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U. S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20590

Statement of Benjamin O. Davis, Jr., Assistant Secretary  
For Safety and Consumer Affairs, Before the United States  
Senate Committee on Commerce, Subcommittee on Surface  
Transportation, regarding amendments to the Natural Gas  
Pipeline Safety Act of 1968, November 9, 1971

Mr. Chairman and Members of the Committee:

I am Benjamin Davis, Assistant Secretary for Safety and  
Consumer Affairs. I am accompanied by Joseph C. Caldwell,  
Acting Director of the Office of Pipeline Safety and  
William Broderick of the Department's Office of General Counsel.

We appreciate the opportunity to present the views of the  
Department of Transportation on S.980, S.1910 and H.R. 5065,  
bills to amend the Natural Gas Pipeline Safety Act of 1968.

Before commenting on the bills, I would like to assure you of  
my deep interest and concern for the natural gas pipeline safety  
program. Since I assumed office as the Assistant Secretary for  
Safety and Consumer Affairs, I have been and am still engaged  
in a learning process. I hope you can bear with me in this  
regard. I am, however, making a concerted effort to learn all  
I can about the pipeline safety program as quickly as possible.  
I have reviewed the program thoroughly and am now evaluating  
its current thrust. I have already visited the Houston field  
office of the Office of Pipeline Safety, and interstate  
transmission and intrastate pipeline facilities in the Chicago  
Illinois, Metropolitan area. I am planning other field trips  
to become acquainted with the operational procedures of the  
gas industry, the nature of safety problems, and the means by  
which the Department can respond more effectively to safety  
needs.

When the Acting Director of the Office of Pipeline Safety,  
appeared before you in July 1969, you raised certain questions  
concerning the program. I would like to review for you some  
developments concerning key questions you raised. One question  
concerned the lack of a full-time director for the Office of  
Pipeline Safety. I agree with you that we need a full-time  
director and I wish to assure you that since I have taken office

I have made an intensive effort to find and select a well-qualified person for this position. As a result, the Department now has some excellent candidates under active consideration and I will do everything I can to have the position filled in the very near future.

You also expressed concern about the lack of public representation on the Technical Pipeline Safety Standards Committee. I wish to assure you that I too am concerned that the public is adequately represented. Two of the public member terms expire next month. In filling the two positions, we are taking full cognizance of your concern and interest in this area.

You also inquired about the relationship of the liquid pipeline safety program to the gas pipeline safety program. My testimony includes a recommendation that your Committee amend the DOT Act to permit consolidation of these functions in the Office of the Secretary.

I believe other questions raised by you during the July 9, 1969, hearings are generally covered in my testimony today. However, if they are not covered to your satisfaction, I will be happy to try and answer any further questions you may have. With your permission, I would like now to proceed to the discussion of the pending bills to amend the Natural Gas Pipeline Safety Act.

Since S.980 and H.R.5065 as introduced were companion bills, I would like to discuss them separately from S.1910.

As originally introduced, Section 1 of H.R. 5065 and S.980 would have deleted from Section 5(a) of the Natural Gas Pipeline Safety Act the words "two years" and substituted the words "three years". Section 2 would have amended Section 15 of the Act to authorize the appropriation of funds to carry out the purposes of the Act without limitations as to amount for any fiscal year.

As H.R. 5065 passed the House of Representatives and is now before this Committee, it contains three sections. Section 1 would amend Section 5(a) of the Natural Gas Pipeline Safety Act by deleting the words "two years" and substituting the words "four years". Section 2 would amend the first sentence of Section 5(c)(1) of the Act to make mandatory payment of funds appropriated for Federal assistance. Section 3 would authorize

appropriations of \$3,000,000 for FY 1972; \$3,800,000 for FY 1973; and \$5,000,000 for FY 1974 to administer the gas pipeline safety program.

Let me provide some background information concerning the proposal to amend Section 5(a) of the Act. That section provides for State agency participation in the administration of the Act with respect to intrastate gas facilities whenever the State agency submits to the Secretary of Transportation an annual certificate that such agency has complied with certain statutory requirements. One of these requirements is that the State certify that its law provides for enforcing safety standards by way of injunctive and monetary sanctions substantially the same as the Natural Gas Pipeline Safety Act. The section also provides that a State agency may file a certificate without regard to the requirement of such sanctions under State law for a period not to exceed two years after the date of the enactment of the Act (i.e., until August 12, 1970).

