



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20348

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MAR 26 1979

The Honorable Howard W. Cannon
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate

*See 06200
Comments on*

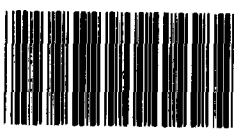
Dear Mr. Chairman:

By letter of February 23, 1979, you requested that we report on S.411, 96th Congress, which, if enacted, would be cited as the "Pipeline Safety Act of 1979." In general, we believe S.411 is a good bill. We approve of its provisions to strengthen and clarify the Department of Transportation's present authority in the safety regulation of natural gas pipeline transportation and to provide major new and comprehensive authority in the safety regulation of hazardous liquid pipeline transportation.

The patterning of Title II after the Natural Gas Pipeline Safety Act, with the amendments in Title I, is a logical step in establishing a comprehensive and effective Federal pipeline safety program. The provisions that we consider particularly important and that we believe should be incorporated into any resulting legislation are listed in Addendum I. Addendum II lists a few additional changes to these titles that you may wish to consider.

Although we are in basic agreement with S.411 as it relates to pipeline transportation, we recommend that the Committee add a new Title III which could be entitled the "Large Hazardous Commodities Storage Facility Safety Act of 1979". We believe that large storage facilities should be covered in a separate title because of the risks to the public associated with having large quantities of hazardous materials in one place. Because these risks are much greater than those posed by pipelines, large storage facilities should be required to meet a higher standard of liability for damages and financial responsibility for payment of claims related to these damages.

We believe that the Federal government should regulate every facility, whether or not connected to pipelines, which stores large quantities of hazardous commodities at one location, in or affecting interstate commerce. There are large facilities storing hazardous liquids (as defined in Title II)



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which are not associated with pipelines. For instance, the Petrolane LPG import terminal in Los Angeles, which has a storage capacity of 600,000 barrels, is not connected to a pipeline. The LPG is transported from the terminal in trucks and railroad tank cars. The bulk storage of other hazardous commodities, such as chlorine, hydrogen cyanide, and vinyl chloride, would also not be covered by S.411 because these hazardous commodities are not transported by pipeline.

Our proposed Title III, in its definition of hazardous commodity, would extend the Secretary's regulatory authority to include large storage facilities in or affecting interstate or foreign commerce for any liquid, solid, or compressed gas for any hazardous commodity regulated under the Hazardous Materials Transportation Act of 1975. The Secretary would be required to regulate certain commodities (listed in the definitions below), but would be given discretion to include other commodities in his regulations.

Title III should prohibit the siting of any new large hazardous commodity storage facility, or the expansion of an existing large storage facility, in or near a densely populated area. The Secretary of Transportation should also be authorized to require any existing, large hazardous commodity storage facility to incorporate any standards applicable to new facilities where he determines that former standards are not adequate.

Coverage should be limited to large storage facilities in order to exclude from regulation the use of small quantities by businesses and other consumers, such as residential and farm LPG users. With these small uses excluded, the Secretary should not be authorized to waive compliance with any part of Title III. Federal, state, and local storage facilities should be required by law to maintain the same safety standards as private facilities.

The structure of Title III should be modeled on Titles I and II. Many of the sections in Titles I and II (such as the promulgation of regulations, the state certification and agreement program, compliance, and penalties) should be included in Title III. The following additional provisions should be incorporated:

1. Remote siting for storage facilities should be required.

The bill should prohibit the siting of any new, large hazardous commodity storage facility or the expansion, including additions to storage capacity or the expanded use, of an existing, large storage facility in or near densely populated areas. The Secretary should prescribe the definition of 'near' and 'densely populated area'.

2. The "preconstruction approval" subsection in titles I and II should be included, except that it should read, "the Secretary shall require that any construction associated with a new or existing large hazardous commodity storage facility not begin until he approves that construction..."

In the preconstruction approval process, we recommend that:

- compulsory adjudicatory hearings be held in the locality concerned;
- only one regulatory agency consider all safety aspects of a large hazardous commodity storage facility, including transportation, storage, and processing; and
- joint hearings be held where more than one agency has responsibility.

Public participation has proven to be a highly effective means of raising important safety problems and focusing high-level government attention on them. The Secretary should announce in the Federal Register and in newspapers in the locality involved that the Department has held discussions on a possible large hazardous commodity storage facility site within 10 days after the first time such a discussion occurs.

