



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

AUG 11 2009

Mr. Adam F. Kovacs
Environmental Coordinator
WestPac Pipelines
2355 Main Street, Suite 210
Irvine, CA 92614

Dear Mr. Kovacs:

On January 9, 2009, and February 10, 2009, you wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) to request an interpretation of the applicability of the Federal pipeline safety regulations in 49 CFR Part 195 to your underground jet fuel filter sump tank at the San Diego Airport Terminal. You provided the following information:

1. The jet fuel filter sump tank is located at the 10th Avenue Marine Terminal, 961 East Harbor Drive in San Diego, California, and is operated by Jankovich Company but owned by WestPac Pipe Lines – San Diego LLC (Buckeye).
2. Until November 26, 2008, the above mentioned sump tank had been regulated by the California Office of the State Fire Marshal (OSFM) under the authority of the California State Code Section 51010 and in the OSFM's capacity as an agent for PHMSA in enforcing the pipeline safety regulations in 49 CFR Part 195.
3. A question regarding jurisdictional authority for the jet fuel filter sump tank arose during a November 26, 2008, County of San Diego compliance inspection at the Jankovich Company's facility.
4. The County of San Diego inspection resulted in the County requesting you do one of the following two things by January 25, 2009:
 - Provide current evidence that this sump tank is regulated by OSFM and subject to the 49 CFR Part 195 regulations; or
 - Provide tank information on updated forms in order to register the sump tank as a County regulated underground tank.
5. Previously, in the fall of 2001, the County of San Diego conducted an inspection of the jet fuel filter sump tank, and the OSFM formally took the position that the subject sump tank served a breakout function to the pipeline and consequently was under OSFM jurisdiction. However, since the November 26, 2008, inspection you stated that OSFM changed its view and no longer believes that this sump tank should be regulated as a breakout tank.
6. The sump tank receives overpressure-generated product (pressure relief) from the filter system. The filter system and the subject tank are integral components of the pipeline system.

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety, provides written clarification of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters. These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

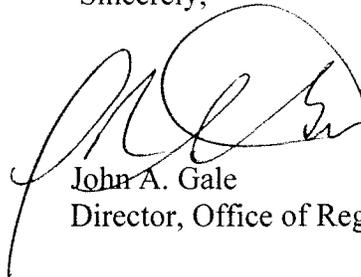
7. The sump tank stores hazardous liquid (jet fuel), which is temporarily transported to an aboveground breakout tank (also part of the pipeline system), and subsequently re-injected into another pipeline segment (in via pipeline, out via pipeline). The aboveground breakout tank that the jet fuel filter sump tank empties into is a part of the pipeline system as well.

You expressed your view that the jet fuel filter sump is a pipeline regulated tank under 49 CFR Part 195 and therefore should be regulated by the OSFM. You ask that PHMSA make an official determination of whether or not this tank is subject to the Part 195 regulations.

Based on the information you provided, PHMSA's determination is that the jet fuel filter sump tank is equipment used in the transportation of hazardous liquids. Therefore, the jet fuel filter sump tank is a pipeline facility and is subject to all applicable 49 CFR Part 195 requirements including corrosion control, integrity management, and personnel qualification and OSFM is currently responsible for regulating the tank.

I hope that this information is helpful to you. If I can further assist you with this or any other pipeline safety regulatory matter, please contact me at (202) 366-4046.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Gale', is written over a circular stamp or seal.

John A. Gale
Director, Office of Regulations



UPS Overnight

February 10, 2009

Attn: Mr. Jeffrey D. Wiese
Associate Administrator for Pipeline Safety
US DOT/PHMSA/PHP-1
1200 New Jersey Avenue, SE
Room E22-330
Washington, DC 20590

FEB 12 2009

RE: Request for Determination – Liquid Pipeline 195 regulations
***Follow-up to Request for Determination made January 9, 2009**
Underground Jet Fuel Filter Sump Tank
San Diego Airport Terminal
WesPac Pipelines- San Diego LLC (a subsidiary of Buckeye Partners, L.P.)

Dear Mr. Wiese,

On January 9, 2009 a *Request for Determination* for the above-referenced facility/tank was sent to your attention per the suggestion of the California Office of the State Fire Marshal (original correspondence is attached for your reference). Again, Buckeye asks that PHMSA make an official determination of whether or not this tank is subject to the Liquid Petroleum 195 regulations. It is important that closure be brought to this situation in the near future.

