

**BEFORE THE  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.**

Authority of NTSB in Railroad, Pipeline, and  
Hazardous Materials Investigations

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Docket No. NTSB-2023-0008

**COMMENTS IN RESPONSE TO ADVANCE NOTICE OF PROPOSED RULEMAKING**

**FILED BY  
THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA  
AMERICAN GAS ASSOCIATION  
AMERICAN PUBLIC GAS ASSOCIATION**

October 30, 2023

## I. Introduction

The Interstate Natural Gas Association of America (INGAA)<sup>1</sup>, American Gas Association<sup>2</sup>, and American Public Gas Association<sup>3</sup> (the Associations) (jointly, “the Associations”) respectfully submits these comments in response to the National Transportation Safety Board’s (NTSB) Advance Notice of Proposed Rulemaking (ANPRM).<sup>4</sup>

Pipeline safety continues to be the top priority of the Associations and their members. This commitment goes well beyond simply meeting extensive Federal and state pipeline safety regulations to include actions such as:

- Programs that improve safety such as INGAA’s Integrity Management – Continuous Improvement program, AGA’s Enhanced Peer Review Program, APGA’s System Operational Achievement Program (SOAR), and our collective work on Pipeline Safety Management Systems (PSMS).
- Research support and funding to advance technologies that enhance pipeline safety, reliability, and integrity.
- Workshops, technical committees, publications, and surveys that allow for the sharing of leading practices and help the industry raise the bar on itself .

The Associations support the NTSB and its efforts to improve pipelines safety. The NTSB’s current regulations and practices have served the agency, pipeline industry, and the public well. The NTSB serves a critical purpose by investigating and providing findings and recommendations after significant pipeline incidents or accidents.

In its Advance Notice of Proposed Rulemaking, the NTSB seeks comments on the terms “significant injury to the environment” and “substantial property damage.” These terms have existed undefined for decades in both the NTSB’s statute and regulations. It is the Associations opinion that defining these terms will unnecessarily limit the NTSB’s discretion to determine which pipeline incidents and accidents truly require a NTSB investigation. The adoption of bright-line definitions could be both over- and underinclusive, requiring the NTSB to invest time and

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<sup>1</sup> INGAA is a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in North America. INGAA is comprised of 26 members, representing the vast majority of the U.S. interstate natural gas transmission pipeline companies. INGAA’s members operate nearly 200,000 miles of pipelines and serve as an indispensable link between natural gas producers and consumers.

<sup>2</sup> Founded in 1918, AGA represents more than 200 local energy companies committed to the safe and reliable delivery of clean natural gas to more than 180 million Americans. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one third of the United States' energy needs.

<sup>3</sup> APGA is the national, non-profit association of publicly owned natural gas distribution systems. APGA was formed in 1961 as a non-profit, non-partisan organization, and currently has over 740 members in 37 states. Overall, there are nearly 1,000 municipally owned systems in the U.S. serving more than five million customers. Publicly owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

<sup>4</sup> Authority of NTSB in Railroad, Pipeline, and Hazardous Materials Investigations, 88 Fed. Reg. 60,166 (Aug. 31, 2023).

resources in unnecessary investigations, while also excluding other incidents from investigation leaving their important lessons undiscovered.

## **II. Detailed Comments**

### **A. The NTSB Should Not Define Substantial Property Damage (Question #s 1, 2, and 4)**

The NTSB should leave the term “substantial property damage” undefined in 49 C.F.R. § 831.40(a)(2).<sup>5</sup> Adopting a property damage dollar threshold to trigger NTSB’s investigative authority is problematic for several reasons. First, Congress has already spoken on whether a monetary threshold is appropriate. Congress examined whether property damage should be defined as part of the Independent Safety Board Act of 1974.<sup>6</sup> Congress ultimately determined that it was not appropriate to set a dollar threshold.<sup>7</sup> Second, the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) regulations already provide for the reporting of natural gas pipeline incidents, investigations, and potential enforcement after incidents. NTSB’s authority was intended to cover the most significant of pipeline incidents, conserving the agency’s resources and allowing PHMSA to investigate other pipeline incidents. Third, since private property values vary throughout the country, similar types of incidents may be treated differently under NTSB’s proposed approach. Using too high a dollar threshold increases the likelihood that the NTSB will not investigate an incident in an economically disadvantaged area while a similar incident could be investigated in a wealthier area. However, setting the dollar figure too low could cause NTSB to investigate incidents that are not significant safety events and detrimentally impact NTSB’s limited resources. A set threshold cannot capture all possible incidents that might merit an investigation given the range and diversity of pipeline systems and the areas where they operate. Additionally, setting an arbitrary dollar amount for NTSB investigations could prevent the agency from investigating multiple similar lower cost incidents where a systemic cause could be identified. Investigation and thorough analysis of such incidents can provide far-reaching and beneficial results to the industry when systemic concerns that could impact multiple pipeline companies are identified. Keeping “substantial property damage” undefined will maintain the NTSB’s flexibility and discretion and ensure that the NTSB can focus on significant pipeline incidents that merit an investigation.

