

Statement of Tim Felt

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House Committee on Energy and Commerce

On Reauthorization of the Pipeline Safety Program

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Mr. Chairman, Members of the Subcommittee, my name is Tim Felt. I am President and CEO of Explorer Pipeline, 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 board member representing the oil pipeline industry's interests in the Common Ground Alliance, a voluntary, private sector organization composed of the key stakeholders in 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.

As the Subcommittee 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:

- 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 that are required to fully comply with the law and in many cases to exceed the law's requirements. The oil pipeline industry plans 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 to send a clear signal that these investments are appropriate and DOT is on the right track in implementing the 2002 Act.

- There are three principal legislative proposals to discuss, and, the prospects for a single, widely-supported bill are excellent. Earlier this year, the Bush Administration transmitted proposed reauthorization legislation, introduced as HR 5678. Last week the Transportation and Infrastructure Committee unanimously reported HR 5782, a bill that our industry can wholeheartedly support. HR 5782 has been re-referred to the Energy and Commerce Committee, which last week released its own discussion draft for comment. These proposals have a number of elements in common and address, for the most part, the same issues. The parties with an interest in pipeline safety and pipeline infrastructure ought to be able to work together to achieve a compromise that has very broad support. Our goal of passage of legislation this year is within reach.

My testimony will discuss the provisions of these various proposals that we think need the most focus in working towards this compromise. We urge the Energy and Commerce Committee to act promptly to mark up HR 5782, reconcile any differences with the Transportation and Infrastructure Committee's version and move to passage by the full House.

## The Role of Pipelines in Petroleum Supply

As we begin discussion of pipeline safety legislation, it is useful to remind the Subcommittee 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 to provide the certainty that this key part of the petroleum distribution system can carry out its role efficiently and safely.

About 40 percent of the total U.S. energy supply comes from petroleum, but the transportation sector depends on petroleum for 96 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 transport a gallon of petroleum by pipeline is very low, typically 2-3 cents per gallon. Transportation in the US would quickly come to a halt without pipelines to deliver crude oil to refineries and petroleum fuels to consumers in various parts of the country.

Oil pipelines are common carriers whose rates are controlled by the Federal Energy Regulatory Commission. Oil pipeline income is driven only by the volume transported and does not depend on the price of the products

transported. 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 past the halfway point in the implementation of integrity management. Large oil pipeline operators (greater than 500 miles of pipeline) completed the required 50 percent of their baseline testing of the highest risk segments prior to the September 30, 2004 deadline set by the regulations. 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. Although operating under a different deadline, similar progress towards their requirements has been achieved by the small operators.

Operators are repairing conditions in need of repair and less serious conditions that are found in the course of investigating defects. Operators are fixing what they find, often going beyond the requirements of the law.

### Improved spill record

As a result of this program, the oil pipeline spill record has improved 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.

The trend 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.

The safety improvement has been dramatic even though the data only covers half the 7-year baseline assessment period for oil pipelines. We expect this trend to continue as we complete the first full cycle and begin the reassessment intervals. This provides a clear indication that the federal pipeline safety program is working.

This background underscores the importance of using this reauthorization cycle to endorse and, where appropriate, strengthen DOT's current pipeline safety program.

### Legislation

The legislative proposals under consideration in the House – HR 5678, HR 5782 and the Energy and Commerce discussion draft – all assume continuation of this good 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 Subcommittee.

### 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 HR 5678, HR 5782 and the discussion draft are similar provisions that will strengthen enforcement of state laws designed to prevent underground damage, and all include a comprehensive list of the elements, including effective enforcement, that characterize successful state underground damage prevention programs. These elements were developed with the assistance of the Common Ground Alliance. We strongly support these provisions and urge the committees to build their final legislative product around underground damage prevention.

HR 5678, HR 5782 and the discussion draft all make it a federal crime to ignore state underground damage prevention laws. We believe this expression of the seriousness the federal government attaches to damage prevention is one of the most important safety advances proposed in these bills. HR 5782 structures this authority to encourage states to become effective in enforcing their damage prevention laws. Effective state enforcement of these laws is the most efficient approach to damage prevention and ought to be the goal of federal policy. We urge the Subcommittee to give serious consideration to directing DOT to forgo

federal action where DOT determines state laws are being adequately enforced.

