

Mr. Robert M. Mendell
Horan & Devlin
1300 Post Oak Boulevard
Suite 2200
Houston, TX 77056

Dear Mr. Mendell:

I am responding to your letter of June 7, 1991, to Richard Rippert of this agency. You asked about the applicability of the Department's hazardous liquid pipeline safety regulations in 49 CFR Part 195 to storage tanks. Your questions relate to deciding whether persons who work on certain storage tanks are subject to the drug testing regulations in 49 CFR Part 199.

First, you asked what level of tank activity would cause a storage tank connected to a pipeline to come under Part 195 as a "breakout tank." Part 195 applies to any storage tank that is used according to the definition of "breakout tank" under ?195.2, except tanks used in pipeline transportation listed in ?195.1(b)-(8). The level of activity of the tank, or the amount of time it functions as a breakout tank, is not a factor under the breakout tank definition.

So, under Part 195, a storage tank qualifies as a breakout tank regardless of the level of activity of the tank.

Your second question was whether terminal tanks are subject to Part 195. The only storage tanks subject to Part 195 are breakout tanks. Such tanks are found along pipeline routes and at pipeline terminals. Pipeline terminals may also have storage tanks that are not breakout tanks. These other types of storage tanks are not subject to Part 195.

Finally, you asked if a breakout tank remains subject to Part 195 while it is out of service if it is "blinded" or "locked out and tagged out" to stop the flow of liquid into or out of the tank. A breakout tank is subject to Part 195 as long as it is used in the transportation of hazardous liquid by pipeline that is covered by Part 195. Such use in transportation, and consequently the jurisdiction of Part 195, is not interrupted when a tank is temporarily emptied or otherwise taken out of service for inspection or repair work. The performance of maintenance activities on a breakout tank is clearly within the jurisdiction of the DOT. Thus blinding or locking out and tagging out a breakout tank for purposes of maintenance will not affect the applicability of DOT pipeline regulations.

With respect to Part 199, these regulations require operators to drug test employees who perform on a pipeline that is subject to Part 195 any operating, maintenance, or emergency-response function regulated by Part 195. Part 195 defines "pipeline" to include "breakout tank." So, performance of any such regulated function on a breakout tank that is subject to Part 195 (including tanks temporarily out of service for maintenance) would subject the person who performs the function to drug testing under Part 199.

I apologize for the delay in answering your letter. Do not hesitate to contact us again if you have further questions about the Department's pipeline safety regulations.

Sincerely,

/signed/

Cesar De Leon
Director of Pipeline Safety
Regulatory Programs