STATEMENT OF
JOHN D. PORCARI
DEPUTY SECRETARY OF TRANSPORTATION

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

Enbridge Pipeline Oil Spill

September 15, 2010

Chairman Oberstar, Ranking Member Mica, and Members of the Committee, thank you for the opportunity to discuss the U. S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's (PHMSA) response to the July 2010 Enbridge Energy Partners LP (Enbridge) oil spill in Marshall, Michigan.

Safety is the number one priority of Secretary Ray LaHood, myself, and PHMSA Administrator Cynthia Quarterman. The Department is actively working to ensure the safety and reliability of the nation's pipeline transportation infrastructure and prevent spills on the 174,000 miles of hazardous liquid pipelines it oversees. Over the past 20 years, all the traditional measures of risk exposure have been rising – population, energy consumption, pipeline ton-miles. At the same time, the number of significant incidents involving onshore hazardous liquid pipelines has declined 28%, accompanying a decrease of 57% of gross barrels spilled.

The oil spill on Line 6B, and the more recent spill on line 6A, of Enbridge's Lakehead System are significant, and an unacceptable blemish to this record. On the evening of Sunday, July 25, 2010, Line 6B ruptured in Marshall, Michigan. An estimated 819,000 gallons of oil were released. Enbridge confirmed the pipeline rupture on Monday July 26, at 11:45 a.m. PHMSA and other Federal officials were not made aware of the incident until 1:33 p.m. (EST.), the time when Enbridge notified the National Response Center.

I am deeply troubled by Enbridge's detection of and response to this oil spill. I visited Marshall, Michigan on two occasions to get a first-hand look at the spill and consequential damage and to ensure the Department is aggressive in its response to the spill and the needs of the affected community. The oil spill has had major consequences for Marshall's residents and the properties of homeowners along the pipeline route, the Talmadge Creek and Kalamazoo River, and the fish, wildlife, and vegetation living in and along the banks of the waterways. Mr. Chairman, Members of the Committee, I assure you the Department, through aggressive regulation and oversight, will use its full enforcement authority to ensure that operators meet pipeline safety standards.

To ensure safety is not only our top priority, but also the top priority of those we regulate, the Department will submit new legislation to strengthen pipeline safety. In addition, the

Department is working on significant rulemakings to increase regulatory oversight and improve guidance to operators as well as other efforts to increase coordination with partners and to support research and development.

I. HOLDING ENBRIDGE ACCOUNTABLE

Since the Obama Administration took office, the Department has repeatedly warned Enbridge to focus on the safety and performance of its entire Lakehead Pipeline system. In February, PHMSA leadership met with members of Enbridge's Executive Leadership team, including the top official for liquid pipelines to discuss PHMSA's concerns about Enbridge's repair methods and a series of major failures involving its pipeline system. PHMSA told Enbridge to review its approach to safety and report back. PHMSA expressed its concerns to Enbridge about the operator's repair methods, and a series of major failures involving its pipeline system. This year, PHMSA also conducted eleven inspections of Enbridge's Lakehead system and initiated five enforcement actions. Last month, PHMSA issued a final order assessing a $2.4 million civil penalty against Enbridge and requiring it to revise maintenance and repair procedures and to train and re-qualify employees, in connection with an incident near Clearbrook, Minnesota where two workers died as a result of Enbridge's failure to follow safety regulations while repairing a pipeline.

Over the last several years PHMSA has conducted 96 inspections of Enbridge's operations, 44 involving the Lakehead system, of which Line 6B is a part. As a result of these inspections, PHMSA initiated 24 enforcement cases against Enbridge that involved the Lakehead system. These cases, which included Notices of Proposed Violation, Notices of Amendment, and warning letters have resulted in 94 allegations of non-compliance with pipeline safety laws and regulations. Consequently, PHMSA has required Enbridge to modify its operation and maintenance manuals including procedures on first discovery reports, accident reporting, emergency response, prompt response to natural disasters, valve inspections, repair procedures, and conditions that could adversely affect the safe operation of the Lakehead system. PHMSA also cited Enbridge for failure to conduct timely inspections and failure to make timely repairs.

The many actions taken against Enbridge collectively demonstrate the Department's close oversight, however more can always be done to address safety. Enbridge's techniques to manage pipelines must change and we have firmly delivered this message to the company's leadership. While the failure cause has yet to be determined for the Marshall failure, we are not waiting to apply lessons learned. PHMSA will ensure that Line 6B is safe for return to operation and in compliance with pipeline safety laws and regulations. At the outset, PHMSA issued a Corrective Action Order (CAO) to Enbridge. The CAO requires Enbridge to take specific steps to ensure the safety of the pipeline, develop and submit for PHMSA approval a written gradual step-by-step restart plan for Line 6B, and develop and submit for approval an integrity verification and remedial work plan for Line 6B.