3. The Secretary should evaluate each existing, large hazardous commodity storage facility. The Secretary should be authorized to require such a facility to incorporate any design, construction, operations, or maintenance standards applicable to new facilities where he determines that former standards are not adequate.

We have shown in our Liquefied Energy Gases Safety Report (EMD-78-28) that dikes built to existing standards are not capable of containing a large, fast spill from a storage tank. The consequences of such a spill in an urban area could be catastrophic.

4. The Secretary should require that reports of any storage facility occurrence (see definition of occurrence) be available to the public in Washington, D.C. and at an appropriate office near the site of the storage facility occurrence.
5. The bill should require that the owners and operators of a large hazardous commodity storage facility, including affiliates, be strictly liable without regard to fault for damages, including cleanup costs, sustained by any person or entity, public or private, as a result of an explosion, fire, or discharge. If a facility is so dangerous that the owners are unwilling to assume this liability, then it is too dangerous for the public. Proposed definitions of these terms are listed below.
6. Congress should establish a minimum dollar level of financial responsibility that both the owners and operators of large hazardous commodity storage facilities should separately maintain. We believe the \$100,000,000 required in H.R. 11586 of the 95th Congress was too small. The civil penalty for noncompliance should be substantial.
7. The following definitions should be used for Title III:

"Hazardous commodities", for the purpose of this Act,

includes LNG, LPG, ethane, anhydrous ammonia, chlorine, and such other hazardous materials designated pursuant to section 104 of the Hazardous Materials Transportation Act of 1975, as the Secretary, in his discretion, determines necessary to protect the public.

"Hazardous commodity storage facility" means any storage tank, cavern, equipment, or building on a large storage facility site used in or affecting interstate or foreign commerce of hazardous commodities.

"Large" means storage capacity of at least 10,000 barrels or 56,000 cubic feet, or a through-put capacity of at least 25,000 barrels per month.

"Occurrence" means any attempt by unauthorized persons to enter company premises, any vital machinery break-down, any overpressuring of storage tanks or caverns, or any unintended escape of material, such as leaks or venting.

"Owner" means any person holding title to, or, in the absence of title, any other indicia of ownership of a large hazardous commodity storage facility, but does not include a person who, without participating in the management or operation of such facility, holds indicia of ownership primarily to protect his security interest in the facility.

"Operator" means any person, except the owner, responsible for the operation of a large hazardous commodity storage facility by agreement with the owner.

"Affiliate" includes, with respect to an owner or operator of a large hazardous commodity storage facility--

- (1) any subsidiary corporations and successive subsidiary corporations of the owner or operator;

- (2) any parent corporation and successive parent corporations of the owner or operator; and
- (3) any parent consortium or similar combination and successive parent consortia or similar combinations of the owner or operator.

If the Committee does not adopt our suggested Title III, we believe the provisions should be incorporated into Titles I and II.

If I can be of any further service during the Committee's consideration of this legislation, please let me know.

Sincerely yours,

(SIGNED) ELMER B. STANTS

Comptroller General
of the United States

Enclosures - 2

ADDENDUM I

Provisions of S.411 that we recommend be incorporated into any resulting legislation

1. Clarification of existing authority
 - a. The insertion of "(including liquefied natural gas)" on page 2, lines 21-23.
 - b. The insertion of "intended for use" in the definition of "pipeline facility" on page 3, line 3 and on page 18, line 11.
 - c. The insertion of "by order" (page 5, line 9) and "and under the same conditions" (page 5, line 19) to clarify the right of judicial review and the authority of certified state agencies.
 - d. The insertion of "(whether or not sustained by a person subject to the safety jurisdiction of the State agency)" (page 9, lines 5-7 and page 24, lines 12-13).
 - e. The "Specific Relief" authority on page 12, lines 14-18 and on page 31, lines 6-10.
 - f. The judicial review of standards on page 13, lines 19-23.
2. Authority for the Secretary to require preconstruction approval for any construction associated with a new or existing pipeline facility (page 4, lines 10-19 and page 20, lines 5-14).
3. Abolition of the Technical Pipeline Safety Standards Committee (page 8, lines 1-3).
4. Extension of coverage of the damage prevention programs to demolition, tunneling, and construction activities (page 8, lines 14-16 and page 23, lines 17-20).

