

STATEMENT OF DR. JAMES PALMER, ADMINISTRATOR OF THE  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT  
OF TRANSPORTATION, BEFORE THE HOUSE INTERSTATE AND FOREIGN  
COMMERCE SUBCOMMITTEE ON ENERGY AND POWER

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Mr. Chairman and Members of the Subcommittee:

I thank you for this opportunity to appear before your Subcommittee to discuss the Department of Transportation's pipeline safety program and, in particular, to express our support for H.R. 2207, a bill to improve the Department's ability to ensure the safe movement in commerce of hazardous gases and liquids by pipeline. I would like to express my appreciation to Congressman Markey for introducing that bill upon request of the Administration.

Before discussing the benefits that would be realized from the enactment of H.R. 2207, I would like to highlight some of the important pipeline safety activities that the Department has undertaken since February 8, 1978, the date of the last authorization hearing held by this Subcommittee on our pipeline safety programs. While sufficient funds to carry out these programs were appropriated for fiscal year 79, we now need legislation to authorize additional appropriations for use during fiscal years 1980 and 1981. H.R. 2207 would authorize appropriations for those years in support of our pipeline safety efforts.

Although the Department's pipeline safety functions continue to be carried out by the Materials Transportation Bureau within the Research and Special Programs Administration, the Bureau has recently completed an internal reorganization which will improve management of the pipeline safety and hazardous materials programs. This was accomplished by separating rulemaking activities from the implementation and enforcement responsibilities for these two programs. The realignment of functions was accomplished by restructuring

the old Offices of Pipeline Safety Operations and Hazardous Materials Operations into four new offices. The new Offices of Pipeline Safety Regulation and Hazardous Materials Regulation are concerned with all rulemaking and waiver activities. The new Office of Operations and Enforcement, in addition to compliance and enforcement, manages the pipeline State grant-in-aid program and monitors implementation of NTSB recommendations. The Office of Program Support consolidates all administrative, budget, research, and data functions in support of the other offices. At this time, there is also a fifth office which manages the Department's participation in the Alaska Natural Gas Transportation System. The staffing and resources committed to the activities of this Office will vary with the workload through the phases of design review and construction monitoring for the System. This Office will go out of existence approximately one year after completion of the Alaska Natural Gas Transportation System, following review of initial operations and assurance that all DOT safety requirements have been met.

In addition to the management improvements provided by the MTB reorganization, staffing of the pipeline safety program has also increased since the hearings last year. At that time only 37 of 54 authorized positions were staffed. Aside from the positions authorized in FY 79 for the Alaska Gas System, 48 of 56 authorized positions are now staffed. The MTB has not moved as quickly on the Alaska Gas positions because of delays associated with that project. Also, a permanent Director of the MTB and an Associate Director for Pipeline Safety Regulation have been installed. The Department looks forward to even more responsive and expeditious personnel actions as a result of the new Civil Service Reform Act.

Over this last year the Department has also made significant progress in developing regulations to assure the safe construction and operation of LNG facilities.

The MTB has now completed the review of over 4,000 pages of comments submitted in response to its April, 1977 advance notice of proposed rulemaking pertaining to new Federal safety standards for LNG facilities. The advance notice proposed more stringent LNG safety standards providing for: (1) protection of persons and property near an LNG facility from thermal radiation (heat) caused by ignition of a major spill of LNG, (2) protection of persons and property near an LNG facility from dispersion and delayed ignition of a natural gas cloud arising from a major spill on LNG, and (3) reduction of the potential of a catastrophic spill of LNG resulting from natural phenomena such as earthquakes, tornadoes, and flooding.

The MTB has decided to treat the subject matter of the original advance notice in two rulemaking actions. The first, a notice of proposed rulemaking published in the February 8, 1979 Federal Register, covers the design (including site selection) and construction of new facilities and existing facilities that are replaced, relocated, or significantly altered. That notice results from the Department's efforts to regulate for the safety of LNG facilities in a manner which is not so costly as to unnecessarily rule out LNG as a national energy source, but which will provide adequate safety assurance for the public.

The second notice of proposed rulemaking will pertain to standards for the operation and maintenance of LNG facilities. It is expected that this second notice will be issued by mid-April. This notice of proposed rulemaking will address operational and transfer procedures, site security, emergency

procedures, employee training requirements, and various maintenance procedures.

The MTB expects to issue the final rule on design and construction of LNG facilities in September and the final rule on LNG facility operations in December.

