Attachment B

STATEMENT OF JAMES W. CONRAD, JR., ESQ. FOR THE AMERICAN CHEMISTRY COUNCIL TO THE ADVISORY GROUP ON ORGANIZATIONAL SENTENCING GUIDELINES TO THE UNITED STATES SENTENCING COMMISSION RELATED TO THE REVIEW OF CHAPTER EIGHT OF THE U.S. SENTENCING GUIDELINES NOVEMBER 14, 2002

Good morning, my name is James Conrad, counsel with the American Chemistry Council. On behalf of the Council, I thank you for the opportunity to testify today before the Advisory Group on Organizational Guidelines to the United States Sentencing Commission.

The American Chemistry Council represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make our lives better, healthier and safer. The business of chemistry is a $460 billion-a-year enterprise and a vital part of our nation's economy. It is the nation's #1 exporting sector, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other industry.

The Council submitted written comments to the Advisory Group on May 16 and October 11 of this year. We have explained our views in some detail in these comments, including our responses to some of the specific questions posed by the Advisory Group. I would like to highlight some important principles for you today.

The Advisory Group has initiated the action called for by Congress in Sarbanes-Oxley.

In Section 805(a)(5) of the Sarbanes-Oxley Act of 2002, Congress directed the Commission to ensure that the *Guidelines* "are sufficient to deter and punish criminal misconduct." At least with respect to those elements of the Guidelines establishing the criteria for an effective compliance assurance program, the Advisory Group is already considering this question. Sarbanes-Oxley does not call for a separate or new review: you are simply ahead of schedule.

The *Guidelines* should continue to focus on criminal conduct in the context of criminal sentencing.

The Commission is charged with promulgating "detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes." The courts use the *Guidelines* to sentence those convicted of crimes. The purpose of the *Guidelines,* therefore, is to "further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation." The Commission should not stray from this mission. The *Guidelines* should not be expanded to address general issues of corporate social responsibility or ethics that are not governed by criminal laws or that are not directly relevant to criminal sentencing.

The Council's members strongly believe in ethical behavior and responsible social conduct. However, the Commission is tasked to address criminal conduct, not promulgate a code of ethics. Any suggested

changes to the *Guidelines* must be evaluated in the very serious criminal sentencing context in which the *Guidelines* are used.

The *Guidelines* should not be used to encourage organization to foster "ethical cultures" to ensure compliance with the "intent" of the law as opposed to "technical compliance." Our members certainly support ethical conduct by organizations, and recognize that encouraging organizations to create an "ethics infrastructure" that goes "beyond compliance" with criminal law is a laudable goal. However, that is not the function of the Sentencing Commission. Establishing criminal sentences based on ethical judgments would effectively be creating new federal crimes, a course of action that lies within the jurisdiction of Congress, not the Commission. The focus of the *Guidelines* should remain on systems that assure compliance with legal requirements, not ethics programs that may focus on important questions in a wider domain. This is particularly true given that there is no agreed-upon set of ethical criteria against which organizations can be measured and that can be the basis for setting criminal penalties.

Any changes to the *Guidelines* should be based on objective evidence and a demonstrable need for change.

Any suggested changes to the *Guidelines* should be based on facts, not theory. Thousands of organizations have invested significant resources implementing compliance systems based on the *Guidelines*. Yet, we are unaware of any actual data or other evidence in the public record showing deficiencies in the *Guidelines* that need correcting. On the contrary, as the Commission has noted, the "organizational guidelines have had a tremendous impact on the implementation of compliance and business ethics programs over the past ten years." The Advisory Group should follow the adage: "If it ain't broke, don't fix it." Material changes should only be considered after finding the *Guidelines* are flawed and that the user community is demanding changes.

Some may say that something must be done because of the alleged criminal activities and corporate governance scandals that currently are high-visibility issues. However, the mere existence of alleged illegal or unethical conduct in some organizations does not mean that the *Guidelines* were at fault or that changing the *Guidelines* would have produced a different result. Changes to the *Guidelines* should be based on objective evidence that the *Guidelines* have not established adequate criteria for effective compliance systems, not on general concerns about unethical conduct.

