Ms. Ruth M. Porter  
Tanks Program Manager  
West Virginia Department of Environmental Protection  
601 57th Street SE  
Charleston, WV 25304

Dear Ms. Porter:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated December 28, 2016, you requested an interpretation of the definition of *pipeline facility* under 49 CFR 192.3 in reference to certain aboveground storage tanks used for brine and other fluids.

You stated that the aboveground storage tanks in question are used by “TransCanada/ [Columbia Pipeline Group] to store brine and other fluids removed in the transportation of gas by pipeline by drip separators and to store oil used to lubricate equipment at TransCanada/ [Columbia Pipeline Group] compressor stations.” You stated that “[w]hile these [aboveground storage tanks] are located adjacent to a ‘pipeline facility’, they are not used to ‘transport gas in the pipeline’ or to ‘treat gas in the pipeline system during the course of transportation’”. In addition, you provided documentation and previous PHMSA interpretations to support your request for interpretation. You asked whether storage of brine and other fluids aboveground removed from gas can be considered part of a pipeline facility and, therefore, regulated and inspected under the Federal pipeline safety regulations.

Section 192.3 defines pipeline facility as:

*Pipeline facility* means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

Equipment used for removal of water and other impurities as treatment of gas meets the definition of a *pipeline facility*. However, storage of the waste products (brine and other fluids) removed from gas is not considered a *pipeline facility* under § 192.3 because after removal, the storage of the fluids is not used in further transportation of the regulated product (gas). In addition, both Parts 192 and 195 do not regulate brine or other non-petroleum waste fluids even if they are transported by pipeline from the storage tanks. Equipment lubricating oil stored at the facility is not regulated by the Federal pipeline regulations if the oil storage tank is not connected to or the oil is not transported by a PHMSA regulated pipeline.

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.
Therefore, PHMSA does not consider the TransCanada/ [Columbia Pipeline Group] storage tanks used to store brine or other waste fluids removed from gas as pipeline facilities, and such storage tanks are not regulated by the Federal pipeline safety regulations.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,

John A. Gale
Director, Office of Standards and Rulemaking
Mr. Cameron H. Satterthwaite,
Acting Director, Office of Standards & Rulemaking
Office of Pipeline Safety (PHP–30)
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave. S.E.
Washington, D.C. 20590–0001

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7037 1006 2626

Dear Mr. Satterthwaite:

This letter seeks input from the Office of Pipeline Safety (Office) regarding the definition of “pipeline facility” at 49 CFR 192.3 as it applies to certain aboveground storage tanks (ASTs) operated by TransCanada/Columbia Pipeline Group (TransCanada/CPG).

This request arises out of a determination by the West Virginia Department of Environmental Protection (WVDEP) that TransCanada/CPG’s ASTs meet the definition of “aboveground storage tank” as defined in the West Virginia Aboveground Storage Tank Act (AST Act - WV Code §§22-30-1 through 22-30-26) (2015) at WV Code §22-30-3(1). Consequently, WVDEP expects TransCanada/CPG to comply with regulatory requirements in the AST Act, including registration of the ASTs, secondary containment, leak detection, and inspection and maintenance requirements.

The AST definition also contains a list of categories of tanks or devices that are not subject to the AST Act, including “pipeline facilities” regulated under the Natural Gas Pipeline Safety Act of 1968 as provided at WV Code §22-30-3-(1)(J). Columbia Pipeline Group believes this exemption applies to the ASTs at issue here based on the federal definition of “pipeline facility.” The WVDEP believes TransCanada/CPG has misapplied that definition.

As you know, the pipeline safety regulations at 49 CFR 192.3 define “pipeline facility” in pertinent part as “. . . any equipment . . . used in the transportation of gas or in the treatment of gas during the course of transportation.”

