

PI-05-0101

U.S. Department of Transportation
Pipeline and hazardous Materials Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

July 22, 2005

Mr. Charles W. Nieder
Attorney at Law
Nieder, Bodeux, Carmichael, Huff, Lenox and Pashos, L.L.P
131 Jefferson Street
St. Charles, MO 63301-2885

Dear Mr. Nieder:

Thank you for your letters of September 28, 2004, and October 13, 2004, requesting an interpretation of Part 49 CFR 192.307.

On March 3, 2005, you modified your requests, asking that the Office of Pipeline Safety (OPS) answer whether or not concrete falls within the definition of consolidated rock at § 192.327. Section 192.327 reads (in part):

§ 192.327 Cover.

(a) Except as provided in paragraphs (c), (e), (1), and (g) of this section, each buried transmission line must be installed with a minimum cover as follows:

Location	Normal soil	Consolidated rock
Inches (Millimeters)		
Class 1 locations	30 (762)	18 (457)
Class 2, 3, and 4 locations	36 (914)	24(610)
Drainage ditches of public roads and railroad crossing	36 (914)	24 (610)

(b) Except as provided in paragraphs (c) and (d) of this section, each buried main must be installed with at least 24 inches (610 millimeters) of cover.

The terms concrete and consolidated rock are defined using the ordinary dictionary definition. Concrete is a synthetically formed coalition of particles into one solid mass, and consolidated rock is a natural geological formation. Because concrete is not a natural geological formation, it does not fall within § 192.327.

If you have further questions regarding this interpretation, please contact me at (202) 366-4595.

Sincerely,
Florence L. Hamn
Director for Regulations
Office of Pipeline Safety

Niedner, Boudeux, Carmichael, Huff, Lenox and Pashos, L.L. P
131 Jefferson Street
St. Charles, Missouri 63301-2885

May 16, 2005

U.S. Department Of Transportation
Research and Special Programs Administration
Office of Pipeline Safety
Attention: Ms. Shauna Turnbull, Regulatory Analyst
400 Seventh Street, SW, Room 2103
Washington, D.C. 20590

And Via Facsimile No. 1-202-493-2311 Dear Ms. Turnbull:

My patience with the United States Department of Transportation is at an end. As indicated in my enclosed letter of September 28, 2004, I have been, since that date, asking your Department for a very simple thing. That is your Department's definition of "consolidated rock" as contained in 49 CFR Chapter 1 Section 192.327, copy enclosed. It is ridiculous that your Department cannot give me an answer to this question and that you have told me that you need extensive time to research what that phrase means. Please answer my questions within the next fifteen (15) days or I will send written complaints to my client's Congressman and Senator.

Very truly yours,
CHARLES W. NIEDNER
Attorney at Law

Niedner, Boudeux, Carmichael, Huff, Lenox and Pashos, L.L. P
131 Jefferson Street
St. Charles, Missouri 63301-2885

October 13, 2004

U.S. Department of Transportation
Research and Special Programs Administration
Office of Pipeline Safety
Attention: Ms. Stacey Gerard 400 Seventh Street
S.W. Washington, D.C. 20590

And Via Facsimile No. 1-202-493-2311

RE: Gaines Family Limited Partnership Pipeline Crossing

Dear Ms. Gerard:

I represent Gaines Family Limited Partnership. I'm writing to ask your office's interpretation of the cover requirement specified in 49 CFR Chapter 1, Section 192.327, and copy enclosed. I have also enclosed two letters and a diagram explaining the overall situation. The bottom line is that the Planning Director Of St. Charles County, Missouri, sent a letter to my client dated September 20, 2004, directing that my client obtain this interpretation from Karen Butler at your Kansas City Office by October 4, 2004. I mailed and faxed my enclosed letter to Karen Butler asking for that interpretation. Today Karen Butler called me and informed me that the Kansas City Office of U.S. DOT was not capable of interpreting that regulation and that only you could interpret the regulation.

I would very much appreciate it if you could respond with your interpretation of whether my hypothetical situation would comply with the cover regulation. I understand that you do not personally know how this construction occurred because you were not present when that happened. I'm not asking you to make any kind of determination about what in fact happened on the property. I'm only asking you to tell me if my client would be in compliance with the cover regulation if in fact the construction occurred as described in my letter of September 28, 2004.

I also realize that you are probably very busy and have a lot of people asking you for information as soon as possible. All I can say is that my client is in serious need of a response from your office as soon as possible because St. Charles County may take legal action against my client if we cannot give them your opinion in the very near future. Neither I nor my client's engineer, Paul Lorton, can understand how the construction described in my letter could not be in compliance with the cover regulation. However, the St. Charles County Planning Director wants to hear that from U.S. DOT and not from me or my client's engineer. Thank you very much for your help in this matter.

