operators continually and appropriately assess the conditions of their pipeline segments in highly populated or frequently used areas. These inspections should serve as a check as to whether

[14]The other 21 operators either (1) have not yet calculated reassessment intervals; (2) do not intend to, given prescriptive federal (7 years) or state (5 years in Texas) reassessment requirements; or (3) did not supply us with information on their reassessment intervals.

operators have identified threats facing these pipeline segments and determined appropriate reassessment intervals. PHMSA and states have begun inspections and expect to complete most of the first round of inspections no later than 2009. As of June 2006, PHMSA has completed 20 of about 100 inspections and, as of January 2006, states have begun or completed about 117 of about 670 inspections. Initial results from these inspections show that operators are doing well in assessing their pipelines and making repairs, but, as discussed earlier, some need to better document their programs. Based on the initial inspection results to date, PHMSA and states did not find many issues that warranted enforcement actions.

Finally, it is important to note that, in addition to periodic reassessments, operators must perform prevention and mitigation activities on a continuing basis. PHMSA regulations require that all operators of pipelines, including those outside highly populated or frequently used areas, patrol their pipelines for excavation and other damage, survey for leakage, maintain valves, ensure that corrosion-preventing protections are working properly, and take other prevention and mitigation measures.

(Attachment I summarizes results of our work to date on the expected availability of resources for pipeline reassessments and the likely impact of assessment activity (including reassessments) on the nation's natural gas supply. We will discuss these topics in more detail in when we report on the 7-year reassessment requirement this fall.)

Increasing State Funding Appears Reasonable, but Funding Sources and Oversight Plans Would Need To Be Addressed

The Subcommittee's draft bill proposes to increase the matching funds that PHMSA provides to states for pipeline safety program activities from a maximum of 50 percent to a maximum of 80 percent of a state's pipeline safety program costs. The increased funding would offset states' increased workload, such as activities related to gas transmission integrity management and other provisions in the 2002 act. All three legislative proposals also contain provisions, such as damage prevention programs, that could increase states' workloads. Furthermore, state pipeline safety activities would increase if PHMSA implements its planned integrity management program for distribution pipelines. Our recent survey to state pipeline safety agencies about their integrity management oversight programs showed that 39 of 47 state agencies are experiencing challenges in staffing, which could require increased funding. For example, two state officials told us that state agencies are losing trained inspectors because the state salaries are typically lower than what operators pay. PHMSA

proposes to implement the increased funding in 5 percent increments over a 6-year period starting in fiscal year 2008.

We believe that the proposed increase in state grants to offset expanded state activities appears reasonable, provided that appropriate funding sources are identified and that the activities are included in PHMSA's oversight of state pipeline safety programs. According to PHMSA, the agency has several options for increasing funding for state grants, but has not developed a specific plan for how to provide additional funds. One option is for PHMSA to reprioritize its budget to channel additional funds from other activities, such as research, to states. Another option may be to increase user fees that are charged to pipeline companies. User fee assessments in fiscal year 2006 were about $150 per pipeline mile for natural gas transmission operators and about $76 per pipeline mile for hazardous liquid pipelines. All of these options involve tradeoffs among PHMSA's pipeline safety oversight activities or could result in increased fees from the pipeline industry. Therefore, the effects of these options would need to be carefully analyzed in order to find a balanced solution.

According to PHMSA, the agency plans to monitor increased state pipeline safety activities through its current oversight approach, which consists of reviewing annual reports from states and field evaluations of state activities. States are required to submit documentation annually about their pipeline safety program activities for the previous year, including information on the state's pipeline operators, inspections conducted, and enforcement of pipeline regulations. States are also required to submit a description of all ongoing and planned activities and an estimate of the total expenses for the next calendar year. PHMSA validates the information submitted by each state and attends at least one state inspection during field evaluations. As state pipeline safety activities expand, PHMSA would need to determine the best approach for including the new activities in its oversight of state pipeline safety programs.

Concluding Observations

The overall integrity management framework laid out in the Pipeline Safety Improvement Act is improving the safety of gas transmission pipelines. We have not identified issues that bring into question the basic framework of integrity management. Overall, we believe that PHMSA has done a good job in implementing the act. While we expect to make several recommendations to PHMSA when we complete our work, they will be aimed at incremental improvements, rather than major restructuring. Finally, regarding the 7-year reassessment requirement, our preliminary view is that these reassessment intervals should be based on technical

data, risk factors, and engineering analyses rather than a prescribed term. We expect to make a recommendation to the Congress that the 2002 act be amended along these lines when we report on this issue. We expect to report to this Subcommittee and to other committees both on PHMSA's implementation of integrity management and the 7-year reassessment requirement in September.

GAO Contact and Staff Acknowledgements

For further information on this statement, please contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov. Individuals making key contributions to this statement were Jennifer Clayborne, Anne Dilger, Seth Dykes, Maria Edelstein, Heather Frevert, Bert Japikse, Timothy Guinane, Matthew LaTour, James Ratzenberger, and Sara Vermillion.