Because a number of States did not have adequate statutes on this subject last year, the Department proposed an amendment extending the time to meet this requirement by an additional year (i.e., to August 12, 1971).

When the one-year extension was requested, it appeared that State agencies might be able to obtain enactment of needed legislation during the general sessions of their legislatures in 1971. Our view was based on the substantial progress that had been made by State legislatures after August 12, 1968, when the Natural Gas Pipeline Safety Act became law. On that date only Missouri and New York had laws relating to monetary sanctions which were substantially the same as the Federal law. In 1969, 20 additional States enacted appropriate laws on this subject and in 1970 an additional 12 States made similar amendments. Since the legislatures of almost all States were to be in general session during 1971, it appeared that the States needing amended legislation might obtain its enactment in legislative sessions this year.

Some of the States were able to do so. The result is that as of November 1, 1971, 40 States plus the District of Columbia and Puerto Rico, have provisions substantially the same as the Federal law and 10 States do not. Nine of the 10 States still need amendatory legislation. The Ohio statute is now being studied by the legal counsel of the Public Utilities Commission.

It is now clear that in a few States which need amendatory legislation, the legislatures will not again be in general session until 1973. This, for example, is the situation in Minnesota. It also will apply to Ohio if the current legal review should indicate that the present statute needs amendment. In light of this new information, the Department recommends that Section 5(a) of the Act be amended by deleting the words "two years" and by substituting the words "five years". This additional time will make it possible for the few remaining States that need statutory changes to be eligible to submit certifications under Section 5(a) until August 12, 1973. It is believed this extension of time is sufficient to enable these few States to obtain enactment of appropriate State laws.

As already indicated, Section 2 of H.R. 5065 would amend Section 5(c)(1) of the Act. According to the report of the Committee on Interstate and Foreign Commerce, House of Representatives, recommending enactment of this bill (House Report No. 92-257) the stated purpose of this amendment is to make it mandatory for the Secretary of Transportation to pay Federal assistance funds to the States rather than merely authorizing that such payments be made. The report states "The purpose of the amendment is to make clear the Congressional intent that funds appropriated by the Congress for the purpose of inducing the States to enforce Federally established natural gas pipeline safety standards should be expended for that purpose. If these funds are not so expended, the Federal/State program contemplated by the Natural Gas Pipeline Safety Act of 1968 is likely to collapse."

The Department does not favor this amendment because we believe it will inhibit administrative discretion and possibly lead to the indiscriminate payment of Federal funds and the resulting waste. We would prefer to have some discretion as to when and under what conditions the Federal funds may best be utilized.

Section 3 of H.R. 5065 would amend Section 15 of the Act by authorizing appropriations of \$3,000,000 for FY 1972, \$3,800,000 for FY 1973, and \$5,000,000 for FY 1974. Although the Department recommended a continuing authorization for appropriations without a ceiling that might be appropriated for any fiscal year, it does not object to such ceilings if the Congress considers more desirable this method of funding.

As indicated in our letter of March 24, 1971, to you, and again in our letter of August 4, 1971, submitting our views on H.R. 5065, the Department respectfully urges your Committee to add an amendment to your bill to transfer the decision

making authority for liquid pipeline safety matters from the Federal Railroad Administrator to the Secretary.

You may recall that the Department of Transportation Act of 1966 transferred the liquid pipeline safety function from the Interstate Commerce Commission to the newly created Department of Transportation, and statutorily delegated that function to the Federal Railroad Administrator where it is now located. The Natural Gas Pipeline Safety Act of 1968 vested safety jurisdiction over gas pipeline facilities in the Secretary of Transportation. In administering these programs, the Department has learned that the technical aspects of liquid pipeline safety are substantially the same as the technical aspects of gas pipeline safety. In actual practice, the Office of Pipeline Safety acts for the entire technical staff for the Federal Railroad Administration on liquid pipeline safety matters. Consolidation of the gas and liquid pipeline safety functions in the Office of the Secretary would increase the efficiency and promote the economy of the Department's performance in these areas of responsibility. The Department would like to transfer the liquid pipeline safety function to the Office of the Secretary so that function can be combined with gas pipeline safety functions in the existing Office of Pipeline Safety. Under the Department of Transportation Act, the transfer of the liquid pipeline safety function out of the Federal Railroad Administration requires approval of the Congress. On March 21, 1971, the Department transmitted a letter to the Committee Chairman, Mr. Magnuson, urging this amendment, and enclosing language which would accomplish this purpose.

