July 28, 1976

Mr. Richard H. Stock
National LP-Gas Association
1800 N. Kent Street
Arlington, Virginia 22209

Dear Mr. Stock:

This responds to your letter of June 8, 1976, regarding interpretations of terms in 49 CFR 192.11(a) and enforcement policy.

In our letter to you dated May 27, 1976, we stated that for the purpose of Section 192.11(a):

> "A 'system' normally consists of a tank storing petroleum gas in liquid form and the appurtenant pipelines and other facilities used by the operator of the system to deliver gas to one or more customers."

You propose that we reconsider this interpretation to provide, alternatively, that as the term "system" is used in the second instance in Section 192.11(a), it means either "a system that serves 10 or more customers" or "a system that serves more than one customer." The logic of the proposal is, respectively, that as used in the second instance in Section 192.11(a), the term "system" should have a meaning consistent with its meaning as used in the first instance, and that the Natural Gas Pipeline Safety Act of 1968 (the Act) does not authorize regulation of a system serving a single customer.

With respect to the first argument, our interpretation of the term "system" relates to the physical means of transporting petroleum gas and not to the number of customers served. Thus, there is not any inconsistency in applying the interpretation to the term as it is used in each instance in Section 192.11(a). Moreover, the separate qualifying phrases, "that serves 10 or more customers" and "any portion of which is located in a public place," serve to identify those systems which are subject to regulation and are not related to the meaning of the term "system."

Also, we do not agree with the second argument that regulation of a system serving only one customer is not authorized. The Act applies to all transportation of gas that "affects" interstate commerce. The Supreme Court has held that even a single intrastate transaction can reduce potential interstate markets and thus be properly regulated under the commerce clause of the Constitution. Therefore, in the absence of any specific statutory language to the contrary, we believe that all

transportation of gas to the ultimate consumer sufficiently affects interstate commerce to bring it under the Act.

Your second proposal concerns our interpretation of the term "public place" in Section 192.11(a). We have interpreted the term "public place" to mean a place which is generally open to all persons in a community as opposed to being restricted to specific persons, including churches, schools, and commercial buildings as well as any publicly owned right-of-way or property frequented by persons. You propose that we qualify this interpretation by limiting it to "that portion of a public place to which an invitee would normally have access." The purpose of the amended interpretation would be to exclude from regulation small single-tank systems generally located at the rear of a public place or in a kitchen or furnace room where persons are not reasonably expected to enter.

We do not feel that the objective of this second proposal would be consistent with pipeline safety. Although the likelihood of outside interference with systems in public places may be minimized by locating the systems in restricted areas, the risk of injury to the public is not hereby eliminated. Other causes of failure, for example, a malfunction of the system itself, could result in a fire or explosion and harm persons at the public place. It is this eventuality against which the rule is intended to protect. While we agree in principle that public safety should not hinge on ownership of the gas in a system, our statutory responsibility for safety only relates to the transportation of gas in or affecting commerce, which ends when title to the gas passes to the ultimate consumer.

Finally, we cannot concur with your suggested enforcement policy since Part 192 must be enforced as written and interpreted. Any change in the application of Part 192 to petroleum gas systems must be accomplished through the rulemaking process. If it can be demonstrated, as you suggest, that the application of Part 192 does not contribute to safety in areas which conflict with or are additional to NFPA standards 58 and 59, then the pertinent rules should be changed on that basis.

We look forward to your further submissions concerning Docket No. Pet. 76-7, particularly as they may relate to what Federal safety regulation is needed or appropriate for the small petroleum gas system operator.

Sincerely,

Cesar DeLeon
Acting Director
Office of Pipeline
Safety Operations

June 8, 1976

Mr. Cesar DeLeon
Acting Director
Office of Pipeline Safety Operations

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Department of Transportation
2100 2nd Street, S.W.
Washington, D.C. 20560

Dear Mr. DeLeon:

This letter is further to my letter of April 8, 1967 and a meeting between Mr. Charles Sawyer, myself, and Mr. Buck Furrow of your office, held on May 25, 1976.

The purpose of this letter is to request several interpretations. The first interpretation if for the word "system" as it occurs in the second instance in Section 193.11(a) of Title 49 of the Code of Federal Regulations, i.e., "or in a system, any portion of which is located in a public place". It is suggested that "system" as used in the second instance be interpreted to mean "a system" that serves 10 or more costumers". And thus be consistent with its meaning as used in the first instance in Section 193.11(a).