Appendix: Availability of Resources to Conduct Reassessments and Possible Impacts on the Nation's Natural Gas Supply

This appendix summarizes results of our work to date on the expected availability of resources for pipeline reassessments and the likely impact of assessment activity (including reassessments) on the nation's natural gas supply.

Sufficient Resources May Be Available for Pipeline Reassessments

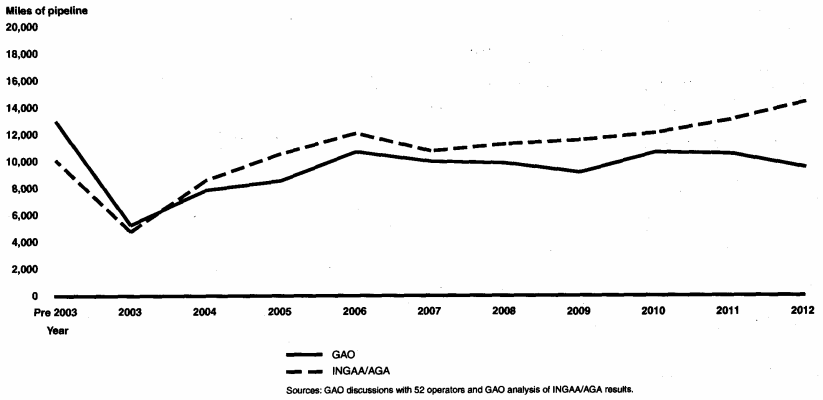
Sufficient resources may be available for operators to reassess their pipelines, but some uncertainty exists. Thirty-seven of the 52 operators, an in-line inspection association and four inspection contractors that we contacted told us that services and tools needed to conduct assessments will likely be available for baseline assessments and they do not anticipate difficulties obtaining these resources in the future. Operators that reported both baseline and reassessment schedules told us they plan to reassess 42 percent of their pipeline miles in highly populated or frequently used areas using in-line inspection.[1] An in-line inspection association and two contractors we contacted said that the in-line inspection industry is well established and has the capacity to expand readily. Operators plan to use direct assessment or confirmatory direct assessment methods in reassessing another 54 percent of their pipeline miles.[2] However, they told us that expertise for direct assessment methods is limited; therefore, they may not be as readily available to all operators.

The Interstate Natural Gas Association of America (INGAA), the American Gas Association (AGA) and we asked operators to estimate the number of miles of pipeline they planned to assess through 2012 in order to determine whether an increase in overall assessment activity would occur because of the overlap between completing baseline assessments and beginning reassessments from 2010 through 2012. The results were conflicting: the industry effort showed an increase in activity, while ours showed a decrease. (See fig. 3.) The reasons for these contrasting findings are unclear but may be due, in part, to the difference in methods used in collecting this information.

[1]In-line inspection involves running a specialized tool through a pipeline to detect and record anomalies, such as metal loss and damage.

[2]Direct assessment and confirmatory direct assessment involve using above-ground detection instruments, and then excavating suspected problem areas.

Figure 3: GAO and INGAA/AGA Results Show Different Trends in their Required Assessment Activity During the Overlap Period



Sources: GAO discussions with 52 operators and GAO analysis of INGAA/AGA results.

Impact of Periodic Reassessments on Natural Gas Supply May be Less than Foreseen

As the Pipeline Safety Improvement Act of 2002 was being considered, INGAA analyzed the possible impact of requiring assessments and periodic reassessments and found that significant disruptions in the natural gas supply and considerable price increases could occur.[3] A more moderate impact was predicted in three subsequent analyses—two reviews of the INGAA study performed for PHMSA by the John A. Volpe National Transportation Systems Center and by the Department of Energy during the congressional debate over the pipeline bill, and a post-act PHMSA

[3]Prepared for The INGAA Foundation, Inc., by Energy and Environmental Analysis, Inc., *Consumer Effects of the Anticipated Integrity Rule for High Consequence Areas*, 2002.

evaluation of its implementing regulations.[4] A waiver provision was included in the 2002 act after INGAA's study was completed; this may serve as a safety valve if it appears that the natural gas supply may be disrupted. Finally, of the 44 natural gas pipeline operators that we contacted that had begun baseline assessments,[5] 26 operators (59 percent) indicated that their assessments and repairs did not require them to shutdown their pipelines or reduce their operating pressure. Sixteen (36 percent) reported minor disruptions in their gas supply because they temporarily shut down pipelines and reduced operating pressure to conduct assessments or repairs. They told us that they used alternate gas sources, such as liquefied natural gas, to sustain their customers' gas supply. The remaining two operators told us that they were not able to meet all their customers' needs, but the customers were able to obtain natural gas from other sources.

[4]See, Department of Transportation docket, RSPA-00-7666, *Energy Impact Statement for Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)*, March 28, 2002, prepared by John A. Volpe National Transportation Systems Center and the U.S. Department of Transportation; Comments from U.S. Department of Energy on INGAA's *Consumer Effects of the Anticipated Integrity Rule for High Consequence Areas*, April 2, 2002; and Research and Special Programs Administration, *Final Regulatory Evaluation, Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)*, March 28, 2002.

[5]Fifty of the 52 operators that we contacted operate natural gas pipeline and six have not yet begun baseline assessment activities.

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