

Congress of the United States
Washington, DC 20515

November 18, 2019

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street N.W., Room 7000
Washington, D.C. 20548

Dear Comptroller General Dodaro:

On October 30, 2019, TC Energy notified the National Response Center of a crude oil release from their Keystone Pipeline System in Edinburg, North Dakota.¹ The 30-inch pipeline had ruptured and spilled an estimated 383,040 gallons of crude oil affecting a nearby water culvert, wetland, and possibly groundwater. This incident marks the third major leak in three years from the pipeline, which is operated by TC Energy, formally known as TransCanada Corporation.²

The first major incident occurred on April 2, 2016, when a passerby discovered an ongoing leak from the pipeline, which released an estimated 16,800 gallons of crude oil near Freeman, South Dakota.³ On November 16, 2017, the Keystone Pipeline System released 210,000 gallons of crude oil when it ruptured near Amherst, South Dakota.⁴ The National Transportation Safety Board determined that the pipe failure was due to a fatigue crack, likely originating from mechanical damage to the pipe's exterior when that segment of pipe was installed in 2008.⁵ Numerous smaller spills have occurred since the pipeline opened in 2010.⁶

In 2007, the Pipeline and Hazardous Materials Safety Administration (PHMSA) granted a special permit for TC Energy to design, construct, and operate crude oil pipelines.⁷ The permit included 51 conditions for the Keystone Pipeline System, covering areas such as fracture control, puncture resistance, pipe coatings, and construction quality requirements. The permit also allowed the pipeline to be operated at a stress level of 80 percent of the pipe's specified minimum yield strength (SMYS), whereas the federal regulations in 49 CFR 195.106 normally limit the operating stress level for hazardous liquid pipelines to 72 percent of SMYS.⁸ The special permit was designed

¹ The National Response Center (NRC) is a federal emergency call center that is staffed by the U.S. Coast Guard and fields initial reports of oil spills, chemical releases or maritime security incidents, [www://nrc.uscg.mil](http://www.nrc.uscg.mil).

² Emily S. Rueb and Niraj Chokshi, "Keystone Pipeline Leaks 383,000 Gallons of Oil in North Dakota," *New York Times*, October 31, 2019, accessed here: <https://www.nytimes.com/2019/10/31/us/keystone-pipeline-leak.html>.

³ Ken Ilgunas, "South Dakota Oil Spill Reveals Major Pipeline Problems," *Time*, April 14, 2016, accessed here: <https://time.com/4292856/south-dakota-oil-spill/>.

⁴ Mayra Cuevas and Steve Almasy, "Keystone Pipeline leaks 210,000 gallons of oil in South Dakota," *CNN*, November 17, 2017, accessed here: <https://www.cnn.com/2017/11/16/us/keystone-pipeline-leak/index.html>.

⁵ National Transportation Safety Board. *Pipeline Accident Brief: TransCanada Corporation Pipeline (Keystone Pipeline) Rupture*, July 5, 2018, accessed here: <https://www.nts.gov/investigations/AccidentReports/Reports/PAB1801.pdf>.

⁶ Hannah Knowles, "Keystone Pipeline leaks 383,000 gallons of oil in second big spill in two years," *The Washington Post*, November 1, 2019, accessed here: <https://www.washingtonpost.com/climate-environment/2019/10/31/keystone-pipeline-leaks-gallons-oil-second-big-spill-two-years/>.

⁷ Docket Number PHMSA-2006-26617.

⁸ 49 CFR 195.106.

to provide for a level of safety equal to, or greater than, the regulations in effect at the time by requiring TC Energy to more closely inspect and monitor the pipeline over its operational life.

After the second major incident, PHMSA issued Corrective Action Orders to summarize investigative findings and required corrective actions from TC Energy before operations on the pipeline could continue.⁹ TC Energy has received three Corrective Action Orders, three Proposed Compliance Orders, three Notices of Amendment, and six Warning Letters – a total of 15 enforcement actions since 2011.¹⁰

The public has a legitimate expectation that the Keystone Pipeline System managed by TC Energy operate safely and without repeated incidents that damage the environment and threaten the public's health and security. Yet we are faced with the third occurrence of a significant pipeline leak that has devastating impacts to both the environment and nearby communities. The frequency and severity of these incidents on the Keystone Pipeline System raises serious questions about both the integrity management program of TC Energy and whether adequate oversight and operating conditions have been put in place by PHMSA to ensure the safe operation of this high-pressure system. This is particularly concerning as TC Energy continues to pursue additional build-out of the Keystone Pipeline System with the Keystone XL Pipeline.

With this in mind, we request that the Government Accountability Office (GAO) conduct a thorough review that examines the compliance of TC Energy with all special permitting conditions and enforcement action requirements. GAO should also assess whether PHMSA has exercised proper enforcement of the conditions and requirements necessary to protect the public from these repetitive accidents and to ensure the pipeline is operating in compliance with federal standards, regulations, and appropriate safety mechanisms. In particular, we request that GAO address the following questions:

- 1) How does PHMSA collect, analyze, and report data on pipeline incidents?
- 2) Has PHMSA appropriately collected, analyzed and reported data on pipeline incidents related to the Keystone Pipeline System?
- 3) Two out of three of PHMSA's Proposed Compliance Orders include civil penalties under U.S. Code, yet PHMSA chose to not impose any civil penalties upon TC Energy. Why has PHMSA not enforced violations of the U.S. Code to the full extent of the law?
- 4) Has TC Energy appropriately addressed the 15 enforcement actions against it since 2011 and has it implemented any new processes to address past incidents, accidents, or compliance related issues?
- 5) Based on its review, does GAO have any recommendations to improve safety and PHMSA's oversight process of TC Energy, the Keystone Pipeline System or pipelines more broadly?

⁹ Other enforcement actions that the PHMSA could enact include Warning Letters, Proposed Compliance Orders, and Notice of Amendments.

¹⁰ Pipeline and Hazardous Materials Safety Administration. *Federal Enforcement Data: TC Oil Pipeline Operations Inc.*, accessed here: https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIE_opid_32334.html?nocache=117#_OuterPanel_tab_2.

We appreciate your attention to this request. Should you have any questions or need additional information, please contact Liz Hill with the Transportation and Infrastructure Committee at (202) 225-4472 or Rick Kessler with the Energy and Commerce Committee at (202) 225-4407.

Sincerely,



PETER A. DeFAZIO
Chair
Committee on Transportation and Infrastructure



FRANK PALLONE, JR.
Chair
Committee on Energy and Commerce



DAN LIPINSKI
Chair
Subcommittee on Railroads, Pipelines, and
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BOBBY L. RUSH
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