

August 14, 1989

Mr. Douglas B. Stebbins  
Eichhorn, Eichhorn & Link  
200 Russell Street  
P. O. Box 6328  
Hammond, Indiana 46325

Dear Mr. Stebbins:

Your letter of July 11, 1989, regarding our new drug testing rules for pipeline employee states that in the case of post-accident testing, neither employers nor hospitals are authorized by the rules to collect the necessary urine samples. You suggested that as part of the pending reconsideration of the final rules, we consider establishing regulations that would enable employers to collect the necessary post-accident specimens from hospitalized employees.

We interpret our regulations at 49 CFR ?199.11 to require a pipeline operator in a post-accident situation to take all reasonable steps to obtain a urine sample. In the case of a conscious but hospitalized employee, the operator should request the hospital or medical facility to obtain the sample and, if necessary, refer to the DOT drug testing requirements. If an employee is unconscious or otherwise unable to evidence consent to the procedure, the medical facility should collect the sample. If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional), and refuses to be tested, under 49 CFR ?199.9 that person must be removed from duty as an "employee," as defined in 49 CFR ?199.3. We will consider dealing with this opinion more formally in the future.

Sincerely,

James C. Thomas  
Acting Director  
Office of Pipeline Safety