The *Guidelines* must remain flexible, practical and generally applicable to all organizations in all sectors.

The *Guidelines* currently offer the flexibility needed to allow organizations of all sizes and types to implement effective compliance programs. Any proposed changes to the *Guidelines* should take into account the small and medium-sized organizations that are the vast majority of U.S. businesses. This is not a theoretical concern. The Commission's statistics reveal that in FY 2000, some 87% of organizations sentenced under Chapter 8 had fewer than 200 employees, while approximately 65% of all sentenced organizations had fewer than 50. Whatever obstacles small and medium-sized businesses face will not be lessened by increasing the level of detail or complexity in the *Guidelines*. Further, attempting to create unique provisions in the *Guidelines* for small and medium-sized businesses would require the Sentencing Commission to be able to discern which obstacles are unique to such businesses

and to draw arbitrary lines between which businesses would "qualify" for any unique provisions and which would not.

The "best practices" developed by sophisticated companies, consulting firms or academia should not become the model for what all organizations must undertake. While smaller organizations should follow the *Guidelines*, they should not be potentially subject to greater criminal penalties if they cannot implement the "best practices" of large enterprises. Indeed, "raising the bar" might only serve to discourage organizations from implementing effective compliance assurance systems.

The *Guidelines* already provide sufficient guidance on designing, implementing or auditing compliance systems.

Some commenters have suggested that the *Guidelines* should include more detailed guidance on designing, implementing or auditing compliance systems. These suggestions, however well-intentioned, are misplaced. The *Guidelines* should remain generic and applicable to all organizations.

There is no evidence of a "market need" for the Commission to provide detailed implementation guidance. There has been a proliferation of sector-specific, public, private, national and international guidance documents and standards on compliance assurance, many of which we surveyed in our May 16 comments. This vast literature is already available to the user community. Indeed, it is not the function of the Commission to provide such general educational assistance through the *Guidelines*, since the failure of an organization to conform to the *Guidelines* can have direct implications in the criminal sentencing context.

Moreover, if the Commission were inclined to provide more detail on compliance programs, the practical impact of that effort must be carefully weighed. The available specific guidance on compliance programs continues to be refined and tailored to the needs of specific areas of regulation. For example, several Federal agencies have already developed sector-specific guidance or even regulations on compliance management systems. Adding detail to the *Organizational Guidelines* could create conflicts with these other efforts, leading to practical implementation problems.

The Guidelines do not need to provide more detail on "corporate governance."

It is no secret that corporate governance is a significant topic of public interest, and that there are several major legislative and regulatory initiatives that are making significant changes to corporate governance. Not the least of these are the new requirements just created by Congress in the Sarbanes-Oxley Act of 2002 and are being implemented by various regulatory and self-regulatory bodies such as the Securities & Exchange Commission, the New York Stock Exchange and the National Association of Securities Dealers.

Adding specific corporate governance responsibilities in the *Guidelines* at this time could create conflicts with the flood of new requirements already being generated. For example, the *Guidelines* should not provide detail on the responsibilities of boards of directors or equivalent governance bodies in overseeing compliance programs. Not all organizations, particularly smaller ones, have such governance bodies, and the *Guidelines* already embody the principle that compliance programs should be supervised by "high level" personnel. Further, specifying the responsibilities of particular functions

associated with corporate governance (e.g., CEO or CFO), expanding the definitions of "high level personnel," or providing additional comments on what is intended by "specific individual(s) within high-level personnel of the organization" would decrease the flexibility that is currently an outstanding feature of the *Guidelines*. These are all issues that are already topics of considerable federal legislative, regulatory and self-regulatory attention.

To provide one last example, more specificity on whistleblower protection is not necessary. We agree that whistleblowers must be completely protected from acts of retribution. However, the *Guidelines* already clearly state that internal reporting should be without fear of retribution. Further, many statutes already provide specific whistleblower protections. Adding more specific whistleblower provisions in the *Guidelines* might either create conflicts with existing substantive laws or be duplicative, or even create loopholes that might result in less protection.

