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February 23, 2009

Dockets Operations
U.S. Dept. of Transportation
M-30, West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

VIA online submission and U.S. Mail

Re: Docket No. PHMSA-2008-0285

Dear Sir or Madam:

This is to provide public comment on behalf of the Sierra Club and Plains Justice on the above-referenced matter, and to express our opposition to the special permit requested by TransCanada Keystone Pipeline, LP to allow it to operate its proposed Keystone XL pipeline at a higher maximum operation pressure (MOP) than permitted by 49 C.F.R. § 195.106.

The Sierra Club is the nation's oldest grass-roots environmental organization. The Sierra Club has more than 725,000 members nationwide, including many thousands of members in the states through which the Keystone XL pipeline would pass. The Sierra Club's purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Plains Justice is a public interest environmental law center with offices in Cedar Rapids, IA and Vermillion, SD, that works to promote environmental justice and sustainable communities in the Northern Plains region of the U.S., including eastern Montana, North Dakota, South Dakota, Nebraska and Iowa. The work of Plains Justice focuses on the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act and energy policy.

We are opposed to issuance of a special permit for the proposed Keystone XL pipeline because TransCanada's proposed design and operational conditions will not provide the same degree of protection to communities and the environment as that offered by the standard in 49 C.F.R. § 195.106, and as such issuance of the permit would be inconsistent with pipeline safety and a violation of federal pipeline safety law. In particular, we offer the following concerns:

- The fact that TransCanada has not requested a special permit for pump stations, road crossings, railroad crossings, launcher/receiver fabrications, population HCAs, and navigable waters indicates that it believes that a thicker pipe wall will provide greater protection in these areas. This indicates that granting of the special permit as requested by TransCanada would represent a judgment that rural and agricultural areas should receive less protection than other areas. This disparity in protection is not recognized by 49 C.F.R. Part 195, and as such represents a de facto adoption of a location factor scheme that is not permitted by US law, including the Administrative Procedure Act, 5 U.S.C. § 551 et seq. (APA).
- Liquid hazardous material pipelines contain much greater mass than natural gas pipelines, such that there is a much greater risk of rupture due to overpressure in surge events. The risk here is particularly acute because of the large size of the proposed pipeline, flow rate, material density, inadequate segmentation, and inadequate pressure relief equipment. These factors indicate that the PHMSA must thoroughly model the actual rupture characteristics of this pipeline in surge events before any special permit is issued. As submitted, TransCanada's application fails to incorporate adequate design and operational controls and fails to adequately address whether its proposed hazardous liquid pipeline can survive overpressure events throughout its operational life.
- TransCanada has failed to provide adequate weld inspection and should be required to inspect 100% of its welds. It is our understanding that TransCanada's construction of its first Keystone pipeline has experienced difficulty, including construction in flooded trenches and in weather and seasonal conditions that could easily result in substandard welds. A thinner pipe wall standard depends on very high quality control in pipe fabrication, construction, operation, inspection, and maintenance. A failure to require 100% testing of welds compromises quality control and increases the risk of pipeline failure relative to the current standard.
- Tar sands bitumen differs substantially from conventional crude oil, particularly with regard to its chemistry and mineral components. TransCanada's application fails to characterize the range of physical characteristics of the bitumen it intends to transport, which is important because the characteristics of the bitumen may change over time. Although TransCanada intends to take measures to reduce erosion caused by water and sedimentation, it has not addressed whether the bitumen it intends to transport is more corrosive than conventional crude oil therefore requires additional safety measures. Further, TransCanada fails to address internal erosion caused by the high mineral content of tar sands bitumen – which poses a substantially different threat than corrosion and fatigue, particularly at high flow rates and in large diameter pipe that may induce site-specific turbulence and therefore site-specific wear. Given the limited operating experience of TransCanada in transporting bitumen, as opposed to synthetic crude oil, PHMSA must err on the side of caution.
- The proposed pipeline will be installed in areas with highly erodible land, by both water and wind. Long-term loss of topsoil in the semi-arid lands through which much of the route passes increases the risk of loss of depth of cover. Although

TransCanada intends to exceed standard depth of cover requirements, in multiple areas throughout the route its greater depth standards are not adequate to the actual erosion conditions.

