Mr. Daniel N. Myers
Director, Legislative Services
& Associate Counsel
National LP-Gas Association
1800 N. Kent Street
Arlington, Virginia 22209

Dear Mr. Myers:

This responds to you letter of March 24, 1978, with regard to the following interpretation published in Advisory Bulletin No. 75-9 dated September 1975:

> "Question: In 49 CFR 192.11(a), does the language 'any portion of which is located in a public place (such as a highway)' refer only to publicly owned rights-of-way or property/"
>
> "OPSO Interpretation: The term 'public place' in Section 192.11(a) means a place which is generally open to all persons in a community as opposed to being restricted to specific persons. We consider churches, schools, and commercial buildings as well as any publicly owned right-of-way or property which if frequented by persons to be public places under Section 192.11(a).

You have questioned the authority of the Office of Pipeline Safety Operations (OPSO) to interprt its regulations in this manner, citing the Natural Gas Pipeline Safety Act's reference to the Administrative Procedures Act (APA) and establishment of the Technical Pipeline Safety Standards Committee. This argument neglects to recognize the limited applicability of the notice and public procedure requirements of the APA. Those requirements expressly do not apply to interpretive rules -- i.e., rules of statements issued by an agency to advise the public of the agency's construction of the statues and rules which it administers (see 4 USC 553). OPSO's interpretation of Section 192.11 is properly considered an interpretive rule in that it does not alter or modify the regulation but rather explains and clarifies the intended meaning and applicability of the rule.

The absence of published procedures regarding interpretations does not invalidate OPS's authority to issue such interpretations. Any government agency which engages in rulemaking is traditionally authorized to interpret the rules which it prescribes.

Regarding the merits of the interpretation, you have said it is erroneous in its conclusion and arbitrary in its application. You point out that the "highway" example of a public place illustrates that the Office of Pipeline Safety (OPS) intended the term to mean only public roadways, right-of-

way, and similar areas. You mention that if OPS had intended to give the words "public place" a broader definition, the Office had the opportunity to do so in 1970 when the regulation was issued. In considering this argument, we looked for any background information from which we might conclude that the "highway example was intended as an exclusive definition of the term "public place." From the information available, we do not find that this result was intended. The only reasonable alternative conclusion is that the term "highway" was used merely as an example of a public place, and the applicability of that regulation wa not intended to be limited to that particular type of public place. Of primary concern to this Office are pipelines located in any type of public place which would expose the public to the possible hazards of LPG. The clarifying interpretation citing "churches, schools, and commercial buildings" as other examples of a "public place" is well within this limitation.

You further illustrate your disagreement with this Office's interpretation by pointing to a letter dated November 18, 1975, to Mr. Harold E. Shutt, Chief Engineer Gas and Electric Division, for the Illinois Commerce Commission. There Opso concluded that propane facilities which were owned, or alternatively, leased by the church were not subject to Part 192 since the purchased gas had "entered the possession of the ultimate customer." You say that because the church in Mr. Shutt's example is private property, whether or not it is frequented by the public, exceptions must be carved out for those instances, like the church, where the facilities are owned or leased by the property owner.\

The exception carved out for public places such as the church example is founded on our interpretation of the extent of jurisdiction of the Natural Gas Pipeline Safety Act of 1968 over the transportation of gas. Our interpretation, which limits jurisdiction at the point where gas has been purchased and received by the ultimate consumer, is consistent with the legislative history of the Act. Such a distinction is practicable, since this point of transfer of gas ownership is easily identifiable.

As an extension of this interpretation, it is logical to conclude that in situations where an entire pipeline system is providing gas to a single ultimate consumer and the entire system is located on property owned by that ultimate consumer, that system is also outside the Act's jurisdiction. The purpose of the Act is to provide for the regulation of gas transportation up to the point where gas reaches the consumer. In a single tank-single customer situation, where the system is on the customer's property, we believe the gas has effectively reached the consumer and thus the system is beyond the scope of the Act.

For the above reasons, we conclude that the subject interpretation of the term "public place" in Section 192.11(a) was properly issued and is neither erroneous of arbitrary. Therefore, we deny your request that the interpretation be rescinded.

In the meantime, as I previously requested in my letter to your association on May 27, 1976, we still solicit the following information from your association:

1. Please explain how the existing regulation of systems with nine or less customers, a portion of which is in a public place, creates "an intolerable burden of enforcement" as alleged.

2. Since Part 192 now incorporates by reference NFPA Standards 58 and 59, the standards with which most operators are familiar, please give examples of the "Confusion" allegedly caused by regulation under Part 192.

3. Section 192.11(a) provides that "In the event of a conflict (with NFPA 58 or 59), the requirements of (Part 192) prevail." Please identify any areas of conflict, and show why application of requirements in Part 192 would be appropriate.

4. Please substantiate the charge that "unnecessary expense" and "unreasonable liability" are created by application of Section 192.11(a) to systems with nine or less customers.

5. What alternative amendment other then absolute exemption might satisfy the regulatory difficulties that are believed to exist?

We believe that a comprehensive set of new safety standards for LPG facilities would remove many of your present difficulties. We would welcome any efforts you might make toward development of such standards.

Sincerely,

/signed/

Cesar DeLeon
Associate Director for
Pipeline Safety Regulation
Materials transportation Bureau

DB
C:\WP51\INTERPRT\192\11\78-06-07