It is not the function of the Sentencing Commission to create new corporate governance rules. That is properly the province of Congress and the numerous regulatory bodies that have been delegated the authority to promulgate and enforce regulations on this topic. The flurry of legislative and regulatory activity demonstrates that there is not a "gap" that the Commission must fill. As the legal requirements on corporate governance are revised and expanded, organizations that implement compliance assurance systems that conform to the criteria in the *Guidelines* will necessarily have to include those new requirements in their systems. Therefore, without any modification to the Guidelines themselves, any new corporate governance requirements will become elements of an effective compliance assurance system.

Thank you again for the opportunity to speak today. I would be happy to answer any questions you may have, and look forward to participating in this afternoon's sessions.

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March 1, 2004

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Dear Commissioners:

This letter is respectfully submitted in response to the Commission's request for public comment, BAC2210-40/2211-01. In particular, my comments relate to Issues for Comment 11: Hazardous Materials.

I am a partner in the law firm of Ballard Spahr Andrews & Ingersoll, LLP, practicing in the Government Enforcement/White Collar Crime Group and the Environmental Group. I was formerly Chief of the Environmental Crimes Section of the U.S. Department of Justice. Before that, I was an assistant United States attorney and Chief of Major Crimes in the United States Attorney's Office in the Eastern District of Pennsylvania, where I supervised all the environmental crimes prosecutions in the district.

In its annual submission to the Commission dated August 1, 2003, the Justice Department asked the Commission to consider revising the guidelines for offenses involving the illegal transportation of hazardous materials. In essence, the Department argued that the specific offense characteristics of the applicable sentencing guideline, § 2Q1.2, often do not apply to these "hazmat" offenses and therefore the guidelines are too low. Among other things, the Commission's request for comments lists eighteen possible aggravating factors, (A) through (R), that might be incorporated into the guidelines as specific offense characteristics (hereinafter the "proposed S.O.C.'s"). I suggest the following framework to help simplify and clarify the analysis of these issues.

Crimes involving illegal transportation of hazardous materials can be broken into three categories. The first category consists of acts of terrorism, that is, transportation offenses where the actors intend there to be releases of hazardous materials to the environment. The

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second category consists of other, non-terrorist related hazmat offenses that also result in releases to the environment. These releases are usually accidental. Unlike more typical pollution offenses, which often involve the intentional discharge, release or dumping of waste to avoid the costs of proper disposal, hazardous materials regulations generally involve transportation of valuable products. The release and loss of valuable product into the environment is an unintended result of a hazmat offense. The third category consists of hazmat transportation offenses where there are no releases. As explained below, the sentencing guidelines already address the first two categories of offenses.

As for the first category, terrorist acts, the Department's letter of August 1, 2003 highlights the relevance of hazardous material transportation to acts of terrorism. (see, e.g., Justice Department letter dated August 1, 2003, p. 14: "Illegal transportation of hazardous materials has emerged as a significant terrorist vulnerability. . . ."). Certainly, a guideline calculation should be subject to enhancement if a hazmat transportation offense involves a terrorist act. However, § 3A1.4 already provides for an increase in offense level for any offenses involving or intending to promote a federal crime of terrorism. Specifically, it provides for an increase either of 12 levels, or an increase to level 32, whichever results in a higher offense level. Thus, there is no need to modify § 2Q1.2 or Part Q to take into account terrorism since it is already covered in chapter 3, and adding a specific offense characteristic for "a terrorist motive" (item (O) in the proposed S.O.C.'s) appears duplicative of § 3A1.4.

Similarly, with respect to the second category, hazmat offenses resulting in accidental releases, the presence of the releases brings these offenses into the "heartland" of other more typical pollution offenses covered by § 2Q1.2. In particular, the existing specific offense characteristics of § 2Q1.2 already provide a series of cumulative enhancements corresponding to the severity of any releases to the environment. These specific offense characteristics adequately reflect the varying seriousness of offenses that include environmental releases.

