



U.S. Department of Transportation  
**Pipeline and Hazardous Materials  
Safety Administration**

1200 New Jersey Ave, S.E.  
Washington, D.C. 20590

**AUG 27 2012**

Mr. Todd L. Tullio  
Manager, Regulatory Compliance  
ConocoPhillips Pipe Line Company  
Threadneedle TN-5022  
600 N Dairy Ashford  
P.O. Box 2197  
Houston, TX 77252

Dear Mr. Tullio:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), you asked for an opinion on the regulatory status of several propane tanks located at ConocoPhillips Pipe Line Company's (CPPL) La Junta Terminal in Colorado. You stated that, in your view, these tanks are capable of receiving and storing propane transported by pipeline for reinjection and continued transportation by pipeline. Therefore, they should be regulated as breakout tanks under 49 CFR Part 195.

Background

The La Junta Terminal is part of CPPL's Borger-Denver Pipeline System.<sup>1</sup> Twenty tanks at the Terminal are used to receive and store liquid propane.<sup>2</sup> Under normal operating conditions, propane is delivered from a refinery in Borger, Texas, and stored in these tanks for sale at a truck loading rack. In January 2007, however, CPPL received a batch of off-specification propane that the company decided to return to the refinery for reprocessing. After developing a specific procedure for that purpose, CPPL modified the necessary equipment at the Terminal and re-injected two batches of the off-specification product. No other propane re-injections have occurred since that time, but your letter states that the tanks remain "connected in a manner whereby propane can be re-injected to a common carrier pipeline."

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<sup>1</sup> <http://www.conocophillipspipeline.com/EN/operation/map/Pages/index.aspx> (last accessed Sept. 23, 2011).

<sup>2</sup> Eighteen of the tanks have an individual capacity of 30,000 gallons. The two other tanks have an individual capacity of 60,000 gallons.

## Analysis

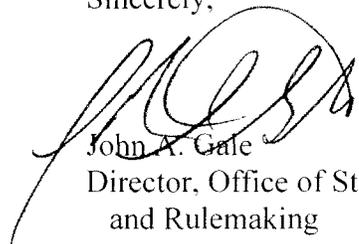
A breakout tank is defined in 49 CFR 195.2 as “a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline.” The Materials Transportation Bureau (MTB), one of PHMSA’s predecessor agencies, adopted that definition in a final rule issued after the enactment of the Hazardous Liquid Pipeline Safety Act of 1979.<sup>3</sup> As MTB stated in that proceeding, this definition is specifically designed to exclude tanks that are only used to receive and store hazardous liquid transported by pipeline for continued transportation by truck, rail, marine vessel, or other non-pipeline modes of transportation.<sup>4</sup>

While the tanks at the La Junta Terminal are predominantly used to receive stored liquid propane for continued transportation by truck, that use is apparently not exclusive. CPPL has re-injected propane from these tanks for continued transportation by pipeline, and the facilities at the Terminal remain configured in a manner that would permit similar re-injections in the future. Therefore, the tanks described in your letter qualify as breakout tanks under the definition provided in § 195.2.

It should be noted that if CPPL were to re-inject its off-specification product into the pipeline system, the company must prepare a Management-of-Change procedure. It should also be noted that the opinion offered in this letter does not preclude the U.S. Environmental Protection Agency (EPA) from regulating the tanks at the La Junta Terminal under the Risk Management Planning requirements in 40 CFR Part 68. EPA’s authority is derived from the Clean Air Act, not the pipeline safety laws, and both agencies share the responsibility for regulating complex or dual-use facilities.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at (202) 366-4046.

Sincerely,



John A. Gale  
Director, Office of Standards  
and Rulemaking

cc: United States Environmental Protection Agency, Region 8

<sup>3</sup> Department of Transportation, Transportation of Liquids by Pipeline, 46 Fed. Reg. 38357, 38358 (July 27, 1981).

<sup>4</sup> See *Exxon Corporation v. U.S. Department of Transportation*, 978 F.Supp. 946, 949-54 (E.D. Wash. 1997) (noting that PHMSA has established a definition for a “breakout tank” in 49 CFR 195.2 that is narrower than its broad statutory authority to regulate “the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline” under 49 USC § 60101(a)(22)(A)).

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications 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.



**ConocoPhillips  
Pipe Line Company**

APR 18 2011

PI-11-0006

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April 13, 2011,

John Gale, Director of Regulations  
Pipeline Hazardous Materials Safety Administration  
1200 New Jersey Avenue SE PHP-30  
Washington, DC 20590

RE: Clarification request on breakout tank Jurisdiction at  
our La Junta Terminal in Colorado.

Dear Mr. Gale,

Pursuant to 49 CFR 190.11 (b), this letter is a request for clarification on the jurisdiction of the propane tanks at ConocoPhillips Pipe Line Company's (CPPL) La Junta Terminal. Based on the definition of a "Breakout Tank" as defined in 49 CFR 195.2, CPPL's position is that the propane tanks/spheres are breakout tanks and should be regulated by US DOT.

At the La Junta Terminal in Colorado, CPPL's normal operations of the La Junta Terminal is to receive propane from a common carrier pipeline system and sell propane across the truck loading rack. CPPL also has the capability to re-inject back in to a common carrier pipeline system from its spheres. The movement of propane from the spheres to a common carrier pipeline system is generally done when CPPL receives a batch of off-specification (not meeting necessary product specifications) propane. In order to re-inject propane in to a common carrier mainline, CPPL would simply perform a valve line up that would allow the propane to be re-injected back in the common carrier mainline.

On October 22, 2010, CPPL received a letter from the PHMSA's Western Region office saying that due to the frequency (one time event) that CPPL re-injects back in to the mainline, that the spheres would not fall under PHMSA's jurisdiction. The Western Region characterized this situation as a modification of a check valve and meter in order to accommodate a onetime injection of off-specification propane back into the pipeline. The Western Region further stated that the onetime event to deal with off-specification product does not meet the definition of breakout tank definition. A copy of the letter is attached for your convenience.

CPPL respectfully disagrees with this interpretation. The definition of breakout tank as found in 49 CFR 195.2 is as follows:

*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.

The definition does not require a regular use or frequency. It only requires the ability for such tank to be used to either relieve surges or receive product and reinject such product for the continued transportation by pipeline. It has been CPPL's practice in the past when determining the jurisdiction of a tank, sphere, or any device used to relieve surges in a hazardous liquid pipeline system or receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline, is based on how that device is connected. The spheres in question are connected in a manner whereby propane can be reinjected to a common carrier pipeline. The determination as to whether such tanks at CPPL's La Junta facility meet the definition of a breakout tank should not be based on frequency but that the capability is there to re-originate propane back to the mainline whenever needed.

CPPL respectfully request your response to this issue in the interpretation of the definition of breakout tank as set forth in 49 CFR 195.2 and further whether these spheres are subject to the jurisdiction and regulation of PHMSA. CPPL believes that if the capability to re-originate back in to the regulated mainline is there, then the tanks need to be regulated as breakout tanks and would fall under PHMSA jurisdiction.

Thank you in advance for your prompt attention to this clarification request. Should you have any questions or need additional information, do not hesitate to call me at 832-379-6255.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Tullio". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Todd Tullio  
Manager, Regulatory Compliance