Concurrent with the MTB's LNG regulatory activities, the United States Coast Guard has been developing regulations for storage and handling of hazardous materials, including LNG, at ports. On August 3, 1978, the Coast Guard issued an advance notice of proposed rulemaking inviting public participation at the earliest stages in the development of regulations to provide standards for safety, security, and environmental protection in the transportation transfer, handling, and storage of liquefied natural gas at waterfront facilities. The Coast Guard is analyzing the comments received as a result of this advance notice and is drafting a notice of proposed rulemaking. The Coast Guard expects that the proposal will be ready for publication in July of this year, or shortly thereafter.

Because of overlapping safety jurisdiction for waterfront LNG facilities, the MTB and the Coast Guard carry out their respective regulatory activities on this subject under the terms of a Memorandum of Understanding executed by the agencies in February, 1978. Cooperation between these two agencies on this important safety matter has been excellent.

In the liquid pipeline area, the MTB has several rulemaking proceedings in process aimed at reducing the potential for accidents involving the transportation of what are viewed as highly volatile liquids (HVL). Examples of such liquids are liquefied petroleum gas and anhydrous ammonia. These liquids, when released into the atmosphere, form a gas cloud which is a markedly different and more insidious hazard than those presented by spills of less volatile

liquids. The gas cloud will move downhill or downwind depending on the terrain, type of liquid involved, and atmospheric conditions. Because it is generally heavier than air, the gas cloud will tend to hug the ground as it continues to move. If a source of ignition is encountered, a petroleum gas cloud will burn or explode. If anhydrous ammonia is spilled, the greatest danger is that of toxicity or asphyxiation. With either commodity, the hazards are severe. The record of liquid pipeline accidents through 1976 shows that although HVL accidents, primarily involving LPG, comprise only 10 percent of the liquid pipeline accidents, those accidents caused 66 percent of the deaths, 50 percent of the injuries and 30 percent of the property damage.

The HVL rulemakings that were initiated in 1978 propose safety plans for normal operations and emergencies and standards designed to reduce spill size, and pipeline failure rates. In addition, the MTB recently issued an advance notice of proposed rulemaking soliciting public comments on the need for additional and more stringent requirements for design, construction, operation, and maintenance of Highly Volatile Liquid pipelines.

I would now like to turn to a discussion of the bill H.R. 2207.

The Natural Gas Pipeline Safety Act of 1968 and the Transportation of Explosives Act in the Federal criminal code are the primary authorities for the Department's current gas and hazardous liquid pipeline safety programs. We believe, after a decade of experience, that these underlying authorities do not provide all the tools necessary for a comprehensive and effective Federal pipeline safety program. The Department believes that H.R. 2207, if enacted into law, will substantially improve the ability of the Department to progress toward the goal of a comprehensive and effective pipeline safety program.

The bill contains two titles. Title I amends the Natural Gas Pipeline Safety Act in a manner that would permit a more effective realization of the original purposes of the Act. Title II proposes new and comprehensive legislation for the safety regulation of hazardous liquid pipeline transportation.

I would like to briefly discuss the more important amendments made by Title I and then discuss in some detail the need for the new law proposed by Title II.

While the Natural Gas Pipeline Safety Act authorizes the Department to prescribe safety standards for, among other things, the design, installation, construction, initial inspection, and initial testing of pipeline facilities, some have questioned whether the Department can enforce, by civil penalty or otherwise, compliance with those standards prior to a facility's being put into service. This question presents itself because the actual risks to life and property sought to be ameliorated by complying with safety standards present themselves only after a facility goes into operation. The Department believes that an effective way to assure operational safety is to assure that safety standards can be met before a facility is placed in operation. Because the question of the ability of the Department to assure such compliance through enforcement sanctions has been raised, the Department believes there is a need to clarify the extent of its jurisdiction. This is accomplished in Title I by broadening the Natural Gas Pipeline Safety Act's definition of "pipeline facilities" to expressly include facilities "intended for use." This clarifies the Department's authority to enforce compliance with applicable safety standards prior to a facility's going into operation and creating the potential for actual hazards.

Title I also amends the Natural Gas Pipeline Safety Act to expressly provide the Department with discretionary authority to require that any construction associated with a new or existing pipeline facility not begin until it approves that construction. Approval would be contingent only on compliance with applicable safety standards and such other terms and conditions as the Department determines are appropriate to assure compliance with standards.

Mr. Chairman, I would like to discuss this provision in some detail. To date, it has not been the practice of the Department to pass on whether facility design standards issued under the Natural Gas Pipeline Safety Act are being complied with before construction of a facility begins. In recent years however, the environmental and safety concerns associated with the location, construction (including extension and replacement), and operation of certain major pipeline facilities, especially those used or intended for use in the import and export of LNG have led the Department to conclude that approval of facility design before construction begins would be warranted in certain cases. Because some may question whether the Natural Gas Pipeline Safety Act currently provides the Department with authority to review and approve a facility design before construction begins, it is proposed under Title I to expressly provide that authority. However, the Department believes it has this authority at the present time.