Indeed, I am not aware of the Justice Department taking the position that § 2Q1.2 results in sentencing that is in any way inadequate for such environmental crimes. For example, in July 2002, I had the opportunity to testify before a subcommittee of the Senate Committee on the Judiciary on the topic: "Criminal and Civil Enforcement of Environmental Laws: Do We Have All the Tools We Need?" Representatives of the Justice Department, the Environmental Protection Agency and others also testified. While many different "tools" for stronger enforcement were discussed, there was no suggestion that tougher sentences were needed for environmental crimes involving actual releases.

Many of the possible specific offense characteristics listed by the Commission in the Issues for Comment 11 simply repeat ones already included in § 2Q1.2, including the one-time release of hazardous material (§ 2Q1.2(b)(1)(B) – increase of 4 levels), the evacuation of a community (§ 2Q1.2(b)(3) – increase of 4), a substantial expenditure for remediation (id. – increase of 4 levels), and the substantial likelihood of death or serious injury (§ 2Q1.2(b)(2) – increase of 9) (items (D), (G), (K), (I) in the proposed S.O.C.'s).

That leaves the third and final category of hazmat transportation offenses – those that are not related to any environmental release, whether intentional or accidental. This is the only category that arguably is not already addressed under the guidelines, since the enhancements to § 2Q1.2 assume a release or a permit violation. Therefore, the evaluation of the need for additional enhancements and the assessment of what such enhancements might be should be focused on this category. However, the analysis of specific offense characteristics for these non-release cases is especially challenging. In the more typical environmental offenses involving releases, the specific offense characteristics reflect the egregiousness of the offenses based on the actual results caused by the offenses – the repetition and impact of the release or releases of the harmful material into the environment. These impacts are empirically observable and measurable. By contrast, there is no actual harm associated with this third category of hazmat offenses since there are no releases into the environment. Instead, the severity of these offenses arise from the relative risk of harm to the public. The guidelines presently address risk with a departure for offenses that significantly endanger public safety. See § 5K2.14. However, rather than this departure, the Department seeks to add new specific offense characteristics. Accordingly, the specific offense characteristics that might be relevant are ones that serve as surrogates for measuring relative risk to the public. Possible examples of these from the list of proposed S.O.C.'s include the transportation of a hazardous material on a passenger-carrying or other aircraft (item A), the transportation of a hazardous material on any passenger-carrying mode of mass transportation (item B), the concealment of the hazardous material during its transportation (item C), the transportation of radioactive or explosive material (item N), and the failure to properly train transporters (item Q).

The difficulty in assessing these proposals is increased not only by the added difficulty in measuring risk as compared to the impact of actual releases, but also by the absence of a significant body of criminal cases or sentencing experience for hazmat transportation offenses. There are relatively few cases on which to evaluate whether or to what extent current sentencing of hazmat cases is inadequate.

In summary, the analysis of hazardous materials transportation offenses should focus on cases which do not involve an environmental release, because this is the only category that may be outside the "heartland" of environmental crimes cases already adequately addressed by the guidelines. Since the existing specific offense characteristics for cases involving actual environment releases are widely viewed as being adequate, there is no justification for adding new specific offense characteristics that relate to the impact of actual releases. Instead, the justification for any enhanced sentencing would have to be that the current guidelines do not adequately reflect the increased risk to public safety caused by hazmat offenses that do not include environmental releases. Therefore, the only S.O.C.'s relevant to the analysis are those that may reflect increased risk in such cases. Such analysis is made more challenging by the inherent difficulty in basing guidelines calculations on risk, rather than impact, and the small pool of relevant criminal experience on which to draw.

There are certainly hazmat offenses that can cause very signif icant risks to public safety, but the trick is to stri ke a proper balance that avoids painting with too broad a brush.

Respectfully,

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March 1, 2004

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Dear Commissioners:

This letter is sent on behalf of the Association of Oil Pipelines (AOPL). The AOPL writes in response to the Commission's request for comments regarding possible revisions to the guideline treatment for the illegal transportation of hazardous materials.

The AOPL is an unincorporated nonprofit organization started in 1947. AOPL represents 49 common carrier oil pipeline companies. AOPL members carry nearly 80% of the crude oil and refined petroleum products moved by pipeline in the United States. Among other things, the AOPL represents its members on legislative and regulatory matters and in the federal courts.