S.1910 would amend the Natural Gas Pipeline Safety Act by (1) permitting a State agency to submit a Section 5(a) certification when enforcement of monetary sanction is carried out either by a State or a State court; (2) proposing yearly apportionment of Federal assistance funds to the States under a fiscal arrangement known as "contract authority"; (3) authorizing a minimum annual payment of \$20,000 to the national organization of State commissions to advance State agency safety programs; and (4) authorizing Federal assistance to States that serve as agents of the Secretary to aid in enforcement of Federal safety standards applicable to interstate transmission facilities.

The Department believes that an administrative civil penalty that does not resort to the courts except for collection is a far more flexible and useful enforcement tool. The door should not be opened to such an alternative method of enforcement by our already overloaded courts. The remarkable record of State legislation, conforming with the Federal statutory

provisions, already enacted since the Natural Gas Pipeline Safety Act became law, is ample evidence that a great majority of the States share these views. We do not recommend this proposal in S.1910. We also do not favor the proposal for yearly apportionment of Federal assistance funds under contract authority. This type of arrangement is appropriate only for established assistance programs. It should be considered here only when both the Federal and State pipeline safety programs are more fully developed and have reached a more predictable level of funding and personnel. Until that time the Secretary should retain much more latitude in disbursing these funds than would be permitted under contract authority. Further, the proposed subparagraphs (4) and (5) overlap and are somewhat inconsistent with the provisions governing payment that are already contained in Section 5(c). Likewise, we do not favor the proposal to make a payment of not less than \$20,000 annually to the national organization of State commissions. This proposal was reviewed by the Congress during its consideration of the 1968 Act and was rejected. Most of the activities that would have been funded by this payment are now being carried out by OPS. Thus, the Department has no basis to justify a change in that legislative decision.

The Department does not object to the proposal to amend Section 5(c)(1) of the Act to permit Federal reimbursement of up to 50 percent of any costs incurred by a State while serving as an agent of the Secretary with respect to interstate transmission facilities. We regard this agency agreement as a temporary arrangement until such time as the Department is adequately staffed to undertake this responsibility. Meanwhile, we believe that a State agency should not be required to bear this financial burden alone. Section 5(c)(1) of the Act already authorizes Federal assistance to State agencies and some funds are being appropriated for this purpose. If the Congress should enact this amendment, we would include the Federal share of the costs involved in this agency relationship within the amounts being made available for Federal financial assistance to the States.

Based upon information informally received from the States that are presently serving as our agents, this activity is estimated to cost about \$75,000 during 1971. The proposed amendment would permit Federal assistance up to 50 percent of such costs as incurred in 1973 and future years.

#### Summary of Program Development

In addition to the Department's views on these bills, I would like with your permission, to give you a brief overview of the

status of the natural gas pipeline safety program.

At the present time, 50 State agencies including Puerto Rico and the District of Columbia are cooperating with the Department under Section 5 of the Act. Only Louisiana and New Jersey are not participating. Thirty-seven State agencies are cooperating under Section 5(a) certifications; and thirteen are cooperating under Section 5(b) agreements. Twenty-one State agencies continue to serve as agents of the Secretary with respect to interstate transmission lines.

We realize it takes time to get money and personnel for these activities. Some States have large, efficient staffs while others are still trying to get their programs off the ground. The Department's overall approach in this program is to assist each State as much as possible with its individual problems. This assistance takes the form of advice on legislative matters, administrative procedures, and personnel qualifications, as well as training and technical information. The Office of Pipeline Safety also serves as a clearinghouse for information on pipeline safety regulatory matters among the States. In addition, we are preparing technical manuals for use by the State agency staffs in evaluating and monitoring the safety of gas pipelines. We are also developing a training course on monitoring pipeline operations for State personnel.