- TransCanada has failed to adequately assess the greater risk of both rupture and undetectable leaks resulting from use of thinner wall pipe. While operation and maintenance practices, if performed adequately over the life of the facility can reduce the risk of leaks, they do not increase the pipeline's capacity to resist mechanical damage. Thus, the special permit terms requested by TransCanada would not provide the same level of protection as the applicable law.
- The pipe produced for the proposed pipeline will likely be fabricated overseas, such that manufacturing quality control and reporting will be outside the control of the US. TransCanada fails to provide adequate inspection in the US to confirm adequate manufacturing quality control.
- TransCanada has proposed to locate the proposed Keystone XL pipeline in some of the most remote areas of the US. Any special permit must increase standards related to determination of worst case spill assessment, particularly with regard to response times and availability of spill containment equipment.

We also note the recommendations of the Public Safety Trust that are set forth in their public comments. A failure to comply with these recommendations would result in a reduction in safety and violation of 49 USC § 60118. These recommendations include but are not limited to: 1) reporting over-pressurization events; 2) eliminating over-pressure failure possibility caused a SCADA operator; 3) requiring 100% of the girth welds to be inspected with non-destructive methods; 4) proper surge pressure analysis and protections; 5) an internal corrosion program; 6) incorporating additional safeties; and 6) adopting the PIPA recommended practices.

It is also our understanding that PHMSA recently completed a rulemaking related to MOP standards for natural gas pipelines. Rather than complete a similar rulemaking for crude oil pipelines, PHMSA has chosen to issue special permits waiving the requirements of 49 C.F.R. § 195.106, even though crude oil pipelines pose a much greater risk to the environment than natural gas pipeline. Further, it appears that PHMSA has in effect amended 49 CFR § 195.106 through the use of its special permit authority. Such de facto amendment of regulation exceeds the authority given to PHMSA by law and is a violation of the APA. We urge the PHMSA to fully examine the merits of this change in pipeline safety standards through a notice and comment rulemaking, as was done when the standard in 49 C.F.R. § 195.106 was promulgated. To do otherwise is contrary to law and fails to provide for a full and fair assessment of the merits of the de facto standard adopted by the PHMSA through its waiver power.

We are further opposed to the Keystone XL pipeline because we have members who live, work, and recreate near the refineries that will emit more air and water pollution as a direct consequence of the Pipeline. This added pollution will stem from both expanded refining operations and, to the extent it replaces oil from other sources, the more highly contaminated tar sands crude. The pollution impacts, including cumulative impacts, may be

particularly onerous to communities located near oil refineries, which are often burdened with contamination from multiple industrial sources.

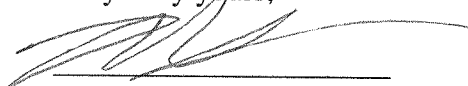
Our members will also be harmed by increases in greenhouse gases that will contribute to global warming and associated severe ecological disruption. Greenhouse gas emissions from refineries will increase both because the Pipeline will lead to expanded operations and because, even to the extent tar sands crude is replacing existing sources of oil, refineries must expend more energy to process each barrel. This import and use of tar sands crude will also contribute to the country's not developing or using alternative, less polluting sources of energy, such as wind or solar energy.


We believe that the requested increase in MOP will indirectly contribute to or exacerbate the impacts noted above. That is because the waiver will increase the pressure and flow to the refineries. By increasing the amount of tar sands crude to the refineries, the MOP increase will hasten and increase the adverse environmental impacts. Therefore, we are opposed to the MOP waiver.

We also question whether there is a valid purpose and need for the MOP increase. The existing MOP standards for the United States were developed to ensure safety and protect the public interest. They should not be waived for cost-savings by the pipeline or other economic benefits to the pipeline operators or users.

In conclusion, should the PHMSA grant the special permit as requested by TransCanada, it would put the interest of our members and constituents at greater risk and reduce their safety. Such result is contrary to the intention of the waiver provision provided by 49 U.S.C. § 60118, and accordingly we request that the waiver be denied.

Very truly yours,


Eric E. Huber (by DPH)
Senior Staff Attorney
Sierra Club


Paul Blackburn (by DPH)
Staff Attorney
Plains Justice