5. Increased enforcement powers regarding:
 - a. the collection of smaller penalties (up to \$1,500) directly through Federal Magistrates (page 11, lines 6-13 and page 29, line 23 through page 30, line 5); and
 - b. the introduction of criminal penalties for willful violations of the Act or regulations or orders issued thereunder or for the willful injury or destruction (or attempted injury or destruction) of any interstate transmission or pipeline facility (page 11, line 14 through page 12, line 2 and page 30, lines 6-18).
6. Authority for the Secretary to issue compliance orders (page 12, lines 3-8 and page 30, lines 19-24).
7. Authority for the Secretary to order hazardous pipeline facilities to take corrective action (page 13, lines 3-18 and page 31, line 19 through page 32, line 9).
8. Giving the Secretary subpoena power and the authority to require the production of relevant property (e.g. pieces of pipeline involved in an incident) (page 14, lines 2-8 and page 33, lines 11-17).
9. Eliminating the requirements imposed by the Mineral Leasing Act of 1920, as amended (page 17, lines 1-3).

In addition, Title II gives the Department of Transportation new or clarified authority for hazardous liquid pipelines. We believe the following authority should be provided in any resulting legislation:

1. The authority to regulate the safety of all hazardous liquids by pipeline in or affecting interstate or foreign commerce (page 17, lines 8-14).
2. The safety regulation of all hazardous liquid pipeline storage facilities in or affecting interstate or foreign commerce. Our proposed Title III would authorize further regulation of "large" storage facilities (page 18, lines 6-8).

3. Establishment of a state certifications and agreements program for hazardous liquids pipelines (page 22, line 17 through page 27, line 2).
4. Civil penalty authority for the violation of any provision of Title II or any regulation or order issued thereunder (page 28, line 19 to page 29, line 10).

ADDENDUM II

Recommended changes and clarifications for Titles I and II

1. Sec. 104 (page 2, line 21 through page 3, line 10).

Consider striking the current exemption in the Natural Gas Pipeline Safety Act of 1968, as amended (Sec. 2(3)) regarding rural gas gathering lines. Under the exemption the Secretary has no authority to survey potential hazards of these lines to determine whether regulation is needed.

2. Sec. 107(a)(2) (page 8, lines 14-16) and Sec. 205(a)(4) (page 23, lines 17-20).

As part of the state certification program, the state agency must certify that it encourages and promotes programs designed to prevent damage to pipeline facilities. Titles I and II should require the Secretary to specify minimum standards for these programs. He should define the characteristics of an "acceptable" program, spell out the requirements for "encouraging and promoting" these programs, and set time limits for establishing them.

3. Sec. 107(a)(5) (page 9, lines 1-8) and Sec. 205(a)(5) (page 23, line 21 through page 24, line 24).

We recommend that:

- a. Title II require \$5,000 as the minimum property damage for reporting an accident or incident. Title I uses \$5,000.
- b. Title I require a "summary of the state agency's investigation as to cause and circumstances surrounding such accident or incident." This language is in the Natural Gas Pipeline Safety Act and in Title II:
- c. Title II include "and any other accident which the state agency considers significant." This language is in Title I.

4. Sec. 107(c) (page 9, lines 11-12).

It may not be wise to strike Section 5(f) at this time. Its provisions should perhaps be left in force at least through calendar year 1980, so that the Secretary may continue to require state agencies to meet their obligations under the section's paragraphs (3) and (4). They oblige the state to maintain hiring levels of pipeline inspectors funded through the program, or repay the funds. Unless such obligations were included in the grant agreements with the states, the Secretary may have no authority to enforce the obligations or recover the funds.

5. Sec. 111(a) (page 16, line 21).

Reference should be "a(3)," rather than "a(13)".

6. Sec. 203(2) (page 17, line 22 through page 18, line 5).

The definition of "hazardous liquid" in Title II "includes, but is not limited to, petroleum, petroleum products, and any other liquid that is flammable, corrosive, or toxic." We believe this last category is too broad; it could bring under regulation commodities that are not hazardous. For example, hot salt water is corrosive, but it does not pose a hazard to the public.

7. Sec. 204(g) (page 22, lines 3-16).

Consider including in Sec. 204(g) provisions similar to those contained in proposed Sec. 3(g) (1), (2), and (3) (page 6, line 5 through page 7, line 8).