

PI-74-0137

September 25, 1974

Dear Mr. Gervino, Esq.
Getty Oil Company
660 Madison Avenue
New York, NY 10021

Dear Mr. Gervino:

This responds to your letter of September 13, 1974, asking whether the additional cover for a pipeline required by 49 CFR 195.210(b) must be provided when a private dwelling is constructed within 50 feet of an existing pipeline, but not on the pipeline's right-of-way. You also question the need for a carrier's "approval" of such construction.

In accordance with section 195.200, the additional cover required by section 195.210(b) must be provided for an existing pipeline whenever it is relocated, replaced, or otherwise changed. The construction of a private dwelling within 50 feet of an existing pipeline without action by the carrier concerned (e.g., sale of its right-of-way) to permit the construction would not result in relocating, replacing, or changing the pipeline and thus not bring the pipeline within the purview of section 195.210(b).

The statutes and regulations administered by this office do not require developers to obtain approval from a pipeline carrier before constructing a private dwelling within 50 feet of the carrier's pipeline. A carrier's right to authorize or restrict this construction is a matter of local law or for agreement between the parties concerned.

Thank you for your interest in pipeline safety.

Sincerely,
Joseph C. Caldwell
Director
Office of Pipeline Safety

Getty Oil Company

September 13, 1974

Mr. Joseph C. Caldwell, Director
Office of Pipeline Safety
400 Seventh Street S.W.
Washington, D. C. 20590

Re: Interpretation of 49 CFR 195.210

Dear Mr. Caldwell:

By letter dated May 14, 1974, Mr. A. G. Meck, President of Getty Pipe Company, wrote to you requesting an interpretation of 49 CFR 195.210 to determine if "an affirmative action of allowing construction" within 50 feet of a pipeline would obligate the Pipeline Company to provide additional pipeline cover as provided under 210(b).

You answered Mr. Meck by letter dated June 20, 1974. The third paragraph of said letter reads as follows:

"A pipeline carrier's action allowing a change in either a right-of-way or in the distance between its pipeline and adjacent structure is an action changing an existing pipeline system within the meaning of Sec. 195.200. Therefore, an action by the pipeline operator that would permit the construction within 50 feet of an existing pipeline serves to effectively change the location of that pipeline relative to adjacent structures. The pipeline operator would, then, pursuant to Sec. 195.210(b), have to provide 12 inches of pipeline cover in addition to that required by Sec. 195.248(a) unless the exception provided in Sec. 195.248(b) is applicable."

It is clear from your response that if a pipeline company allows the construction of a private dwelling on its right-of-way within 50 feet of its pipeline, it must see to it that the additional cover is provided.

However, I would like an interpretation of 195.210 as it applies to those situations where a private dwelling is to be constructed within fifty feet of the pipeline, but not on the pipeline company's right-of-way.

We are presently confronted with a number of situations wherein a township has requested a prospective builder of private dwellings to obtain our approval for the construction of any dwelling within fifty feet of our pipeline, but not on our right-of-way. I am confused as to why this "approval" is sought, since it is my opinion that if we do not have any interest in the land on which the dwelling is to be built (such as an easement or right-of way) our approval would not be required and if given would be meaningless. The townships involved apparently are generally aware of the provisions of 195.210 and feel that the safest thing for them to do is to have the builder obtain our approval whether or not it is required.

It is therefore my position that if a private dwelling is to be constructed within fifty feet of our pipeline, but not on our right-of-way, we have no legal basis for taking affirmative action and/or approving or disapproving of said construction. Consequently, if in fact, said dwelling is constructed, we need not provide the additional coverage unless and until the pipeline itself is replaced or re-located. I believe the paragraph from your letter, which I have quoted above, implicitly supports this conclusion.

Very truly yours,
EUGENE F. GERVINO