If you have any questions regarding this matter please contact me at 610.904.4529 or at akovacs@buckeye.com. Please forward all responses to me at the letterhead address. Thank you for your time and cooperation, I look forward to your response.

Sincerely,

Adam F. Kovacs
Environmental Coordinator

Enclosures

c: Jason Mengel → File CA.100.430
Leon Wirschem (via e-mail, Leon.Wirschem@sdcounty.ca.gov)*
Bob Gorham (via e-mail, Bob.Gorham@fire.ca.gov)*
\\bpf\file\environ\sites\ca\locations\sandiego_wespac\jet fuel filer sump\sd jet fuel sump_phmsa ii.rtf

bc: Jason Mengel → Mark Bonenberger → File CA.100.430* **New File "Underground tanks"**
Dale Corbello, Dale Thurman, Jay Bice, Don Hankey (Via e-mail)*
\\bplfile\environ\sites\ca\locations\sandiego_wespac\jet fuel filter sump\sd jet fuel sump_phmsa.rtf



WesPac Pipelines

2355 Main Street, Suite 210 • Irvine, CA 92614
Telephone: (949) 222-2249 • Fax: (949) 222-0992

UPS Overnight

January 9, 2009

Attn: Mr. Jeffrey D. Wiese
Associate Administrator for Pipeline Safety
US DOT/PHMSA/PHP-1
1200 New Jersey Avenue, SE
Room E22-330
Washington, DC 20590

**RE: Request for Determination – Liquid Pipeline 195 regulations
Underground Jet Fuel Filter Sump Tank
San Diego Airport Terminal
WesPac Pipelines- San Diego LLC (a subsidiary of Buckeye Partners, L.P.)**

Dear Mr. Wiese,

On November 26, 2008 the County of San Diego conducted a compliance inspection at The Jankovich Company's (Jankovich) 961 East Harbor Drive facility in San Diego, CA. During this inspection, the jurisdiction of a jet fuel filter sump tank came into question. The subject tank, which will be referred to as the "jet fuel filter sump" for the purposes of this letter, is operated by Jankovich and owned by WesPac Pipe Lines- San Diego LLC (Buckeye). In the past, this tank has been regulated by the California Office of the State Fire Marshal (OSFM), who has pipeline regulatory jurisdiction in California. Pursuant to this inspection, the County requested that Buckeye do one of two things **by January 25, 2009:**

- Provide current evidence that this tank is regulated under OSFM (Liquid Pipeline 195 regulations)
- OR
- Provide tank information on updated forms in order to register the tank as a regulated underground storage tank

Buckeye representatives have spoken at length with Leon Wirschem of the County of San Diego as well as Bob Gorham, Divisional Chief OSFM, regarding the jurisdiction of this tank. Thus far we have not been able to come to an agreeable conclusion on its jurisdiction. In a conversation that I had with Mr. Gorham on December 18, 2008, he indicated that his interpretation of the tank's jurisdiction was not the end all decision, and that if Buckeye wanted to pursue a definitive, final answer, that we should contact your agency. Buckeye's stance is that the jet fuel filter sump is a pipeline regulated tank under the Liquid Pipeline 195 regulations, and therefore should not fall subject to regulated underground storage tank regulation.

The debate on the jurisdiction of this tank originally surfaced in the fall of 2001 pursuant to another County of San Diego inspection. You'll find per the first attachment, entitled "Underground Breakout Tank-10th Avenue Marine Terminal" that in 2001 the OSFM formally took the position that the subject tank served a breakout function to the pipeline and consequently was under OSFM jurisdiction. The OSFM representative responsible for this interpretation was Mr. Emmett Cooper, a memorandum explaining the OSFM's interpretation of the tank's jurisdiction is also attached. Mr. Cooper's interpretation is clear-cut and straightforward, and is not different from the interpretation that Buckeye currently advocates. Mr. Cooper's interpretation has held true for approximately 6 years, until this past November when the County of San Diego conducted the most recent inspection of the premises. The tank's operational characteristics have not changed and the regulations have not changed, however, the

stance of the OSFM regarding the tank's jurisdiction has changed. They no longer believe that this tank should be regulated under their program. The second attachment was generated by the OSFM in an attempt to explain their stance on why they no longer feel this tank falls under their jurisdiction. It is a flow diagram of the jet fuel filter system and the underground sump in question, with two bullet points listed at the bottom of the page explaining why they feel this tank should not be regulated by them. Their reasoning for not having regulation over this tank cites the following logic:

a. The underground tank is not used to relieve surges from pipeline system. The PRV on the filters provide overpressure protection of the filters only.

b. The underground tank does not store hazardous liquid and reinjects to another BO (breakout) tank, not a pipeline.