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The ASTs in question are used by TransCanada/CPG to store brine and other fluids removed from gas in the transportation pipeline by drip separators and to store oil used to lubricate equipment at TransCanada/CPG compressor stations. While these ASTs are located adjacent to a “pipeline facility,” they are not used to “transport gas in the pipeline” or to “treat gas in the pipeline system during the course of transportation” as required by the federal definition to qualify as a “pipeline facility.”

The WVDEP believes the ASTs here are analogous to anhydrous ammonia storage tanks analyzed by the Office in a letter dated June 1, 2001, to Sempra Energy. That letter along with Sempra’s letter of May 1, 2001, requesting an opinion from the Office, is included as Attachment “A.” The Office reasoned that while “Sempra’s pipeline compressor assemblies, including the anhydrous ammonia storage tanks, are ‘pipeline facilities,’ the anhydrous ammonia storage tanks cannot be considered ‘storage incident to transportation’ in the sense of storage of product being transported by a pipeline” within the meaning of 49 CFR 192.3. Consequently, the Office concluded that the connection of Sempra’s anhydrous ammonia storage tanks to a “pipeline facility” did not exempt it from complying with environmental regulations administered by U. S Environmental Agency.

The WVDEP believes the Office should reach the same conclusion regarding TransCanada/CPG’s brine and oil storage tanks. In other words, the storage of brine and oil as part of TransCanada/CPG’s transportation system and compressor stations does not fall within the definition of “pipeline facility” at 49 CFR 192.3 and, therefore, must comply with the requirements in the WVDEP AST Act.

To assist the Office, the WVDEP is also including correspondence pertaining to the WVDEP’s determination that TransCanada/CPG’s brine and oil storage tanks must comply with the WV AST Act regulatory requirements. Attachment “B” contains two letters dated October 4, 2016, and July 19, 2016, from the WVDEP supporting its determination. As noted in the July 19, 2016, letter, the WVDEP determined the ASTs were terminal points where material (condensate and produced water) was stored after removal from the gas transportation stream. The material is a liquid, not vapor gas, and does not reenter the gas stream. Instead, it is removed from the ASTs and transported by truck for disposal or recycling. Moreover, the ASTs are not used for the storage, transportation or treatment of gas. Also included is Attachment “C” which consists of schematics of the brine and oil storage tanks. Finally, Attachment “D” is correspondence dated August 26, 2016, from TransCanada/CPG analyzing its position.

If you need any further information regarding this matter, please let us know. I can be reached at (304) 926-0499 extension 1007.

Sincerely,

Ruth M. Porter
Tanks Program Manager

Enclosures:

cc: Scott G. Mandirola, Director, DWWM (via e-mail)  
    Patrick V. Campbell, Deputy Director, DWWM (via e-mail)  
    Jeremy W. Bandy, Chief Inspector, EE (via e-mail)  
    Joseph M. Sizemore, Assistant Chief Inspector, EE/HW–Tanks (via e-mail)
Attachment A
June 1, 2001

Ms. Joyce A. Padleschat
Attorney
Sempra Energy
101 Ash Street
San Diego, CA 92101-3017

Dear Ms. Padleschat:

This letter is in response to your letter of May 1, 2001, requesting clarification of the definition of "pipeline facilities" as used in federal gas pipeline safety regulations at 49 CFR Part 192.

Sempra was asked by the Certified Unified Program Agency (CUPA) for Kern County, California, to prepare a Risk Management Plan (RMP) for anhydrous ammonia storage and handling facilities, which are part of a selective catalytic reduction (SCR) system used for controlling NO emissions from a natural gas pipeline compressor station. Preparation of RMPs for certain stationary pollution sources is required by the regulations of the U.S. Environmental Protection Agency (EPA) at 40 CFR § 68.3. Because the SCR facilities are part of the compressor engine assembly, Sempra maintains that they are transportation-related "pipeline facilities" not subject to the RMP requirements.

