

**STATEMENT OF CESAR DE LEON
DEPUTY ASSOCIATE ADMINISTRATOR FOR PIPELINE SAFETY
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION**

**BEFORE THE SENATE COMMITTEE ON
COMMERCE, SCIENCE AND TRANSPORTATION**

AUGUST 3, 1994

Good morning Mr. Chairman and members of the Committee.

I am Cesar De Leon, Deputy Associate Administrator for Pipeline Safety in the Research and Special Programs Administration (RSPA). Thank you for the opportunity to appear before you today to testify on behalf of Secretary Peña, Acting Administrator Ana Sol Gutiérrez, and the Department of Transportation (DOT) concerning key elements of a risk management regime to protect the Nation's pipeline infrastructure. In protecting the integrity of pipelines, we protect the health and welfare of the people and the environment in proximity to those pipelines.

The issues we will discuss today have been framed in legislation that has been proposed by your colleagues from New Jersey, Senator Bradley and Senator Lautenberg, and in the House, by Congressmen Pallone and Sharp. Most of my statement will focus on this legislative initiative, but I believe it is important that I put this initiative and the issues it confronts in the context of the pipeline safety program that will play a major role in carrying it out, should it be adopted.

The Pipeline Safety Program

Mr. Chairman, the Department's pipeline safety program has been in a constant state of flux for almost 10 years. With a growing list of mandates for action from Congress and the National Transportation Safety Board, most of which have followed accidents of national significance, and with resources incapable of keeping up with those mandates, the program has had to be one of crisis management rather than risk management. As such, we have established what I consider to be an admirable record for responding to accidents, although I believe we don't yet have a program that adequately addresses prevention.

In the last year, we have witnessed accidents that raise fundamental issues concerning the state of the pipeline infrastructure in this country and the need to better understand the risks posed to, and by, that infrastructure. We have been hard at work examining how best to manage these risks. I am pleased to report that, for the first time in the history of the pipeline safety program, I believe that the program will be equal to the challenges it faces. While this is partly a function of the promise of more resources, I believe as important is the personal attention of Secretary Peña to those challenges. In my experience, no previous Secretary of Transportation has been so well informed of the issues involved in assuring the integrity and viability of one of the Nation's largest transportation

infrastructures.

By committing the Department, in a time of severe budget constraints, to pursue a budget for pipeline safety in fiscal year 1995 that is double what it was in fiscal year 1993, the Secretary has signaled a new era for pipeline safety. This will be an era in which the pipeline safety program can become a leader in risk management, and finally fulfill the essence of what its core purpose should be - a credible, technically solid, and independent assessor of the nation's pipeline infrastructure and actions of the industry to protect and operate that infrastructure. I believe that the proposed legislation can be an effective tool to help us realize that purpose.

National One-Call Campaign

Mr. Chairman, before discussing the proposed legislation, I would like to bring the Committee up to date on DOT's national campaign to improve the use of one-call notification systems. Over the last several months, we have taken significant steps in defining and implementing a strategy to strengthen one-call systems nationwide. DOT was an active participant in the annual One-Call Systems and Damage Prevention Symposium last May in St. Paul, and devoted an entire morning of the most recent meeting of our two Technical Advisory Committees to one-call issues. In addition we are:

- o Examining reasons why participation in, and use of, one-call systems is not universal and exploring ways to enhance such participation and use.

- o Compiling information on model state programs and best practices to share with other states which are developing their own programs.

- o Working with various pipeline safety stakeholders to coordinate our efforts to improve one-call systems.

- o Supporting state efforts to develop or strengthen their one-call laws.

In addition, the House and Senate Appropriations Committees are considering, in conference, funding of up to \$1.5M which would allow us to make grants to states to enhance their one-call programs. We are very supportive of this effort and have identified several possible initiatives DOT could fund with that money including: education of excavators in safe digging techniques, education of the people who locate the underground facilities, development of software for use by states to easily comply with reporting requirements, and funding start-up costs of enforcement of one-call laws (many states do not have the staff initially to enforce one-call laws; once the system is up and running, enforcement can be funded out of user fees paid by

participating members). Any or all of these projects would significantly improve the effectiveness of the pipeline safety program.

As you can see, DOT has been very active on the one-call front, and we will continue to vigorously promote and support increased one-call usage.

Proposed Legislation

Mr. Chairman, you have asked for our views on proposals contained in S. 2101, "The Comprehensive One-Call Notification Act of 1994". Our comments are based on the latest version of the companion bill, H.R. 4394, (an Amendment in the Nature of a Substitute to H.R. 4394; Discussion Draft dated July 14, 1994).