If the above conditions are true, I wouldn't disagree with the OSFM's interpretation, however, their observations are simply not accurate. In response to the OSFM's logic above, please note the following site conditions:

a. The tank receives overpressure-generated product (pressure relief) from the filter system. The filter system and the subject tank are clearly integral components of the pipeline system*.

*Per 49 CFR Part 195, Section 2:

Pipeline or pipeline system means all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

b. The tank stores hazardous liquid (jet fuel), which is temporarily transported to a breakout tank (also part of the pipeline system), which then moves on to another stretch of pipeline (in via pipeline, out via pipeline). The breakout tank that the jet fuel filter tank empties into is a part of the pipeline system as well.

In addition, Buckeye feels that this tank is accurately defined by both defining criteria associated with a "breakout tank" per 49 CFR Part 195, Section 2. As you know, a breakout tank is described in the following manner:

A tank that is used to (a) *relieve surges in a hazardous liquid pipeline system* **OR** (b) *receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.*

These criteria define what this tank is. To be regulated by the OSFM the tank would only have to hit on one portion of the breakout tank definition. Buckeye feels that it connects on both.

Buckeye asks that PHMSA establish an official determination of whether or not this tank is subject to the Liquid Petroleum 195 regulations.

If you have any questions regarding this matter please contact me at 610.904.4529 or at akovacs@buckeye.com. Please forward all responses to me at the letterhead address. Thank you for your time and cooperation, I look forward to your response.

Sincerely,



Adam F. Kovacs
Environmental Coordinator

Enclosures

Attachment 1

Underground Breakout Tank-10th Avenue Marine Terminal



John J. Maney
Director – Operations

November 21, 2002

Ms. Carmel Fuentecilla
Hazardous Materials Specialist
Department of Environmental Health
County of San Diego
1255 Imperial Avenue
San Diego, CA 92112-9261

RE: Underground Breakout Tank – 10th Avenue Marine Terminal (Attachment 1)

Dear Ms. Fuentecilla:

After our telephone conversation yesterday, I reviewed our files regarding the question of which agency had jurisdiction of the underground Breakout tank at the 10th Avenue Marine Terminal located at 961 E. Harbor Drive; San Diego, CA. The WesPac Pipeline San Diego International Airport Jet Fuel Pipeline System is regulated by the Office of the State Fire Marshal (SFM) under the authority of California Government Code Section 51010. In addition, the SFM acts as an agent of the federal Office of Pipeline Safety to ensure compliance with 49 Code of Federal Regulations Part 195. On October 23, 2001 a meeting was held at the 10th Avenue Marine Terminal to determine whether the SFM or San Diego County Department of Environmental Health had jurisdiction on an underground pipeline Breakout tank. The meeting was attended by the following individuals:

Office of the State Fire Marshal
Emmett Cooper

Department of Environmental Health
John Kolb
Carmel Fuentecilla
Stephen Kelly
Robert Rapista

WesPac Pipelines
John Maney
Dale Thurman

During the inspection of the facilities, Emmett Cooper determined that the underground tank served a "breakout" function to the pipeline system and, therefore, fell under the jurisdiction of the SFM. John Kolb indicated verbal agreement with this conclusion and requested that Mr. Cooper prepare a written document summarizing the results and conclusion of the inspection. A copy of Mr. Cooper's Activity Report on the inspection was forwarded to Mr. Kolb for consideration. WesPac did not receive a copy of the activity report at the time, but Mr. Cooper

Ms. Carmel Fuentecilla

Page 2

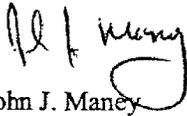
forwarded a copy to WesPac on November 20, 2002 for attachment as supporting documentation for this letter.

In early December 2001, Mr. Kolb contacted Dale Holder, President - WesPac Pipelines by telephone and verbally informed him that he had concluded that the underground Breakout tank did indeed fall under the jurisdiction of the SFM and NOT the San Diego County Department of Environmental Health. In addition, Mr. Kolb stated that he would forward a "Claim and Voucher for Refund of Money" to WesPac for completion and refund of \$1780.00 paid by WesPac for Underground Storage Tank application and penalty fees. This form was submitted to the County of San Diego in mid December 2001 and the refund check was received on January 17, 2002, see attachments.