The pipeline safety regulations at 49 CFR § 192.3 define "pipeline facility" as "new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation." There is no question that Sempra's pipeline compressor assemblies, including the storage tanks for anhydrous ammonia, are "pipeline facilities." Although the term "transportation" is not defined, we believe that the anhydrous ammonia storage likely constitutes a "stationary source" within the meaning of the environmental regulations at 40 CFR § 68.3 (the RMP rule).

However, the gas pipeline safety regulations do not address NO control. Nor can the storage of anhydrous ammonia for the purpose of pollution control be considered "storage incident to transportation" in the sense of storage of a product being transported by a pipeline. Therefore, the storage of anhydrous ammonia storage as part of an SCR system on a "pipeline facility" does not appear to exempt it from the EPA RMP requirements. Naturally, any determination of whether this facility is subject to RMP requirements is up to EPA and its state partners.

If you have any further questions, please contact me at (202) 366-4565.

Sincerely yours,
Richard D. Huriaux, P.E.
Manager, Regulations
Office of Pipeline Safety
Richard Huriaux  
Director of Regulations  
Office of Pipeline Safety  
Research and Special Programs Administration  
Department of Transportation  
400 Seventh Street, S.W., Room 7128  
Washington, D.C. 20590  

Re: Definition of "Pipeline Facility"

Dear Mr. Huriaux:

Thank you for taking the time yesterday in our telephone conversation to respond to my question concerning facilities that constitute a "pipeline facility" and for offering to provide us with a written explanation. We would very much appreciate the written response.

As we discussed, the Company has been asked to prepare a RMP for emissions reduction equipment that is necessary for the operation of natural gas compressors along a transmission pipeline. Transportation facilities subject to oversight or regulation under 49 C.F.R. Part 192 are included in those facilities exempt from preparing a RMP. I understand from our conversation that you participated in defining the parameters of this exemption.

The facilities at issue are part of a natural gas compressor station regulated pursuant to 49 C.F.R. Part 192. Each compressor is driven by a natural gas fired engine which, pursuant to the engine's air quality permit, is equipped with a Selective Catalytic reduction system ("SCR") to reduce air pollutant emissions (NOx). SCR operates by injecting small amounts of ammonia into the emission stack, which changes the NO into nitrogen and water. Consequently, this facility handles and stores a certain volume of anhydrous ammonia for use solely in the SCR. Pursuant to the engines' air permits, the engines — and thus the compressors - would not be able to operate without the SCR, including ammonia.

The only purpose for the SCR, including the ammonia, is to allow operation of the compressors that move natural gas through the pipeline system. Based on their purpose and function, we believe that the emission reduction equipment that are part of the compressor engines are transportation related "pipeline facilities" as defined by 49 C.F.R. Part 192.

We greatly appreciate your providing us with your opinion in this matter.

Very truly yours,
Joyce A. Padleschat

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1 49 C.F.R. §68.3, definition of “Stationary source”.

Attachment B
7/19/2016

Heather A. Roberts
Environmental Compliance Manager
Columbia Pipeline Group
4360 W. Roy Furman Hwy
Waynesburg, PA 15370

CERTIFIED RETURN RECEIPT REQUESTED

Dear Ms. Roberts:

This correspondence is in response to your June 17, 2016 email. The West Virginia Department of Environmental Protection (WVDEP) appreciates Columbia Pipeline Group (Columbia) providing additional information to the Agency concerning the approximately four hundred and fifty (450) Aboveground Storage Tanks (ASTs) that Columbia has deregistered. We understand Columbia’s position is that these ASTs are not subject to the AST Act because they are subject to the Natural Gas Pipeline Safety Act of 1968 and regulated under the Department of Transportation (DOT)/Pipeline and Hazardous Material Safety Administration (PHMSA). Specifically, Columbia asserts the tanks do not meet the statutory definition of an AST due to the provisions found in WV Code, Chapter 22, Article 30, Section 3(1)(J).

In support of this argument, Columbia noted that the definition of a pipeline facility under 49CFR 192.3 means “new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.” Furthermore, Columbia noted that the transportation of gas means “the gathering, transmission, or distribution of gas by pipeline or the storage of gas, in or affecting interstate or foreign commerce.”