PHMSA is also inspecting Enbridge's compliance with regulations related to maintaining the integrity of the line and control room procedures, and is examining Enbridge's response to the incident, including its leak detection capabilities, emergency shut-down systems, and its notification procedures and practices. PHMSA also has an open investigation into Enbridge's conduct and compliance with pipeline safety laws. This investigation includes whether Enbridge

promptly notified the National Response Center of the spill, had an adequate leak detection system and related control room procedures, and whether its pipeline integrity program meets PHMSA's safety standards.

PHMSA oversaw the pipe removal, the repairs, and all testing. PHMSA will continue to oversee other assessments and remedial actions and independently review all relevant information and data. In addition, PHMSA retained an independent third party expert to assist in its examination of inline inspection and other integrity validation assessments to ensure a rigorous review. The Department is closely watching Enbridge as they take every step to come into compliance with pipeline safety laws and regulations and holding them accountable for their promise to go beyond minimum standards.

PHMSA's incident investigation is focusing on past, current, and future compliance with U.S. pipeline safety laws and regulations. The National Transportation Safety Board (NTSB) launched an investigation into the specific cause or causes of this failure and its related consequences. During the NTSB's investigation into the failure, PHMSA conducted formal interviews of Enbridge personnel, local agencies, and citizens to gather pertinent facts, data, and documents relevant to the failure, including the sequence of events and factors that may have contributed to the release. When NTSB launches an investigation into a pipeline incident, PHMSA uses the findings to inform its approach to addressing causal factors of an incident. Accordingly, PHMSA is not addressing the causes of this particular failure, or its consequences, today.

Department and PHMSA personnel have been on-site and directly engaged in the response efforts since the spill occurred. PHMSA immediately responded to the Enbridge Line 6B spill, dispatching two investigators to the release site and one additional investigator to the Enbridge control center in Edmonton, Alberta, Canada. Several more inspectors worked on-site to discharge both PHMSA and NTSB's investigative responsibilities. PHMSA quickly coordinated with community leaders and first responders. PHMSA not only coordinated with members of the NTSB, but also met with Region 5 representatives of the Environmental Protection Agency, congressional staff, and other emergency personnel engaged in the response efforts. The Department and PHMSA continue to be very responsive to the community, attending and speaking at community meetings, meeting directly with community leaders, and participating in briefings for local officials. I would like to recognize and express my appreciation to the men and women of the PHMSA team who worked tirelessly for the last forty-five days to this end. PHMSA personnel responded to the incident with vigor, and have spent a significant amount of time on-site.

II. HOLDING ALL PIPELINE OPERATORS ACCOUNTABLE

The Department's pipeline oversight program is based on three fundamental tenets.

- First, PHMSA must establish safety standards that are both prescriptive and risk-based, verify that operators perform to these standards, and take enforcement actions against operators if they are not in compliance with these standards.

- Second, PHMSA can impact safety culture and operator performance beyond minimum compliance with the regulations.

- Third, pipeline operators must understand and manage the risks associated with their pipelines, including taking actions to prevent pipeline spills and minimizing the impact of any spills should they occur.

Under the Obama Administration, PHMSA has begun a comprehensive review of the existing pipeline safety regime and developed initial solutions, through legislation, potential rulemaking, and other actions, to ensure that all pipelines are adequately regulated and that operators put safety first.

A. Strong Legislation

Today Secretary LaHood presented to Congress the Administration's legislative initiative for the reauthorization of the Department's pipeline safety program entitled, "Strengthening Pipeline Safety and Enforcement Act of 2010," designed to fill regulatory gaps and strengthen enforcement. The proposal:

- increases the maximum administrative civil penalties for the most serious types of violations from $100,000 per day/$1 million for a series of violations to $250,000 per day/$2.5 million for a series of violations;

- adds 40 additional inspection and enforcement personnel over four years;

- closes regulatory gaps on "gathering" pipelines – lines that collect products from processors or refiners and delivers to transmission pipelines – by eliminating current statutory exemptions for gas and hazardous liquid gathering lines;

- requires a review of the effectiveness of current rules that apply risk management requirements to pipelines in high consequence areas (HCAs) to determine whether these requirements should be applied to entire pipelines; and

- increases the data available to the pipeline program to minimize risks.

Secretary LaHood has said: "As the recent oil pipeline failure near Marshall, Michigan, has shown, . . . the Department needs stronger authority to ensure the continued safety and reliability of our nation's pipeline network."