There are three distinct steps in damage prevention: notification, prompt and accurate marking, and careful digging with due regard for the markings. HR 5782 and the discussion draft both provide for a balanced federal enforcement impact on the damage prevention process in the sense that both create, with slightly different drafting solutions, a federal cause of action against an operator who fails to respond to a location request or fails to accurately mark the location of a pipeline as well as against an excavator who fails to notify the one-call system or disregards location information or markings. We support this balance.

### 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. Industry stakeholders support the CGA financially and in return receive value that couldn't be purchased. CGA provides a forum to work underground damage

prevention issues that simply doesn't exist anywhere else. DOT and other federal agencies with an interest in the underground infrastructure receive value as well, because 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. We believe the legislation you are considering should reauthorize section 6105 of title 49, which authorizes funds that could be used to support CGA and its 811 campaign.

### Low Stress Pipelines

Earlier this year there was a significant leak from a BP Alaska crude oil pipeline on the North Slope operating at or 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 leak is a statistical anomaly in its size and is not at all typical of releases from low stress pipelines. Nevertheless, this 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 at the time of the accident but was exempt from DOT oversight 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.

HR 5782 and the discussion draft both direct DOT to develop regulations to address low stress pipelines by a date certain. We support these provisions. Each allows DOT the flexibility to craft regulation that addresses risks appropriately. Pipelines operated at low stress are inherently less risky relative to the high stress transmission lines that are the proper principal focus of DOT's pipeline safety program. We would recommend that DOT's regulation of low stress pipelines

- apply to low stress pipelines carrying high volume, as in the case of the line on the North Slope that leaked,
- follow the DOT's consistent risk-based policy of focusing an appropriate level of protection on areas where the consequences of a spill are high,
- choose measures of protection that address the actual risks presented and
- take care to balance costs and benefits.

We have provided DOT with an outline describing a structure for regulating low stress pipelines. DOT can put low stress pipeline regulations in place using elements its successful integrity management regulations, and has begun the administrative process to do this. Existing legislative authority is adequate, but the setting of a date for completion of the process in legislation will ensure all interested parties that DOT will act in a timely manner.

### Safety Orders

The Subcommittee draft contains a provision similar to one in the Administration's bill, HR 5678, that modifies DOT's current authority to issue mandatory orders to pipeline operators. Subsection (l) was added to section 60117 of title 49 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.

The discussion draft and HR 5678 both add to section 60117(l) 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, both provisions go 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".

We appreciate DOT's desire to develop an enforcement tool to document and address situations where DOT and the operator can identify conditions that are not yet severe but may become so. However, the proposal in HR 5678 and the discussion draft goes too far in the direction of permitting the possibility of arbitrary action against an individual operator who has violated no DOT regulation. Under these provisions an operator would 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.

We would like to work with the Subcommittee to develop a provision that provides DOT what it needs in terms of documentation of its interactions with operators about needed safety improvements, but which contains the proper protections to ensure that any actions ordered in fact are justified, prudent and represent real safety improvements. We would also want to be sure that such orders to individual operators do not become a substitute for appropriately crafted regulations that apply to all operators.

### Enforcement Transparency

Section 2(j) of the discussion draft requires DOT to post on a website monthly information about pipeline enforcement actions taken by the Secretary or the Pipeline and Hazardous Materials Safety Administration. Enforcement information is made publicly available by DOT for other modes regulated by the Department. 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.

### Other Provisions

My comments today have not addressed every provision of every proposal. Most of the provisions I have not discussed appear acceptable or do not directly affect the oil pipeline industry. We will continue to analyze the legislation and make our views available to those working on the legislation. The oil pipeline industry wants to work constructively with Congress, DOT and interested parties to achieve a compromise among the various legislative approaches that are offered that can achieve the broadest possible support. Our goal should be enactment of a bill this year that will reauthorize the pipeline safety program for several years – we suggest at least 5 years -- to guarantee as much certainty as possible to DOT, the affected industry and the public regarding the rules governing the safety oversight of our national pipeline infrastructure. That goal is within our reach if we all can continue to work together.

### 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 the House 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.