WVDEP has reviewed documents previously submitted by Columbia and WVDEP inspectors met with Columbia’s representatives and visited a number of Columbia’s AST locations on May 25, 2016 in an attempt to gain a better understanding of Columbia’s operations. WVDEP has determined the ASTs in question to be terminal points where the material (e.g. condensate and produced water) has been removed from the gas transportation stream. Furthermore, the material in the ASTs does not re-enter the gas transportation stream. The material in the ASTs is removed and transported by truck for disposal or recycling. The material stored in the ASTs are liquids not vapor gas, and the ASTs do not appear to be used in the storage of gas, the transportation of gas, or the treatment of gas. WVDEP believes the ASTs are storing various liquid wastes and potentially by-products prior to disposal or recycling. In summary, WVDEP believes that the ASTs are subject to the requirements of the AST Act.

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and its associated Legislative Rules. Therefore, WVDEP expects Columbia to fulfill its AST regulatory requirement including but not limited to the registration provisions found at WV Code §22-30-4.

However, if Columbia continues to believe that its tanks are exempt, it should provide any further documentation to support its position within thirty (30) days of receipt of this letter. If you have questions or would like to discuss further, please contact me at 304.926.0499 extension 1007. Thank you for your prompt attention to this matter.

Sincerely,

[Signature]

Ruth M. Porter
Tanks Program Manager

cc: Scott G. Mandirola, Director, DWWM (via e-mail)  
Patrick V. Campbell, Deputy Director, DWWM (via e-mail)  
Jeremy W. Bandy, Chief Inspector, EE (via e-mail)  
Joseph M. Sizemore, Assistant Chief Inspector, EE (via e-mail)  
Eric Mauzy, Northern Inspector Supervisor, Tanks, (via e-mail)  
Jason Liddle, Southern Inspector Supervisor, Tanks (via email)
October 4, 2016

Stephen Chung, Director
Environmental Law
U.S. Pipelines Law
Columbia Pipeline Group, Inc.
700 Louisiana, Ste. 700
Houston, TX 77002

Dear Mr. Chung:

This is in response to your letter of August 26, 2016, regarding your contention that a subset of Columbia Pipeline Group’s (CPG’s) aboveground storage tanks fall within the scope of the pipeline facility exemption found in the AST Act (WV Code 22-30-3 (1)(I)) and, therefore, are not subject to provisions of the Act and its Rules.

Simply put, we disagree with your plain reading of the AST Act and the definition of “pipeline facility.” The definition clearly creates two categories of equipment, facilities, or buildings that qualify as a “pipeline facility.” First, if the equipment, facility, or building is used in the “transportation of gas,” then it is a “pipeline facility.” Second, if the equipment, facility, or building is used in the “treatment of gas during the course of transportation,” then it also is a “pipeline facility.” Here, the CPG brine storage tanks fail to satisfy either category.

The brine tanks are plainly not used to “transport gas.” Instead, as you acknowledge, they are used to store brine, generated from the treatment or removal process, to await transportation for disposal. Obviously, none of this involves the “transportation of gas.”

Similarly, the brine tanks are not used in the “treatment of gas during the course of transportation.” Rather, as the attached CPG diagram clearly indicates, “the treatment of gas,” the removal of brine from the gas, occurs underground in a facility or equipment connected directly to the pipeline that transports the gas. That is the facility or equipment that qualifies under the second category, not the aboveground storage tanks used to store brine prior to disposal.

WVDEP acknowledges that there were duplicate entries pulled on the list of ASTs we provided you with our letter of July 22, 2016. These duplicates occur in the system based upon

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how the tanks were initially registered. Attached is a revised list of all deregistered ASTs with duplicates removed.

Accordingly, it is the determination of the agency that the tanks in question are not a "pipeline facility" and must be registered pursuant to the Act. Continued operation or use of an aboveground storage tank that has not been properly registered is a violation of WV Code 22-30-4 (e). Continued violation of the statue will result in formal enforcement.

