

PI-97-0101
U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

September 16, 1997

Mr. R. J Redweik
Staff Environmental Engineer
Shell Western E&P Inc.
P.O. Box 576
Houston, TX 77001

Dear Mr. Redweik:

This is in response to your letter dated June 16, 1997, requesting further clarification of the Research and Special Programs Administration's (RSPA) regulation of Shell Western E&P Inc. pipeline facilities transporting non-HVLs through low stress lines in Cook Inlet, Alaska. You described these facilities as accepted from 49 CFR Part 195 regulations because they transport petroleum in onshore gathering lines in rural areas. As this letter explains, the facilities are regulated under Part 195.

The pipeline facilities are subject to part 195 requirements because, for purposes of the pipeline safety regulations, we do not consider the facilities to be located onshore. Although the pipeline safety regulations do not define onshore, offshore is defined in § 195.3 as being "beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters." The facilities are located in the waters of Cook Inlet, which average a depth of 100 feet, 35 foot tides, and 7 knot currents. Cook Inlet is in direct contact with the open seas, as evidenced by tides and currents. Recent pipeline safety legislation and regulations have focused on the potential hazards to navigation posed by submerged pipeline facilities. Thus, our intent in delineating onshore from offshore waters is to focus on waters where submerged pipeline facilities pose a risk to the public and the environment. The pipeline facilities in Cook Inlet pose a safety hazard to navigational traffic.

Because the Coast Guard has the same concern with navigational hazards, we refer to its regulations for establishing the line of demarcation. (33 CFR part 80.) The Coast Guard's regulations do not consider Cook inlet as inland waters. Although alternative definitions for determining inland waters exist, such as one based on Federal/State boundaries, these definitions have no relevance to the pipeline safety laws.

Furthermore, the facilities are regulated under Part 195 because they are located in a navigable waterway. Cook Inlet is a navigable waterway, which is navigable in fact by commercial navigation. RSPA clarified the regulatory 'status of such lines in amendment 53 to 49 CFR 195 (59 FR 35465). This amendment addressed the applicability of Part 195 regulations to pipelines that operate at 20% or less of specified minimum yield strength (SMYS) in navigable waterways. Although rural gathering lines were exempted, pipelines in navigable waterways were not accepted because of the greater risk they pose to the public and the environment.

If you have any further questions, please feel free to contact me at (202) 3664565. I am confident that Shell Western E&P Inc. shares in our commitment to the safety and integrity of the nation's hazardous liquid pipeline system. I look forward to our continued partnership in furthering our common goals.

Sincerely,
Richard B. Felder
Associate Administrator for Pipeline Safety

Shell Western E&P Inc.
P.O. Box 576
Houston, Texas 77001

CERTIFIED MAIL P 298 304 497
RETURN RECEIPT REQUESTED

June 16, 1997

Mr. Richard D. Huriaux
Director for Technology and Regulations
Office of Pipeline Safety
Department of Transportation 400
Seventh Street, SW Washington, DC
20590

Dear Mr. Huriaux:

SUBJECT: CLARIFICATION OF DOT PIPELINE JURISDICTION COOK INLET, ALASKA

Further to your letter of May 19, 1997, we respectfully disagree with your explanation regarding the classification of the subject pipelines and request that you reconsider your determination of jurisdiction. It remains our contention that these pipelines are transporting petroleum in onshore gathering lines in rural areas. Therefore, in accordance with 49 CFR 195.1(b)(4) and as explained below, these regulations are clearly not applicable to the subject pipelines.

Rationale for Reconsideration of Determination of Jurisdiction

First and foremost, the subject pipelines are located in onshore waters -- not offshore as put forth in your letter. The definition for offshore as provided in 49 CFR 195.2 means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters. Based on this definition, Cook Inlet is clearly considered onshore waters.

Your letter states that:

Cook Inlet waters are considered offshore as they are in direct contact with the open sea and not categorized as "inland waters". Inland waters are specifically established by the U.S. Coast Guard under 33 CFR 80.01. Under this Coast Guard regulation, none of the sounds, bays, harbors, or inlets of Alaska are considered to be inland waters.

Unfortunately, the regulation which you cite above and on which your determination of jurisdiction is solely based is not applicable to the regulations under 49 CFR 195. Only those definitions listed or referenced in 49 CFR 195 are applicable to the 49 CFR 195 regulations. The 33 CFR 80.01 regulatory definition is not cited under 49 CFR 195 and is therefore not applicable to the regulations under 49 CFR 195. Furthermore, 33 CFR 80.01 clearly states that "the regulations in this part establish the lines of demarcation delineating those waters upon mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those water[s] upon which mariners shall comply with the Inland Navigation Rules. Since 49 CFR 195 does not deal with international regulations for preventing collisions at sea nor with inland navigation rules, your citing of the 33 CFR 80.01 definition for offshore is not applicable in our determination of jurisdiction.

The Minerals Management Service, the Environmental Protection Agency, the State of Alaska, and other agencies which regulate our operations and facilities consider the Cook Inlet area where these subject pipelines are located to be coastal waters of the State of Alaska. Clearly, Cook Inlet is not considered offshore.

