



**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**

**Bill Shuster**  
**Chairman**

**Washington, DC 20515**

**Peter A. DeFazio**  
**Ranking Member**

November 9, 2017

Mathew M. Sturges, Staff Director

Katherine W. Dedrick, Democratic Staff Director

The Honorable Elaine L. Chao  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Chao:

I write to you to express my frustration with the Pipeline and Hazardous Materials Safety Administration's (PHMSA) continued failure to implement the congressional mandates included in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Act) (P.L. 112-90) and urge action by this Administration to finalize critical safety regulations. We just passed the seventh anniversaries of two of the most tragic onshore oil and gas pipeline ruptures in recent history. Yet, the rulemakings that Congress mandated in the 2011 Act, which were intended to address many of the deficiencies identified by the National Transportation Safety Board's (NTSB) investigation of those accidents, still have not been finalized.

On July 25, 2010, a 30-inch-diameter pipeline owned and operated by Enbridge Incorporated ruptured in Marshall, Michigan, resulting in the release of nearly one million gallons of heavy crude oil into the Talmadge Creek, the Kalamazoo River, and the surrounding wetlands. No fatalities were reported but more than 300 people sought medical treatment for symptoms consistent with crude oil exposure, and the surrounding environment as well as a few homes and local businesses were destroyed. Much of this destruction could have been prevented, or at least mitigated, had it not taken Enbridge more than 17 hours to detect the massive leak.<sup>1</sup>

Six weeks later, on September 9, 2010, a 30-inch-diameter segment of an intrastate natural gas transmission pipeline owned and operated by the Pacific Gas and Electric Company (PG&E) ruptured in a residential area in San Bruno, California. The explosion was so massive that it produced a crater about 72 feet long by 26 feet wide. The released natural gas ignited, resulting in a fire that destroyed 38 homes and damaged 70 others. Tragically, eight people were killed, many were injured, and many more were evacuated from the area.<sup>2</sup>

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<sup>1</sup> *Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release Marshall, Michigan*, Accident Rpt No. NTSB/PAR-12/01 (July 25, 2010).

<sup>2</sup> *Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire San Bruno, California*, Accident Rpt No. NTSB/PAR-11/01 (September 9, 2010).

The NTSB found “PG&E took 95 minutes to stop the flow of gas and to isolate the rupture site— a response time that was excessively long and contributed to the extent and severity of property damage and increased the life-threatening risks to the residents and emergency responders.”<sup>3</sup> According to the NTSB, the use of either automatic or remote control shutoff valves would have reduced the amount of time taken to stop the flow of gas.<sup>4</sup>

This is not the first time that PHMSA has been alerted to the need for automatic or remote control shutoff valves. For more than 20 years, the NTSB has recommended that PHMSA require their installation. In 1994, the NTSB investigated a Texas Eastern Transmission Corporation (TETCO) pipeline explosion in Edison Township, New Jersey.<sup>5</sup> A 36-inch diameter pipeline owned and operated by TETCO ruptured “catastrophically” in an asphalt plant compound. The force of the rupture and natural gas escaping at a pressure of about 970 pounds per square inch gauge excavated the soil around the pipe and blew gas hundreds of feet into the air, propelling pipe fragments, rocks, and debris more than 800 feet. Within one to two minutes of the rupture, one of several possible sources ignited the escaping gas, sending flames upward 400 to 500 feet in the air. Approximately 1,500 local residents were evacuated. Miraculously, no deaths directly resulted from the rupture and resulting fire.

Like San Bruno, the NTSB concluded that the inability of TETCO to promptly stop the flow of natural gas to the rupture contributed to the severity of the accident.<sup>6</sup> The NTSB recommended that PHMSA’s predecessor agency, the Research and Special Programs Administration, “expedite requirements for installing automatic- or remote-operated mainline valves on high-pressure pipelines in urban and environmentally sensitive areas to provide for rapid shutdown of failed pipeline segments.”<sup>7</sup>

Neither PHMSA nor its predecessor agency took acceptable action on those NTSB recommendations. As a result, Congress stepped in and mandated the installation of automatic and remote control shutoff valves in the 2011 Act. Congress also mandated the installation of leak detection technology, verification and documentation of maximum allowable operating pressure, and expansion of pipeline operators’ integrity management programs to high-consequence areas, all concerns raised following recent accidents. Yet, here we are— seven years later— and PHMSA has not finalized any of these safety-critical rulemakings.

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<sup>3</sup> *Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire San Bruno, California*, Accident Rpt No. NTSB/PAR-11/01 (September 9, 2010).

<sup>4</sup> *Id.*

<sup>5</sup> *Texas Eastern Transmission Corporation Natural Gas Explosion and Fire, Edison, New Jersey*, Accident Rpt No. NTSB/PAR-95/01 (March 23, 1994).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

On February 3, 2015, I sent a letter to the Department of Transportation Inspector General (DOT IG) requesting an audit of PHMSA's ineffectiveness and apparent inability to comply with the law. In the letter, I stated,

In multiple pipeline accident investigations over the last 15 years, the National Transportation Safety Board has identified the same persistent issues, most of which PHMSA has failed to address on its own accord. Each and every time, Congress has been forced to require PHMSA to take action, most recently in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.<sup>8</sup>

On October 18, 2016, the DOT IG released his report,<sup>9</sup> which found that 20 of PHMSA's 81 mandates remain unimplemented, including eight pipeline safety rulemaking mandates from the 2011 Act. In addition, more than one-half (60 of 118) of NTSB's pipeline and hazardous materials safety recommendations remain open, including one I have repeatedly urged PHMSA to finalize requiring railroads to develop comprehensive oil spill response plans.<sup>10</sup> Ten of the Government Accountability Office's and the DOT IG's 64 recommendations also remain open.