Within five days of receipt of this letter CPG must advise WVDEP of the actions it is taking to correct this violation(s). Thank you for your prompt attention to this matter.

Sincerely,

[Signature]

Ruth M. Porter
Tanks Program Manager

Attachment
cc: Scott G. Mandirola, Director, DWWM (via e-mail)
    Patrick V. Campbell, Deputy Director, DWWM (via e-mail)
    Jeremy W. Bandy, Chief Inspector, EE (via e-mail)
    Joseph M. Sizemore, Assistant Chief Inspector, EE, HW – AST / UST (via email)
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Columbia Gas Transmission
Deregistered Tanks (submit date 6/15/15)

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Typical Underslung Drip

Valve

Siphon Tube

Pipeline

Drip assembly cross-section

Liquid level

Gas flow

Not to Scale
Attachment D
August 26, 2016

Via CMRRR #7015 1520 0002 7290 9718
Ms. Ruth Porter
Tanks Program Manager
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Dear Ms. Porter:

Columbia Pipeline Group (CPG) appreciates the opportunity to respond to your letter we received via email on July 22, 2016 and via certified mail on July 29, 2016. We hope this response will correct any misunderstanding regarding the number, properties, locations or use of the de-registered CPG above ground storage tanks (ASTs) and will resolve this matter.

Incorrect number of ASTs referenced in your letter.

Your letter references four hundred and fifty (450) CPG above ground storage tanks (ASTs). This number is inaccurate. The West Virginia Department of Environmental Protection (DEP) inventory lists many duplicate entries. Please see Attachment 1, which highlights the duplicates in the DEP electronic system.

CPG originally registered 373 ASTs. After the passage of Senate Bill 423, CPG de-registered 339 ASTs. The DEP objected to de-registration of a subset totaling 220 ASTs. In total, CPG currently has 34 ASTs registered in the DEP system. Although arguably these 34 ASTs are also exempt, CPG has maintained registration because of a very conservative application of the exemption; while these ASTs are also part of a transmission pipeline facility, they are not physically connected to the pipeline. As discussed in more detail below, the remaining deregistered ASTs clearly fall into the enumerated exemptions under the West Virginia Aboveground Storage Tank Act (Act) as amended in 2015.

The de-registered ASTs are exempt under a plain reading of the Act.

The deregistration of a subset of our above ground storage tank (AST) inventory was a direct result of the regulatory changes made with the passage of Senate Bill 423, which amended the Act. Based on public comments at the time by West Virginia leaders, it was anticipated that tanks originally registered under the 2014 version would be deregistered if they fell under one of the new exemptions.
Ms. Porter
August 26, 2016

The plain reading of the Act exempts Columbia’s pipeline facilities from the regulation.1 Columbia relies on the law of statutory construction in West Virginia, which is well settled.2 In applying a statute, “its words should be given their ordinary acceptance and significance and the meaning commonly attributed to them.”3 The language of the statutory exemption is:

“Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979.”4

The common meaning and significance of the term “pipeline facilities ... regulated under the Natural Gas Pipeline Safety Act of 1968” is the definition stated in the Pipeline Safety Act itself. Any other definition would run afield of the statutory construction rule. “Pipeline facilities” are specifically defined to include “new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.”[emphasis added] 4 Accordingly, the plain reading of the West Virginia code exempts Columbia’s facilities. In addition, the DEP guidance on which tanks must be registered also exempts pipeline facilities and provides no additional limitations on this exemption.5

It is a “fundamental canon of statutory construction” that, "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."6 If the West Virginia legislature intended to change the ordinary, accepted meaning of “pipeline facilities” from the definition in the federal code under §192.3, it is Columbia’s position that such a deviation would have been required to be explicitly clear in the Act.