The Commission has sought comments in response to the August 1, 2003 Department of Justice submission which alleges that the sentencing guideline applicable for hazardous materials, § 2Q1.2 is not adequately suited to illegal transportation of hazardous materials. The Department of Justice suggests two grounds to justify changes to the guidelines: first, that illegal transportation of hazardous material is different from typical pollution offenses covered by § 2Q1.2 and has characteristics not addressed by that guideline; and, second, that the specific offense characteristics set forth in § 2Q1.2 are not characteristic of illegal transportation of hazardous materials. For the reasons set forth below, the AOPL urges the Commission to reject the structure of the Department's approach and offers an alternative approach more closely tailored to the stated need.

The AOPL supports the Department's effort to obtain enhancement of penalties where hazardous materials and/or the hazardous material transportation infrastructure are used to commit (or attempt to commit) acts of terrorism. As described in the attached summary of

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industry security efforts[1], the pipeline industry has entered into close cooperation with federal law enforcement and regulatory agencies to address shared concerns about the integrity and security of the nation's critical private infrastructure. In addition, the AOPL support the Department's effort to obtain enhancement of penalties where violations involve controlled substance manufacturing or trafficking offenses.

As set forth below, there are existing provisions of the Guidelines that address the potential misuse of the nation's hazmat transportation infrastructure as a weapon. To the extent further revision is considered appropriate, there is precedent within the guidelines for a much more straightforward approach to this issue.

To address "one-time, catastrophic occurrences," involving illegal hazardous materials transportation by terrorists, the guidelines already provide for a "victim related enhancement" at § 3A1.4 for crimes which involved or were intended to promote terrorism.

If further revision is thought to be necessary, a direct and simple precedent is found in § 2B1.1(b)(12)(B)(i) which provides for a specific offense characteristic in crimes involving theft and embezzlement if:

> the offense (i) substantially jeopardized the safety and soundness of a financial institution . . .[2]

Using this model to address illegal hazardous material transportation by those with the intent to commit acts of terrorism, or to engage in controlled substance manufacturing or trafficking offenses, the guidelines could add a new specific offense characteristic to § 2Q1.2 as follows:

> (7) If the offense: (i) involved, or was intended to promote a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32; (ii) involved, or was intended to promote a controlled substance manufacturing or trafficking offense, increase by 2 levels, but if the resulting offense level is less than level 14, increase to level 14.

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[1] See Attachment 1, "Security Planning and Preparedness in the Oil Pipeline Industry," API-AOPL Environmental and Safety Initiative, August, 2003, available at: http://www.aopl.org/pubs/reports.html.

[2] United States Sentencing Guidelines, § 2b1.1(b)(12)(B)(i) (January, 2003).

This would provide additional specific offense characteristics that would be consistent with the model utilized in § 2B1.1, and with the language for victim-related adjustments for crimes involving terrorism in § 3A1.4 and for transportation offenses involving drugs in § 2D1.12(a)(12)and(b).

The Department correctly notes that § 2Q1.2 was not originally designed to cover hazardous material transportation violations. However, as the Department also notes, since 1993, hazmat crimes were added to § 2Q1.2.

Thus, illegal transportation of hazardous material *is* covered by § 2Q1.2.[3] Further, almost all of the offense characteristics proposed for comment for illegal transportation of hazardous material are covered by the existing guidelines. Thus, a violation of the legal limits on hazardous material transportation results in a base offense level of 8. If there is a release, a four-level enhancement may apply, and if there is a related evacuation or disruption of public utilities or a significant clean up, then another four-level enhancement would apply. Should the offense result in a substantial likelihood of death or serious bodily injury, a nine-level enhancement would apply.[4] The Department has long noted that these sanctions available under § 2Q1.2 provide serious punishments for environmental violations.

Moreover, the use of criminal enforcement of environmental laws has proceeded step-wise, with criminal enforcement following the gradual clarification of regulatory requirements and as a support and enhancement to the government's other enforcement tools of administrative and civil enforcement.