Very truly yours,
CHARLES W. NIEDNER
Attorney at Law

Niedner, Boudeux, Carmichael, Huff, Lenox and Pashos, L.L. P
131 Jefferson Street
St. Charles, Missouri 63301-2885

September 28, 2004

United States Department of Transportation
Regional Office of Pipeline Safety
Attention: Ms. Karen Butler
910 Locust Street, Suite 462
Kansas City, Mo. 64106-2641

And via fax # 1-816-329-3831

Re: Gaines Family Limited Partnership Pipeline Crossing

Dear Ms. Butler:

I represent the Gaines Family Limited Partnership. I am writing to you at the suggestion of the Director of Planning of St. Charles County, Steven G. Lauer. As suggested in the enclosed copy of his letter to my client, we are seeking your Department's advice on whether the amount of cover that my client placed over Missouri Pipeline Company's natural gas pipeline for a parking lot meets USDOT standards. My client's engineer, Paul Lorton, believes that this is a Class 1 location as referenced in 49 CFR Chapter 1, Section 192.327. I believe that regulation requires that such a pipeline be covered by either 30 inches of soil or 18 inches of consolidated rock. I do not know the definition of "consolidated rock" and I ask that you clarify that for me.

There is a rather involved and contentious history between my client and Missouri Pipeline Company which I will be happy to share with you if you want to know it. However, the purpose of this letter is to explain the cover that was put over the pipeline by my client and to ask you if that cover meets USDOT standards.

Before any concrete was poured by my client, my client graded the soil over the pipeline easement to prepare it for the parking lot construction over the pipeline. My client contacted Missouri Pipeline Company to examine the grading before any concrete was poured. Matt Smith, a Missouri Pipeline Company employee, came to the site and took measurements using a probe to determine the amount of soil covering the pipeline in those graded areas over the pipeline. Matt Smith placed flags in the graded areas with numbers on the flags indicating the depth of the soil cover at 5 locations where my client wanted to pour a concrete parking lot over the pipeline. My client prepared a depiction of Matt Smith's depth findings titled "MPC Probe 02-20-04", copy enclosed. I have added an arrow indicating north on the depiction. The rectangle on the left side of that depiction represents a building next to the parking lot. There are numbers representing the distance from the building to the edge of the pipeline easement, the distance from the building to the center of the pipeline where the depth was probed, and the depth of cover readings determined by Matt Smith. For instance, at the top (east end) of the depiction, the easement boundary is 11 feet from the building, the center of the pipeline is 38 feet from the building, and the depth of the graded soil cover over the center of the pipeline is 42 inches. I don't know why the bottom (southern) two measurements do not include the distance from the building to the center of the pipeline, but that could be easily calculated if anyone cares about that. The important numbers are of course the depth of soil cover readings taken by Matt Smith over the center of the pipeline. My client subsequently poured 12 inches of concrete over those depths of graded soil in the pipeline easement. Therefore, there is now an additional 12 inches of concrete cover over the depth of soil readings taken by Missouri Pipeline Company's employee, Matt Smith. That means that there is more than 30 inches of cover over the pipeline at all locations, 12 inches of which is concrete.

I would appreciate it if you could send a letter to me confirming that such described construction would be in compliance with USDOT standards for cover of a natural gas pipeline. As mentioned above, I would also be interested to know the meaning of "consolidated rock" in the regulation.

For your file, I have also enclosed a letter from my client's engineer expressing the opinion that my client's use of 12 inches of concrete on top of the graded soil for the parking lot is safer than a previous plan approved by St. Charles County that only required an aggregate parking lot surface meaning gravel or asphalt.

Thanks for your help.

Yours very truly,
CHARLES W. NIEDNER
Attorney At Law

St. Charles County Government
201 North Second Street
Suite 420
St. Charles, MO 63301-2874

September 20, 2004

Gaines Family Limited Partnership
William R. Gaines, Jr.
55 North Pointe Circle
Lake St. Louis, Missouri 63367

Dear Mr. Gaines:

Please be advised that the Planning & Zoning Division of the Community Development Department has reviewed the revised site plan that Mactec Engineering and Consulting had submitted on September 10, 2004. The following items still need to be addressed relative to the site plan for Gaines Construction, Inc.:

1. The trash enclosure area needs to be sight-proof both in the front with a solid gate, and in the rear with a six (6) foot tall fence.
2. Please relocate the loading zone to the most western overhead door of the former Total Marine Business structure so that it does not encroach upon parking spaces.
3. When all related site work is completed, inspected and approved by the Planning and Zoning Division, occupancy permits will need to be obtained for each of the three (3) buildings constructed on the site.
4. In reference to the site improvements over the natural gas pipeline easement please be advised that I do not have authority to override the federal interest in pipeline safety and will require either a letter of consent from the pipeline company or a letter from the USDOT Regional Office of Pipeline Safety in Kansas City, Mo. For the USDOT Office you should send a copy of the MPC Probe 02-20-04 which is enclosed to either of the following staff members Karen Butler at 816-329-3835 or Harold Winnie at 816-3293836. Both of their addresses would be the same at USDOT Regional Office of Pipeline Safety, Regional Project Manager, Community Assistance and Technical Services, 910 Locust, Suite 462, Kansas City, Missouri 64106-2641. The USDOT staff would need to advise if the current situation meets the minimum requirement for soil cover and improvement that they enforce.

Please have the above information submitted to the Planning & Zoning Division by no later than Monday October 4, 2004. If you have any further questions regarding this matter please feel free to contact me at your earliest convenience.

Sincerely,
Steven G. Lauer
Planning & Zoning Division Director