Additionally, there is no language in the Act redefining “pipeline facilities” or limiting the exemption to hazardous liquid pipeline breakout tanks, as your letter suggests, and such an interpretation is contrary to the well-established definition in the Pipeline Safety Act. Because they are only applicable to hazardous liquids pipelines, breakout tanks are defined under 49 CFR §195.2, a breakout tank is defined as one “used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by a pipeline for re-injection and continued transportation by pipeline.” The

2 In State of West Va. v. Cont'l Cas. Co., 130 W.Va. 147, 42 S.E. 2d 820 (1947), the Court held that when a statute is clear and unambiguous, and the legislative intent is plain, the statute should not be interpreted by the courts. 50 Am. Jur., Statutes; Section 225.
4 “Pipeline facility” is a term defined specifically by 49 CFR §§ 192.3.
5 https://apps.dep.wv.gov/ast/astsurvey.cfm.
Ms. Porter  
August 26, 2016  

U.S. Environmental Protection Agency (EPA) definition of a breakout tank under 40 CFR 112.2 is operationally identical; “a container used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline.” If the exemption in the Act had been intended to be limited to breakout tanks, it would have, by definition, also been limited to hazardous liquid pipelines. It was not, as it clearly includes natural gas pipeline facilities.

The Déregistered ASTs meet the definition and use requirements for exemption under the Act.

The de-registered CPG ASTs are physically connected to the transmission pipeline and are used in the transportation of natural gas and fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC), and the Department of Transportation/ Pipeline and Hazardous Materials Safety Administration (DOT/PHMSA).

There appears to be a misunderstanding of the function of the exempt ASTs, which forms the basis of your objection to deregistration. You stated in your letter, “[t]he material stored in the ASTs are liquids not vapor gas, and the ASTs do not appear to be used in the storage of gas, the transportation of gas, or the treatment of gas.” This is incorrect. For natural gas to be transported by pipeline, the storage withdrawal process involves removal of brine water from the gas. The water is then stored in ASTs until proper disposal. Natural gas cannot enter the pipeline without this critical process, because of the strict pipeline gas quality requirements under FERC tariffs. These ASTs are critical components of the transportation of natural gas, and vital equipment at pipeline facilities, and are therefore exempt.

Regulation under DOT/PHMSA and the EPA addresses legislative intent and environmental concerns.

All of the exemptions in the Act codify the legislative intent to focus regulatory attention on previously unregulated tanks in critical zones, which pose a significant risk to West Virginia public water supply intakes, while exempting safe tanks, which are already governed by state and federal regulations.

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<th>Location/Use</th>
<th>In Zone of Critical Concern</th>
<th>In Water Protection Area</th>
<th>Jurisdiction</th>
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</table>
Ms. Porter  
August 26, 2016  

The ASTs at Columbia's facilities are subject to design, integrity and monitoring regulations under the jurisdiction of DOT/PHMSA, as well as EPA's Spill Prevention, Control, and Countermeasure (SPCC) rules under 40 CFR 112.

The fourteen (14) ASTs in the zone of critical concern and two (2) ASTs in the water protection area are managed under SPCC plans. The SPCC requirements include maintaining secondary containment, and testing or inspection for integrity on a regular schedule and whenever material repairs are made. In addition, routine visual inspection is performed of the outside of the container for any signs of deterioration or indications of discharges. This visual inspection includes the AST’s supports and foundations, and is performed to verify the suitability of the AST for continued use until the next formal inspection. These measures effectively minimize and manage the risks associated with ASTs.

CPG is in compliance with the requirements of the Act, and remains committed to safe and environmentally sound practices for managing ASTs in accordance with all applicable requirements. If you have additional questions or would like to discuss further, please contact Heather Roberts at 724-627-2112, or myself at 832-320-5463.

Yours truly,

Stephen Chung  
Director, Environmental Law  
U.S. Pipelines Law  
Columbia Pipeline Group, Inc.  
a subsidiary of TransCanada Pipeline USA Ltd.

cc: H. Roberts

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7 §§112.8(c)(6), 112.12(c)(6)(i).