

DEPARTMENT OF TRANSPORTATION
Office of the Secretary
Washington, D.C.

STATEMENT OF JAMES B. MINOR, ACTING DEPUTY ASSISTANT
SECRETARY FOR SAFETY AND CONSUMER AFFAIRS, BEFORE THE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER, REGARDING
AMENDMENTS TO THE NATURAL GAS PIPELINE SAFETY ACT OF
1968, MARCH 9, 1971

Mr. Chairman and Members of the Committee:

I am James B. Minor, Acting Deputy 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 H.R. 5065, a bill to
amend the Natural Gas Pipeline Safety Act of 1968.

Section 1 of the bill H.R. 5065 would amend Section 5(a)
of the Natural Gas Pipeline Safety Act by changing the
words "two years" where they appear in clause (4) of the
first sentence to "three years."

The provision recommended for amendment is an exception to one of the State certification requirements. Specifically, under Section 5(a) of the Act a State agency which desires to regulate intrastate pipeline facilities must certify, among other things: "... (4) ... that the law of the State makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions substantially the same as provided in Sections 9 and 10; except that a State agency may file a certification under this subsection without regard to the requirement of injunctive and monetary sanctions under State law for a period not to exceed two years after the date of enactment of this Act."

(Emphasis added.) The proposed amendment would extend the two-year period to three years, thereby allowing the States an additional year in which to enact conforming legislation.

Shortly after enactment of this law, the Office of Pipeline Safety, recognizing that many States did not have appropriate injunctive and monetary sanctions, called the attention of the State Public Service Commissions to the possible need for appropriate State legislation on this subject. (Copy of letter dated November 27, 1968 attached.)

Based upon a review of then existing State statutes that were submitted to the Department's Office of General Counsel, and of later State enactments, it appears that when the Natural Gas Pipeline Safety Act became law in 1968 only two States, Missouri and New York, had injunctive and monetary sanctions that were substantially the same as the Federal law.

The November 27, 1968, letter generated a response on the part of 21 State legislatures in 1969, and an additional 11 State legislatures in 1970. The result is that 33 States and Puerto Rico presently have State laws on this subject that are substantially the same as the related provisions of our Act, and 17 States and the District of Columbia do not.

Under the Pipeline Safety Act, a State agency that does not have an adequate State statute became ineligible on August 12, 1970, to submit a Section 5(a) certificate. In this regard, the Department initially decided to have State agency annual certifications submitted on a calendar year basis, and we plan to do so in the future. However, when it became apparent last summer that so many State agencies would be ineligible to continue their active participation in the program in 1971 because needed amendments to State laws had not yet been enacted, the Department decided administratively, as an interim step,

to accept certifications from those States--if made before August 12, 1970, to continue for a 12-month period following their submission. The result is that nine States and the District of Columbia are presently regulating their intrastate pipelines under Section 5(a) certifications that expire late in July or early in August of this year. In addition, five States have temporarily entered into Section 5(b) agreements with the Department, pending enactment of State laws and their eligibility to certify. Two States--Arkansas and New Jersey--have not yet acted. We are in contact with both States and are hoping either for a State enactment that will permit State certification under Section 5(a) or for an agreement under Section 5(b). Late last year, the State of Louisiana voluntarily withdrew from its Section 5(b) agreement.

This problem--the fact that all the States that need amended State legislation have not yet enacted it--points out the time lag between the enactment of a Federal statute calling for Federal/State cooperation, and the enactment of State legislation that permits State agencies to cooperate with the Federal agency. Although the Department has been

in constant communication with the States on this matter, the scheduling of State legislative sessions and other priorities within the States has precluded complete success in this matter.

If all of the State legislatures in session this year enact appropriate amendments to State laws, and if Congress also enacts similar legislation applicable to the District of Columbia, all State agencies--except Louisiana--will be eligible to submit certifications on a calendar year basis again. Meanwhile, we need the amendment to assure that the Department and the cooperating State agencies have the needed flexibility to carry out the Federal/State partnership envisioned by the Act.

Section 2 of the bill is needed because Section 15 of the Natural Gas Pipeline Safety Act authorized appropriations only through fiscal year 1971. It is clear to us that there is a definite need for a continuing program of gas pipeline safety. Section 2 will enable us to plan for a continuing program.

We recommend enactment of the bill as early as possible.

I would now like to give a brief overview of the administration of the Natural Gas Pipeline Safety program.

Last August the Secretary of Transportation created the Office of the Assistant Secretary of Transportation for Safety and Consumer Affairs and transferred the Office of Pipeline Safety to it from the Office of the Assistant Secretary for Systems Development and Technology. While the individuals who have served in that Office provided overall guidance to the Office of Pipeline Safety, the nature of the research and technology function is not consistent with the day-to-day supervision of an office that performs essentially regulatory functions. With the creation of an Assistant Secretary who would perforce be devoting a large percentage of his time to transportation safety, it became apparent that his office would provide an appropriate "home" for the Office of Pipeline Safety.

The Act required that the Department establish and put into effect no later than twenty-four months after the enactment of the Act, minimum Federal safety standards for the transportation of gas and pipeline facilities. These basic standards were issued on August 11, 1970.