As we have previously pointed out the unnecessary expense or unreasonable liability created by application of Part 192.11(a) as presently interpreted will force LP-Gas firms to sell all or part of their installations to individual customers. The authority or regulatory agencies does not extend to the customer if not engaged in the distribution of gas. The change in ownership of LP-Gas installations serving 9 or less customers, which would result from the continued application of Section 192.11(a), would place the responsibility for maintaining the installation under the control of those unfamiliar with safety standards. Clearly this is contrary to the interests of government, the LP-Gas industry, and the public.

Alternatively we request that the word "system" as used in the second instance in Section 192.11(a) i.e., "or in a system, any portion of which is located in a public place be interpreted to mean a system that serves more than one customer". It appears obvious from the basic legislation, the Congressional history of it, the regulations, and the comments thereto that pipeline safety provisions were never intended to apply to a single installation employing a few feet of service line. The conclusion from any other interpretation would be that the regulations could apply to the millions of single customer installations throughout the nation.

We submit that Part 192 of Title 49 has as its primary purpose the regulation of the transmission of large volumes of gas at high pressure over long distances. To attempt to require single customer installations to conform to Part 192 is not only an inequitable and unnecessary burden on the small volume user, but more significantly, it adds nothing to the safe operation of these installations.

Additionally or alternatively, we request that a "public place" as used in Section 192.11(a) be qualified and interpreted to mean, "that a portion of a public place to which an invitee would

normally have access". The typical LP-Gas installation serving a public place consists of a storage tank, usually segregated at the rear of the public place and a service line normally no longer than 10 feet in length. LP-Gas appliance(s) are located in a distinct portion of the structure set aside for their use such as a kitchen or furnace room. The adoption of this interpretation would exempt from the application of Part 192 those public places presently encumbered by it merely because they are, in effect, served by LP-Gas.

In a letter from you to Mr. Harold E. Shutt dated November 18, 1976, it was stated that a church with a propane tank located on its property to supply fuel for heating purposes was not subject to the jurisdiction of Part 192 since that part does not extend to gas which has been purchased by and entered the possession of the ultimate consumer. It was further stated that, "This jurisdictional limitation is indicated by the definition of the term "service line" in Section 192.3. Because the church which you describe is the ultimate consumer of the gas it is not subject to Part 192".

In the case of the single customer installation, cited previously in this letter, the customer is "the ultimate consumer of the gas", although title may not pass until the gas leaves the meter located on the customer's property. Thus, the only distinction between the consumers for whom we seek relief and the illustration cited in the referenced letter of November 18, 1976 is the difference of when title passes. The two installations are physically identical with the single exception being the use of a meter as a means of measuring the quantity of gas consumed, rather than determining this on the basis of the amount of gas replaced in the storage tank. Surely the application of safety regulations is not to be determined by the legal abstraction of the indicia of ownership.

In both, the example of the church and the single customer installation, "a portion" of the installation is located in a "public place". However, the latter is subject to Part 192 regulations while the former is not. The adoption of the interpretation suggested would reconcile this inconsistency, preserve the integrity of Part 192.11(a) as presently written, and avoid its application from seeming to depend upon irrelevant concepts of ownership. Interpreting "public place" to mean, "that a portion of a public place to which an invitee would normally have access", would exempt Part 192 from applying to the most frequently encountered LP-Gas installations where storage, piping, and appliances are separate and distinct from that portion of the public place to which all but those with a purpose or need can reasonably be expected to enter.

It should be recognized that the granting of the requested interpretations would <u>not</u> leave LP-Gas systems unregulated. Such systems would <u>continue</u> to remain subject to the application of NFPA standards 58 and 59. These standards have experienced an exceptional safety record, and we are unaware of any incident involving LP-Gas which would have been prevented by the additional application of Part 192.

Finally, additionally or alternatively, we request that a statement of enforcement policy be issued to the effect that, NFPA standards 58 and 59 will apply to any installations of nine or less

customers in the absence of an affirmative showing that application of Part 192 will substantially enhance the safe operation of such installations". This would place the burden of proving the need for the application of Part 192 upon those responsible for enforcement, and in instances where it cannot be demonstrated that Part 192 would contribute substantially to achieving greater safety only standards 58 and 59 would be applicable.

I am in receipt of your letter of May 27, 1976 in which you request additional information in order to determine if rulemaking action is justified, in behalf of the NLPGA, concerning 49 CFR 192.11(a). The Association is in the process of compiling the requested documentation, and I will contact you in the near future on this matter.

Thank you very much for your attention to these enclosed requests, and please let us know if we may supply any additional information to assist you in reaching a final decision.

With warm regards, I am

Sincerely,

Richard H. Stock