

# Congress of the United States

## Washington, DC 20515

August 1, 2022

Tristan Brown  
Acting Administrator  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

Dear Acting Administrator Brown:

We write concerning the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) actions to regulate pipeline safety through implementation of the *Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act)*.<sup>1</sup> On October 14, 2021, we wrote to you outlining pipeline safety initiatives included in the *PIPES Act* that were not adequately prioritized for implementation by this Administration.<sup>2</sup> While we appreciate the response by PHMSA to brief Committee staff, we still have outstanding concerns that these important actions are not being met.

Pipelines are one of the safest, most efficient, and environmentally friendly modes of transporting energy.<sup>3</sup> Unfortunately, the actions of the Biden Administration have worked to disincentivize the construction and permitting of this essential infrastructure, which is necessary for transportation of traditional fossil fuel energy sources, as well as new and emerging fuels, such as carbon dioxide or hydrogen.<sup>4</sup> Actions such as cancellation of the Keystone XL pipeline, rollback of the Trump Administration's National Environmental Policy Act (NEPA) regulations and Navigable Waters Protection Rule, as well as this Administration's strong anti-energy rhetoric have disincentivized future investments in pipeline infrastructure.<sup>5</sup> A lack of pipeline infrastructure only further penalizes average Americans grappling with inflation and record high gasoline and energy prices.<sup>6</sup>

Given this Administration's anti-pipeline policies and messaging, it is imperative that we ensure PHMSA implements the *PIPES Act* in an unbiased manner that focuses on pipeline safety as Congress

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<sup>1</sup> *Consolidated Appropriations Act of 2021*, Pub. L. 116-260, Division R, 134 Stat. 2210 (2020) [hereinafter *PIPES Act*].

<sup>2</sup> Letter from the Hon. Sam Graves and the Hon. Eric A. "Rick" Crawford, to Tristan Brown, Act. Administrator, PHMSA (Dec. 28, 2021) (on file with Committee) [hereinafter PHMSA Letter].

<sup>3</sup> *Pipeline Safety Regulations*, PHMSA, available at <https://primis.phmsa.dot.gov/comm/SafetyStandards.htm>.

<sup>4</sup> See, e.g., PAUL PARFOMAK, CONG. RSCH. SERV., R46700, PIPELINE TRANSPORTATION OF HYDROGEN: REGULATION, RESEARCH, AND POLICY, (2021), available at <https://crsreports.congress.gov/product/pdf/R/R46700>; see also PAUL PARFOMAK, CONG. RSCH. SERV., IN11944, CARBON DIOXIDE PIPELINES: SAFETY ISSUES, (2022), available at <https://www.crs.gov/Reports/IN11944>.

<sup>5</sup> Exec. Order No. 13,990 (Jan. 20, 2021); see also Press Release, EPA, Army Announce Intent to Revise Definition of WOTUS (June 9, 2021) available at <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus>; NEPA Implementing Regulations Revisions, 87 Fed. Reg. 23,453 (Apr. 20, 2022), available at <https://www.federalregister.gov/documents/2022/04/20/2022-08288/national-environmental-policy-act-implementing-regulations-revisions>.

<sup>6</sup> Emmie Martin, *Inflation continues to rise—and gas prices are up nearly 50% since last year*, CNBC, June 10, 2022, available at <https://www.cnbc.com/2022/06/10/inflation-continues-to-rise-gas-prices-up-nearly-50percent-since-last-year.html>.

intended. The *PIPES Act* passed both the House and the Senate in a bipartisan fashion and reflects the priorities of Congress for increasing the safety and efficiency of the United States' 2.7-million-mile pipeline network and protecting people as well as the environment from pipeline incidents.<sup>7</sup> There are several provisions included in the *PIPES Act* that are critical to advancing pipeline safety, yet questions remain about their implementation status.