The bill would give the Department discretion in exercising this approval authority in recognition that relatively few pipeline facilities warrant this kind of close scrutiny and that only in those few cases will commensurate safety benefits be derived from the exercise of this authority. It is intended that the Department will exercise this authority only with regard to classes

of facilities identified through a rulemaking process as warranting pre-construction review. It is anticipated that rulemaking of this nature could be completed within a year of H.R. 2207 becoming law.

Also, I want to emphasize that the pre-construction review would focus exclusively on whether a facility meets the Department's generally applicable safety standards. While the Department recognizes the need to consider whether additional safety requirements are appropriate on a site specific basis, H.R. 2207 does not provide the Department with the authority to impose such site specific requirements. As you are aware, the Department of Energy and the Federal Energy Regulatory Commission already have such authority under the Natural Gas Act. Lastly, it is our view that any pre-construction activities that might be undertaken under this proposed provision, as those undertaken pursuant to existing law, will be done expeditiously, to avoid delay in the development of new energy facilities. Specifically in this regard, the Department anticipates working in close coordination with DOE/FERC during their facility certification proceedings.

While the two amendments proposed in Title I of H.R. 2207 just discussed seek to clarify existing Natural Gas Pipeline Safety Act authority, several other amendments under that Title clearly provide new authority to assist the Department in carrying out its gas pipeline safety responsibilities. Primary among these amendments are those pertaining to enforcement and investigative powers.

Currently, if the Department is unable to collect a civil penalty assessed under the authority of the Natural Gas Pipeline Safety Act, the matter may be referred for collection only to the Attorney General for district court action. Whether the Department of Justice decides to pursue the collection of

a civil penalty depends on the significance of the case which is at times considered synonymous to the level of the assessed penalty.

While understanding the reluctance of the Department of Justice to commit resources to cases that, when viewed individually, are not considered significant, the Department also recognizes the need to pursue to final collection all civil penalty actions notwithstanding the penalty amount. Because many of the Department's pipeline civil penalty cases involve relatively small assessments, it believes that an alternative to the current District Court collection procedures is both desirable and workable.

For these reasons, Title I proposes to amend the Natural Gas Pipeline Safety Act to permit, under certain conditions imposed by the appropriate district court, actions before Federal Magistrates for collection of civil penalties ranging to \$1,500.

Precedent for using Federal Magistrates to collect relatively small civil penalties is found in the Federal Boat Safety Act of 1971 (Pub. L. 92-75). Because the U.S. Coast Guard has successfully used this procedure under that Act, the Department believes the availability of the procedure to the pipeline safety enforcement program will lead to similar benefits.

There are situations where violations of law or regulations justify the imposition of criminal penalties. With regard to gas pipeline safety, the Department believes that willful violations of the Natural Gas Pipeline Safety Act, or regulations or orders issued under the Act, and willful destruction or attempted destruction of interstate gas transmission facilities fall into that category. However, the Natural Gas Pipeline Safety Act does not currently authorize criminal sanctions for such violations or actions. Title I

of H.R. 2207 would amend the Act to permit the imposition of such sanctions.

To further enhance the gas pipeline enforcement program, Title I also provides the Department with compliance order authority. This authority has been found to be most useful in situations where monetary penalties alone are not fully effective in achieving compliance with the Natural Gas Pipeline Safety Act or regulations issued under the Act. I would like to cite a few examples:

- ° When an otherwise appropriate civil penalty may be too burdensome on the alleged violator. The burden may be created when the violator must pay both the penalty and the cost necessary to achieve compliance, which may result in a substantial risk that he may be put out of business. Most typically, this situation arises with gas distribution systems owned and operated by small municipalities located in the south and southwestern U.S.
- ° In cases where a civil penalty is not warranted, the issuance of a compliance order permits the formal establishment of a precise description of the noncompliance or violation and provides the evidentiary framework for follow-up inspections. Failure to meet the terms of the compliance order could lead to a more supportable civil penalty assessment or Government action to seek court enforcement of the terms.
- ° As a method of closing out cases, which because of their age may make them unacceptable to the U.S. Attorney's office for prosecution, the compliance order enables the Government to recognize violations and impose formal sanctions to record thereon.

The benefits of compliance order authority in these situations are already being experienced by the MTB in its hazardous materials enforcement program.

The Department does not currently have authority under the Natural Gas Pipeline Safety Act to issue subpoenas or require the production of property. The absence of such authority has frustrated, on several occasions, the Department's responsibility to expeditiously and effectively carry out gas pipeline compliance and accident investigations. For example, the Department has experienced operator reluctance and refusal to release property (usually a pipe segment) that is considered relevant to the Department's compliance and regulatory activities. To avoid this problem in the future, Title I of H.R. 2207 proposes to provide the necessary authority. Providing this authority to the Department is not intended to preempt or frustrate the National Transportation Safety Board from carrying out its statutory investigative responsibilities for the determination of probable cause of pipeline transportation accidents. The Department would exercise this new authority consistent with its safety responsibilities and in coordination with the activities of the Safety Board.

