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**Summary of July 27, 2006 Testimony of Lois N. Epstein, P.E.
Before the Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
U.S. House of Representatives**

**Hearing on the Discussion Draft on Pipeline Safety Improvement Act
Reauthorization and on H.R. 5782**

The Discussion Draft

Cook Inletkeeper and the Pipeline Safety Trust are particularly supportive of the provisions in the Discussion Draft addressing Technical Assistance Grants, Enforcement and Enforcement Transparency, and Low-Stress Pipeline Regulation. The Technical Assistance Grants provision is the number one priority of the safety and environmental protection communities. On enforcement transparency, Congress needs to direct the Pipeline and Hazardous Materials Safety Administration (PHMSA) to provide all official documentation to the public from the start of enforcement actions until cases are closed. With respect to low-stress pipeline regulation, the Discussion Draft language gives PHMSA the discretion it needs to develop a technically-sound rule (which H.R. 5782 does not).

H.R. 5782

Cook Inletkeeper and the Pipeline Safety Trust prefer the language in the Discussion Draft to the language in H.R. 5782 on damage prevention and state damage prevention programs, and H.R. 5782 does not contain important provisions covering Technical Assistance Grants and Enforcement and Enforcement Transparency. Both organizations support the one year rulemaking deadline for distribution integrity management programs and the Section 4 language on reducing the risks associated with human factors.

Both Cook Inletkeeper and the Pipeline Safety Trust support a four-year reauthorization period.



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Before the Subcommittee on Energy and Air Quality

Committee on Energy and Commerce

U.S. House of Representatives

**Hearing on the Discussion Draft on Pipeline Safety
Improvement Act Reauthorization and on H.R. 5782**

July 27, 2006

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Good morning. My name is Lois Epstein and I am an Alaska- and Maryland-licensed engineer and an oil and gas industry specialist with Cook Inletkeeper in Anchorage, Alaska. Cook Inletkeeper is a nonprofit, membership organization dedicated to protecting Alaska's 47,000 square mile Cook Inlet watershed, and a member of the Waterkeeper Alliance of 150+ organizations headed by Bobby Kennedy, Jr. My background in pipeline safety includes membership since 1995 on the U.S. Department of Transportation's Technical Hazardous Liquid Pipeline Safety Standards Committee which oversees the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) oil pipeline activities and rule development, testifying before Congress in 1999, 2002, 2004, and 2006 on pipeline safety, and researching and analyzing the performance of Cook Inlet's 1000+ miles of pipeline infrastructure by pipeline operator and type.¹ I have worked on environmental and safety issues for over 20 years for two private consultants, the U.S. Environmental Protection Agency, Environmental Defense, and Cook Inletkeeper.

Additionally, I am a part-time consultant for the Pipeline Safety Trust, located in Bellingham, Washington, and my testimony today reflects both Cook Inletkeeper and the Pipeline Safety Trust's views. The Pipeline Safety Trust came into being after the 1999 Olympic Pipe Line tragedy in Bellingham, Washington which left three young people dead, wiped out every living thing in a beautiful salmon stream, and caused millions of dollars of economic disruption to the region. After investigating this tragedy, the U.S. Department of Justice (DOJ) recognized the need for an independent organization which would provide informed comment and advice to both pipeline companies and government regulators and would provide the public with an independent clearinghouse of pipeline safety information. The federal trial court agreed with DOJ's recommendation and awarded the Pipeline Safety Trust \$4 million that was used as an initial endowment for the long-term continuation of the Trust's mission.

For more details on many of the issues discussed below, please see my U.S. House of Representatives testimony on March 16, 2006 before the Highway, Transit, and Pipelines Subcommittee of the Committee on Transportation and Infrastructure and on April 27, 2006 before the Subcommittee on Energy and Air Quality of the Committee on Energy and Commerce.

¹ See *Lurking Below: Oil and Gas Pipeline Problems in the Cook Inlet Watershed*, 28 pp. plus appendices, 2002, and follow-up reports in 2003 and 2005. www.inletkeeper.org/pipelines.htm

The Discussion Draft

The safety and environmental protection constituents I represent commend the committee staff from both parties for an excellent Discussion Draft which should – with a minor change – proceed toward swift passage at the committee level and in the U.S. House of Representatives. The organizations I represent are particularly supportive of the provisions in the Discussion Draft addressing Technical Assistance Grants, Enforcement and Enforcement Transparency, and Low-Stress Pipeline Regulation. I first will discuss these provisions, then will cover other provisions of the Discussion Draft, and last will address H.R. 5782 – the bill marked-up on July 19 in the Committee on Transportation and Infrastructure of the U.S. House of Representatives.

Technical Assistance Grants. Section 2(i) of the Discussion Draft reauthorizes a provision of the Pipeline Safety Improvement Act of 2002 which has not been implemented to date and which is the number one priority of the safety and environmental protection communities. This provision, when implemented, will promote better technical and policy decisions, and will increase communication between diverse members of the public, governmental decision-makers, and members of the pipeline industry. These technical assistance grants will allow members of the public to hire independent experts to explain, analyze, and interpret technical data.

The grants can be used to: 1) analyze operator-reported data on integrity management (e.g., to compare operations of similar pipelines), 2) interpret (for the public) operator studies on right-of-way selection and operational decisions, 3) assist community organizations and local governments to comment on regulations or industry standards in areas where they wouldn't otherwise have the resources to do so, and 4) provide effective public input to government and industry in ways not now foreseeable. Examples of public organizations that could benefit from such grants include the Washington City and County Pipeline Safety Consortium and the Kentucky Pipeline Safety Advisory Committee, which each formed after major pipeline failures and include a broad spectrum of stakeholders interested in ways to avoid additional pipeline accidents in their states. Note that the 2002 statute requires that these grants not be used for lobbying or in direct support of litigation.