After careful review of our files, it appears that WesPac did not receive formal notification from the Department of Environmental Health that the subject tank would be regulated by the SFM. As a result, we were unable to provide you with any substantive documentation during your inspection of the facilities yesterday morning. For use in future inspections, we request that you provide us a written notice of your department's concurrence that the subject tank will be regulated by the SFM.

Thank you for your patience in this matter and please feel free to contact me with any questions or comments you may have.

Regards,



John J. Maney

cc: Dale Holder / WesPac
Dale Thurman / WesPac
Mark Taylor / SDUPD

Attachments: SFM Activity Report (3 pages)
Claim and Voucher for Refund of Money
Reimbursement Check Stub

**ACTIVITY REPORT
NARRATIVE**

REPORT #: 20011023EKC1
SUBMITTED BY: Emmett Cooper
OPERATOR: WesPac
I.U.: 0155A
PIPELINE ID: 1080,1082
SUBJECT: Breakout Tank

On October 23, 2001 I met with those WesPac personnel listed on the attached Activity Report at their 10th Avenue Terminal (Terminal) in San Diego. The purpose of the meeting was to inspect the piping to and from, an underground tank and their use. The County of San Diego's Department of Environmental Health had conducted an inspection of the Terminal and determined that the subject tank is an underground storage tank that is jurisdictional to Chapter 6.7 of the Health and Safety Code of Underground Storage of Hazardous Materials.

The subject tank is made of steel, approximately 7 feet high, 6 feet in diameter with a capacity of 35 Barrels (1467 gallons). It is buried with only the top portion exposed. The tank is epoxy coated. The tank is inside a secondary steel containment tank that is coated with tar and is cathodically protected. There is a high level, and a high-high level alarm that would send an alarm to the control room in the event of a high fluid level.

The Tank is adjacent to fuel filters, and for maintenance purposes, the filters require draining. The fuel (Jet-A) is drained into the Tank during this maintenance operation. There are also pressure relief valves on the filtering system that can relieve fuel to the Tank. There is a centrifugal pump in the Tank that is used to transfer the fuel to one of the two breakout tanks that are subsequently used for further transportation by pipeline to the San Diego Airport.

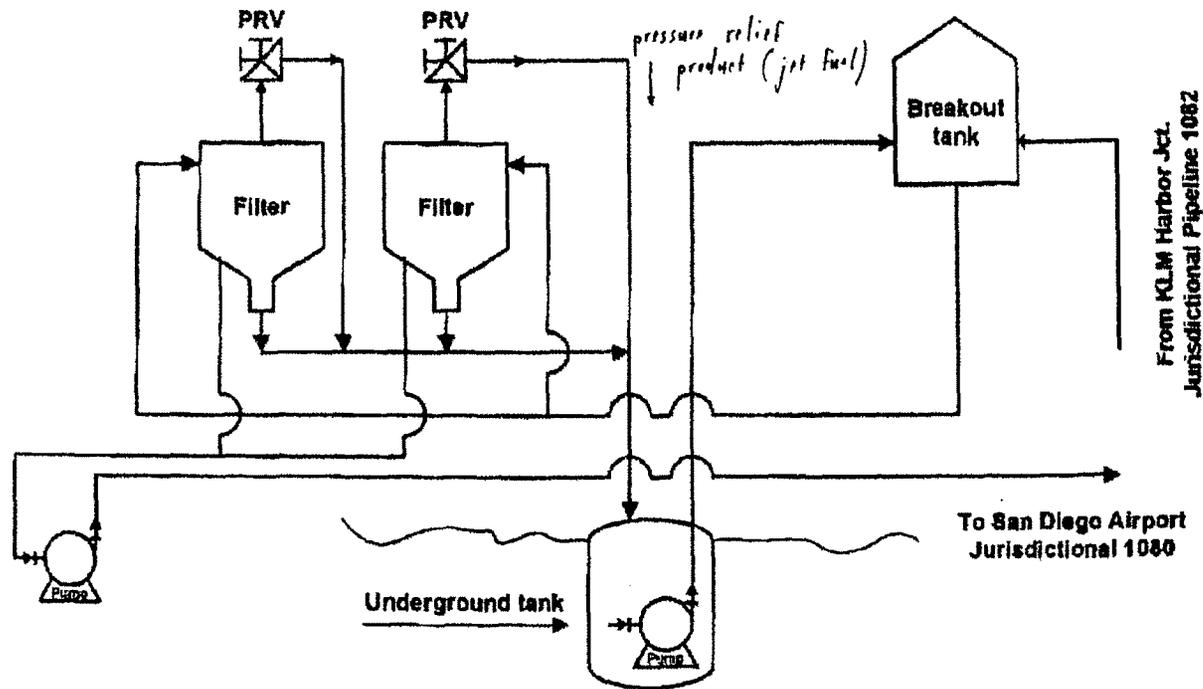
In my opinion, the subject Tank is a breakout that meets the requirements of 49 CFR Part 195.