For instance, section 115 of the *PIPES Act* mandated that PHMSA consider updating class location change requirements.<sup>8</sup> Class location change regulations mandate that pipeline operators undertake certain actions when population density changes, such as replacing pipeline segments that result in large releases of gas into the atmosphere.<sup>9</sup> Modernizing these requirements have the potential to create efficiencies for operators and further protect the environment by minimizing these releases. PHMSA indicated it will send a final rule on class location changes to the Secretary for review by October.<sup>10</sup> However, it is our understanding PHMSA will not hold a necessary Gas Pipeline Advisory Committee (GPAC) meeting before this deadline.<sup>11</sup> This would be a missed opportunity to advance a rule in a timely manner that would provide both operational and environmental benefits.

In addition, section 104 of the *PIPES Act* included a technology pilot program to allow operators to field test new and innovative technologies and practices that improve pipeline safety.<sup>12</sup> Since we last inquired about this program, PHMSA issued a congressionally mandated report in December 2021 on the costs and benefits of the program.<sup>13</sup> However, PHMSA transmitted this report before it issued any guidance to operators on how to utilize the program, so it did not contain any substantive analysis for Congress to evaluate the program.<sup>14</sup> PHMSA finally issued this guidance in February of this year, yet we remain concerned the requirements for the program, such as submittal of an environmental assessment, will disincentivize participation in the program for the program's duration.<sup>15</sup>

Other provisions in the *PIPES Act* that deserve prioritization from PHMSA include section 109 requiring PHMSA to issue regulations by the end of 2022 to create a new idled pipeline operating status, which would provide operational efficiencies for pipelines temporarily not in service.<sup>16</sup> According to PHMSA, no action has been taken to meet this regulatory deadline.<sup>17</sup> Additionally, the *PIPES Act* requires PHMSA to update operations and maintenance standards for liquified natural gas (LNG)

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<sup>7</sup> *PIPES Act supra*, note 1; *see also* PHMSA, Pipeline Miles and Facilities 2010+, June 30, 2022, *available at* [https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2F\\_portal%2FPublic%20Reports&Page=Infrastructure](https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2F_portal%2FPublic%20Reports&Page=Infrastructure).

<sup>8</sup> *PIPES Act supra*, note 1, at § 115.

<sup>9</sup> Pipeline Safety: Class Location Change Requirements, 85 Fed. Reg. 65,142, (Oct. 14, 2020), *available at* <https://www.federalregister.gov/documents/2020/10/14/2020-19872/pipeline-safety-class-location-change-requirements> [hereinafter Class Location Requirements].

<sup>10</sup> *PIPES ACT 2020 Web Chart*, PHMSA (June 24, 2022), *available at* <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-06/6.24.22%20PIPES%20Act%20Website%20Chart.pdf>.

<sup>11</sup> Phone briefing with PHMSA staff and T&I Committee Republican staff, June 30, 2022; *see also* PHMSA, PHMSA Meeting Registration and Document Commenting (June 30, 2022) <https://primis.phmsa.dot.gov/meetings/Home.mtg>.

<sup>12</sup> *PIPES Act supra*, note 1 at § 104.

<sup>13</sup> PHMSA Letter *supra*, note 2; *see also* PHMSA, PIPELINE SAFETY ENHANCEMENT PROGRAMS REPORT TO CONGRESS – DECEMBER 2021 (2021) (on file with Committee).

<sup>14</sup> *Id.*

<sup>15</sup> Pipeline Safety: Pipeline Safety Enhancement Programs, 87 Fed. Reg. 5,939 (Feb. 2, 2022), *available at* <https://www.federalregister.gov/documents/2022/02/02/2022-02159/pipeline-safety-pipeline-safety-enhancement-programs>.

<sup>16</sup> *PIPES Act supra*, note 1, at § 109.

<sup>17</sup> Class Location Requirements *supra*, note 9.

facilities and report on creation of an LNG center of excellence.<sup>18</sup> Russia's invasion of Ukraine this year has propelled LNG as a strategic and essential commodity in the global economy.<sup>19</sup> The recent Freeport LNG facility explosion, which took a critical source of LNG offline, further shows the need for modernized regulations for LNG facilities to prevent incidents such as this and maintain the role of American LNG in the global economy.<sup>20</sup> Accordingly, PHMSA must work diligently to meet these critical regulatory objectives for LNG.