B. Aggressive Regulatory Initiatives

The Department's legislative proposal will complement its additional planned regulatory initiatives to continue to improve pipeline safety. The Department intends to take significant action to reassess its pipeline safety regulations to expand and strengthen them, as needed, keeping in mind the lessons it has already learned from the Marshall oil spill. As a result, the Department is considering several regulatory actions. Specifically, the Department will consider:

- extending regulation to certain pipelines currently exempt from regulation;

- identifying additional areas along pipelines that should receive extra protection or to be included in the HCA category for integrity management protection;

- establishing standards and procedures for minimum leak detection requirements for all pipelines;

- requiring the installation of emergency flow restricting devices in certain areas;

- revising valve spacing requirements on new construction or existing pipelines;

- establishing repair timeframes for pipeline segments in areas outside the HCAs that are assessed as part of the integrity management program; and

- adopting standards and procedures for improving the methods of preventing, detecting, assessing and remediating stress corrosion cracking in hazardous liquid pipeline systems.

This week, PHMSA also issued a Notice of Proposed Rulemaking[1] (NPRM) proposing to revise the deadlines in a December 2009 final rule that addressed human factors and other aspects of control room management for pipelines where controllers use supervisory control and data acquisition (SCADA) systems. The final rule set a program development deadline of 18 months to August 1, 2011, and a subsequent program implementation deadline of 18 months to February 1, 2013. The NPRM proposes to expedite the program implementation deadline for most standards to August 1, 2011. Under the December 2009 rule, pipeline operators must implement methods to reduce the risk associated with controller fatigue. In addition, operators of pipelines where controllers use SCADA systems must define the roles and responsibilities of controllers and provide controllers with the necessary information, training, and processes to fulfill these responsibilities. Such operators must also manage alarms, assure control room considerations are taken into account when changing pipeline equipment or configurations, and review reportable incidents or accidents to determine whether control room actions contributed to the event.

PHMSA has also been conducting a thorough review of its inspection and enforcement related regulation, operations, and guidance, as well as its data collection and transparency, and has taken the following actions:

October 2009	Issued an advanced NPRM for comments on whether PHMSA can bring enforcement action against violators of state pipeline damage prevention laws in those states with inadequate damage prevention enforcement programs. The comment period has closed.
December 2009	Issued a Final Rule to address human factors and other aspects of control room management for pipelines where controllers use SCADA systems. This rule addressed several NTSB recommendations.

[1] NPRM submitted to Federal Register on September 13, 2010. Comment period closes in 60 days.

January 2010	Issued an Advisory Bulletin[2] reminding hazardous liquid pipeline operators of the importance of prompt and effective leak detection capability in protecting public safety and the environment.
June 2010	Issued an Advisory Bulletin[3] to operators of hazardous liquid pipeline facilities required to prepare and submit an oil-spill response plan, requiring them to ensure full compliance.
June 2010	Issued a NPRM regarding the regulation of the remaining population of unregulated rural hazardous liquid low stress pipelines, which was required by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.

We are confident that these enhancements to PHMSA's safety regulations will reduce the likelihood of a significant spill such as the one that occurred in Marshall, MI.

C. Other Initiatives

PHMSA is establishing strong relationships with other organizations involved in responding to pipeline incidents and emergencies. When PHMSA responds to an incident, its primary concerns are the public's safety and determining an operator's compliance with PHMSA's regulations. PHMSA is often requested to share information and support the investigations of other agencies. In addition, PHMSA has a long history of working closely with local emergency officials in response to pipeline emergencies and its staff effectively participates in incidents where there is an Integrated Command System. Still, the Department must do more. The Department has reached out to EPA and the U.S. Coast Guard suggesting a new Memorandum of Understanding to ensure coordination during oil spill response.

PHMSA also recently announced it is awarding seventeen research contracts totaling $5.9 million to companies and institutions for the development of new projects that provide innovative solutions to improving pipeline safety and protecting the environment. The awards will support the development of research projects targeted at addressing the associated challenges of pipeline safety with the detection, prevention, and characterization of threats and leaks, and construction quality. To date, PHMSA has invested over $57 million for 161 projects focused on providing solutions for detecting pipeline leaks, preventing damages to pipelines, improvements in pipeline materials, and improved pipeline system controls, monitoring, and operations.

III. Conclusion

Mr. Chairman, safety is the Department's highest priority. In addition to the Michigan spill, investigations are now underway to determine the causes of a last week's Enbridge oil pipeline break in Illinois and the Pacific Gas and Electric natural gas incident in California. Incidents like these must not happen. I assure you that the Department will remain vigilant in ensuring the safety and integrity of all pipelines under its jurisdiction. We are making every effort

[2] Pipeline Safety: Leak Detection on Hazardous Liquid Pipelines: January 26, 2010.
[3] Pipeline Safety: Updating Facility Response Plans In Light of the Deepwater Horizon Oil Spill: June 23, 2010.

to ensure Line 6B is free of safety and environmental risks before Enbridge is granted permission to restart. As stated before, the Department will hold Enbridge and all pipeline operators accountable for the safe operation of their pipelines.

Thank you and I am happy to respond to your questions.