In that context, it should be considered that hazardous material transportation regulation is in a remarkable state of change. In response to 9/11, new partnerships have developed between the private sector and federal, state and local governments to devise the means to identify the areas of greatest potential risk and develop the strategies most likely to address those risks. To the extent that the Department's proposal seeks to increase penalties as a means of reducing those risks, the effort is premature, as the government itself is still determining what acts (or failures

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[3] United States Sentencing Guidelines, Appendix A (November 2002) Listing Statutory Provisions found at title 49.

[4] Of course other enhancements could apply as well, such as those dealing with the offenders role in the offense in Chapter 3B and for acts of obstruction under 3C.

to act) in the area of hazardous material transportation constitute the greatest potential risk (and which therefore might receive greater sanctions should they be violated).[5]

A recent Congressional Research Service Report for Congress noted that after the terrorist attacks:

> Pipeline operators reviewed procedures, tightened security, rerouted transportation patterns, closely monitored visitors and made capital improvements to harden key facilities. The Association of Oil Pipelines (AOPL) and the American Petroleum Institute (API), working together, provided guidance to member companies on how to develop a recommended pipeline security protocol analogous to an existing protocol on managing pipeline integrity.[6]

Ninety-five percent of AOPL operators had developed new security plans and instituted appropriate security procedures by February 2003. Pipeline operators have joined with the Department Homeland Security to establish a cooperative, industry-directed database to provide real-time threat alerts, cyber alerts and solutions. AOPL members have also worked with the Department of Homeland Security to identify critical facilities that warrant government protection should they be threatened and have responded to requests by the DOT's Office of Pipeline Safety and DHS's Transportation Security Administration to conduct vulnerability assessments. These are only a few of the ways that the AOPL and its members have moved to respond to security threats and to increase government-industry partnerships to enhance the protection of the nation's critical infrastructure. These efforts to identify risks and problems in the hazardous material transportation industry are still in process.

In the context of these efforts, most of the suggested revisions to § 2Q1.2 are not focused on the utility of this guideline provision as a means of addressing national security threats or drug trafficking. Guidelines revisions have generally flowed from the careful study of empirical information. Outside of the approach noted above to address acts of terrorism against our nation's critical private infrastructure or drug related offenses, the small number of criminal

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[5] For example, in a proposed rulemaking, the DOT and the Transportation Security Administration are evaluating the need to require further security enhancements on materials or categories of materials that present the most serious security risks in transportation. 68 Fed. Reg. 37,470, 34,477 (June 9, 2003).

[6] CRS Report for Congress, "Pipeline Security: An Overview of Federal Activities and Current Policy Issues," updated February 5, 2004, p. CRS-11.

hazmat cases do not provide a basis for the non-security focused proposals on § 2Q1.2. There is simply too little "additional information and . . . firm empirical basis" which the Commission itself considers a necessary basis for revisions to the guidelines.[7]

* * *

While not the main focus of these comments, the reference to possible changes to the Chapter Eight guidelines to specifically cover hazmat compliance appears to conflict with the past design of Chapter Eight and the Commission's current proposal to revise Chapter Eight. As the Commission is well aware, Chapter Eight provides leniency for effective programs to prevent and detect violations of law. Chapter 8 has long served an outsize role in determining the shape and content of corporate compliance plans. Following the October 2003 report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines, the Commission has published proposed amendments to Chapter Eight which propose a new standalone guideline focused on compliance programs.

The provisions of the Chapter Eight guidelines that address compliance programs have been crafted to have broad application. Notably, some concerns over the proposed changes focus on whether or not expanding the specificity of the definition of an effective compliance program is beyond the Committee's purview or expertise. This concern would be amplified should the Commission begin developing industry specific criteria. What is considered to be the most effective compliance program for a given industry is subject to a vast number of economic, technological and other factors. It would undermine the broad impact of the Chapter Eight guidelines in this area should the Commission attempt to make such narrow prescriptions.

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The AOPL hopes that these comments are useful to the Commission. The AOPL would appreciate the opportunity to send a representative to testify before the Commission's public hearing on March 17, 2004.

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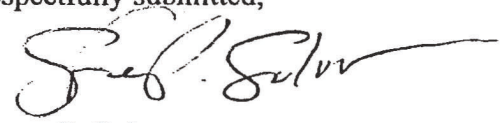
[7] United States Sentencing Commission, Guidelines Manual, Chapter 1, Part A, Introduction and General Application Principles, "A Concluding Note."

