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Committee on Energy and Commerce  
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March 23, 2006

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The Honorable Brigham A. McCown  
Acting Administrator  
Pipeline and Hazardous Materials Safety Administration  
Department of Transportation  
400 Seventh Street, S.W., Room 8410  
Washington, D.C. 20590

Dear Acting Administrator McCown:

As you may know, we hold a longstanding interest in the safety of the Nation's liquid and gas pipeline infrastructure and the role that the Federal Government plays in working to prevent disastrous pipeline accidents. Although in the past the Office of Pipeline Safety (OPS) was not always up to the task, we note that in recent years the Office's oversight of the pipeline safety program has improved substantially, particularly since passage of the Pipeline Safety Improvement Act of 2002. There are still areas, however, that require improvement and constant review.

In a recent appearance before the House Committee on Transportation and Infrastructure you testified with regard to enforcement that "[w]e are imposing and collecting larger penalties, while guiding pipeline operators to enhance higher performance." Your testimony goes on to say that "[c]ompared to 2002, when penalty limits were raised, we doubled the civil penalties proposed in 2004 and tripled them in 2005. For calendar year 2005, the proposed penalties amounted to over \$4,000,000."

As a result of correspondence with your predecessor, Mr. Samuel Bonasso, the Office of Pipeline Safety provided Democratic staff with a document entitled "OPS Final Order Collection Amounts" on July 30, 2004. That document provided details on enforcement actions taken by the Office of Pipeline Safety between January 2000 and March 2002 and listed proposed, assessed, and final order dates for all enforcement actions during that time period. The data provided was quite illuminating in that it demonstrated that while OPS had proposed an impressive \$9,094,700 in penalties, it had assessed only \$2,620,050 or approximately 28 percent.

Given this document and your recent testimony we would appreciate an update of the aforementioned chart containing the following:

1. (a) A detailed breakdown of penalty actions taken by OPS from March 7, 2002, to the present date, including types of violations for which a penalty was proposed; the proposed penalty; the assessed penalty; the amount collected for each final penalty; the reason, where applicable, for a reduction in the proposed penalty; the number of cases referred to the Department of Justice (DOJ) and the status of cases referred to DOJ.  
  
(b) The collection status of all final penalties for actions taken between January 1, 2000, and the present.
2. On June 21, 2001, OPS announced a proposed civil penalty in the amount of \$2.52 million as a result of the pipeline incident in Carlsbad, New Mexico, that claimed the lives of 12 people. Please detail the status of this case, the final penalty assessed by OPS, and the collection status thereof.
3. In July of 2004, the Government Accountability Office (GAO) released a report entitled "Pipeline Safety: Management of the Office of Pipeline Safety's Enforcement Program Needs Further Strengthening"(GAO-04-801). This report contained a number of critical observations about OPS's enforcement program. I would appreciate specific responses to the following:
  - (a) The GAO recommended that "OPS define its enforcement goals and strategy and establish a systematic approach for designing new performance measures." In her testimony before the Congress on March 16, 2006, Ms. Katherine Siggerud with GAO stated that "PHMSA has developed a reasonable enforcement strategy framework that is responsive to GAO's earlier recommendations." Please provide a copy of OPS's enforcement strategy and detail specifically how it differs from the enforcement regime in place at the time of the 2004 GAO report. Has this strategy been published or is it available on the OPS and/or PHMSA Web site. If not, why not?
  - (b) Page 4 of the GAO report includes a discussion of OPS penalties assessed and reduced and notes that "OPS's database does not provide summary information on why penalties are reduced." Has OPS updated its database capabilities to include information on why proposed penalties are reduced? If so, please explain how this system works. If not, why not?
  - (c) Page 13 of the GAO report states that "In 2002, OPS created an Enforcement Office to put more focus on enforcement and help ensure consistency in

enforcement decisions. However, the agency has not yet filled key positions in this office.” Please detail the number of full-time enforcement employees that are currently employed by OPS and the difference in staffing from July 2004.

- (d) Page 33 of the GAO report noted several deficiencies in the method of penalty collection by OPS and the Federal Aviation Administration (FAA), which collects penalties on behalf of OPS. GAO made three specific recommendations that OPS should implement (p. 35) in order to improve the management of penalty collection which were (1) OPS should inform FAA of all proposed and assessed civil penalties so that FAA can carry out its collection functions; (2) FAA should share its reports on collections with OPS so that OPS will know the status of civil penalty enforcement actions; and (3) OPS should post all enforcement actions on its Web site, consistent with its policy.

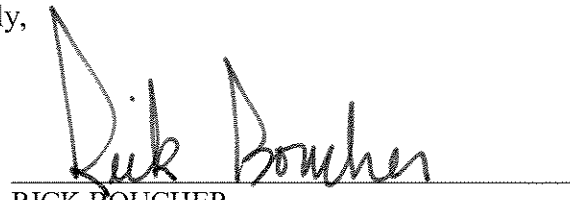
Please comment on each specific recommendation and detail what actions OPS has taken to respond to each.

Because Congress is currently considering reauthorization of the Pipeline Safety Improvement Act of 2002, I would appreciate this information no later than Thursday, April 6, 2006. If you have any questions please contact me, or have your staff contact Mr. Bruce Harris of the Committee on Energy and Commerce Democratic staff at (202) 226-3400. Thank you for your attention to this matter.

Sincerely,



JOHN D. DINGELL  
RANKING MEMBER  
COMMITTEE ON ENERGY AND COMMERCE



RICK BOUCHER  
RANKING MEMBER  
SUBCOMMITTEE ON ENERGY AND  
AIR QUALITY

cc: The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce

The Honorable Ralph M. Hall, Chairman  
Subcommittee on Energy and Air Quality

The Honorable Don Young, Chairman  
Committee on Transportation and Infrastructure

The Honorable James L. Oberstar, Ranking Member  
Committee on Transportation and Infrastructure