

Statement of Tim Felt

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Before the Senate Committee on Commerce, Science and Transportation

On Reauthorization of the Pipeline Safety Program

and

H.R. 5678, H.R. 5782 and S. 3961

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Mr. Chairman, Members of the Committee, my name is Tim Felt. I am President and CEO of Explorer Pipeline Company, headquartered in Tulsa, Oklahoma. Explorer operates 1,400 miles of petroleum products pipeline serving 16 states extending from the Gulf Coast throughout the mid-western United States.

I am a member of the API Pipeline Committee, vice-chairman and treasurer elect of the Association of Oil Pipe Lines, and the oil pipeline industry's board member for the Common Ground Alliance, a voluntary, private sector organization dedicated to the prevention of excavation damage to underground facilities. I appreciate the opportunity to appear today on behalf of API and AOPL. Together, API and AOPL represent the

companies responsible for the vast majority of U.S. oil pipeline transportation.

Summary

As the Committee reviews the current state of pipeline safety and the progress that has been made since the 2002 Act, these are the main points I would like to emphasize:

- We need to enact pipeline safety reauthorization legislation before the end of this Congress. A lot of work has gone into the current bills, and there are no major disagreements about what a compromise among the various bills should look like. Let's get a good bill passed now.
- The Pipeline Safety Improvement Act of 2002 is a success. Industry and DOT have cooperated to achieve significant improvement in pipeline safety, and this improvement is demonstrated by our industry's record. This record is reflected on the charts that accompany my testimony.
- The oil pipeline industry is making the investments needed to fully comply with the law and related regulations and in many cases to exceed their requirements. We plan to invest over \$1 billion in pipeline safety improvements over the next five years. Because of

this, it is very important that Congress reauthorize the DOT pipeline safety program in 2006. Reauthorization sends a clear signal that these investments are appropriate, and DOT is on the right track in implementing the 2002 Act.

- In addition, several billions of dollars of investments in new oil pipeline infrastructure are underway or planned in the near term. Certainty in the safety requirements this infrastructure must meet is very important for these investments.
- The Administration, the jurisdictional committees of the House and Senate, the industry and the pipeline advocates are in virtual agreement on the core provisions of a compromise reauthorization bill that could be passed in 2006. Passage of a bill before final congressional adjournment is our shared goal.
- If this Congress passes a reauthorization bill, the protections provided by this compromise will be available now. If this Congress fails to pass a bill, a subsequent Congress must start over to adopt new legislation approving the needed authority. That could take months or years. Congress can act now and should act now.

We urge you to act promptly to reconcile any differences between the Senate bill, S. 3961, and the bills approved by the House Committees and send a compromise bill to the President this year.

The Role of Pipelines in Petroleum Supply

In discussing pipeline safety legislation, it is useful to remind the Committee of the role oil pipelines play in energy supply. An understanding of this role leads to appreciation of the need for effective and workable policies that provide certainty so this key part of the petroleum distribution system operates efficiently and safely.

About 40 percent of the total U.S. energy supply comes from petroleum, but the transportation sector depends on petroleum for 97 percent of its energy. Two-thirds of domestic crude oil and refined products transportation is provided by pipeline. Pipelines do this safely and efficiently. The cost to deliver a gallon of petroleum by pipeline is very low, typically 2-3 cents per gallon. Transportation – airlines, automobiles, trucks, barges and ships -- could not function without pipelines to deliver crude oil to refineries and refinery output of petroleum fuels to consumers in various parts of the country. The national oil pipeline system is a bargain for consumers and an absolutely essential part of the US economy.

Oil pipelines are common carriers whose rates are regulated by the Federal Energy Regulatory Commission. Oil pipeline income is driven by the volume delivered and does not depend on the price of the products transported. Oil pipeline companies do not profit from high oil prices. In fact, high oil prices have a negative impact on oil pipeline income by raising power costs and reducing demand for petroleum.

Progress in Pipeline Safety

Oil pipeline operators have been subject to the DOT's pipeline integrity management regulations since March 2001, before enactment of the 2002 Act. DOT's inspections of operators' plans show that integrity testing will eventually cover approximately 82 percent of the nation's oil pipeline infrastructure. The oil pipeline industry is well past the halfway point in the implementation of integrity management. DOT has audited each of these operators under these regulations at least two times – an initial “quick hit” audit and one subsequent full audit. Many are involved in a third audit cycle. Operators are finding and repairing conditions in need of repair and less serious conditions discovered in the course of investigating defects. Operators are fixing what they find, often going beyond the requirements of the regulations.