The bill addresses the single leading cause of pipeline failures, external force, or third party damage, typically caused by heavy construction equipment striking a pipeline. This damage may be acute, that is, it causes the pipeline to fail immediately and puts construction crews and surrounding homes and businesses immediately at risk; or, it may be chronic, that is, it causes damage to the pipeline that over time results in failure, thereby putting the nearby population and/or structures at risk. It is this chronic damage that is proving to be the more serious and difficult to control.

The bill is predicated on several concepts that we fully support, including:

- o Comprehensive state-wide one-call notification systems.
- o A federal pipeline safety grant program that provides funds to states to encourage state adoption of effective one-call programs.
- o The essential elements of an effective one-call system: mandatory participation by all underground facility operators; only narrowly drawn exceptions to a general requirement that all excavators call before they dig; effective, easily administered sanctions; and, 24-hour coverage with provision for emergency excavation.
- o Development by the Department of Transportation of a model one-call program.
- o Development by the Department, through partnerships, of a nationwide public education program.
- o An enforcement provision that leaves discretion to the states in establishing penalties and provides for increased penalties when damage results from a violation.

- o Secretarial review of the adequacy of state one-call programs.

- o Federal implementation of a nationwide toll free one-call telephone number.

However, we believe that several concepts included in the bill need clarification to ensure that they accomplish their objective. These include:

- o The bill's requirement to establish a nationwide toll-free one-call telephone number. While supporting the concept, we believe that the requirement for a national number should not preclude the use of statewide numbers; rather the national number should be used in conjunction with statewide numbers. Many states have already invested significantly in publicizing their statewide numbers and eliminating them in favor of a national number might create confusion. The most beneficial use of a national number would be if an excavator is operating outside its normal base of operations (i.e., in another state) and calls a national number to be routed automatically to the appropriate number in the state where the excavation will take place. We think the language in the bill needs to be clarified to assure this outcome.

- o The bill's provision for incentive grants to the states to

establish new, or to improve, existing one-call systems. We support this but we need to work with the committees to ensure that it works as we believe was intended, i.e., the funds for these grants would be drawn from the existing balance in the Pipeline Safety Fund. The bill as currently drafted appears to draw these funds from user fee collections in the years for which the grants would be made. We believe the funds should be drawn from already collected but unexpended pipeline safety user fees.

- o The bill's requirement for the Secretary of Transportation to develop a model one-call program. We support the concept of a model program, but we believe that the requirement should be combined with the statutory elements of the state program set out in Section 5 of the bill. This would simplify the legislation and ensure that two sets of statutory requirements (i.e., state program and model program) do not inadvertently confuse the desired result.

There are a few additional elements in the legislation which we believe need further work, notably the compliance provisions in Section 4(c). We have detailed our concerns in an attachment to this testimony. We will continue to work with the committee staffs to resolve these concerns.

Conclusion

Mr. Chairman, the pipeline safety program is on the threshold of becoming what it has needed to be for many years. The Secretary has pledged his personal support to assure that the program reaches its full potential. I know I speak for our political leadership when I add our pledge for the same outcome. To reach our full potential will take more than resources -- it will take a new leadership approach that seeks out partnerships with states, local governments, public interest groups, and the industry.

The successful management of the risks inherent in pipeline transportation will require not only sound public policy decisions by all levels of government, but will require a wider and deeper understanding of pipelines -- where they are, what they do, how they are maintained, and what risks they pose. If we are successful in nothing else in the "new Office of Pipeline Safety," we must succeed in increasing public awareness of pipelines - and assuring that such awareness occurs before an accident. We believe that Congress has made great progress towards crafting one-call legislation that will significantly enhance our ability to meet this objective. We will continue working closely with the committees to produce an effective bill.

Thank you.

REMAINING DOT CONCERNS WITH S.2101**"COMPREHENSIVE ONE-CALL NOTIFICATION ACT OF 1994"****AUGUST 3, 1994**o Section 4, paragraph (c), Compliance

This provision gives the Secretary or any aggrieved person a cause of action against a state if the state fails to comply with the law. We are concerned that such a freestanding mandate to the states raises substantial Tenth Amendment concerns.

We need to have further discussions with the committee staffs to ensure that any compliance provision is meaningful and clear.

o Section 6, paragraphs (b) and (e), Penalties and Enforcement

These provisions providing that the state "may...assess" a penalty of imprisonment and "may include" on-site citations, are superfluous since they merely reflect what a state already has the power to do.

o Section 7, paragraph (a), subparagraph (1), Coordination

This provision requires the Secretary to coordinate implementation of this Act with the pipeline safety laws. It is not clear from the language if this is just a routine request to

ensure there are no conflicts among the laws, or if there is some special significance that would impact how this Act is implemented (e.g., would it have an effect on which pipeline facilities would be included under this bill?).