

January 26, 1977

Mr. Arthur P. Gnann, Jr.
Vice President, Operations
North Carolina Natural
Gas Corporation
Drawer 909
Fayetteville, North Carolina 28302

Dear Mr. Gnann:

This responds to your letter of December 1, 1976, regarding the construction of a paved roadway and other utility services over a 4-inch gas transmission line and the resulting reduction in ground cover over the pipeline.

Several questions are asked which in general relate to the applicability of the Federal gas pipeline safety standards, 49 CFR Part 192, or other Federal laws to persons other than the operator of a gas pipeline.

First, while a paved roadway may be considered a "structure" as that term is used under Section 192.327(c), that section of the safety standards does not appear applicable to your situation. Section 192.327 prescribes minimum cover requirements which must be met when a pipeline is readied for service or replaced, relocated, or otherwise changed. The rule does not have continuing legal effect thereafter, and once cover is installed, it need not be maintained in accordance with §192.327. However, if cover over an existing pipeline is eroded or otherwise remove, as by grading, an operator who knows of the reduction in cover is required by Sections 192.613 and 192.703 to consider the effect of the loss of cover on the safety of the pipeline and take appropriate remedial action if necessary.

The Federal gas pipeline safety standards are enforceable only against persons who own or operate pipelines and do not apply to third parties or outside contractors who may interfere with a pipeline, such as by construction of a roadway. We are not familiar with Federal laws relating to road construction, and do not now whether such construction is prohibited or limited by those laws.

Basically, under 49 CFR Part 192, operators are required to take whatever remedial action is necessary to operate and maintain their pipeline systems in accordance with the safety standards. Refusal or inability of persons other than the operator to correct unsafe situations which they have created on an operator's pipeline does not relieve the operator of its responsibility for compliance with Part 192.

We believe that a solution to your compliance problem may involve determining the extent of your right under common law regarding the 4-inch transmission line and possibly legal action to enforce those rights.

Sincerely,

\signed\

Cesar DeLeon
Acting Director
Office of Pipeline
Safety Operations

NORTH CAROLINA NATURAL GAS CORPORATION

December 1, 1976

Mr. Cesar DeLeon
Assistant Director
Office of Pipeline Safety Operations
Department of Transportation
Washington, D.C. 20590

Dear Mr. DeLeon:

North Carolina Natural Gas Corporation, (NCNG) is a public utility serving natural gas to a number of communities in Eastern North Carolina through a system of transmission lines.

In the suburbs of Greenville, North Carolina, an apartment project owner and contractor, without notice to NCNG, commenced the construction of a paved roadway and other utility services over our 4" transmission pipeline serving Washington, North Carolina, which normally operates at pressures up to 500 psi.

Prior to construction our pipeline had a minimum cover of about 33 inches and a maximum cover of 39 inches. The owner and contractor has reduced this ground cover by grading to a minimum of 18 inches and a maximum of about 30 inches along the 900 foot length of the construction presently underway.

Negotiations with the owner and contractor to relocate the roadway and to stop removal of the ground cover from the pipeline have proved completely fruitless.

In support of our continuing efforts to resolve this problem, I would appreciate an expression of the position of the Office of Pipeline Safety Operations on the following questions:

1. Is a paved road considered to be a structure?
2. What Federal Regulations, Rules or Statutes, if any, prohibit the construction of a paved roadway running parallel with and over a transmission pipeline? If same is not prohibited, are there any Federal restrictions or limitations regulating the construction of such a roadway?
3. Do Federal Statutes, Rules or Regulations prohibit removal by third parties of ground cover over a transmission pipeline that was originally laid to specifications?

4. Do prohibitions and safety requirements of the Federal Gas Pipeline Safety Regulations in Title 49 of the Code of Federal Regulations, Part 191 and 192 apply to the third party contractors; and are same enforceable against third parties interfering with the efforts of a transmission company such as NCNG to enforce the provisions of said Federal Code?

The answers to the questions above and any other legal interpretations of the Federal Code and its enforcement as may be applicable in this matter of third party interference are very important to our effort to operate and maintain our system in a manner that is not detrimental to the public safety.

Your prompt reply will be greatly appreciated.

Yours very truly,

\signed\

Arthur P. Gnann, Jr.
Vice President, Operations