### **B. The NTSB Should Not Adopt PHMSA’s Property Damage Threshold (Question # 3)**

The NTSB should not adopt PHMSA’s property damage threshold for incidents listed in Part 191.<sup>8</sup> Using PHMSA’s property damage threshold could lead to duplicative efforts and cause unnecessary confusion. As the NTSB is aware, its investigation takes priority over any federal agency on the same pipeline incident.<sup>9</sup> Other federal agencies cannot participate in the probable

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<sup>5</sup> NTSB is currently “responsible for the investigation of pipeline accidents, explosions, incidents, and ruptures in which there is a fatality, significant injury to the environment, or substantial property damage.” 49 C.F.R. § 831.40(a)(2).

<sup>6</sup> Pub. L. 93–633 (Jan. 3, 1975).

<sup>7</sup> See S. Conf. Rep. 93-1347 (Dec. 13, 1974)(Congress declined to add a \$100,000 property damage threshold in 1974).

<sup>8</sup> 49 C.F.R. § 191.3. PHMSA’s property damage threshold is currently \$139,700. This threshold is increased each year for inflation purposes. See <https://www.phmsa.dot.gov/incident-reporting#:~:text=Prior%20to%20July%201%2C%202023,to%2049%20CFR%20Part%20191>.

<sup>9</sup> 49 C.F.R. § 831.5(a)(1).

cause determination.<sup>10</sup> By using the same threshold as PHMSA, NTSB would not only strain its resources but it would also limit PHMSA’s ability to investigate pipeline incidents. The NTSB should continue to focus its attention and resources on those incidents that are the most significant and require the NTSB’s expertise.

**C. The Inclusion of a Fatality as a Trigger for an NTSB Investigation Provides the Agency with Broad Authority (Question # 7)**

The NTSB seeks comment on whether it should consider factors other than monetary value.<sup>11</sup> The Associations note that the definition in Sec. 831.40(a)(2) also provides the NTSB with the authority to investigate incidents that involve a fatality. This factor provides the NTSB with the necessary authority to investigate pipeline accidents that are significant to the public.

**D. The NTSB Should Not Define Significant Injury to the Environment (Question #9)**

The Associations encourage the NTSB to also leave the term “significant injury to the environment” undefined. Without a specific definition, the NTSB can evaluate each incident on a case-by-case basis and determine whether it should be investigated. The range of potential conditions involved in an incident cannot be captured by a specific threshold. The NTSB should not unnecessarily limit itself and continue to use its discretion to determine when to act. Currently, the NTSB investigates significant pipeline incidents or accidents and provides meaningful findings and recommendations for PHMSA, industry, and other stakeholders to study and adopt. The Associations urge the NTSB to allow this practice to continue.

**E. The Same Definitions Should Apply to all Pipelines (Question #8)**

The NTSB requests comment on whether different definitions should apply to municipality-owned pipelines and publicly-traded owned pipelines.<sup>12</sup> The same definitions should apply to all pipelines. A pipeline’s ownership structure does not and should not limit or affect any operator’s pipeline safety obligations, and any threshold triggering an NTSB investigation should serve to promote pipeline safety on all pipelines.

**III. Conclusion**

The NTSB serves a critical role for maintaining pipeline safety. The NTSB should not unnecessarily limit its authority by adopting specific definitions of “substantial property damage” or “significant injury to the environment”. The NTSB should also be aware of the unintended impacts of defining these terms including overburdening its resources and impacting PHMSA’s ability to investigate. For these reasons, the Associations encourage NTSB to leave these terms undefined.

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<sup>10</sup> 49 C.F.R. § 831.5(a)(2).

<sup>11</sup> 88 Fed. Reg. 60,166, 60,167 (Aug. 31, 2023).

<sup>12</sup> *Id.*

Respectfully submitted,



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