In appropriating \$500,000 in Federal assistance funds for FY 1971, the Congress enabled the Department to give impetus to the Federal/State cooperation contemplated under the Act. Initially 43 States expressed interest in receiving Federal financial assistance but eight of them did not apply for varying reasons. The funds were allotted to 35 applicant States in June this year. We plan to reimburse them early next year for the Federal share of their 1971 program costs.

With the appropriation of \$750,000 Federal financial assistance for FY 1972, the Department has received applications from 41 States, including the District of Columbia and Puerto Rico. The applications are being processed and we expect to obligate the funds within the next few days. Of the remaining States, nine did not request Federal funds and two --Louisiana and New Jersey-- are not eligible to receive funds.

In administering the Act, we have leaned heavily on the Technical Pipeline Safety Standards Committee, established pursuant to the Act, for assistance. Since its establishment in January 1969, ten meetings have been held. We have found this Committee to be one of the most valuable features of the

Act. We shall continue to draw on this body of experts for advice and recommendations.

The Office of Pipeline Safety now has a total of 29 positions. Twenty-three of these positions are filled, with two others committed but being held up due to a DOT freeze on hiring. We are recruiting to fill the remaining four and will fill them as soon as possible. In November 1970 we established a pilot field office with three positions in Houston, Texas. There are plans to establish four additional field offices in other parts of the country when resources are available.

Aside from our State relationship described above, the two most important accomplishments since our last appearance before this Committee have been:

- (1) Placing in effect the Federal Safety Standards and
- (2) The establishment of a leak and test failure reporting system that became effective February 9, 1970. This system requires certain operators to report certain leaks or failures and all operators to report annually on their overall operating experience. This information will enable us to detect problem areas that need attention and evaluate the effectiveness of all aspects of our regulatory program.

Information obtained for individual leaks from the OPS leak and test failure reporting requirement in Part 191 of DOT Regulations has confirmed two areas needing immediate attention. The two main causes of leaks are damage by outside forces and corrosion. We have taken or are taking steps to reduce these incidents in each case.

Outside damage accounted for approximately 63% of the individual leaks reported to the OPS. We are developing more comprehensive regulations for the marking and identification of pipelines. We also have drafted a model statute for passage by State and local regulatory authorities to require certain actions on the part of utility operators and parties having the need to dig or excavate in the vicinity of underground utilities. We plan to solicit the support of all private and Government groups and organizations associated with or involved in the operations or control over utilities.

Corrosion accounted for approximately 15% of the individual leaks reported to OPS. We now have in effect a complete new set of corrosion regulations that should reduce this problem.

We are also fostering the development of specialized equipment that can be used to determine the condition of certain types of distribution pipelines that have been affected by corrosion.

Our regulatory program may be described as having three distinct segments:

- (1) To develop and publish Federal safety standards.
- (2) To inform and educate all concerned parties about what is and will be involved in this program.
- (3) To monitor gas pipeline operators for compliance in conjunction with State agencies.

We are now evaluating the Federal Safety Standards to determine areas in which they may be strengthened or improved.

The second segment, communication with those involved in the program, has been implemented. During 1970 the OPS staff participated in some 55 meetings, talking to over 7,500 State, industry, union and other interested parties. Recently we began publication of a monthly advisory bulletin for dissemination of information to all interested parties.

The third segment has been implemented on a limited basis both in the field and from our Headquarters office. Last year we established a pilot field office in Houston, Texas. That office is staffed by two technical men who cover the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. In four of these States our staff is monitoring the State agency activities with respect to State agency cooperation under the Act. Similar monitoring visits have been initiated in other States by our Headquarters office personnel.

Since Louisiana does not have a State agency cooperating with the Department, all gas facilities in that State are under our direct safety jurisdiction. Our Houston office has been visiting a number of small operators in that State to explain the purpose of the Natural Gas Pipeline Safety Act, to identify the Federal safety standards, and to point out the requirements for operator compliance with those standards.

In closing, I wish to express the appreciation of the Department for the opportunity of presenting our views on the bills your Committee is considering; and on summarizing gas pipeline safety program developments for you. If there are any questions, I will gladly try to answer them. Thank you, Mr. Chairman.