Respectfully submitted,



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Security Planning and Preparedness in the Oil Pipeline Industry

August 2003

Almost two years have elapsed since the tragic events of September 11, 2001. The oil pipeline industry is committed to the integrity and security of the national oil pipeline network. We would like to take this opportunity to bring you up to date on oil pipeline industry security actions that have taken place since September 11, but focusing on recent months.

The oil pipeline network is a valuable national asset, which is owned, maintained and operated by private companies. Pipelines are the irreplaceable core of the U.S. petroleum transportation system and the means for both delivery of foreign and domestic crude oil to refineries and for moving finished products from refining and producing centers to consuming regions. Oil pipeline shipments account for 17% of all domestic freight moved nationwide, delivering more than 14 billion barrels (600 billion gallons) per year. The nation's oil pipeline network includes 160,000 miles of interstate transmission pipelines. Those pipelines are regulated from a safety and environmental perspective by the federal government through the U.S. Department of Transportation Office of Pipeline Safety.

Pipelines are physically robust. The vast majority of pipeline systems are underground and less vulnerable than aboveground facilities. Pipeline operators have been managing the integrity, safety and security of pipeline systems for many years. Most damage to pipelines can be readily repaired and pipeline operators have emergency response plans in place. Disruptions in supply can often be avoided by providing alternative forms of transportation for short periods or by using interconnections to move products around the site of damage to a pipeline.

Pipeline operators cooperated readily with the federal government to identify, for preparedness purposes, those pipeline facilities that are critical to the nation. Key critical pipeline assets have been identified using system risk analysis along with mutual discussion between operators and the Department of Homeland Security, the Department of Energy and the Department of Transportation. In addition to key critical assets, other pipeline systems may be considered viable terrorist targets or a release resulting from a terrorist attack from certain pipeline systems might have a significant impact on people,

on public drinking water, on regional energy supply, on military facilities important to national defense, or could potentially impact other modes of transportation or other critical infrastructures (electric power generation, telecommunications, or other utilities). These pipeline systems or portions of pipeline systems, have also been specifically identified by operators. Information about critical assets forms a part of our nation's security and is not subject to public disclosure.

Security guidance for pipeline facilities is in place and pipeline operators are implementing that guidance for critical facilities. In July 2002, the American Petroleum Institute published "Guidelines for Developing and Implementing Security Plans for Petroleum Pipelines." By developing a pipeline security plan operators can improve the security of pipeline systems and develop the knowledge and processes for making security related decisions. Pipeline operators have and will continue to:

- Identify and analyze actual and potential events that can result in pipeline security related incidents
- Identify the likelihood and consequence of such events
- Provide an integrated means for examining and evaluating risks and selecting risk reduction actions
- Establish and track security plan effectiveness
- Establish security conditions (using the national treat advisory system) and specific protective measures based on the threat level

The security of pipeline facilities has also been considered in relationship to other energy assets. The petroleum industry as a whole has published, "Security Guidance for the Petroleum Industry" (April 2003) in close cooperation with the Department of Homeland Security, Information Analysis and Infrastructure Protection division.

The federal government has established pipeline security contingency planning guidance, published that guidance for action by pipeline operators and asked that all pipeline operators submit a written statement concerning security preparedness. In September 2002, the U.S. Department of Transportation, in coordination with the Department of Energy and agencies that became the Department of Homeland Security, published a pipeline security information circular. The circular defined critical pipeline facilities, identified appropriate measures for protecting critical facilities (based on the national threat advisory system) and defined a process by which the federal government would verify that operators had taken appropriate action and implemented satisfactory security procedures and plans. The information circular requested that operators submit a written statement confirming that the operator has:

- Reviewed the information circular and the Pipeline Security Contingency Planning Guidance
- Reviewed the consensus security guidance appropriate to its segment (oil or natural gas) of the pipeline industry
- Identified its critical facilities
- Developed a corporate security plan
- Begun implementing its corporate security plan to protect the physical and cyber security of its critical facilities

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