Furthermore, we must address PHMSA's continued staffing challenges. Section 102 of the *PIPES Act* provided PHMSA with additional authority to hire personnel with expertise in pipeline safety, pipeline facilities, and pipeline systems to complete outstanding congressional mandates and rulemakings.<sup>21</sup> Unfortunately, PHMSA has indicated that it will be hiring attorneys, environmental economists, and climate change and mitigation staff, rather than personnel with pipeline safety expertise.<sup>22</sup> We are also disappointed that the President has not put forward a nominee for PHMSA Administrator to provide permanent leadership. These unfulfilled staffing priorities cause us great concern that this Administration is putting climate change messaging ahead of PHMSA's pipeline safety activities.

The House Committee on Transportation and Infrastructure and Senate Committee on Commerce, Science, and Transportation hold primary jurisdiction on pipeline safety at the Department of Transportation (DOT), and as such, it is essential that we oversee PHMSA's implementation of Congressional mandates and directions regarding pipeline safety activities. We respectfully ask that PHMSA prioritize these critical rulemakings and actions and keep the Committees regularly updated on their implementation. Should you have any questions, please contact Melissa Beaumont, Republican Staff, on the House Subcommittee on Railroads, Pipelines, and Hazardous Materials at 202-225-9446 and Paul Wasik, Republican Staff, on the Senate Committee on Commerce, Science, and Transportation at 202-224-1251.

Sincerely,



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Sam Graves  
Ranking Member  
U.S. House Committee on  
Transportation and Infrastructure



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Roger F. Wicker  
Ranking Member  
U.S. Senate Committee on  
Commerce, Science, and Transportation

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<sup>18</sup> *PIPES Act*, *supra* note 1, at § 110-111.

<sup>19</sup> Mike Soraghan, *Russia crisis may drive a U.S. natural gas surge*, E&E NEWS, Mar. 9, 2022, available at <https://www.eenews.net/articles/russia-crisis-may-drive-a-u-s-natural-gas-surge/>.

<sup>20</sup> *Fire causes shutdown of Freeport liquefied natural gas export terminal*, EIA, June 23, 2022, available at <https://www.eia.gov/todayinenergy/detail.php?id=52859>.

<sup>21</sup> *PIPES Act supra*, note 1, at § 102.

<sup>22</sup> @PHMSA\_DOT, TWITTER (Mar. 26, 2021, 12:09 PM), available at [https://twitter.com/PHMSA\\_DOT/status/1375479993304760320](https://twitter.com/PHMSA_DOT/status/1375479993304760320); see also DOT, BUDGET ESTIMATES FISCAL YEAR 2023: PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (2022), available at [https://www.transportation.gov/sites/dot.gov/files/2022-03/PHMSA\\_Budget\\_Estimates\\_FY23.pdf](https://www.transportation.gov/sites/dot.gov/files/2022-03/PHMSA_Budget_Estimates_FY23.pdf).

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Eric A. "Rick" Crawford  
Ranking Member  
Subcommittee on Railroads,  
Pipelines, and Hazardous Materials  
U.S. House Committee on  
Transportation and Infrastructure

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Deb Fischer  
Ranking Member  
Subcommittee on Surface Transportation,  
Maritime, Freight, and Ports  
U.S. Senate Committee on  
Commerce, Science, and Transportation

Cc: The Honorable Peter A. DeFazio  
Chair  
U.S. House Committee on Transportation and Infrastructure

The Honorable Donald Payne  
Chair  
Subcommittee on Railroads, Pipelines, and Hazardous Materials  
U.S. House Committee on Transportation and Infrastructure

The Honorable Maria Cantwell  
Chair  
U.S. Senate Committee on Commerce, Science, and Transportation

The Honorable Gary Peters  
Chair  
Subcommittee on Surface Transportation, Maritime, Freight, and Ports  
U.S. Senate Committee on Commerce, Science, and Transportation