The language of Section 2(i) of the Discussion Draft ensures that there will be at least three demonstration grants not exceeding \$25,000 “for the purpose of demonstrating and evaluating the

utility of grants under this section” and ensures broad dissemination of the grant’s technical findings. Both organizations I represent are confident that there will be widespread support for continuing these grants, which is why these organizations are not concerned that there likely will be only three demonstration grants with a maximum value of \$25,000 – as compared to the \$50,000 allowed in the 2002 statute and an unspecified number of grants – during this reauthorization period.

Enforcement and Enforcement Transparency. Both of the organizations I represent support the provisions in the Discussion Draft granting PHMSA additional enforcement authorities – Section 2(e) covering Safety Orders and Section 2(f) covering Integrity Program Enforcement.

The Enforcement Transparency provision, Section 2(j) of the Discussion Draft, is a strong step forward. To date, PHMSA has not provided timely information to the public, state and local government, or industry on its enforcement activities. To ensure greater trust in this nation’s pipeline safety programs, it is important for stakeholders to be aware of the enforcement activities taking place by having the federal government post the enforcement documents it issues (e.g., orders and letters) and any applicable industry responses to those documents. Enforcement transparency begins when enforcement actions are first proposed, continues with regular updates for each stage of the process as developments occur, and ends when cases are closed. Our organizations ask that the subcommittee make the following minor wording change (or equivalent) to Section 2(j)(1)(a) of the Discussion Draft to make it clear the intent of this section:

(a) IN GENERAL.—Not later than 12 months after the date of enactment of this section, the Secretary shall begin to provide a monthly summary to the public of all gas and hazardous liquid pipeline enforcement actions taken by the Secretary or the Pipeline and Hazardous Materials Safety Administration, **from the time enforcement actions are proposed until enforcement actions are finalized.** Each summary shall include information on the operator involved in the enforcement activity, the type of violation that necessitated the enforcement activity, the penalty or penalties proposed, **any changes in status since the previous summary,** the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate.

Low-Stress Pipeline Regulation. The organizations I represent support regulating low-stress pipelines to prevent releases to the environment such as this winter's release of approximately 200,000 gallons of crude oil from a BP low-stress transmission pipeline on the North Slope of Alaska. Regulation of low-stress pipelines should be based on the data compiled by PHMSA and others, and regulatory definitions and thresholds should not be set by Congress. Both organizations support the language of Section 2(k) of the Discussion Draft, which gives PHMSA the discretion it needs to develop a technically-sound rule (which H.R. 5782 does not do).

Other Provisions of the Discussion Draft. The organizations I represent support the following provisions of the Discussion Draft:

- One Call Civil Enforcement (Section 2(a)),
- State Damage Prevention Programs (Section 2(b)),
- State Pipeline Safety Grants (Section 2(c)),
- Damage Prevention Technology Development (Section 2(d)),
- Seven Year Reinspection (Section 2(h)), since this section incorporates the findings of the upcoming Comptroller General report into policy-making as our organizations testified previously should be done,
- Cost Reimbursements, covering Design Reviews (Section 2(k)),
- Direct Line Sales (Section 2(l)), and
- The Four-Year Reauthorization period (Section 3).

H.R. 5782

In areas where H.R. 5782 differs from the Discussion Draft, the organizations I represent provide the following comments:

On Section 2 covering damage prevention and state damage prevention programs, based on our contacts with state pipeline safety regulators, both organizations prefer the language in the Discussion Draft to the language in H.R. 5782. Most notably, in section (b) of both draft bills, the Discussion Draft language "*encouraging and promoting* the establishment of a [state] program designed to prevent damage" (emphasis added) is far superior to H.R. 5782's language, i.e., the state "*has agreed to take*

actions toward establishing a program designed to prevent damage” (emphasis added), because the former allow allows federal funding to continue prior to passage of state legislation.

On Section 3 covering the distribution integrity management program rulemaking issues, both organizations support the one year rulemaking deadline and accept the language contained in Section 2(e) on standards for Distribution Integrity Management Programs.

On Section 4 covering pipeline control management, both organizations support the Section 4(a) language requiring standards to reduce the risks associated with human factors, including fatigue.

On Section 5 covering low-stress pipelines, both organizations believe the language contained in H.R. 5782 unnecessarily and inappropriately limits PHMSA’s technical discretion in low-stress pipeline rulemaking. This language limits regulation of currently-unregulated low-stress pipelines to certain locations (despite the need for at least corrosion prevention for all currently-unregulated low-stress pipelines) and sets the minimum diameter for PHMSA-regulated low-stress pipelines. Such language intrudes upon PHMSA’s ability to regulate pipelines based on technical data. As discussed above, the language in the Discussion Draft on low-stress pipelines provides PHMSA with needed discretion for its regulatory decisions.

On Section 6 covering appropriations, as noted above, both organizations support a four-year reauthorization period.

On Section 7 covering standards to implement National Transportation Safety Board (NTSB) recommendations, both organizations support inclusion of the three mandates to PHMSA to develop new regulatory standards (NTSB recommendations P-05-1, 2, and 3). In addition, both organizations support – and have been working to ensure that – PHMSA implements NTSB recommendation P-05-5 which would require “computer-based leak detection systems on all lines unless engineering analysis determines that such a system is not necessary.” This important recommendation should not be ignored by Congress and PHMSA.

Last, disappointingly, H.R. 5782 does not address Technical Assistance Grants and Enforcement and Enforcement Transparency, which are high priorities for safety and environmental protection organizations.

Thank you very much for your interest in pipeline safety and environmental protection. Please feel free to contact me or Carl Weimer of the Pipeline Safety Trust at any time with your questions or comments.