According to the DOT IG, despite progress in addressing mandates and recommendations, PHMSA missed about 75 percent of its mandated deadlines and 85 percent of the deadlines that DOT policy requires its own operating administrations to set for notices of proposed rulemaking (NPRM) and final rules.<sup>11</sup> This track record is not surprising given that in 2005 the DOT IG reported that "there remain "long-standing pipeline and hazardous materials congressional mandates, some more than a decade old (ranging from 2.7 to 12.8 years for pipeline safety mandates and 2.5 to 14.8 years for hazardous materials safety mandates)."<sup>12</sup>

I fear that the rulemaking mandates contained in the 2011 Act are following the same meandering path. This is why I pushed for inclusion of a provision in the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act) (P.L. 114-183, §. 3) requiring the U.S. Department of Transportation (DOT) to provide Congress with regular updates on the status of each outstanding mandate. However, to date, that process has not produced results either.

According to PHMSA's Progress Tracker<sup>13</sup> on the 2011 Act, last updated on June 1, 2017, an NPRM on automatic and remote control shutoff valves entitled "Pipeline Safety: Amendments to Parts 192 and 195 to require Valve installation and Minimum Rupture Detection Standards" is

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<sup>8</sup> Hon. Peter A. DeFazio, "Letter to U.S. Department of Transportation Inspector General Calvin L. Scovel III" (Feb. 3, 2015), available at <https://democrats-transportation.house.gov/node/547>.

<sup>9</sup> *Insufficient Guidance, Oversight, and Coordination Hinder PHMSA's Full Implementation of Mandates and Recommendations*, Rpt No. ST-2017-002 (Oct. 14, 2016) [hereinafter *Insufficient Guidance*].

<sup>10</sup> Safety Recommendation R-14-005, National Transportation Safety Board (January 23, 2014).

<sup>11</sup> *Insufficient Guidance*, *supra* note 9.

<sup>12</sup> *Actions Taken and Needed in Implementing Mandates and Recommendations Regarding Pipeline and Hazardous Materials Safety*, Rpt No. AV-2006-003 (October 20, 2005).

<sup>13</sup> See <http://www.phmsa.dot.gov/legislative-mandates/pipeline-safety-act/progress-tracker> [hereinafter *Progress Tracker*].

“projected to publish in September 2016.” There is no further information on DOT’s website on the status of this rulemaking.

The Obama Administration incorporated most of the other safety-critical mandates that were included in the 2011 Act into two NPRMs: one on hazardous liquid pipelines, published on October 13, 2015,<sup>14</sup> and one on gas transmission pipelines, published on April 8, 2016.<sup>15</sup> The comment periods closed on January 2016 and April 2016, respectively, although comments on the proposed gas rule were extended to July 2016.

According to the Progress Tracker, a final rule on hazardous liquid pipelines was expected to be published in October 2016,<sup>16</sup> but according to another chart on PHMSA’s website, intended to be responsive to Section 3 of the PIPES Act, publication of the final rule has been delayed until March 27, 2018.<sup>17</sup> No further information is provided in the chart even though the PIPES Act of 2016 requires DOT to include in its congressional updates:

- (1) a description of the work plan for each outstanding regulation (not provided);
- (2) an updated rulemaking timeline;
- (3) current staff allocations with respect to each outstanding regulation;
- (4) any resource constraints affecting the rulemaking process (not provided);
- (5) any other details associated with the development of each outstanding regulation that affect the progress of the rulemaking process (not provided); and
- (6) a description of all rulemakings (not provided).

The same chart states that the gas rule is delayed until August 22, 2018, due to “competing priorities”. I would like more information on these “competing priorities” and an explanation of why these two rulemakings were delayed another two years, particularly when the chart states that PHMSA has 10 to 13 staff working on these rules.<sup>18</sup>

We cannot afford to wait until another catastrophic accident occurs and lives are lost for PHMSA to take final action on these rules. Our Nation’s vast 2.5 million-mile pipeline network is aging. The potential for a major accident is not a matter of if, but when, and when it does happen, PHMSA cannot once again be in the position of having failed to act.

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<sup>14</sup> *Pipeline Safety: Safety of Hazardous Liquid Pipelines*, Dkt. No. PHMSA-2010-0229

<sup>15</sup> *Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines*, Dkt. No. PHMSA-2011-0023

<sup>16</sup> *Progress Tracker*, *supra* note 13.

<sup>17</sup> See <https://www.phmsa.dot.gov/pipes-act>

<sup>18</sup> *Id.*

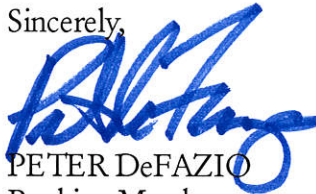
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It is evident that PHMSA needs your help. I urge you to take immediate action and finalize these rulemakings that are languishing in the chronically dysfunctional PHMSA bureaucracy. These initiatives are critical to protecting our citizens' safety and our Nation's natural resources. If you have any additional questions, please contact me, or have your staff contact Elizabeth Hill at (202) 225-4472.

Sincerely,



PETER DeFAZIO  
Ranking Member

cc: The Honorable Howard "Skip" Elliott, Administrator, Pipeline and Hazardous Materials Safety Administration