

Memorandum

March 16, 1995

Jurisdiction of Plains Terminal & Transfer

Barbara Betsock
James C. Thomas

You have asked whether the tankage and related piping at the Plains Terminal and Transfer crude oil terminal at Cushing, Oklahoma, is subject to the pipeline safety regulations. Based on the information you have provided, these facilities are pipeline facilities subject to the pipeline safety regulations applicable to hazardous liquid pipelines.

You have described the tankage in the terminal as meeting the definition of breakout tanks in 49 C.F.R. § 195.2 based on use of the tanks as temporary storage for continued transportation by pipeline. The crude oil in the terminal arrives and departs via numerous interstate and intrastate pipelines which are unquestionably subject to the jurisdiction of 49 U.S.C § 60101 *et seq.* The terminal is not a production, manufacturing, or refining facility. Although the terminal is independently owned and operated by Plains Terminal and Transfer Corporation rather than by one or more of the operators of the various pipelines using the terminal, ownership is irrelevant to the jurisdictional issue. The nature and use of the tankage as storage incidental to the movement of hazardous liquid by pipeline (and not otherwise excepted by the statute) dictates that the terminal is a pipeline facility subject to the jurisdiction of 49 U.S.C § 60101 *et seq.*

This does not answer the question of regulation under 49 C.F.R Part 195. You have asked whether the fact that the terminal operates as less than 20% SMYS and is located in a rural area provides an exception to regulation. The answer is no. The description provided of the operations in the terminal indicates that the breakout tanks, albeit storage, are an integral part of the pipelines using the terminal. These pipelines are regulated pipelines operating at more than 20% SMYS. Thus the associated breakout tanks are not excepted from regulation.

This view of “the 20% SMYS exception” is not new. In a January 30, 1986 final order, OPS considered a defense that piping associated with breakout tanks in a terminal was excepted from regulation. In the Matter of Marathon Pipe Line Company, CPF No. 4516. Although the case was dismissed on other grounds, OPS rejected the defense based on the 20% SMYS exception because the exception does not apply to segments of pipeline systems. In proposing the change in regulation that brings certain 20% SMYS pipelines into the regulation, we made it clear that breakout tanks such as these have never been excluded from regulation:

Some operators expressed concern that piping within storage or terminal facilities would become regulated. Pipeline associated with breakout tanks at storage facilities of regulated hazardous liquid pipelines currently is regulated, regardless of operating stress, if the liquids are reinjected and transported further by a pipeline system that is regulated.

58 Fed. Reg. 12215 (Notice of proposed rulemaking, March 3, 1993).

cc: Ed Ondak, Western Regional Director
Ivan Huntoon, Central Regional Director
Fred A. Joyner, Southern Regional Director
Bill Gute, Western Regional Director
Tom Fortner, Director, Compliance and Regulatory Program