



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

SEP 28 2015

Mr. J. Patrick Foley  
Senior Vice President  
Caelus Energy Alaska LLC  
3700 Centerpoint Drive, Suite 500  
Anchorage, AL 99503

Dear Mr. Foley:

In response to your request of December 5, 2014, by letter dated March 11, 2015, the Pipeline and Hazardous Materials Safety Administration (PHMSA) provided you with information concerning a diesel fuel pipeline operated by Caelus Energy Alaska LLC, that transports diesel fuel from onshore facility to a production facility on a man-made gravel island located offshore in the Beaufort Sea. Specifically, the March 11 2015, letter advised you that it appeared the diesel pipeline is subject to regulation under § 195.1(a)(2) because it transports petroleum products to the gravel island where they will be consumed.

In a subsequent letter to PHMSA dated April 22, 2015, you requested that PHMSA revisit its response to your December 5, 2014, request. You stated that Caelus purchases diesel fuel from vendors that deliver it by truck to onshore tanks where the pipeline originates and you questioned whether the diesel fuel is in the stream of transportation. In addition, you noted that the diesel fuel pipeline never leaves the State of Alaska and questioned whether such transportation is in or affecting interstate commerce under 49 U.S.C. 60101.

With regard to the fact that the diesel fuel arrives at the onshore tanks by truck as opposed to some other mode of transportation, such as rail, marine vessel, or another pipeline, we appreciate the additional information but it does not mean that the movement of the diesel fuel through the diesel fuel pipeline is not in the stream of transportation. With regard to the issue of PHMSA's authority over an intrastate pipeline that does not transport products to another state, it is true that a state can assert authority over intrastate pipelines in accordance with the certification process set forth in 49 U.S.C. 60105 and PHMSA would not directly regulate the intrastate pipelines in that state. In the case of Alaska, however, the state does not have a § 60105 certification and, therefore, PHMSA has authority to regulate non-exempt hazardous liquid pipelines used in transportation in Alaska.

Finally, with regard to the idea that the onshore facility where the pipeline originates and the gravel island are one entity and the pipeline "never leaves" what you term your production facility, PHMSA cannot agree. The fact is that there are surface waters between the onshore facility and the island that you do not own or control all physical access to (as might be the case with a facility on land that can be fenced in). A pipeline failure or spill into these waters would

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters. These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations do not create legally-enforceable rights or obligations and are provided to help the public understand how to comply with the regulations.

impact parties other than Caelus. The fact that a pipeline runs between the onshore facility and the island does not make the portion of the pipeline crossing the water body part of your production facility; in fact, this water crossing constitutes a "High Consequence Area" under 49 CFR part 195.

We appreciate the additional information you provided; however, it does not change our preliminary determination that the diesel fuel pipeline is subject to regulation under part 195. In addition, we appreciate your expression of intent to comply with the applicable requirements.

If we can be of further assistance, please contact Tewabe Asebe of my staff at 202-366-5523.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Gale", written over a light blue horizontal line.

John A. Gale  
Director, Office of Standards  
and Rulemaking



J. Patrick Foley  
SVP, Caelus Natural Resources Alaska, LLC  
pat.foley@caelusenergy.com  
Direct: 907-343-2110

April 22, 2015

John A. Gale  
Director, Office of Standards and Rulemaking  
PHMSA, U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590-0001

Re: Oooguruk Production Facility - Written Regulatory Interpretation of March 11, 2015

Dear Mr. Gale:

Thank you for your response to our request for a written interpretation dated December 5, 2014. Based upon the additional information and analysis provided in this letter, PHMSA should revisit and re-interpret the findings in your letter of March 11, 2015 because the contents of the 2-inch line at issue is not in the “stream of regulated transportation” and because the line is not “transporting hazardous liquid.” Nevertheless, although Caelus respectfully disagrees with the written interpretation provided by PHMSA, I also write to confirm that, subject to otherwise receiving a favorable reinterpretation, Caelus intends to comply with all regulatory requirements applicable based upon the interpretation that PHMSA has provided to us.

A. **The 2-inch line is a component of a “production facility” and, accordingly, its contents are not in the “stream of regulatory transportation.”**

Under 49 C.F.R. § 195.2,

*Production facility* means **piping or equipment** used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum or carbon dioxide, or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be **used in the process of extracting petroleum** or carbon dioxide from the ground or from facilities where carbon dioxide is produced, and preparing it for transportation by pipeline. This includes piping between treatment plants which extract carbon dioxide, and facilities utilized for the injection of carbon dioxide for recovery operations.)

All of the Caelus piping and equipment in the Oooguruk Production Facility is used solely for the extraction and recovery of crude. The 2-inch line at issue here is necessary to provide fuel for a generator that is essential to the operation of the offshore drilling (extraction and recovery) operation, and is also occasionally used to provide base oil used for drilling fluids.

Caelus purchases diesel fuel and base oil from vendors that deliver by truck to onshore tanks. Once delivered, the diesel fuel and base oil never leave the production facility. The 2-inch line is just like other in-plant piping located on the grounds of production facility. In this case, the production facilities includes the conductor pipe that contains a 12-inch flow line, an 8-inch water injection line and a 6-inch gas injection line, as well as the 2-inch line in question. The 2-inch line never leaves our production facility.

In sum, respectfully, PHMSA's jurisdiction does not include production facilities, production facilities are not in the "stream of regulated transportation," and the 2-inch line at issue is part of our production facilities.

**B. The 2-inch line is not "transporting hazardous liquid."**

The following definitions (bold font added) are established in 49 U.S.C. § 60101:

(7) "interstate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility used to transport hazardous liquid **in interstate or foreign commerce**;

(8) "interstate or foreign commerce"--

...  
(B) related to hazardous liquid, means commerce between--  
**(i) a place in a State and a place outside that State; or**  
**(ii) places in the same State through a place outside the State;**

(22) "transporting hazardous liquid"--

(A) means the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, **in or affecting interstate or foreign commerce**; but

(B) does not include moving hazardous liquid through--

- (i) gathering lines in a rural area;
  - (ii) onshore production, refining, or manufacturing facilities;
- or
- (iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities;

Applying these definitions, use of the 2-inch line in question does not meet the statutory definition of "transporting hazardous liquid" because: (i) the diesel fuel and base oil purchased

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by Caelus never leaves the State of Alaska (note that state waters are considered part of the associated state) and, accordingly, there is no commerce between a place in Alaska and any other state with respect to the 2-inch line; (ii) because the 2-inch line is not in or affecting interstate commerce, the pipeline is not, by statutory definition, "transporting hazardous liquid;" and (iii) because the 2-inch line is not, by definition, transporting hazardous liquid, it is not "already in the stream of regulated transportation" as interpreted by PHMSA in its March 11, 2015 letter.

In sum, based upon the information previously provided in Caelus' letter of December 5, 2014 and in this letter, we urge PHMSA to reevaluate and reconsider its interpretation. Notwithstanding our perspectives, in the interim, Caelus is proceeding in compliance with the interpretation we received on March 11, 2015. Please contact John Hellen at 907-343-2102 with any questions regarding this matter.

Sincerely,



J. Patrick Foley  
Senior Vice President

cc: Tewabe Asebe, USDOT  
John Hellén, Caelus  
Jeffrey W. Leppo, Stoel Rives