Improved spill record

These inspections and repairs have improved the oil pipeline spill record dramatically in the last five years, as the exhibits show. The data for these exhibits comes from a voluntary industry program that since 1999 has collected extensive data on oil pipeline performance. These figures represent line pipe releases, which are those that occur outside the company's facilities and are the releases most likely to impact the public and the environment. Line pipe is rightly the primary focus of DOT's program, so the improvement in our record is direct evidence of the wisdom of the DOT approach.

The trend in oil pipeline incidents is down for each cause category. The number of total releases dropped 51 percent, releases due to corrosion dropped 67 percent, and releases due to operator error dropped by 63 percent. Finally, releases from third party damage from excavation dropped 37 percent.

This safety improvement record only covers half the 7-year baseline assessment period for oil pipelines. We expect the record to show continued improvement as we complete the first full cycle and move through subsequent mandatory 5-year reassessment intervals.

The federal pipeline safety program is working. Congress needs to pass a reauthorization bill that endorses and, where appropriate, strengthens this excellent program.

Legislation

The legislative proposals – the Administration’s H.R. 5678, the House versions of H.R. 5782 and the Senate’s S. 3961 -- all assume continuation of the current DOT program and seek to make it better. I would like to highlight the provisions of these proposals that we believe are the most significant and deserve the most attention by the Committee. My testimony will also discuss improvements we recommend for certain of the provisions. While none of these bills is perfect from our perspective, the Committee should understand that we see nothing that would cause AOPL and API to oppose enactment of compromise pipeline safety reauthorization legislation based on these bills. Enactment of the legislation is more important than any concerns we have with individual provisions.

Underground Damage Prevention

Pipeline releases caused by excavation damage are the most traumatic, the largest, and are the most likely to threaten the public and the environment. At the center of H.R. 5678, H.R. 5782 and S. 3961 are similar provisions that will strengthen the impact of state laws designed to prevent

underground damage. Incentives are provided to states that adopt strong damage prevention laws and programs. To qualify for these incentives a state must also be adequately enforcing its damage prevention laws. Improvement in enforcement of state damage prevention laws would make real improvement in pipeline safety.

In addition, these bills all make it a federal civil violation to ignore state underground damage prevention laws. We believe this expression of the seriousness the federal government attaches to damage prevention enforcement is one of the most important safety advances proposed in these or any recent pipeline safety bills.

Common Ground Alliance

As noted at the beginning of my testimony, I serve as the Common Ground Alliance Board member for the oil pipeline industry. The CGA is one of the best things that has happened in pipeline safety in many years. CGA provides a forum to work underground damage prevention issues that simply doesn't exist anywhere else. CGA brings solutions to the table instead of problems. One of CGA's current roles is to lead the public awareness campaign to promote use of the nationwide, toll-free 811 telephone number for one-call notification that was required by the 2002

Act. Section 17 of S. 3961 should specifically authorize funds to support the 811 campaign.

Low-Stress Pipelines

Earlier this year there was a significant leak from a crude oil pipeline on the North Slope of Alaska that was under DOT's jurisdiction, but was operating at less than 20% of specified minimum yield strength – low-stress. Crude oil from this release covered an approximately two-acre area. Based on API's Pipeline Performance Tracking System, our industry's internal data library on oil pipeline spills, this particular leak was a statistical anomaly in its size and is not at all typical of releases from low stress pipelines. Nevertheless, the leak shows that anomalies do occur and must be considered in managing the risks pipelines present. That pipeline was regulated by the Alaska Department of Environmental Conservation, but was not covered by the DOT regulations then in effect because it was operating at low stress, did not cross a navigable waterway, was in a rural area and did not transport highly volatile liquids.

DOT has accelerated a rulemaking process that was underway before the leak occurred to address the regulation of low-stress pipelines. In the House, one of the pipeline safety reauthorization bills directly addresses the regulation of low stress pipelines other than gathering lines. AOPL and API

worked with the House Energy and Commerce Committee and are supporting a provision in that Committee's version of H.R. 5782 that would subject the pipeline on the North Slope that leaked and similar pipelines to the same DOT regulation that currently covers high-stress pipelines. Section 13 of S. 3961 is similar to this House provision. We continue to support the House Energy and Commerce Committee low-stress provision and urge this Committee to adopt the same language so that the treatment of low stress pipelines will be the same in each bill.

Safety Orders

Sec. 6 of S. 3691 modifies DOT's current authority to issue mandatory orders to pipeline operators. Title 49 section 60117(l) was added by the Pipeline Safety Improvement Act of 2002 to allow DOT to issue a "safety order" to an individual operator in situations that appear to require action, but do not rise to the level of danger implied in a "hazardous facility" designation under section 60112, the principal authority available to DOT to order actions by an operator. The intent in 2002, as we understand it, was to provide DOT with an enforcement tool with a lower threshold that would not require DOT to first declare that an operator's facility "is or would be hazardous" before actions would be required of the operator that could be documented in the public record. Unfortunately, the existing section

60117(l) does not provide for notice or an opportunity for a hearing before an order would be issued. This existing provision is seriously lacking in due process protection for pipeline operators who might be subject to such an order.