As I previously stated, Title II of H.R. 2207 proposes new and comprehensive legislation for the safety regulation of hazardous liquid pipeline transportation. The need for this legislation can be better understood with some background on the Federal involvement in liquid pipeline safety matters.

The authority to regulate liquid pipeline carriers for safety purposes originated with the Act of May 30, 1908 (33 Stat. 554), popularly known as the Transportation of Explosives Act, which gave the Interstate Commerce Commission (ICC) the authority to regulate the safe transportation of explosives by common carriage. A 1921 amendment brought liquid pipelines under

the Act for the first time. When Title 18 was enacted into positive law in 1948, these provisions were reenacted in substance as 18 U.S.C. sections 831-835.

Although amendments made to the Transportation of Explosives Act in 1960 broadened the applicability of the Act to include private carriers as well as common carriers, a new definition of "carrier" expressly excluded "pipeline carriers." The legislative history of the 1960 amendments provides no insight into the reasons for repealing this forty-year old legislative authority.

In a report titled "Report on Movement of Dangerous Cargoes", dated September 30, 1963, an interagency study group coordinated by the Department of Commerce made the following recommendation:

"The ICC should be given specific authority and responsibility for the safety regulation of all pipelines operating in interstate and/or foreign commerce (other than water pipelines and gas pipelines)."

In Congressional hearings that followed, industry spokesmen stated a preference for a set of uniform national liquid pipeline regulations rather than regulations promulgated by various States and local jurisdictions and, for this reason were in favor of being brought under the authority of the ICC for safety purposes once again. By Pub. L. 89-95, approved July 27, 1965, this was accomplished by removing the three words "other than pipelines" from the definition of "carrier" in the Transportation of Explosives Act. To this date, no other amendments to the Transportation of Explosives Act have been made.

Regulations were promulgated only after the responsibility was transferred from ICC to DOT, and there have been several amendments since 1970.

In January 1975, the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) (HMTA) was signed into law.

Although a much more cohesive and effective piece of legislation than the Transportation of Explosives Act for regulating the nonpipeline transportation of hazardous materials, section 112 of the HMTA (49 U.S.C. 1811) provides that the provisions of the HMTA do not apply to liquid pipelines already subject to safety regulation under the Title 18 criminal provisions. The result is that liquid pipelines are the only mode of transportation still regulated for safety under the Transportation of Explosives Act.

This background evidences a lack of full attention to the needs of an effective Federal liquid pipeline safety program. Unlike the Natural Gas Pipeline Safety Act of 1968, for gas pipelines, the Transportation of Explosives Act was not written with pipeline safety in mind and in fact does not even use the word pipeline in its provisions, and applies to pipelines only because of its general applicability to hazardous materials transportation. The Department believes that necessary and appropriate improvement of its liquid pipeline safety programs requires the enactment of legislation specifically pertaining to such programs.

The Department further believes that the safety regulation of hazardous liquid pipeline transportation can best be carried out using the same administrative and legal framework as the safety regulation of gas pipeline transportation. But as you are aware, there are substantial differences between the philosophy of the Transportation of Explosives Act and that of the Natural Gas Pipeline Safety Act. For example, the Department lacks jurisdiction under the Transportation of Explosives Act to:

- regulate storage of hazardous liquids;
- regulate intrastate pipeline transportation of hazardous liquids; or
- impose civil penalties for violation of hazardous liquid pipeline safety standards.

The Department has all these powers under the Natural Gas Pipeline Safety Act.

The Department believes the Natural Gas Pipeline Safety Act to be a comprehensive piece of legislation and further believes that the same administrative and legal framework should exist for the safety regulation of both gas and hazardous liquids. The new safety law for hazardous liquid pipeline transportation which is proposed in Title II of H.R. 2207 is consistent with those beliefs in that it is patterned very closely after the Natural Gas Pipeline Safety Act as it is proposed to be amended under Title I of H.R. 2207.

Mr. Chairman, I've tried to show you today how hard we have been working to improve our pipeline safety programs. While I believe that enactment of H.R. 2207 will substantially enhance the Department's capability in that regard, I want to assure you of the Department's commitment, whether or not H.R. 2207 becomes law, to the continued improvement of those programs.

Lastly, I can assure you that the Department is ready to provide any assistance that you or your staff might desire during your consideration of pipeline safety legislation in the days ahead.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you or other Members of the Subcommittee may have.