Lastly, since 49 CFR 195.1(b)(4) states that the "transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexico" is not subject to these regulations, it is clear that the regulators intended to include onshore rural areas as being areas which may be covered with water and may be located in territorial state and coastal waters. If this were not the case, why would the exception for gathering lines in the inlets of the Gulf of Mexico be included in this subparagraph? Clearly, for the purpose of these regulations, Cook Inlet was not considered offshore. In addition, onshore rural areas could include areas covered by water (e.g., territorial seas, coastal waters, and other state waters).

Conclusion

In conclusion, as defined by 49 CFR 195.2, the subject pipelines in Cook Inlet are not located offshore. These pipelines are onshore gathering lines which transport petroleum and are located in rural areas. In accordance with 49 CFR 195.1(b)(4), these regulations do not apply to these subject pipelines. Therefore, we request that you reconsider your determination of jurisdiction.

If you have any questions, please contact me at (281) 544-3016.

Very truly yours,
R. J. Redweik
Staff Environmental Engineer

Shell Western E&P Inc.
P.O. Box 576
Houston, Texas 77001

CERTIFIED MAIL P 298 304 520 RETURN RECEIPT REQUESTED

March 17, 1997

Mr. Rich Felder
Associate Administrator of Office of Pipeline Safety
Department of Transportation
400 7th Street, SW
Washington, DC 20590

Dear Mr. Felder:

SUBJECT: REGULATION OF GATHERING LINES IN COASTAL WATERS COOK INLET, ALASKA

Further to our meetings and discussions with Mr. Chris Hoidal of your office in Anchorage, Alaska, Shell Western E&P Inc. (SWEPT) requests your concurrence with our interpretation that the subject gathering lines in Coastal Waters, Cook Inlet, Alaska are not subject to DOT regulation.

Background

Under 49 CFR Part 195.1, the regulations state that this part is not applicable to the transportation of non-HVL through low stress pipelines, except for any pipeline or pipeline segment that is located in an onshore area other than a rural area, offshore, or in a waterway that is navigable in fact and currently used for commercial navigation (Reference 195.1(a)(3)) and is not applicable to the transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexico subject to Section 195.413 (Reference 195.1(a)(4)). Although not all of the requirements are met under 195.1(a)(3), all of the requirements are met under 195.1(a)(4) and therefore the gathering lines are not subject to DOT regulation.

Under 195.1(a)(3), our lines located in Cook Inlet are transporting non-HVL through low stress lines. However, certain pipelines and pipeline segments are excepted and are subject to DOT regulation. These include lines located in the onshore area other than a rural area, lines located in the offshore, or lines located in a waterway that is navigable in fact and currently used for commercial navigation.

Our lines are located in rural areas (i.e., Cook Inlet) and are not located in the offshore, therefore, the exception does not apply for these two items. However, since our lines are located in a waterway that is navigable (i.e., Cook Inlet), we are unable to meet all the requirements under this subsection exception and our lines would still be considered DOT regulated under 195.1(a)(3).

However, our lines clearly meet the requirements under 195.1(a)(4) and are therefore not subject to DOT regulation. Under paragraph (a)(4), lines which transport petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexico subject to 195.413. Our lines are onshore gathering lines located in rural areas and they transport petroleum crude oil. First of all, gathering lines are defined as a pipeline 8 5/8 inches or less nominal outside diameter that transport petroleum from a production facility. Our lines are 8 inches nominal outside diameter and transport petroleum from production facilities as defined under 195.2. Furthermore, our lines are also located in a rural area (i.e., located outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development). The definition of rural area is not limited to onshore areas and in fact, rural areas located in Coastal

Waters (e.g., Cook Inlet) are specifically included under 195.1(a)(4) as lines which are excluded from DOT regulation. Under paragraph (a)(4), rural area gathering lines in the inlets of the Gulf of Mexico subject to 195.413 are specifically excepted and are subject to DOT regulation. However, other rural area gathering lines including those in Coastal Waters (e.g., Cook Inlet) and those in inlets of the Gulf of Mexico (i.e., other than those subject to 195.413) are specifically excluded from regulation. A diagram is attached showing the subject pipelines.

In conclusion, our lines in Cook Inlet, although located in navigable waters, are transporting non-HVL (i.e., petroleum crude oil) through low-stress gathering lines in rural areas from production facilities and are therefore not subject to DOT regulation under 49 CFR Part 195.

Similar rationale can also be used for excluding our gas gathering lines from DOT regulation under 49 CFR Part 192. The regulations clearly state under 192.1(b)(2) that onshore gathering of gas outside of an area within the limits of any incorporated or unincorporated city, town, or village or any designated residential or commercial area such as a subdivision, business or shopping center, or community development are not subject to DOT regulation. Since our gas gathering lines are located outside of the above areas (i.e., in Cook Inlet), our lines are not subject to DOT regulation under 49 CFR Part 192. A diagram is attached showing the subject pipelines.

In conclusion, our lines in Cook Inlet are gas gathering lines located outside of the areas described under 192.1(b)(2)(i) and (ii) and are therefore not subject to DOT regulation under 49 CFR Part 192.

Summary

As demonstrated above, we conclude that the Shell Western E&P Inc. petroleum and gas gathering lines from our production platforms located in the Cook Inlet, Alaska are not subject to DOT regulation under 49 CFR Parts 192 or 195.

If you have any questions or comments, please contact me at (281) 544-3016.

Very truly yours,
R. J. Redweik
Staff Environmental Engineer