In keeping with the spirit of the Act, we have exerted maximum efforts to establish working relations with the State agencies. This effort has had good results as indicated by the substantial degree of program participation and cooperation on the part of a large majority of the States. As of December 31, 1970, 49 State agencies including the District of Columbia had Section 5(a) certifications in effect with only Hawaii, Louisiana, and Puerto Rico not participating in the program. Also at the close of the year 22 States were voluntarily serving as agents of the Secretary with respect to monitoring interstate transmission pipeline activities.

At the present time, State agency interest and cooperation continues to be high. Forty-two States have filed Section 5(a) certifications. Seven others have filed 5(b) agreements because they are not yet eligible to certify. Twenty-two States continue to serve as agents of the Secretary with respect to interstate transmission lines. Only three States (Arkansas, Louisiana, and New Jersey) are not now participating in the program.

When the Act was passed, very few States had a permanent full-time safety program. I am glad to say that many of them have increased their staffing and at present 29 States have at least one technical employee devoting full-time to pipeline Safety. The total number of technical employees in the 29 States is 70, ranging from 12 in New York to one in several of the States. These 70 technical positions are supported by 18 clerical positions. In a number of States, the pipeline safety work is inter-related with other regulatory and safety functions. Consequently, these States have personnel devoting part-time to gas pipeline safety as part of their overall duties.

Recognizing that Congress saw fit to establish this program with the intent of placing the majority of the responsibility for safety regulation at the State level and, consistent with the President's policy for Federal/State relations, we have endeavored to plan and implement our program to gain maximum effectiveness on the part of State agencies to carry out this program. The main problem faced by the States is that many of them need time to establish a basic program and to put it into motion.

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 clearing house 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.

Another indication of State interest in this program is the enactment in 1969 and 1970, of State legislation relating to gas pipeline safety matters. Some of the States such as Illinois, Indiana, South Carolina, South Dakota, and Texas, enacted statutes based substantially on the Natural Gas Pipeline Safety Act. In 11 States the laws were amended to vest in a State agency safety jurisdiction over municipally owned gas distribution systems. In a total of 32 States, legislation made the

State law on monetary sanctions substantially the same as the Federal. Based on informal advice we have received in recent weeks, we know that the legislatures of a number of other States are now considering amendments of State statutes to strengthen State agency capability to cooperate with us.

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 nine meetings have been held to give both formal and informal advice and recommendations. 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 28 positions. 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 during the past year have been:

- (1) The publication of the Minimum Federal Safety Standards on August 11, 1970; 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.

Our program may be described as having three distinct phases:

- (1) To develop and publish minimum Federal 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 correlation with State agency responsibilities.

We have completed Phase (1) and are now basically involved in Phase(2), that of communication with those involved in the program. During 1970 the OPS staff participated in some 55 meetings, talking to over 7,500 State, industry and other interested parties.

We are now at the point of "changing gears" from a developmental phase to an operational program. When the program has matured, all 3 phases will continue to varying degrees.

It is our intent and goal to assist the States in fulfilling their responsibility to the maximum of their capability.



OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

November 27, 1968

Chairman, Each State Public
Service Commission

Dear Mr. Chairman:

In response to a number of informal requests the Office of Pipeline Safety has received, I am writing to each State agency concerning the injunctive and monetary sanction provisions of the Natural Gas Pipeline Safety Act of 1968.

As you are aware, one of the requirements of the Pipeline Safety Act is that after August 12, 1970, in order to make a certification under Section 5(a), a State must be able to certify "that the law of the State makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions substantially the same as are provided under Sections 9 and 10" of the Act.

Apparently, most States will be able to comply with the requirement for injunctive authority. However, we have had numerous requests to furnish States with a model State law that would undoubtedly comply with the monetary sanction requirement. The following language, which is substantially identical with Section 9 of the Pipeline Safety Act, would comply with the monetary sanction requirement of Section 5(a):

"(a) Any person who violates any provision of [insert citation for the statutes of the State governing the safety of pipeline facilities and the transportation of gas] or of any regulation issued thereunder, shall be subject to a civil Penalty of not to exceed \$1,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$200,000 for any related series of violations.

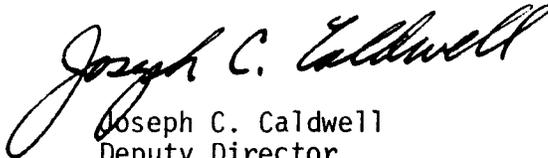
"(b) Any civil penalty may be compromised by [insert name of the State agency enforcing the gas pipeline safety statute and regulations]. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of

the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged or may be recovered in a civil action in the State courts."

If the law of your State does not contain substantially the same elements as this model language and your agency desires to certify under Section 5(a) of the Act after August 12, 1970, I suggest that your agency give consideration to seeking promptly an amendment to your law to incorporate the model language. It is not necessary that a State statute use the exact language quoted above. What is important is that the State law contain the essential elements of an administrative penalty provision that is assessed, compromised, and collected by a State agency with resort to the courts only in those cases where the person alleged to have committed the violation refuses to pay.

If you have any questions as to whether the existing statutes of your State, or any proposed amendments, comply with the above-discussed requirements, you may submit your present or proposed language to this Department for review and advice.

Sincerely yours,



Joseph C. Caldwell
Deputy Director
Office of Pipeline Safety