The Administration's bill, the House Energy and Commerce bill and Sec. 6 of S. 3961 all amend section 60117(l) to add a welcome notice requirement and opportunity for a hearing at DOT before any order could be issued. Ensuring a modicum of due process addresses a significant omission in the 2002 Act. However, Sec. 6 goes on, in effect, to eliminate the due process benefit by practically abolishing any threshold or burden of proof for DOT in triggering a safety order. The Secretary of Transportation may order an operator to make possibly extensive expenditures on all or a portion of the operator's system to address "any condition that poses a risk" based on any "factors the Secretary considers appropriate". Under these provisions an operator could be virtually powerless to contest effectively any DOT requirement to make what the operator believes to be unnecessary expenditures of scarce resources to address questionable risks.

Notwithstanding these concerns, we recognize that some version of Sec. 6 is likely to be included in any final pipeline safety reauthorization bill. Therefore we urge the Committee to transform the provision into a problem-

solving tool instead of a provision that assumes a contest among lawyers is always necessary. We suggest the Committee direct that the administrative procedures implementing this order offer the pipeline operator an opportunity to confer informally with DOT before exercising the operator's right to a hearing. We believe informal consultation will produce remedies acceptable to both operator and DOT that will resolve the vast majority of DOT's concerns without the need for a formal hearing. Any action taken by mutual agreement as a result of the consultation could be reduced to writing and made both public and enforceable. We believe this simple modification will save time and legal costs and bring about safety improvements sooner. If the operator and DOT cannot agree on a remedy, the DOT would retain the authority to conduct a formal hearing and issue its order.

Finally, we suggest the Committee to modify Sec. 6 of S. 3961 to focus the authority on pipeline integrity risks and remove pipeline "replacement" as a remedy for this low-threshold order. If DOT is going to take the expensive step of ordering replacement of a pipeline, it should be done under the higher-threshold hazardous facility order authority of title 49 section 60112.

Enforcement Transparency

Sec. 9 of S. 3961 requires DOT to post information on a monthly basis about pipeline enforcement actions taken by the Secretary or the Pipeline and Hazardous Materials Safety Administration. We have no objection to this proposal as long as the normal due process and confidentiality attaching to negotiation and settlement of cases is preserved. The House Energy and Commerce Committee language captures these safeguards and in addition ensures that no information will be disclosed under this provision that would not be disclosed under the Freedom of Information Act. We believe consistency with the Freedom of Information Act should be required in whatever bill passes.

Cost Recovery for Extraordinary Events

Sec. 19 of S. 3691 authorizes DOT to recover DOT's costs of investigating major pipeline safety incidents "from the person or persons responsible for the incident". The amounts collected would not be returned to the Treasury, but would remain available to DOT until expended to cover the cost of investigating and monitoring incidents. We question the wisdom of this provision. DOT should budget for these types of expenses through the normal federal budget process. The additional fees authorized by Sec. 19 would not be subject to congressional control or oversight through the

appropriations process. There would be no effective check on the operation of this authority once this bill passes.

Other Provisions

My comments today have not addressed every provision of every proposal. Most of the provisions I have not discussed we do not oppose or do not directly affect the oil pipeline industry. I would reiterate that the important goal at this point is enactment of the legislation. Passage of compromise legislation is more important than any concerns we have with individual provisions.

With so little time left in the current Congress, we hope the Committee will work with the House to put together (and quickly) a bill that has broad appeal and can pass both Houses. The test for inclusion of a provision should be whether it is acceptable to all the interested parties. We need to move forward by consensus, and we need to move rapidly if a bill is to pass. It would be a shame to have come this far and worked together so well and yet not achieve passage of the bill. The protections for the public that a bill would provide are within reach, particularly in the area of damage prevention and state cooperation. These protections should be made available now. We should not make the public wait for some future Congress to enact these protections.

Closing

In summary, current pipeline safety law is working, and working very well. Improvements can be made, particularly in strengthening underground damage prevention, but fundamental changes are not needed. The legislative proposals before Congress all seek to make improvements in the fundamentally sound DOT pipeline safety program based on the Pipeline Safety Improvement Act of 2002. We need to move promptly to agree on the improvements that can gain broad support and incorporate these improvements in a pipeline safety reauthorization bill that can be enacted this year. The oil pipeline industry stands ready to help in any way we can in the achievement of this worthy goal.

This concludes my remarks, I will be happy to respond to questions.