Attachments: Photographs
Schematic Map. San Diego Dept. of Environmental Health Contacts

END OF REPORT

WasPac
San Diego 10 Th. Street Terminal
Underground Breakout Tank
Jurisdictional

10-23-2001

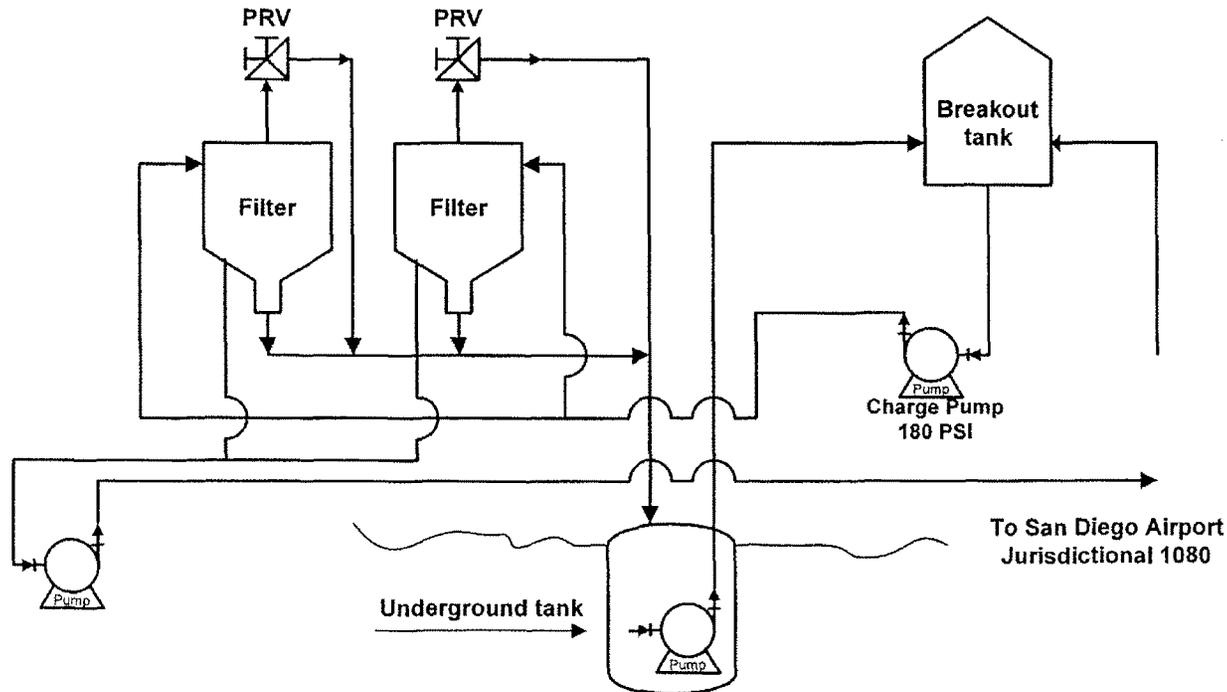


Attachment 2

OSFM Flow Schematic and Jurisdictional logic

**WesPac
San Diego 10 Th. Street Terminal
Underground Breakout Tank
Non-Jurisdictional.**

EKC 10-23-2001
Rev. 12-02-2008
RGG. 12-02-2008



From KLM Harbor Jct.
Jurisdictional Pipeline 1082

§195.2 Definitions. Breakout tank means a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.

Reasoning used to determine Underground tank is not regulated by SFM

- (a) The underground tank is not used to relieve surges from pipeline system. The PRV on the filters provide overpressure protection for the filters only.
- (b) The underground tank does not store hazardous liquid and reinjects to another BO tank not a pipeline.